

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ULSTER

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CRED A, LLC, 61 CROWN STREET, LLC, 311 WALL STREET, LLC, 317 WALL STREET, LLC, 323 WALL STREET OWNERS, LLC, 63 NORTH FRONT STREET, LLC, 314 WALL STREET, LLC, and 328 WALL STREET, LLC

Petitioners,

For a judgment pursuant to Article 78 of the CPLR

- against -

CITY OF KINGSTON PLANNING BOARD, CITY OF KINGSTON, JM DEVELOPMENT GROUP, LLC, HERZOG SUPPLY CO., INC., KINGSTONIAN DEVELOPMENT, LLC, PAGE PROPERTIES, LLC, and BLUE STONE REALTY LLC

Respondents.

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**VERIFIED AMENDED  
PETITION**

Index No.: EF2020-253

Assigned Judge  
Hon. Richard Mott

Petitioners, 61 Crown Street, LLC, 311 Wall Street, LLC, 317 Wall Street, LLC, 323 Wall Street, LLC, 317 Wall Street, LLC, 323 Wall Street Owners, LLC, 63 North Front Street, LLC, 314 Wall Street, LLC and 328 Wall Street, LLC, ("Petitioners") by and through their attorneys, Rodenhausen Chale & Polidoro LLP, as and for their Verified Amended Petition respectfully allege as follows:

**PRELIMINARY STATEMENT**

1. This is a CPLR Article 78 proceeding brought to annul a resolution of the City of Kingston Planning Board ("Planning Board") adopted on December 16, 2019, determining that a proposed mixed use building incorporating a 420 car garage, 143 apartments, 32 room boutique hotel, and 9,000 square foot retail/restaurant space, pedestrian plaza and walking bridge located at the intersection of Fair Street and N Front Street (the "Project"), within the National Register-listed Kingston Stockade Historic District ("KSHD"), along with the rezoning of approximately

0.313-acres of property to accommodate the same, would not have a significant adverse impact on the environment (the “Negative Declaration”). A copy of the Negative Declaration and its resolution are annexed hereto as Exhibit A.

2. In addition, this proceeding also seeks to annul a February 18, 2020 resolution of the City of Kingston Planning Board granting Preliminary Subdivision Approval for the Project (the “Subdivision Approval”).

3. The Project is located on several parcels of property in the City of Kingston at 9-17 & 21 N Front Street and 51 Schwenk Drive, tax parcels 48.80-1-25, -26, -24.120 (the “Property”).

4. The Negative Declaration resolution was adopted in contravention of the procedural and substantive requirements of the State Environmental Quality Review Act (“SEQRA”) and its implementing regulations in that, among other errors, the Planning Board failed to identify the relevant areas of environmental concern and failed to take the required “hard look” at the areas of concern.

5. The Subdivision Approval resolution was impermissibly adopted as it was based on an inadequate and unlawful SEQRA review.

6. Petitioners intend to amend or supplement this petition as may be necessary to include further municipal actions and approvals related to the Project.

### **PARTIES**

7. Petitioner 61 Crown Street, LLC is a duly created limited liability company organized in the State of New York which owns certain properties located at 61 Crown Street and 156-162 Green Street, identified as tax parcels 48.330-3-10 and 48.330-3-28.100, respectively. Petitioner 61 Crown Street, LLC’s properties are located in close proximity to the

Project's Property and are within the National Register-listed KSHD.

8. Petitioner 311 Wall Street, LLC is a duly created limited liability company organized in the State of New York which owns certain property located at 311 Wall Street, identified as tax parcel 48.331-1-16. Petitioner 311 Wall Street, LLC's property is located in close proximity to the Project's Property and is within the National Register-listed KSHD.

9. Petitioner 317 Wall Street, LLC is a duly created limited liability company organized in the State of New York which owns certain property located at 317 Wall Street, identified as tax parcel 48.331-1-15. Petitioner 317 Wall Street, LLC's property is located in close proximity to the Project's Property and is within the National Register-listed KSHD.

10. Petitioner 323 Wall Street Owners, LLC is a duly created limited liability company organized in the State of New York which owns certain property located at 323 Wall Street, identified as tax parcel 48.331-1-13. Petitioner 323 Wall Street, LLC's property is located in close proximity to the Project's Property and is within the National Register-listed KSHD.

11. Petitioner 63 North Front Street, LLC is a duly created limited liability company organized in the State of New York which owns certain property located at 63 North Front Street, identified as tax parcel 48.314-2-15. Petitioner 63 North Front Street, LLC's property is located in close proximity to the Project's Property and is within the National Register-listed KSHD.

12. Petitioner 314 Wall Street, LLC is a duly created limited liability company organized in the State of New York which owns certain property located at 314 Wall Street, identified as tax parcel 48.331-2-10. Petitioner 314 Wall Street, LLC's property is located in close proximity to the Project's Property and is within the National Register-listed KSHD.

13. Petitioner 328 Wall Street, LLC is a duly created limited liability company organized in the State of New York which owns certain property located at 328 Wall Street, identified as tax parcel 48.331-2-4. Petitioner 328 Wall Street, LLC's property is located in close proximity to the Project's Property and is within the National Register-listed KSHD.

14. The Petitioners are supportive of the concept of a mixed-use redevelopment project, but take serious issue with the lack of diligence performed by the Planning Board during its environmental review and the massive size, scope and appearance of the structures which will negatively impact the KSHD.

15. Petitioners will be injured by the Project as it will impact their enjoyment of their respective properties. The Project involves the construction of a massive mixed-use development in a nationally recognized historic district which has the potential to negatively impact the historic resources and character of the KSHD. The Project also involves changes to traffic flow, including the closure of the Fair Street Extension. The Project will permanently alter the historic character of the KSHD, in which Petitioners' properties are located, and will interfere with the appearance and environment of the district. Petitioners purchased their properties in part due to the unique setting of the KSHD which the Project will now disrupt.

16. Petitioners have standing to pursue the claims asserted herein because they are owners of real property in the City of Kingston and have unique property and personal interests that will be adversely affected by the proposed Project.

17. Petitioners' interests are within the zones of interests that SEQRA is intended to protect.

18. Upon information and belief, Respondent City of Kingston Planning Board (the "Planning Board") is a duly created body established by the City of Kingston pursuant to New

York General City Law Article 3, whose authorized duties include, among other things, the authority to review actions pursuant to SEQRA.

19. Upon information and belief, Respondent City of Kingston is the owner of the parcel at 21 North Front Street, identified as tax parcel number 48.81-1-26, as well as the portion of Fair Street that is proposed to be discontinued and be developed as part of the Project.

20. Upon information and belief, Respondent JM Development Group, LLC is a New York limited liability company with offices at 2975 Route 9W South, New Windsor, NY, and a developer of and/or applicant for the Project.

21. Upon information and belief, Respondent Herzog Supply Co., Inc. is a duly created New York business corporation with offices at 151 Plaza Road, Kingston, NY, and the owner in whole or in part of real property located at 9-17 N Front Street and 51 Schwenk Drive, identified as tax parcel nos. 48.80-1-26 and -24.120, which is a portion of the Project Property.

22. Upon information and belief, Respondent Kingstonian Development, LLC is a New York limited liability company with offices at 2975 Route 9W South, New Windsor, NY, and a developer of and/or applicant for the Project.

23. Upon information and belief, Respondent Patrick Page Holdings, d/b/a Patrick Page Properties, is a New York limited partnership with offices at 1613 Route 300, Newburgh, NY, and a developer of and/or applicant for the Project. Respondent Patrick Page Holdings was erroneously identified as Page Properties LLC in the caption but has accepted service and appeared in the proceeding.

24. Upon information and belief, Respondent Blue Stone Realty, LLC is a New York limited liability company with offices at 200 Fair Street, Kingston, NY, and has an interest in the Project.

25. Collectively, Respondents herein, with the exception of the Planning Board, are referred to hereafter as the “Applicants.”

### **VENUE**

26. Pursuant to CPLR §§ 7804(b) and 506(b), this Article 78 proceeding is properly venued in New York Supreme Court, Ulster County.

### **BACKGROUND**

#### ***A. History of the Stockade District***

27. The KSHD comprises approximately 32.11 acres of uptown Kingston which once housed the Kingston stockade. A copy of the National Register of Historic Places Nomination Form is annexed hereto as Exhibit B.

28. This section of the City of Kingston was laid out as a Dutch village in the mid-seventeenth century. The site of the village was “carefully chosen in relation to topography on a high delta-like plain which provided good drainage, as well as effective strategic protection from attack.” Ex. B at p. 6.

29. In 1658, a log stockade was completed to fortify the village, and the streets along the boundaries of the stockade are still seen in modern uptown Kingston. Ex. B at 6.

30. Since its establishment, the KSHD has had tremendous historical significance. The settlement became the first capital of the State of New York, hosted a constitutional convention to permit the framing of New York’s Constitution, and contained the First Term of the New York Supreme Court, as presided over by future U.S. Supreme Court Justice John Jay. Ex. B at 6.

31. At present, over 300 years after its establishment, remnants of the historic Dutch settlement are evident. The street patterns are intact, and the area contains colonial-era Dutch

stone houses. Moreover, even the development that has occurred since the colonial era has contributed to the KSHD's historic character; "The district contains a number of building[s] which individually exemplify the city's architectural development from the seventeenth through twentieth centuries. Together, however, with the street patterns and landscaping they form an environment that is a critical and irreplaceable part of the historical heritage of Kingston and of New York State." Ex. B at 6.

*B. Proposed Development in the District*

32. The City of Kingston owns a parcel of land located partly within the KSHD which was formerly developed with a parking garage. Upon information and belief, in the spring of 2008 the City demolished the garage as a result of poor maintenance thereof.

33. The municipally-owned site, tax parcel 48.80-1-26, now contains a parking lot to the north as well as a park located along its southern boundary on North Front Street, between Wall Street and Fair Street. The park consists of a passive recreation area with playground games painted on the pavement, two picnic tables, a rectangular sitting wall, trees and other landscaping elements, and a walkway.

34. This area is identified in the Ulster County tax records for the parcel as a "picnic site." A copy of the County parcel records for this parcel is attached hereto at Exhibit C.

35. Upon information and belief, this park area was first constructed as a picnic site in 1971. See Ex. C at 2.

36. Upon information and belief, the City of Kingston maintains this park, and has allowed it to be used for hosting events for the public, including but not limited to a holiday tree lighting attended and led by the Mayor of Kingston. See the Press Release published by the City of Kingston on December 6, 2013, "Snowflake Festival 2013," a copy of which is attached

hereto at Exhibit D. See also a photo of such a tree lighting at the park that, upon information and belief, was taken in 2016, a copy of which is attached hereto as Exhibit E. See also a map of the festivities from 2019, depicting the use of the municipality's park, a copy of which is attached hereto at Exhibit F.

37. On October 27, 2016, the Common Council published "Request for Qualifications #K16-10, Adaptive Development of Uptown Parking Sites for Mixed Use" (the "RFQ"). A copy of the RFQ is annexed hereto as Exhibit G.

38. The RFQ sought responses "from qualified developers to design, construct and operate a mixed use development on three separate parcels owned currently by the City of Kingston" Ex. G. at 1.

39. Upon information and belief, the Common Council awarded the RFQ to Respondent Blue Stone Realty LLC.

40. Upon information and belief, the Project has been assigned to JM Development Group, LLC, Page Properties, LLC, and Herzog Supply Co., Inc., which eventually proposed the Project and submitted applications to the City of Kingston Planning Board for site plan and special use permits for the same.

41. Upon information and belief, Blue Stone Realty LLC and its related entities retain a right of reverter and may develop the portion of the Property owned by the City of Kingston if the Project is not approved.

42. The Project seeks to construct a 420 car garage, 143 apartments, 32 room boutique hotel, and 9,000 square foot retail/restaurant space, pedestrian plaza and walking bridge at the Property, which is located within the City of Kingston's Central Commercial ("C-2") District. All of the Property except tax parcel 48-80-1-24.120 was also located within the City of



Kingston's Stockade Mixed Use Overlay ("MUO") District, with the City having amended the Zoning Map to include said parcel in the MUO District.

43. As part of the Project, the Applicants sought subdivision approval from the Planning Board to merge the properties identified as tax parcel nos. 48.80-1-25 & 48.80-1-24.120.

44. The Project is within the KSHD and is located across from the Senate House State Historic Site, which is believed to have been constructed in the late 1600's to early 1700's and was the site of New York's first constitutional convention.

45. On June 3, 2019, after having received site plan and special use permit applications for the Project, the Planning Board established itself as Lead Agency for the Project pursuant to SEQRA, meaning that it would perform the requisite environmental review of the Project in order to determine the Project's potential to adversely affect the environment and whether additional environmental reviews of the Project were necessary. If the Project has even the potential to have a significant adverse environmental impact, then the lead agency must adopt a "Positive Declaration" requiring that a Draft Environmental Impact Statement ("DEIS") be prepared. It is only when an action does not have the potential to have a significant adverse impact on the environment that a Negative Declaration may be adopted.

46. On March 18, 2019, the Planning Board correctly classified the Project as a Type I action under SEQRA. Type I actions are presumed likely to have a significant adverse environmental impact. 6 NYCRR 617.4(a)(1).

47. Among the materials submitted to the Planning Board by the Applicants was a Full Environmental Assessment Form Part 1 ("FEAF") dated November 27, 2018. The FEAF is meant to describe and contextualize a proposed action and is the primary source of information

for a lead agency in determining whether an action has the potential to have a significant adverse environmental impact.

48. Subsequent to the submission of the FEAF, the Project has changed significantly. Fourteen new residential units and an additional floor were added to the Project's apartment building.

49. Despite these changes to the Project, the Planning Board did not require the Applicants to submit a new or revised FEAF.

50. Upon information and belief, throughout its environmental review of the Project, the Planning Board has received dozens of oral and written comments regarding the various ways in which the Project will adversely impact the environment, including, *inter alia*, impacts to aesthetics and visual resources, archaeological and historical resources, water resources, community character, and traffic.

51. In fact, the Planning Board has even received input from an Interested Agency under SEQRA describing the ways in which the Project will impact historic resources, which are considered a part of the environment under SEQRA. 6 NYCRR 617.2(l).

52. On December 16, 2019, the Planning Board adopted its Negative Declaration, finding that the Project does not have even the potential to have a significant adverse environmental impact.

53. On February 18, 2020, the Planning Board granted the Project Preliminary Subdivision Approval, and upon information and belief said preliminary subdivision approval was filed in the office of the City Clerk on March 3, 2020. See Minutes of the City of Kingston Planning Board attached hereto at Exhibit H.

**AS AND FOR A FIRST CAUSE OF ACTION**  
**(FAILURE TO COMPLY WITH THE PROCEDURAL REQUIREMENTS OF SEQRA)**

54. Petitioners repeat and reallege all the foregoing allegations set forth in this Petition with the same force and effect as though set forth herein at length.
55. The procedural requirements of SEQRA must be strictly followed.
56. A FEAF is required for all Type I actions. 6 NYCRR 617.6(a)(2).
57. The Planning Board failed to fulfill the requirements of SEQRA by, among other things, failing to require a FEAF that included all project components and changes.
58. The FEAF Part 1 that the Planning Board relied on when making its Negative Declaration did not account for significant modifications to the Project, which grew in both size and scope since the submission of the application.
59. The FEAF Part 1 also fails to identify all required approvals, including the request to rezone of a portion of the Project area by the Common Council.
60. The FEAF Part 1 also fails to identify the fact that the Project will involve the removal of a small park area at a portion of the Property owned by the City. Alienation of parkland requires approval of both the New York State Legislature and Governor.
61. The FEAF failed to identify the need for these approvals, and later the Planning Board failed to consider the impacts of those approvals. See Ex. A, attach. at 2.
62. The Planning Board acted in contravention of SEQRA by issuing a Negative Declaration without a complete FEAF Part 1 and without circulating the FEAF to all involved and interested agencies, and its Negative Declaration must be annulled.

**AS AND FOR A SECOND CAUSE OF ACTION**  
**(FAILURE TO TAKE A HARD LOOK AT IMPACTS TO HISTORICAL RESOURCES)**

63. Petitioners repeat and reallege all the foregoing allegations set forth in this

Petition with the same force and effect as though set forth herein at length.

64. SEQRA requires a reviewing agency to identify all relevant areas of environmental concern, analyze the areas of environmental concern (the “hard look”) and, in adopting a Negative Declaration, provide a detailed reasoned elaboration for its determination. 6 NYCRR 617.7(b).

65. In the Full EAF Part 2, the Planning Board identified a potentially large impact on historic and archeological resources.

66. The potential for just one significant impact is sufficient to require the preparation of an Environmental Impact Statement. 6 NYCRR 617.7(a)(1).

67. The Project will adversely impact the KHSD. The KHSD is defined not only by its historic past, but also the fact that that past is still reflected in its present character. The Project would interfere with that historic resource by constructing a massive, out of scale, and out of character mixed-use development.

68. One means by which the Project will impact the KSHD is through visual impact.

69. Upon information at belief, the main building for the Project will be 7 stories tall. A building of this scale will dwarf its surroundings and eliminate the unique, quaint, historic character that defines the Stockade District. The Negative Declaration fails to substantively study and consider this visual impact, as its basis for a finding of no impact focuses almost entirely on whether certain additional units on the Project’s seventh floor are visible from the surrounding area. See Ex. A at 47. The discussion hardly considers the overall impact of the structure on the visuals of the District.

70. The Kingstonian is “out of context with the vernacular architecture of the stockade district . . . and may compromise the authenticity of the district.” See Affidavit of R.

Beiran ¶ 7, a copy of which is attached hereto at Exhibit I.

71. The Kingstonian is “out-of-scale” with the KSHD and “would present an outsized adverse visual and contextual impact on the architectural and historic character of both the National Register-listed KSHD and the locally designated Stockade (Area) Landmark District.” See Affidavit of K. Culhane ¶ 30, a copy of which is attached hereto at Exhibit J.

72. Moreover, the Project threatens to develop over one of the features that formed the basis for the Stockade District’s location. The stockade was established at its location in order to take advantage of a bluff in the local topography. The fact that this bluff is still relatively intact is notable and contributes to the historic character of the District. Ex. B at 6. The Project proposes to construct a building starting in the Stockade District and expanding down and over the bluff to the northeast of the District, thereby eliminating a feature that contributed to both the District’s founding and its present historical value.

73. The Senate House State Historic Site will be negatively impacted by the loss of the historic stockade topography. The view of the Project site from the Senate House State Historic Site clearly includes the steep grade drop of the Fair Street Extension, indicating the historic bounds of the Stockade District. This visual interpretive feature will be lost forever.

74. The loss of the landscape above the creek below the bluff, and its replacement with a bulky and dense new development, would have adverse visual impacts on the approach to the historic district as well as the experience from within the KSHD and the Senate House State Historic Site. These impacts have been dismissed by the Planning Board in its Negative Declaration. Ex. J, Aff. K. Culhane ¶ 31. In the case of the Senate House State Historic Site, the Negative Declaration fails to even acknowledge any potential impacts to the site, let alone thoroughly analyze the impacts.

75. In addition, the Planning Board's reasoning that the Project's visual impact does not warrant a Positive Declaration is flawed and based on the incorrect standard. In analyzing the extent to which the Applicants have purportedly mitigated the impacts of the Project, the Planning Board stated in its Negative Declaration that it "is satisfied that the visual impacts of the project have been thoroughly examined and mitigated to the maximum extent practicable. Therefore, none of these areas of environmental concern identified as moderate to large are significant." Ex. A at 46.

76. The Planning Board based its decision on its belief that the impacts have been "mitigated to the maximum extent practicable." A Lead Agency must base its decision on whether or not an action has the potential to have a significant adverse environmental impact, not whether it believes an impact has been partially mitigated. 6 NYCRR 617.7(a)(1).

77. Involved Agencies have identified potential impacts to historic resources, but the Planning Board dismissed their concerns.

78. By letter dated September 19, 2019, the New York State Office of Parks, Recreation, and Historic Preservation ("OPRHP") provided its opinion on the Project and its potential impact on historic resources. A copy of the letter is annexed hereto as Exhibit K.

79. OPRHP noted that the Project would result in a visual intrusion on the historic stockade boundary:

"North Front Street is the traditional district boundary marked by a distinct natural drop-off down toward the Esopus Creek. This natural contour clearly marks the northern boundary of the historic 1658 stockade. The lower portion to the north of the district now contains modern buildings and the shopping plaza further to the north, but the historic boundary remains readily apparent and continues to characterize the district. The new construction would significantly alter the northern district boundary and would be clearly visible from within the historic district." Ex. K at 1.

80. OPRHP also noted that, though there are now a variety of building types and

styles within the KSHD, the Project as proposed is out of character and would not mesh with the existing neighborhood: “The new construction is monolithic compared with the surrounding district. Though the currently proposed design attempts to reference the historic setting and surrounding architecture, we believe that a much greater effort is warranted for a construction of this scale.” Ex. K at 2.

81. Based on its review of the Project, OPRHP concluded that “[i]n accordance with the Secretary of the Interior Standards, and based on our comments above, we believe that the proposed development will have adverse effects to the Kingston Stockade Historic District.” Ex. K at 2 (emphasis added).

82. The Planning Board failed to seriously consider this input, simply noting that it disagreed with OPRHP’s conclusions and that the Applicant has attempted to mitigate these impacts. The term “disagree” is too strong a word, as it implies that there was some minimal consideration of impacts. Here, the Negative Declaration does not even acknowledge the bluff/topography issue raised by OPRHP. The simple and conclusory dismissal of OPRHP’s conclusions further demonstrates that the Planning Board did not take a “hard look” at the Project’s adverse environmental impacts.

83. Another Involved Agency whose input the Planning Board failed to consider was the City of Kingston Historic Landmarks Preservation Commission (“HLPC”).

84. By letter dated March 11, 2019, the HLPC wrote the Planning Board as an Involved Agency, listing numerous concerns about the Project, which it believed would historical resources. The HLPC informed the Planning Board of the Project’s potential to, among other things, “create a false historical record,” “impact the visual context of the district, including the architectural components of the district’s buildings,” and alter “a significant landscape

feature of this historic district: the bluff, an important element to interpreting the district's history." A copy of the HLPC's Involved Agency letter to the Planning Board is attached hereto at Exhibit L.

85. Historic Preservation Specialist and former HLPC Vice Chair Marissa Marvelli informed the Planning Board of the Project's potential impacts to historical resources. In her August 19, 2019 comments, a copy of which is attached hereto at Exhibit M, she states that the Planning Board had ignored the HLPC's letter and concerns.

86. The City of Kingston Historic Landmarks Preservation Commission ("HLPC") again submitted a letter to the Planning Board on September 6, 2019, express concerns about the loss of archaeological features, and called for ongoing dialogue regarding the HLPC's concerns about the visual impacts on the historic district. HLPC called for "careful consideration to the impacts on the district." There is no further evidence that such an evaluation has taken place to the satisfaction of the HLPC as an Involved Agency, nor in satisfaction of the terms of its enabling legislation. A copy of this letter is attached hereto at Exhibit N.

87. The Planning Board may attempt to claim that it received positive feedback for the Project from an Involved Agency regarding historical impacts, but there was no such information in the record before the Planning Board when it adopted its Negative Declaration.

88. While it is true that OPRHP later did an about-face, advising the Empire State Development Corporation that it believed the Project would not have adverse impacts on historic resources, the letter was drafted after the adoption of the Negative Declaration, is not part of the Planning Board's record, and cannot be considered when determining whether the adoption Negative Declaration was proper.

89. The OPRHP informed the Planning Board of its change of opinion via letter dated



February 14, 2020, nearly two months after the Planning Board's adoption of the Negative Declaration. A copy of this letter is attached hereto at Exhibit O. This letter was delivered after Petitioner Creda, LLC instituted this proceeding on January 16, 2020, and appears to be an after-the-fact attempt to address the deficiencies in the Negative Declaration that Creda, LLC's petition raised. Petitioners are in the process of instituting an additional Article 78 proceeding that would, among other things, address the conclusions of this letter and OPRHP's improper assessment of the Project.

90. However, the scope of an Article 78 proceeding is limited to the record before the agency at the time of its action. As the letter was not part of the Planning Board's record when it made its Determination of Significance, it cannot now be considered during a challenge to that Determination.

91. Even if the February 14, 2020 OPRHP letter was properly considered by the Planning Board, it does not relieve the Planning Board of its obligation as lead agency to independently take a hard look at impacts to historic resources and to provide a written reasoned elaboration supporting its finding.

92. Pursuant to the above, the Planning Board failed to thoroughly analyze impacts on historic resources and failed to provide a reasoned elaboration for its Negative Declaration, instead relying on conclusory statements. Therefore, its determination of non-significance is arbitrary and capricious and must be annulled.

**AS AND FOR A THIRD CAUSE OF ACTION  
(FAILURE TO TAKE A HARD LOOK AT IMPACTS TO COMMUNITY  
CHARACTER)**

93. Petitioners repeat and reallege all the foregoing allegations set forth in this Petition with the same force and effect as though set forth herein at length.

94. SEQRA requires a reviewing agency to identify all relevant areas of environmental concern, analyze the areas of environmental concern (the “hard look”) and, in adopting a Negative Declaration, to provide a detailed reasoned elaboration for its determination. 6 NYCRR 617.7(b).

95. In the Full EAF Part 2, the Planning Board failed to identify and consider a potentially large impact on community character.

96. The Planning Board briefly discusses community character within the Negative Declaration’s subsection on historic resources but fails to substantively discuss the potential impacts. The glossing over of impacts on community character by the Planning Board does not satisfy the requirement of taking a “hard look” at the issue.

97. The Planning Board concludes that the Project will not have a significant adverse impact on community character because the uses proposed are purportedly allowed by special permit and because the mixed-use plan will further the goals of the MUO District.

98. The Planning Board’s conclusion is flawed and cannot support its SEQRA determination because it is based on whether the Project complies with the City’s Zoning Law, not whether the Project will have an impact on the environment. As described in detail above, the Project will have a significant adverse impact on the character of the surrounding community – the KSHD.

99. The District is defined by its quaint and historic character. Two Interested Agencies and many members of the public commented on the negative effects that the Project would have on the KSHD. See Ex. K, wherein OPRHP advised the Planning Board that the Project would have adverse effects on the KSHD. See also Ex. L.

100. While well-designed projects can enhance and complement a historic district, “the

public experience of the KSHD would forever be undermined by the poor planning and incompatible design represented by the Project. Once built, the archaeological and cultural landscape features would be lost forever, and along with them the sense of place and scale inherent in the KSHD”. Ex. J, Aff. K. Culhane ¶ 35.

101. The Project is out of scale with the KSHD and with standards promulgated by the Secretary of the Interior for any work that will potentially impact historic resources. Ex. J, Aff. K. Culhane ¶¶ 24, 25.

102. Standard 9 of the Secretary of Interior’s standards states that “New additions, exterior alterations or related new construction will not destroy historic materials, features and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.” Ex. J, Aff. K. Culhane ¶ 24.

103. The Project elevations depict a “gaping maw of a parking garage on a physical and visual axis with historic Fair Street, replacing the historic Fair Street Extension,” which “does not meet the Secretary of the Interior’s Standards, as it is a jarring divergence from the historic rhythm of the district, its historic street pattern, as well as the commercial streetwall’s scale, features, and proportion.” Ex. J, Aff. K. Culhane ¶ 25.

104. The materials and style of the Project are also incompatible with the KSHD and Standard 9. “The many colors and textures of the façade; its lack of visual cohesion; and its confusing composition are not compatible with the historic district’s features, size, scale, proportion or massing as demanded by the Standards.” Ex. J, Aff. K. Culhane ¶ 26.

105. These impacts are dismissed as insignificant in the Negative Declaration.

106. The Negative Declaration fails to consider the impacts of the pedestrian walking bridge on the uptown business community, which would divert pedestrians into a privately-owned strip mall outside of the KSHD.

107. The Negative Declaration also fails to adequately address the impact on community character from increased parking needs. The existing surface lot at the Property contains parking spaces for approximately 144 cars serving the KSHD community.

108. The Project will replace the surface parking lot with a parking garage with 420 spaces serving both the public and the needs generated by the Project, or 276 spaces more than the Property currently provides. Only 250 spaces will be accessible to the public, while the Project would generate the need for at least 290 to 343 parking spaces, resulting in a net loss of parking spaces available to the public.

109. Section 405-34J of the City of Kingston Zoning Law requires 1.5 spaces for each one-bedroom apartment and 2 spaces for a two- or three-bedroom apartment.

110. The Zoning Law further requires one parking space for each hotel room with an additional space needed for every 600 square feet of space outside of guest rooms.

111. The Project proposes a mix of one-, two- and three-bedroom apartments. If all 143 of the apartments, including the two- and three-bedroom apartments, and the 32 hotel rooms generate only 1.5 vehicles each, a minimum of 263 parking spaces in the garage will be occupied by residential tenants and hotel customers. Additional spaces will be needed for hotel employees. This does not account for the additional parking generated by customers and employees of the 8,000 square feet of commercial space.

112. The Zoning Law requires one parking space for every 100 square feet of gross floor area for a restaurant, and one parking space for every 300 square feet of floor area for retail.

The commercial portion of the Project will therefore generate the need for at least 27 to 80 parking spaces.

113. The proposed 420 parking spaces are not sufficient to replace the existing public parking spaces and provide for the parking needs generated by the Project.

114. The Project will result in net loss of public parking spaces, impacting the surrounding businesses and neighborhoods, as cars drive further from the KSHD to locate available parking. The Planning Board failed to consider this impact on community character.

115. The Negative Declaration fails to provide the required written elaboration on why the Project will not have an impact to community character, other than its analysis that the Project will comply with zoning.

116. The Planning Board's conclusory statement that the Project will not result in any significant impacts on the character of community is arbitrary, capricious, not supported by the record, and the Negative Declaration must be annulled.

**AS AND FOR A FOURTH CAUSE OF ACTION  
(FAILURE TO TAKE A HARD LOOK AT ARCHAEOLOGICAL RESOURCES)**

117. Petitioners repeat and reallege all the foregoing allegations set forth in this Petition with the same force and effect as though set forth herein at length.

118. SEQRA requires a reviewing agency to identify all relevant areas of environmental concern, analyze the areas of environmental concern (the "hard look") and, in adopting a Negative Declaration, to provide a detailed reasoned elaboration for its determination. 6 NYCRR 617.7(b).

119. The Planning Board failed to give a hard look to the impacts of the Project on archaeological resources.

120. In addition to the Stockade District's obvious historical value, as discussed above,

the Stockade District contains archaeological resources that had to be considered by the Planning Board when determining whether the Project could have adverse environmental impacts.

121. The OPRHP has previously noted that that the site is in an archaeologically sensitive area.

122. Due to the site's apparent archaeological value, a phase 1A Cultural Resources Investigation was prepared by the Applicants' consultant, Joseph E. Diamond, PhD. A copy of the report is attached as Exhibit P. The report found a high likelihood of finding archeological deposits related to the period of significance of the KSHD within the proposed Project area and recommended additional testing.

123. Despite this recommendation, the Planning Board failed to require the recommended additional testing before determining that the Project would not have a significant adverse impact on archaeological resources.

124. Instead, the Planning Board is allowing additional testing to take place during construction. Monitoring during construction has the potential to miss important artifacts as employing backhoes and other harmful construction methods can quickly turn over dirt. If archaeological resources are found during construction, it will be too late to redesign the Project to avoid impacts to such resources.

125. Moreover, "monitoring during construction has the potential to slow construction in the case of a significant find, therefore there is little incentive for the Project developers to take this recommendation seriously or to conduct archaeological investigations with the level of detail required for useful or insightful data recovery." Ex. J, Aff. K. Culhane ¶ 20.

126. Phase II archaeological investigations, and, if warranted, Phase III investigations, must take place before the Planning Board makes its determination of significance.

127. Without the results of such additional archaeological investigations, the Negative Declaration is arbitrary and capricious and not based on substantial evidence.

**AS AND FOR A FIFTH CAUSE OF ACTION  
(FAILURE TO CONSIDER IMPACTS FROM PARKLAND ALIENATION)**

128. Petitioners repeat and reallege all the foregoing allegations set forth in this Petition with the same force and effect as though set forth herein at length.

129. The Project proposes the elimination of an existing park owned by the City of Kingston.

130. Municipal parkland is subject to the “public trust doctrine,” which imposes a duty to hold public land for the benefit of the people. Parkland therefore cannot be alienated without approval of a parkland alienation bill.

131. Alienation of parkland by a municipality is an action subject to SEQRA review and municipalities must consider the alienation, alternatives and its consequences.

132. The FEAF failed to identify the alienation of parkland as a component of the Project.

133. The Planning Board completely failed to consider the impacts of alienation of parkland in its Negative Declaration. There is not a single mention of it in the FEAF, SEQRA documents, or Negative Declaration.

134. SEQRA recognizes that “[a]ctions commonly consist of a set of activities or steps” and that “the entire set of activities or steps must be considered the action . . . .” 6 NYCRR 617.3(g). Impacts from the alienation cannot be considered in a separate SEQRA review because SEQRA requires the entire set of activities to be considered together.

135. The Planning Board failed to take a hard look at the impacts of alienation of parkland when it adopted the Negative Declaration.

136. The Planning Board and the City of Kingston have impermissibly segmented review of alienation of parkland from the review of the Project.

137. The Planning Board violated the requirements of SEQRA when it adopted the Negative Declaration and the Negative Declaration must be annulled.

**AS AND FOR A SIXTH CAUSE OF ACTION  
(IMPROPER GRANT OF SUBDIVISION APPROVAL)**

138. Petitioners repeat and reallege all the foregoing allegations set forth in this Petition with the same force and effect as though set forth herein at length.

139. Pursuant to SEQRA, an agency may not approve an action without first determining whether it has the potential to have a significant adverse impact on the environment. 6 NYCRR 617.1(c).

140. As set forth above, Respondent Planning Board did not comply with the procedural or substantive aspects of SEQRA with respect to the Project. Therefore, the Planning Board was not permitted to approve any action related to the Project.

141. Subsequent to its improper adoption of the Negative Declaration, the Planning Board granted the Project Preliminary Subdivision Approval for a lot line revision between two of the Project parcels.

142. As this Preliminary Subdivision Approval was granted subsequent to and pursuant to an improper Negative Declaration, it must be annulled.

**WHEREFORE**, Petitioners respectfully request that this Court enter a Judgment and Order granting the Verified Petition in its entirety and awarding judgment to Petitioners as follows:



- (a) Annulling and vacating the Planning Board's Negative Declaration for the Project;
- (b) Annulling and vacating the Planning Board's Preliminary Subdivision Approval for the Project; and
- (c) Awarding Petitioners such other and further relief as the Court deems just and proper, with the costs and disbursements of this proceeding.

Dated: July 15, 2020  
Rhinebeck, New York

RODENHAUSEN CHALE & POLIDORO LLP

By:

A handwritten signature in dark ink, appearing to read 'Victoria L. Polidoro', with a long horizontal flourish extending to the right.

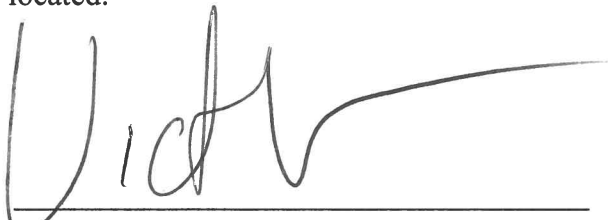
Victoria L. Polidoro, Esq.  
Attorneys for Petitioners  
55 Chestnut Street  
Rhinebeck, NY 12572  
(845) 516-4323

VERIFICATION


STATE OF NEW YORK     )  
  ) ss.  
COUNTY OF DUTCHESS    )

VICTORIA L. POLIDORO, being duly sworn, deposes and says:

I am an attorney with Rodenhausen Chale & Polidoro LLP, counsel for Petitioners and I am familiar with the relevant facts herein. I have read the foregoing Amended Verified Petition and know the contents thereof, and the same are true to my knowledge, except those matters therein which are alleged upon information and belief, and I believe those matters to be true. The basis of my knowledge is my review of Petitioners' records and/or consultations with Petitioners. This verification is made pursuant to CPLR 3020(d)(3) because Petitioners are not located in the same county where their attorneys' office is located.

  
\_\_\_\_\_  
VICTORIA L. POLIDORO

Sworn to before me this  
15th day of July, 2020

  
\_\_\_\_\_  
Notary Public

JAMES P LOGAN  
NOTARY PUBLIC-STATE OF NEW YORK  
No. 02LO6381720  
Qualified in Dutchess County  
My Commission Expires 10-09-2022