

STATE OF NEW YORK  
SUPREME COURT COUNTY OF OTSEGO

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In the Matter of the Application for a Judgment  
Pursuant to Article 78 and Request for Declaratory  
Judgment Pursuant to Section 3001 of the Civil Practice  
Law and Rules by:

JOHNA M. PEACHIN, JOHN C. PIETROBONO,  
KATHLEEN PIETROBONO, ROBERT B.  
PONDOLFINO, JR., and GERALD D. PONDOLFINO

Petitioners/Plaintiffs

v.

CITY OF ONEONTA, CITY OF ONEONTA COMMON  
COUNCIL, GARY HERZIG in his capacity as MAYOR  
OF THE CITY OF ONEONTA, CITY OF ONEONTA  
PLANNING COMMISSION, CITY OF ONEONTA  
ZONING BOARD OF APPEALS, STEPHEN YERLY in  
his capacity as CITY OF ONEONTA CODE  
ENFORCEMENT OFFICER, PARKVIEW  
DEVELOPMENT & CONSTRUCTION, LLC, and  
HARTWICK COLLEGE

Respondents/Defendants

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Petitioners/plaintiffs Johna M. Peachin, John C. Pietrobono, Kathleen Pietrobono, Robert B. Pondolfino, Jr., and Gerald D. Pondolfino (collectively “Petitioners”), by and through their attorney Douglas H. Zamelis, Esq., allege for their verified petition/complaint against respondents/defendants City of Oneonta, City of Oneonta Common Council, Gary Herzig in his capacity as Mayor of the City of Oneonta, City of Oneonta Planning Commission, City of Oneonta Zoning Board of Appeals, Stephen Yerly in his capacity as City of Oneonta Code Enforcement Officer, Parkview Development & Construction, Inc., and Hartwick College (collectively “Respondents”) as follows:

### INTRODUCTION

1. This proceeding is brought pursuant to Article 78 of the Civil Practice Law and Rules in connection with a large, controversial development project commonly

**VERIFIED PETITION**

Index No.:

Hon.

known as the “Lofts on Dietz Street” (the “Project”) to annul and vacate a) the October 10, 2019 written determination of the City of Oneonta Code Enforcement Officer (the “CEO”) that “The Dietz Street Lofts are in compliance with the parking requirements found in the City of Oneonta Code” as contrary to the City of Oneonta Zoning Code (the “Zoning Code”); b) the November 5, 2019 determination of the City of Oneonta Common Council (“Common Council”) and Mayor to sell a portion of the Dietz Street parking lot owned by the City of Oneonta (the “City”) to Parkview Development & Construction, LLC (“Parkview”) for i) failure to comply with the requirements of the State Environmental Quality Review Act codified at Article 8 of the Environmental Conservation Law (“SEQRA”); ii) failure to provide reasonable or adequate notice to the public; and iii) failure to comply with General City Law (“GCL”) Section 23(2)(b)’s requirements for the disposition of public property; and c) the November 6, 2019 determination of the City of Oneonta Planning Commission (the “Planning Commission”) granting site plan approval to Parkview for failure to comply with SEQRA, failure to comply with several provisions of the Zoning Code, and unreasonable and improper waiver of several substantive requirements of the Zoning Code.

2. Petitioners also seek a declaratory judgment pursuant to Section 3001 of the CPLR that Section 300-61(G)(2) of the Zoning Code is invalid and unenforceable in that it fails to contain appropriate conditions for waivers of site plan requirements by the Planning Commission as required by GCL Section 27-a(5).

## PETITIONERS/PLAINTIFFS

3. Petitioner Johna M. Peachin (“Ms. Peachin”) is a natural person who resides at 115 Deerfield Drive, Town of Oneonta, Otsego County, New York, and who owns and operates The Peachin Group, LLC, a business consulting and tax preparation firm located at 189 Main Street in the City of Oneonta. Ms. Peachin, her employees and her clients rely on the Dietz Street parking lot for parking. The Project will substantially reduce the number of parking spaces in the lot while simultaneously creating significant additional demand for parking there. This will complicate Ms. Peachin’s daily commute and that of her employees as parking becomes a scarce resource and searching for parking more time consuming. Turning from Dietz Street onto Main Street is already an issue at peak times. Adding nearly 100 cars to the area would negatively impact her as they would exacerbate the Main/Dietz Street intersection problem. The loss of parking spaces in the DSPL will adversely impact the ability of Ms. Peachin’s clients to find parking within a reasonable distance of her office. This is particularly important during the peak January through March client meeting period when accumulated and plowed snow have adversely impacted parking in the downtown area. Ms. Peachin is further concerned about the City establishing a precedent of allowing grade level dwelling units in the downtown Oneonta area - despite the prohibition in the Zoning Code. She fears that the restaurants and shops in the heart of the City that she regularly visits and enjoys will be replaced by grade level residential dwelling units which will change the character of the downtown

neighborhood and community. Ms. Peachin is a member of the YMCA located at 20-26 Ford Avenue directly across the street from the DSPL and the Project. She works out at the YMCA three to four times per week, and the lack of available parking caused by the Project will adversely impact her exercise schedule.

4. Petitioners John C. Pietrobono (“Mr. Pietrobono”) and Kathleen Pietrobono (“Ms. Pietrobono”) are natural persons who reside at 129 Hillside Drive, Oneonta, Otsego County, New York. Mr. and Ms. Pietrobono own and operate Lewis Hurley & Pietrobono Funeral Home, a Funeral home located at 51 Dietz Street in the City. The Pietrobono’s Funeral Home is located less than 50 feet from the Dietz Street parking lot in close proximity to the Project, and relies on existing parking in the Dietz Street parking lot which will be substantially reduced by the Project, and will create additional demand for parking in the vicinity of the Project and the Funeral Home. Mr. and Ms. Pietrobono would be affected daily by congestion resulting from the Project and the inability of their clients to find parking within a reasonable distance of the Funeral Home. Funerals at Mr. and Ms. Pietrobono’s funeral home typically require parking spaces for approximately 30 cars, and up to 100 cars in some instances, and parking is already limited in the vicinity of the Funeral Home. Mr. and Ms. Pietrobono are concerned that traffic from the Project, including construction traffic, will interfere with and delay processions from their Funeral Home to area cemeteries. Mr. and Ms. Pietrobono are concerned that the 110 spots that would remain after the Project is constructed will not be enough to accommodate the Funeral Home and the several other Dietz

Street and Ford Avenue businesses who rely on available parking in the Dietz Street parking lot, along with the additional demand of the 136 spaces required for the Project. Mr. and Ms. Pietrobono are concerned that the Project will not only make parking more difficult to find but will also diminish the desirability of their Funeral Home and value of their real property which relies on available parking in the Dietz Street parking lot. Mr. and Ms. Pietrobono would bid on the Subject Property if it were sold in a competitive public auction. Mr. and Ms. Pietrobono are concerned that the Project would obstruct scenic views from their Funeral Home.

5. Petitioner Robert B. Pondolfino (“Dr. Robert Pondolfino”) is a natural person who resides at 47 Elm Street in the city of Oneonta, Otsego County, New York. Dr. Robert Pondolfino maintains a general dental practice in close proximity to the Project located at 39 Dietz Street in the City of Oneonta, which practice heavily relies on existing parking in the Dietz Street parking lot for himself, patients and employees. The Project would substantially reduce available parking for him and his employees, and would adversely affect his patients in their ability to find parking within a reasonable distance of his office. Dr. Robert Pondolfino’s patients are scheduled every 45 minutes on average, and when his patients are unable to find parking near his office they are often late for their appointment, all subsequent appointments are delayed, and Dr. Robert Pondolfino and his patients end up working longer than normal days. During the winter when accumulated and plowed snow limits available parking in the Dietz Street parking lot, Dr.

Robert Pondolino is often forced to walk to work because of the lack of available parking in the vicinity of his office and the Project. Dr. Robert Pondolino utilizes this area of Dietz Street on almost a daily basis and he is often delayed at the intersection with Main Street, and he is concerned that the Project will further exacerbate the congestion and traffic delays in the vicinity of the Project. Dr. Pondolino is also concerned that the Project will obstruct and adversely affect the scenic view of the hills currently enjoyed from his office's picture window.

6. Petitioner Gerald D. Pondolino ("Dr. Gerald Pondolino") is a natural person who resides at 882 Winney Hill Road, Oneonta, Otsego County, New York. Dr. Gerald Pondolino owns and operates Pondolino Dental Associates, a dental office located at 39 Dietz Street in the City which relies on existing parking in the Dietz Street Parking Lot which will be substantially reduced by the Project, and will create additional demand for parking in the vicinity of the Project and his office. Dr. Gerald Pondolino would be affected daily by congestion resulting from the Project and the inability of his employees and clients to find parking within a reasonable distance of his office. Many of Dr. Gerald Pondolino's patients are elderly, and parking in close proximity to his office, particularly during inclement weather, is particularly important to his elderly and disabled patients. Dr. Gerald Pondolino is concerned that the Project would eliminate existing parking in the Dietz Street parking lot serving existing and established businesses, and create additional demand for parking, making parking almost impossible to find in the vicinity of his office and the Project. Dr. Gerald

Pondolfino is a member of the Oneonta YMCA, he visits the YMCA four times per week, and he is concerned that the Project would make parking in the vicinity of the YMCA difficult to find. Dr. Gerald Pondolfino appreciates Oneonta's "City of the Hills" vista, and he is concerned that the Project would adversely impact this important and scenic vista, alter the character of his community, and eliminate important parking for other businesses and Main Street festivals.

7. Petitioners assert herein interests within the zones of interest sought to be protected by SEQRA, the GCL and the Zoning Code.
8. Petitioners all own or regularly use property in the immediate vicinity of the Project, will individually and collectively bear the brunt of the environmental impacts from it, and all utilize this particular portion of the City of Oneonta in a regular and frequent manner.
9. By virtue of their ownership or regular use of lands in the immediate vicinity of the Project, petitioners would suffer harm different in kind and degree than the public at large if the Project were to be constructed.

#### **RESPONDENTS/DEFENDANTS**

10. Respondent City of Oneonta (the "City") is a duly created political subdivision of the State of New York with a principal place of business at 258 Main Street, Oneonta, New York, and is now or formerly the reputed owner of the real property at the Dietz Street Parking Lot on which the Project is proposed to be constructed and operated (the "Subject Property").
11. Respondent City of Oneonta Common Council is the duly elected legislative body

of the City of Oneonta with a principal place of business at 258 Main Street, Oneonta, New York. The Common Council determined to convey the subject Property to Parkview.

12. Respondent Gary Herzig in his capacity as Mayor of the City of Oneonta is the duly elected Mayor of the City of Oneonta with a principal place of business at 258 Main Street, Oneonta, New York. The Mayor acted with the Common Council in determining to convey the Subject Property to Parkview.
13. Respondent City of Oneonta Planning Commission is the duly appointed planning commission of the City of Oneonta with a principal place of business at 258 Main Street, Oneonta, New York. The Planning Commission issued a Negative Declaration under SEQRA, then subsequently determined to waive several substantive requirements of the Zoning Code, including but not limited to all requirements pertaining to off-street parking, in order grant site plan approval for the Project.
14. Respondent City of Oneonta Zoning Board of Appeals (“ZBA”) is the duly appointed board of zoning appeals of the City of Oneonta with a principal place of business at 258 Main Street, Oneonta, New York. The ZBA refused to hear a timely appeal in connection with the Project duly filed by Petitioners herein.
15. Respondent Stephen Yerly in his capacity as City of Oneonta Code Enforcement Officer (“CEO”) is the duly appointed code enforcement officer of the City of Oneonta with a principal place of business at 258 Main Street, Oneonta, New York. The CEO determined in writing that the Project purportedly met all parking

and other requirements of the Zoning Code.

16. Respondent Parkview Development & Construction, LLC is, upon information and belief and according to public records, a domestic limited liability company with an address for the service of process at 34 Clayton Boulevard, Suite A, Baldwin Place, New York. Parkview applied for and on November 6, 2019 received site plan approval for the Project from the Planning Commission, and on November 5, 2019 the Mayor and Common Council resolved to convey a portion of the Dietz Street parking lot to Parkview.
17. Respondent Hartwick College is an educational institution chartered by the New York Board of Regents with a principal place of business at or about Willis Street, Oneonta, New York. Hartwick College is the sponsor of a portion of the Project to be dedicated as the Hartwick College Grain Innovation Center (“HCGIC”) and is named as a respondent/defendant only in an abundance of caution.

### **BACKGROUND**

18. Upon information and belief, Parkview submitted an application for site plan approval to the Planning Commission for the Lofts at Dietz Street Project, a four story 73,500 square foot mixed-use building which would contain 40 one-bedroom and 24 two-bedroom apartments, as well as the HCGIC comprising 4,184 square feet, all located on a portion of the 2.2 acre Dietz Street parking lot owned by the City and currently used as a municipal parking lot serving nearby businesses, services, and amenities, including Petitioners’.
19. Upon information and belief, at or about the same time Parkview was applying to

the Planning Commission for site plan approval, Parkview was in negotiations with the Mayor and Common Council for the conveyance of a portion of the 2.2-acre Dietz Street parking lot on which the Project would be located.

20. As part of its application to the Planning Commission, Parkview submitted a proposed site plan, but it never submitted to the Planning Commission certain other plans required by the Zoning Code including a detail plan which would show, among other things, the location of off-street parking for the Project.
21. The minutes of the Planning Commission's July 17, 2019 meeting (see <https://ecode360.com/documents/ON1737/public/513646716.pdf>) indicate "Delaware Engineering Representative Robert Chiappisi explained that they will be requesting a waiver of building plans and detailed plans. There were no objections voiced by those Planning Commissioners present, but *no vote was taken*" (*emphasis added*).
22. Upon information and belief, the Planning Commission never voted to waive the submission requirements calling for other plans, including a grading plan, utilities plan, building plan, and detail plan which plan would show off-street parking for the Project, and therefore never actually waived those requirements.
23. The Planning Commission was apprised and understood that the construction of the Project would eliminate 84 existing parking spaces in the Dietz Street parking lot which are presently utilized by visitors to the downtown portion of the City, and existing businesses and organizations in the immediate vicinity of the Project, including Petitioners'.

24. The Planning Commission further knew or should have known that the Zoning Code's provisions applicable to the Project in the MU-1 zoning district a) prohibit grade level dwelling units within 50 feet of a public right of way; b) require that off-street parking be located in the MU-1 zoning district; c) and require that off-street parking be located within 200 feet of the building it serves.
25. All site plans submitted to the Planning Commission for the Project by Parkview showed dwelling units located less than 50 feet from the Dietz Street public right of way (see [https://www.oneonta.ny.us/files/3215/7246/4772/Complete\\_PC\\_meeting\\_submission\\_packet\\_10-30-19.pdf](https://www.oneonta.ny.us/files/3215/7246/4772/Complete_PC_meeting_submission_packet_10-30-19.pdf)).
26. Included in Parkview's application materials was an "Oneonta Downtown Parking Study, Final Draft Report, February 2018" which examined both on and off-street parking throughout the downtown portion of the City during fair weather conditions, including areas well beyond 200 feet from the Project, and in zoning districts other than just the MU-1 zoning district where the Project would be located. (see [https://www.oneonta.ny.us/files/8915/6647/5494/Parking\\_Study\\_2018.pdf](https://www.oneonta.ny.us/files/8915/6647/5494/Parking_Study_2018.pdf)).
27. In assessing off-street parking requirements for the Project as required by the Zoning Code, the CEO and Planning Commission mis-construed the Zoning Code's "off-street" parking requirements as "off-site" parking, and mis-calculated that the portion of the Project dedicated to apartments would require 93 parking spaces, when the 64 apartments actually require 96 off-street parking spaces under

the Zoning Code, and ignored the Zoning Code's provision that required off-street parking spaces for dwelling units be located within 200 feet of the building they serve.

28. The CEO and Planning Commission entirely ignored, or at best overlooked, that the HCGIC, comprising 4,184 square feet of the Project, would require no less than 43 additional off-street parking spaces if there is only one employee at the HCGIC, and likely more depending on the total number of employees at the HCGIC.
29. The CEO and Planning Commission knew or should have known that the Project, as set forth in detail below, would require a total of at least 139 off-street parking spaces in the busy and already crowded downtown area, and possibly more depending on the actual number of employees at the HCGIC, and that the parking spaces for the proposed apartments must be within 200 feet of the building they serve.
30. On October 10, 2019, the CEO erroneously determined in writing that "The Dietz Street Lofts are in compliance with the parking requirements found in the City of Oneonta Code" and "Based on the availability of existing parking in the MU-1 District the creation of any additional on or offsite parking is unnecessary and in fact not in adherence with the standards found in 300-101" (see [https://www.oneonta.ny.us/files/2615/7116/8403/Dietz\\_Street\\_Parking\\_Memo.pdf](https://www.oneonta.ny.us/files/2615/7116/8403/Dietz_Street_Parking_Memo.pdf)).
31. Because the CEO's October 10, 2019 written determination erroneously referred

to “off-site” parking instead of “off-street” parking as required by the Zoning Code, mis-calculated the number of off-street parking spaces required for the Project’s 64 apartments, ignored or overlooked the parking requirements for the HCGIC, failed to consider the requirement that off-street parking be located within 200 feet of the building it serves, and ignored the Zoning Code’s prohibition of grade level dwelling units within 50 feet of the public right of way, on November 1, 2019 Ms. Peachin and others timely appealed the CEO’s October 10, 2019 written determination to the ZBA (the “ZBA Appeal”).

32. By correspondence from the City Attorney dated November 15, 2019, the ZBA outright refused to hear the ZBA Appeal on the erroneous bases that “What was submitted was not a valid appeal, nor is there any basis for a valid appeal to be made to the Zoning Board of Appeals in this situation” and:

Appeals to the Zoning Board can be made only by a person who has filed an application for a permit with the Code Enforcement Office and then only after that application has been denied. None of you have either applied for, or been denied, a permit from the Codes office, which would trigger the right to file an appeal to the Zoning Board of Appeals. There is no statutory basis for an ‘appeal’ to the Zoning Board from a communication between the Code Enforcement Office and the Planning Board.

33. As such, Petitioners have exhausted any such administrative remedy.
34. In connection with the sale of the Subject Property to Parkview, the Mayor and the Common Council arranged for the publication of only one notice of public hearing, which notice did not specify with any detail the public property proposed to be sold other than “a portion of the Dietz Street Parking Lot (tax map 300.6-1-

- 7)”, and which did not set forth the proposed purchaser or the purchase price.
35. On November 5, 2019, over Petitioners’ objections concerning parking in the vicinity of the Project, and in the absence of any Determination of Significance under SEQRA, the Mayor and Common Council resolved to convey the Subject Property to Parkview.
  36. The Planning Commission was established as Lead Agency for the environmental impact assessment of the Project under SEQRA, and properly characterized the Project as a Type I action, meaning that the Project is presumed to have a significant impact on the environment and require an Environmental Impact Statement (“EIS”).
  37. At its November 6, 2019 meeting, the Planning Commission acknowledged that the Project would eliminate 84 existing parking spaces and require 93 additional off-street parking spaces, and the Planning Commission conceded that the Project could have a “moderate” impact on parking in the vicinity of the Project, without ever taking into account the 43 or more parking spaces required by the HCGIC.
  38. In making its November 5, 2019 SEQRA Determination of Significance, the Planning Commission acknowledged the potentially significant impacts on parking that could result from the Project, but found that such impacts could be mitigated by a tentative and otherwise unspecified “parking plan” intended to be implemented by the Mayor and the Common Council at some unknown time in the future.
  39. On November 6, 2019, a day after the Mayor and Common Council had already

resolved to sell the Subject Property to Parkview, the Planning Commission adopted a SEQRA Negative Declaration for the Project, a Type I action presumed to have a significant effect on the environment and require an EIS, finding that acknowledged impacts to parking could be mitigated by some unspecified possible future action of the Mayor and Common Council, and that the Project did not have the potential for one, single, significant adverse environmental impact.

40. Immediately after issuing the SEQRA Negative Declaration, the Planning Commission raised its purported authority to waive requirements of the Zoning Code, and determined that it could waive all off-street parking requirements for the Project, in effect grant an area variance for the Project allowing zero off-street parking spaces, when the Zoning Code requires no less than 139 parking spaces, 96 of which must be within 200 feet of the Project building.
41. On November 6, 2019, despite the pending ZBA Appeal which by operation of GCL Section 81-a(6) stayed “all further proceedings in furtherance of the action appealed from”, the Planning Commission resolved to waive all of the Zoning Code’s off-street parking requirements, erroneously found that the Project conforms to all requirements of the Zoning Code despite the several grade level dwelling units less than 50 feet away from the Dietz Street public right of way, and granted site plan approval to Parkview for the Project.
42. The Planning Commission never voted to waive the required submissions, including the grading plan, utilities plan, building plan and detail plan, and no such plans was ever submitted by Parkview.

43. The City maintains a page on its official website for the Project at <https://www.oneonta.ny.us/lofts-dietz-project/>.

RELEVANT PROVISIONS OF LAW

44. GCL Section 23(2)(b) provides that:

No sale or lease of city real estate or of any franchise belonging to or under the control of the city shall be made or authorized except by vote of three-fourths of all the members of the common council or corresponding legislative body of the city. In case of a proposed sale or lease of real estate or of a franchise, the ordinance must provide for a disposition of the same at public auction to the highest bidder, under proper regulations as to the giving of security and after public notice to be published at least once each week for three weeks in the official paper or papers. A sale or lease of real estate or a franchise shall not be valid or take effect unless made as aforesaid and subsequently approved by a resolution of the board of estimate and apportionment in any city having such a board, and also approved by the mayor.

45. GCL Section 27-a(3) provides that:

Notwithstanding any provision of law to the contrary, where the proposed site plan contains one or more features which do not comply with the zoning regulations, application may be made to the zoning board of appeals for an area variance pursuant to section eighty-one-b of article five-a of this chapter without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

46. GCL Section 27-a(5) provides in pertinent part that:

The legislative body may further empower the authorized board to, when reasonable, waive any requirements for the approval, approval with modifications or disapproval of site plans submitted for approval. Any such waiver, which shall be subject to appropriate conditions set forth in the local law adopted pursuant to this section, may be exercised in the event any such requirements are found not to be requisite in the interest of

the public health, safety and general welfare or inappropriate to a particular site plan.

47. GCL Section 38 provides that:

Any person or persons, jointly or severally aggrieved by any decision of the planning board concerning such plat or the changing of the zoning regulations of such land, or any officer, department, board or bureau of the city, may obtain a review in the manner provided by the civil practice law and rules provided the proceeding is commenced within thirty days after the filing of the decision in the office of the city clerk.

*Commencement of the proceeding shall stay proceedings upon the decision appealed from.*

The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the planning board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings (emphasis added).

48. GCL Section 81-a provides in pertinent part that:

**5.** Filing of administrative decision and time of appeal.

**(a)** Each order, requirement, decision, interpretation or determination of the administrative official charged with the enforcement of the zoning local law or ordinance shall be filed in the office of such administrative official within five business days from the day it is rendered, and shall be a public record. Alternately, the legislative body of the city may, by resolution, require that such filings instead be made in the city clerk's office.

**(b)** An appeal shall be taken within sixty days after the filing of any order, requirement, decision, interpretation or determination of the administrative official, by filing with such administrative official and with the board of appeals a notice of appeal, specifying the grounds thereof and the relief sought. The administrative official from whom the appeal is taken shall forthwith transmit to the board of appeals all the papers constituting the record upon which the action appealed from was taken.

**6.** Stay upon appeal. *An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certifies to the board of appeals, after the notice of appeal shall have been filed with the administrative official, that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.*

**7.** Hearing on appeal. *The board of appeals shall fix a reasonable time for the hearing of the appeal or other matter referred to it and give public notice of such hearing by publication in a paper of general circulation in the city at least five days prior to the date thereof. The cost of sending or publishing any notices relating to such appeal, or a reasonable fee relating thereto, shall be borne by the appealing party and shall be paid to the board prior to the hearing of such appeal. Upon the hearing, any party may appear in person, or by agent or attorney.*

**8.** Time of decision. *The board of appeals shall decide upon the appeal within sixty-two days after the conduct of said hearing. The time within which the board of appeals must render its decision may be extended by mutual consent of the applicant and the board.*

**9.** Filing of decision and notice. *The decision of the board of appeals on the appeal shall be filed in the office of the city clerk or the zoning office if such office has been established, within five business days after the day such decision is rendered, and a copy thereof mailed to the applicant (emphasis added).*

49. GCL Section 81-b provides in pertinent part that:

**1(b)** “Area variance” shall mean the authorization by the zoning board of appeals for the use of land in a manner which is not allowed by the dimensional or physical requirements of the applicable zoning regulations.

**2.** Orders, requirements, decisions, interpretations, determinations. The board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation or determination appealed from and shall make such order, requirement, decision, interpretation or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end shall have all the powers of the administrative official from whose order, requirement, decision, interpretation or determination the appeal is taken.

and

**4. Area variances.**

**(a)** The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

**(b)** In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also consider:

**(i)** whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

**(ii)** whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;

**(iii)** whether the requested area variance is substantial;

**(iv)** whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

**(v)** whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

**(c)** The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

50. Six NYCRR Section 617.2(l) provides that:

*Environment* means the physical conditions that will be affected by a proposed action, including land, air, water, minerals, flora, fauna, noise, resources of agricultural, archeological, historic or aesthetic significance, existing patterns of population concentration, distribution or growth, existing community or neighborhood character, and human health.

51. Six NYCRR Section 617.3(a) provides that “No agency involved in an action may undertake, fund or approve the action until it has complied with the provisions of

SEQR.”

52. Six NYCRR Section 617.4(a) provides in pertinent part that:

. . . the fact that an action or project has been listed as a *Type I action* carries with it the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS (emphasis added).

53. Six NYCRR Section 617.7 provides in pertinent part that:

a) The lead agency must determine the significance of any Type I or Unlisted action in writing in accordance with this section.

(1) To require an EIS for a proposed action, the lead agency must determine that the action may include the potential for at least one significant adverse environmental impact.

(2) To determine that an EIS will not be required for an action, the lead agency must determine either that there will be no adverse environmental impacts or that the identified adverse environmental impacts will not be significant.

(b) For all Type I and Unlisted actions the lead agency making a determination of significance must:

(1) consider the action as defined in sections 617.2(b) and 617.3(g) of this Part;

(2) review the EAF, the criteria contained in subdivision (c) of this section and any other supporting information to identify the relevant areas of environmental concern;

(3) *thoroughly analyze the identified relevant areas of environmental concern to determine if the action may have a significant adverse impact on the environment;* and

(4) set forth its determination of significance in a written form containing a reasoned elaboration and providing reference to any supporting documentation (emphasis added).

54. 6 NYCRR Section 617.7(d)(1) provides in pertinent part that “For *Unlisted*

*actions* involving an applicant, a lead agency may prepare a conditioned negative declaration” (emphasis added).

55. Zoning Code Section 300-10(F)(3) pertaining to the MU-1 zoning district provides that “Required parking may be provided on or off site and may be provided anywhere within the MU-1 District.”
56. Zoning Code Section 300-10(G) pertaining to the MU-1 zoning district provides that “Grade level dwelling units within 50 feet of the outer edge of the public right-of-way are prohibited.”
57. Zoning Code Section 300-61(4) provides that “For multifamily dwellings, required off-street parking shall be located as close to the use as possible, given site conditions, and in no case more than 200 feet from the building it is required to serve.”
58. Zoning Code Section 300-61(D) provides that:

Computation of required spaces.

**(1)** The required number of spaces is provided in the Table of Parking Requirements by Use, § **300-101**, for each land use in each zoning district.

**(2)** In the case of a combination of uses, the total requirements for off-street auto parking spaces shall be the sum of the requirements for the various uses, unless it can be proven that staggered hours of use and/or shift employment would permit modification. Whenever a major fraction of a space is required, a full space shall be provided.

**(3)** If spaces are provided on the basis of employees or participants, the number on the theoretical maximum shift or peak period shall be used.

**(4)** Unless otherwise specified, off-street parking standards are based on square feet of all floor area, including the area of any accessory buildings.
59. Zoning Code Section 300-61(G) provides in pertinent part that:

Off-street parking and loading standards by usage. The parking requirements listed in the Table of Parking Requirements by Use, § 300-101, reflect reasonable standards for uses in most locations. The City of Oneonta Common Council, in adopting these standards, is providing guidance to future developers, tenants and residents of uses requiring off-street parking and loading. From an environmental, community character and cost perspective, it is always desirable to construct the least number of parking spaces to accommodate a particular use. The following general requirements apply to all off-street parking.

(1) Applicants are encouraged to provide evidence of lesser parking and loading demand if appropriate, including the availability of nearby parking lots, parking garages, on-street parking, or shared parking lots.

(2) The Planning Commission may require less off-street parking or loading, if warranted, based on the information presented. In any case where less off-street parking is required, the Planning Commission reserves the right to require the set-aside of additional open space sufficient to accommodate the amount of off-street parking which would ordinarily be required.

(3) The Planning Commission also reserves the right to request additional information, such as but not limited to expected number of employees, participants, expected attendance or expected deliveries, relevant to judging the adequacy of listed parking and loading standards. Such information may result in application of off-street parking standards higher than those listed.

(4) For uses not listed, the required number of off-street parking or loading spaces shall be determined by the Code Enforcement Officer based on similarity to listed uses and information provided by the applicant.

(5) In all cases, the provided off-street parking and loading should be sufficient to prevent frequent on-street parking by users or employees or the loading and unloading of passengers or materials from the public right-of-way in such a manner that is disruptive to traffic.

60. Zoning Code Section 300-101's "Table of Parking Requirements by Use" provides that "apartment complex" and "dwelling, multifamily" are subject to Note 7 which requires "1.2 spaces per one-bedroom dwelling unit; two spaces per dwelling unit for units with two or more bedrooms".
61. Zoning Code Section 300-101's "Table of Parking Requirements by Use" further provides that "college" requires "1 per employee plus 1 per 3 seats" and is subject

to Note 6 “Where ‘per seat’ is specified: or per 100 square feet if fixed individual seats are not the primary arrangement”.

62. Zoning Code Section 300-84 provides in pertinent part at subdivision (A) that “This chapter shall be enforced by the City Code Enforcement Officer” and at subdivision (D) that “Referral to Planning Commission, Common Council and Zoning Board of Appeals. The City Code Enforcement Officer shall instruct any applicant of the appropriate City agency to whom application should be presented prior to issuance of a building permit, as specified by the procedures set forth in this chapter.
63. The entire Oneonta Zoning Code can be viewed at:  
<https://ecode360.com/10662899>.
64. The New York State Department of State’s James A. Coon Local Government Technical Series publication “Guidelines for Applicants to the Zoning Board of Appeals” provides in pertinent part: [Q] “Who may apply to the ZBA for Relief? [A] *Anyone who could be ‘aggrieved’ by the decision or action of the enforcement officer, has standing to take an appeal before the ZBA*” (emphasis added)(see [https://www.dos.ny.gov/lg/publications/Guidelines\\_for\\_Applicants\\_to\\_the\\_Zoning Board of Appeals.pdf](https://www.dos.ny.gov/lg/publications/Guidelines_for_Applicants_to_the_Zoning_Board_of_Appeals.pdf)).

**AS AND FOR A FIRST CAUSE OF ACTION  
(Arbitrary and Capricious Determination of the CEO)**

65. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 64 hereinabove.

66. The CEO's October 10, 2019 written determination found, among other things, that "The Dietz Street Lofts are in compliance with the parking requirements found in the City of Oneonta Code".
67. The Zoning Code requires at least 139 "off-street" parking spaces for the Project, including 96 parking spaces for the 64 apartments, and at least 43 parking spaces for the HCGIC assuming only one employee, and probably more depending on the number of employees at the HCGIC.
68. The Zoning Code requires that the 96 parking spaces in connection with the apartments must be located "off-street" within the MU-1 zoning district and within 200 feet of the building they serve.
69. The site plan submitted to the CEO showed no parking spaces for the Project.
70. The CEO's October 10, 2019 written determination that "The Dietz Street Lofts are in compliance with the parking requirements found in the City of Oneonta Code" was therefore made in violation of lawful procedure, was affected by error of law, was irrational, was arbitrary and capricious, was an abuse of discretion, and the CEO's October 10, 2019 written determination should be annulled and vacated *ab initio*.

**AS AND FOR A SECOND CAUSE OF ACTION  
(Failure to Stay All Further Proceedings)**

71. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 70 hereinabove.
72. The November 1, 2019 ZBA Appeal was timely and effected an automatic stay of

“all proceedings in furtherance of the action appealed from” as provided by GCL Section 81-a(6).

73. Despite the filing of the ZBA Appeal which effected the automatic stay provided by GCL Section 81-a(6), the Mayor and City Council conducted further proceedings on November 5, 2019, and the Planning Commission then conducted further proceedings on November 6, 2019.
74. By conducting proceedings in violation of the automatic stay provided by GCL Section 81-a(6), the Mayor and Common Council failed to perform a duty enjoined upon them by law, proceeded in excess of jurisdiction, and the Mayor and Common Council’s and Planning Commission’s determinations to conduct further proceedings in violation of the automatic stay were therefore made in violation of lawful procedure, were affected by error of law, were arbitrary and capricious, was an abuse of discretion, and the Mayor and Common Council’s and Planning Commission’s determinations made subsequent to the filing of the ZBA Appeal and the automatic stay should be annulled and vacated *ab initio*.

**AS AND FOR A THIRD CAUSE OF ACTION  
(Mayor and Common Council’s Failure to Comply with SEQRA)**

75. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 74 hereinabove.
76. When the Mayor and Common Council resolved to convey the Subject Property to Parkview on November 5, 2019, the Project was undergoing coordinated SEQRA review with the Planning Commission serving as Lead Agency, the

Planning Commission had not at that time made a Determination of Significance, and SEQRA had not yet been completed.

77. By resolving to convey the Subject Property to Parkview before SEQRA had been completed, the Mayor and Common Council failed to perform a duty enjoined upon them by law, proceeded in excess of jurisdiction, and the Mayor and Common Council's determination to convey the Subject Property to Parkview was therefore made in violation of lawful procedure, was affected by error of law, was arbitrary and capricious, was an abuse of discretion, and the Mayor and Common Council's resolution to convey the Subject Property to Parkview should be annulled and vacated *ab initio*.

**AS AND FOR A FOURTH CAUSE OF ACTION  
(Planning Commission's Failure to Comply with SEQRA)**

78. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 77 hereinabove.
79. The Planning Commission properly determined that the Project constituted a Type 1 action under SEQRA.
80. The Planning Commission understood that the Project would eliminate 84 existing parking spaces at the Dietz Street parking lot, miscalculated the number of parking spaces required by the Zoning Code for the 64 apartments as 93 instead of 96, and failed altogether to consider the 43 or more parking spaces required by the Zoning Code for the HCGIC.
81. The Planning Commission acknowledged that the loss of 84 existing parking

spaces and demand for 93 parking spaces from Project could have moderate impacts on parking and identified parking as an area of environmental concern, however it failed to take the necessary “hard look” at the Project’s parking impacts in the already congested downtown area of the City.

82. The Planning Commission’s resolution issuing Negative Declaration for the Project relies on a tentative and otherwise unspecified “parking plan” speculated to be implemented by the Mayor and the Common Council at some unknown time in the future to mitigate parking impacts from the Project.
83. The Planning Commission’s reliance on tentative and unspecified plans for future mitigation in its SEQRA Negative Declaration constitutes an impermissible Conditioned Negative Declaration for a Type 1 action.
84. By failing to take the necessary “hard look” at parking impacts posed by the Project and relying on tentative and unspecified plans for future mitigation of parking impacts in an impermissible Conditioned Negative Declaration for a Type 1 action, the Planning Commission failed to perform a duty enjoined upon them by law, proceeded in excess of jurisdiction, and the Planning Commission’s SEQRA Negative Declaration was therefore made in violation of lawful procedure, was affected by error of law, was arbitrary and capricious, was an abuse of discretion, and the Planning Commission’s November 6, 2019 resolution issuing the SEQRA Negative Declaration should be annulled and vacated *ab initio*.

**AS AND FOR A FIFTH CAUSE OF ACTION  
(Failure to Comply with Zoning Code Section 310(G))**

85. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 84 hereinabove.
86. Parkview’s site plan clearly showed that some of the 64 apartments are grade level dwelling units located much closer than 50 feet from the Dietz Street public right of way.
87. The Planning Commission ignored and failed to apply Zoning Code Section 300-10(G) to the Project.
88. By failing to ensure that Parkview’s site plan complied with Zoning Code Section 300-10(G), the Planning Commission failed to perform a duty enjoined upon it by law, proceeded in excess of jurisdiction, and the Planning Commission’s November 6, 2019 resolution granting site plan approval for the Project was therefore made in violation of lawful procedure, was affected by error of law, was arbitrary and capricious, was an abuse of discretion, and the Planning Commission’s November 6, 2019 resolution granting site plan approval to Parkview should be annulled and vacated *ab initio*.

**AS AND FOR A SIXTH CAUSE OF ACTION  
(Lack of Appropriate Conditions in Zoning Code Section 300-61(G)(2))**

89. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 88 hereinabove.
90. Zoning Code Section 300-10(G)(2) fails to include “appropriate conditions” as required by GCL Section 27-a(5) and is therefore invalid and unenforceable.

91. Because Zoning Code Section 300-10(G)(2) fails to include “appropriate conditions” as required by GCL Section 27-a(5) and is therefore invalid, it should be declared null, void, and unenforceable.

**AS AND FOR A SEVENTH CAUSE OF ACTION  
(Unreasonable Exercise of Waiver)**

92. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 91 hereinabove.
93. The Planning Commission purported to waive all of the Zoning Code’s off-street parking requirements, including Section 300-61(C)(4)’s requirement that parking be provided within 200 feet of the building it serves, and Section 300-101’s requirement that the Project’s mixed-use building with apartment and college uses provide 139 off-street parking spaces.
94. The purported waiver by the Planning Commission of all 139 off-street parking spaces otherwise required by the Zoning Code, particularly where the Project itself would eliminate 84 existing parking spaces in the busy Dietz Street parking lot, was not based on substantial evidence and was unreasonable.
95. In purporting to waive all off-street parking requirements for the Project, the Planning Commission failed to make the finding required by GCL Section 27-a(5) that such off-street parking requirements were not “requisite in the interest of public health, safety and welfare or inappropriate to” Parkview’s site plan.
96. By failing to make the findings required by GCL Section 27-a(5) that the off-street parking requirements were not “requisite in the interest of public health,

safety and welfare or inappropriate to” Parkview’s site plan and unreasonably waiving all 139 required parking spaces and the requirement that parking spaces required by dwelling units be located within 200 feet of the Project building, the Planning Commission failed to perform a duty enjoined upon it by law, proceeded in excess of jurisdiction, and the Planning Commission’s November 6, 2019 resolution granting site plan approval for the Project was therefore made in violation of lawful procedure, was affected by error of law, was arbitrary and capricious, was an abuse of discretion, and the Planning Commission’s November 6, 2019 resolution granting site plan approval to Parkview should be annulled and vacated *ab initio*.

**AS AND FOR AN EIGHTH CAUSE OF ACTION  
(Failure to Require Area Variances)**

97. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 96 hereinabove.
98. Zoning Code Section 300-101 specifies that the Project requires a minimum of 139 off-street parking spaces, and that 96 of those parking spaces be located within 200 feet of the Project building.
99. The site plan submitted by Parkview showed no off-street parking within 200 feet of the Project building.
100. Because Parkview’s site plan did not show 139 off-street parking spaces, or 96 parking spaces within 200 feet of the Project building for the dwelling units, an area variance was required from the ZBA pursuant to the specific and rigorous

standards of GCL Section 81-b(4).

101. By failing to refer Parkview to the ZBA for an area variance from the off-street parking requirements of the Zoning Code, the CEO failed to perform a duty enjoined upon him by law, proceeded in excess of jurisdiction, and the CEO's determination that the Project complied with all requirements of the zoning code, including off-street parking, was therefore made in violation of lawful procedure, was affected by error of law, was arbitrary and capricious, was an abuse of discretion, and the CEO's determinations that the Project complied with all requirements of the Zoning Code should be annulled and vacated *ab initio*.

**AS AND FOR A NINTH CAUSE OF ACTION  
(Failure to Comply with GCL Section 23(2)(b))**

102. Petitioners repeat and reallege each and every allegation set forth in paragraphs 1 through 101 hereinabove.
103. The Mayor and City Council did not, as required by GCL Section 23(2)(b), dispose of the Subject Property "at public auction to the highest bidder, under proper regulations as to the giving of security and after public notice . . . published at least once each week for three weeks in the official paper".
104. By disposing of the Property without holding a public auction and without public notice published at least once each week for three weeks, the Mayor and City Council failed to perform a duty enjoined upon them by law, proceeded in excess of jurisdiction, and the Mayor and City Council's determination to convey the Subject Property to Parkview Project was therefore made in violation of lawful

procedure, was affected by error of law, was arbitrary and capricious, was an abuse of discretion, and the Mayor and City Council's November 5, 2019 resolution to convey the Subject Property to Parkview should be annulled and vacated *ab initio*.

**WHEREFORE**, Petitioners respectfully request that this Court issue a decision and order granting their verified petition/complaint, and awarding judgment to the Petitioners and against Respondents as follows:

1. Annuling and vacating *ab initio* the City of Oneonta Code Enforcement Officer's October 10, 2019 written determination that "The Dietz Street Lofts are in compliance with the parking requirements found in the City of Oneonta Code" for failure to properly consider or apply the relevant parking standards and requirements set forth in the City of Oneonta Zoning Code.
2. Annuling and vacating *ab initio* the City of Oneonta Mayor and Common Council's November 5, 2019 resolution to convey a portion of the Dietz Street parking lot to Parkview Development & Construction, LLC for a) conducting proceedings in violation of the automatic stay effected by General City Law Section 81-b(6); b) failure to comply with procedures for disposition of public property set forth at General City Law Section 23(2)(b); and c) for failure to comply with the State Environmental Quality Review Act.
3. Annuling and vacating *ab initio* the City of Oneonta Planning Commission's November 6, 2019 SEQRA Negative Declaration for a) conducting proceedings in violation of the automatic stay effected by General City Law Section 81-b(6); b) failure to take a "hard look" at the impacts to parking from the Lofts at Dietz Street Project; c)

reliance on tentative and unspecified plans for future mitigation of impacts to parking; d) issuing an impermissible Conditioned Negative Declaration for a Type 1 Action; and e) failure to provide a reasoned elaboration as to why the Project does not pose a substantial impact to parking.

4. Annuling and vacating *ab initio* the City of Oneonta Planning Commission's November 6, 2019 resolution issuing site plan approval to Parkview Development & Construction, LLC for the Lofts at Dietz Street Project for a) conducting proceedings in violation of the automatic stay effected by General City Law Section 81-b(6); b) failing to require the submission of detail and other plans by Parkview; c) failing to ensure that Parkview Development & Construction, LLC's site plan did not provide grade level dwelling units within 50 feet of the Dietz Street public right of way; d) failing to make findings that off-street parking requirements are not requisite in the interest of public health, safety and welfare or inappropriate to Parkview Development & Construction, LLC's site plan; e) failing to properly calculate required parking spaces; f) usurping the statutory authority of the City of Oneonta Zoning Board of Appeals to grant area variances; and g) improperly and unreasonably waiving all off-street parking requirements for the Lofts at Dietz Street Project.

5. Declaring City of Oneonta Zoning Code Section 300-61(G)(2) void and invalid for failure to contain appropriate conditions for the exercise of waivers by the City of Oneonta Planning Commission as required by General City Law Section 27-a(5), and enjoining application or enforcement of said section by the City of Oneonta.

6. Such other and further relief as the Court deems just and proper, including an award

of Petitioners' attorney's fees and costs.

Dated: Springfield Center, New York  
December 4, 2019

By:

\_\_\_\_\_/s/\_\_\_\_\_  
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