

ZBA #2887

DOWNTON WALK APPEAL

Interpretation Request: 27 Jumel Place

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INTERPRETATION REQUEST

- Nature of Appeal
- Procedural Matters
- February 22, 2016 Determination Must Be Reversed



NATURE OF APPEAL

Zoning Board vested with jurisdiction to interpret the City's Zoning Ordinance

More typical: Project developer makes application to ZBA



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NATURE OF APPEAL

An interpretation is an appeal by an **aggrieved party** seeking to overturn a determination made by the administrative official charged with the enforcement of the Zoning Ordinance. *Zoning Ordinance §8.3.5*

Such appeal may be taken by any **person aggrieved**. *NY Gen. City Law §81-a[4]*



"PERSON AGGRIEVED"

A person whose property is located **in close proximity to a project site** has standing.

Youngewirth v. Town of Ramapo Town Board, 98 AD3d 678, 680 [2d Dep't 2012]

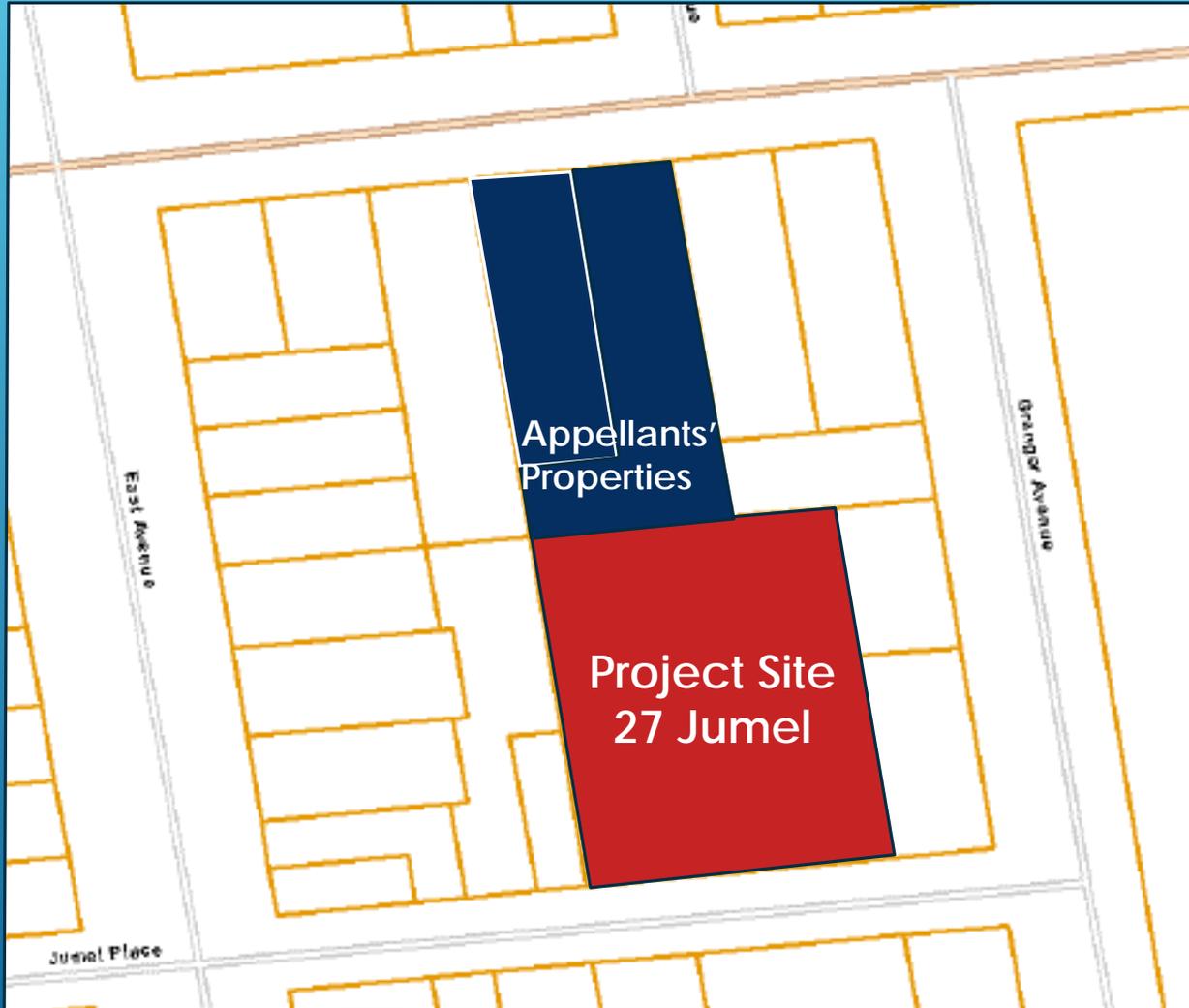
Matter of McGrath v. Town Board of Town of North Greenbush, 254 AD2d 614 [3d Dep't 1998]



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"CLOSE PROXIMITY"



Source: Saratoga County GIS Mapper



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INTERPRETATION SOUGHT

An interpretation is an appeal by an aggrieved party **seeking to overturn a determination made by the administrative official charged with the enforcement of the Zoning Ordinance.** *Zoning Ordinance §8.3.5*



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INTERPRETATION SOUGHT

ZONING AND BUILDING INSPECTOR DENIAL OF APPLICATION FOR LAND USE AND/OR BUILDING

APPLICANT: ANW HOLDINGS, INC.

TAX PARCEL NO.: 166.13-1-50.2

PROPERTY ADDRESS: 27 JUMEL PLACE

ZONING DISTRICT: URBAN RESIDENTIAL-3

This applicant has applied to use the identified property within the City of Saratoga Springs for the following:

Proposed construction of a seven-unit condominium project (detached single-family residences).

This application is hereby denied upon the grounds that such use of the property would violate the City Zoning Ordinance article(s)

240-2.3 A., Table 3 and 6.4.5 A. As such, the following relief would be required to proceed:

Extension of existing variance Interpretation

Use Variance to permit the following: _____

Area Variance seeking the following relief:

<u>Dimensional Requirements</u>	<u>From</u>	<u>To</u>
<u>Max principal building coverage: 7 units combined</u>	<u>30%</u>	<u>46%</u>
<u>Max principal buildings on one lot:</u>	<u>1</u>	<u>7</u>
<u>Minimum front yard setback:</u>	<u>10 ft.</u>	<u>1 ft.</u>
<u>Minimum rear yard setback:</u>	<u>25 ft.</u>	<u>6 ft.</u>
<u>Maximum height residential fence:</u>	<u>6 ft.</u>	<u>8 ft.</u>

Advisory Opinion required from Saratoga County Planning Board


ZONING AND BUILDING INSPECTOR

2/22/16
DATE



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INTERPRETATION SOUGHT

Use Variance to permit the following: _____

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<u>Max principal buildings on one lot:</u>	<u>1</u>	<u>7</u>



PROCEDURAL MATTERS

Project Developer Claims:

Appeal is Untimely

Appeal is Barred by Administrative
Res Judicata

Source: Letter from Carter Conboy, May 3, 2016

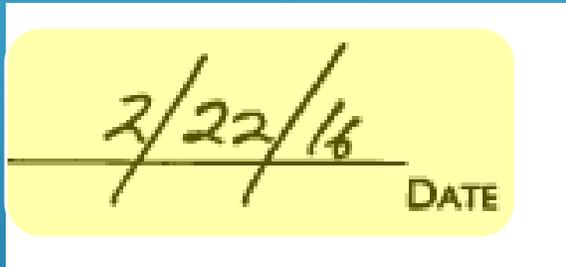


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APPEAL IS TIMELY

“An application for appeal shall be submitted by an aggrieved person **within sixty (60) days** of the filing of any such decision [of the building inspector]”. *Zoning Ordinance § 8.4.1 [B]*



Deadline to file appeal: **April 22, 2016**

Date appeal filed: **March 18, 2016**



APPEAL IS NOT BARRED BY ADMINISTRATIVE RES JUDICATA

Administrative res judicata bars a party from re-litigating an issue it has already unsuccessfully litigated before.

Project developer claims that the 2013 Building Inspector determination gives rise to administrative res judicata, precluding this appeal.



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APPEAL IS NOT BARRED BY ADMINISTRATIVE RES JUDICATA

Administrative res judicata **only applies where the prior administrative action was an adjudication.**

Res judicata is designed to prevent **re-litigation** by the **same parties** of the **same issues.**

Matter of Tillie Venes v. Community School Bd., 43 NY2d 520, 523-525 [1978]



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APPEAL IS NOT BARRED BY ADMINISTRATIVE RES JUDICATA

Building Inspector's 2013 determination was:

1. **not an adjudication**
2. **a ministerial act**
3. **not a full and fair opportunity to resolve the issue raised here**



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APPEAL IS NOT BARRED BY ADMINISTRATIVE RES JUDICATA

ZBA determines issues that are properly raised by an actual application.

Prior ZBA application **did not address permissibility of the proposed use**, an issue that was not raised by the application in front of it.



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APPEAL IS NOT BARRED BY ADMINISTRATIVE RES JUDICATA

Erroneous determination by building inspector in the past does not prevent later enforcement of the zoning ordinance. *Matter of Twin Town Little League Inc. v. Town of Poestenkill*, 249 AD2d 811, 811-12 [3d Dep't 1998].

Even where there are harsh results. *Town of Putnam Valley v. Sacramone*, 16 AD3d 669, 670 [2d Dep't 2005]



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PROCEDURAL MATTERS

This Appeal is timely – brought within 60 days

And should be decided on its merits – not barred by administrative res judicata.



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DETERMINATION MUST REVERSED

Zoning Analysis

Precedential Impact of Decision



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DETERMINATION APPEALED

Use Variance to permit the following: _____

Area Variance seeking the following relief:

Dimensional Requirements

From

To

Max principal building coverage: 7 units combined

30%

46%

Max principal buildings on one lot:

1

7



DETERMINATION APPEALED

Building Inspector determined that an area variance is sufficient to permit the proposed project.

Question posed by this appeal:

Does the proposed project require a use variance or an area variance to permit the the use of a single lot as seven dwelling units?



DETERMINATION APPEALED

Area Variance: “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.**”

N.Y. Gen. City Law § 81-b [1][b].

Use Variance: “the authorization by the zoning board of appeals for the use of land for **a purpose which is not allowed or is prohibited by the applicable zoning regulations.**” *N.Y. Gen. City Law §81-b [1] [a].*



ZONING ANALYSIS

Is the project a permitted “use”?

“Use” is defined as “[t]he specific use for which land or a building is designed, occupied or maintained”

Zoning Ordinance App. A, at 18.



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ZONING ANALYSIS

Project is located in the **Urban Residential – 3 (UR-3)**
Zoning District



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ZONING ANALYSIS

Table 2: Use Schedule – Permitted Uses

UR-3	UR-4, UR-4A, UR-5
Single Family Residences	Single Family Residences
Two Family Residences	Two Family Residences
	Multi-Family Residences

Zoning Ordinance Table 2.



ZONING ANALYSIS

Table 1: Zoning Districts and District Intent

UR-3	To conserve, maintain and encourage single family and two-family residential uses
UR-4/4A	To accommodate a mix of single, two-family and multi-family residential uses
UR-5	To accommodate multi-family residential development at moderately high densities and to encourage a mixture of housing types.

Zoning Ordinance Table 1.



ZONING ANALYSIS

What is the specific use for which this land is to be designed, maintained, or occupied?

Seven dwelling units on **single lot**

Seven dwelling units on a single lot is a **multi-family residential use**



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ZONING ANALYSIS

Seven Dwelling Units on a Single Lot

Seven dwellings worth of traffic

Seven dwellings worth of parking

Seven dwellings worth of population density

Seven dwellings worth of demand for services

Fire, EMS, Police, School District

All on a **single lot.**



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ZONING ANALYSIS

The **specific use** for which this single lot will be designed, maintained, and occupied is **seven family residential**.

The **specific purpose** for which this land will be used is **seven family residential**.



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ZONING ANALYSIS

Subdivision application would create a single dwelling unit for each individual lot and would allow planning board to address:

- Traffic
- Parking
- Density
- Demand for fire services
- Demand for police services
- Demand for EMS services
- Demand for school district services
- Orderly development of the land, including setbacks for each building



SUBDIVISION RESULTS

If subdivided (assuming a seven-lot subdivision would be approvable), the setbacks applicable to this project change dramatically.

9 front yards created

10 foot setbacks required

All 9 front setbacks would be violated

Very limited rear setbacks provided

25 feet required

At least 6 lots would violate rear setbacks



ZONING ANALYSIS

The project **proposes seven dwelling units** on **one lot**.



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PRECEDENTIAL IMPACT

An interpretation decision of a zoning board of appeals **sets precedent** for future applications.

Knight v. Amelkin, 68 NY2d 975, 977-78 [1986]

What precedent would be set by upholding the February 22, 2016 determination?



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PRECEDENTIAL IMPACT

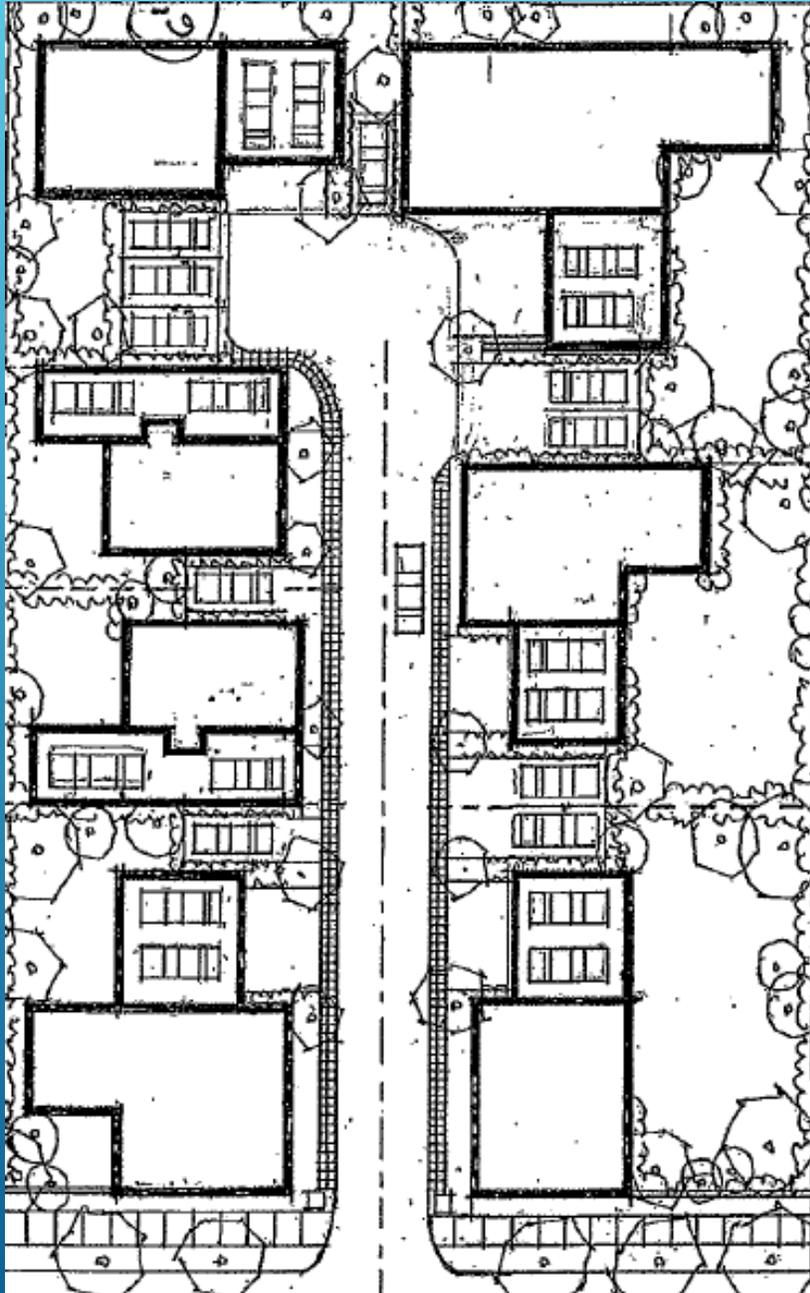
If the February 22, 2016 determination is upheld:

In the **UR-3 zoning district**, a **single lot** can be used to build **any number of dwelling units** as long as each individual building contains only one or two dwelling units each.



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PRECEDENTIAL IMPACT

Take this lot as an example.

0.80 acres.

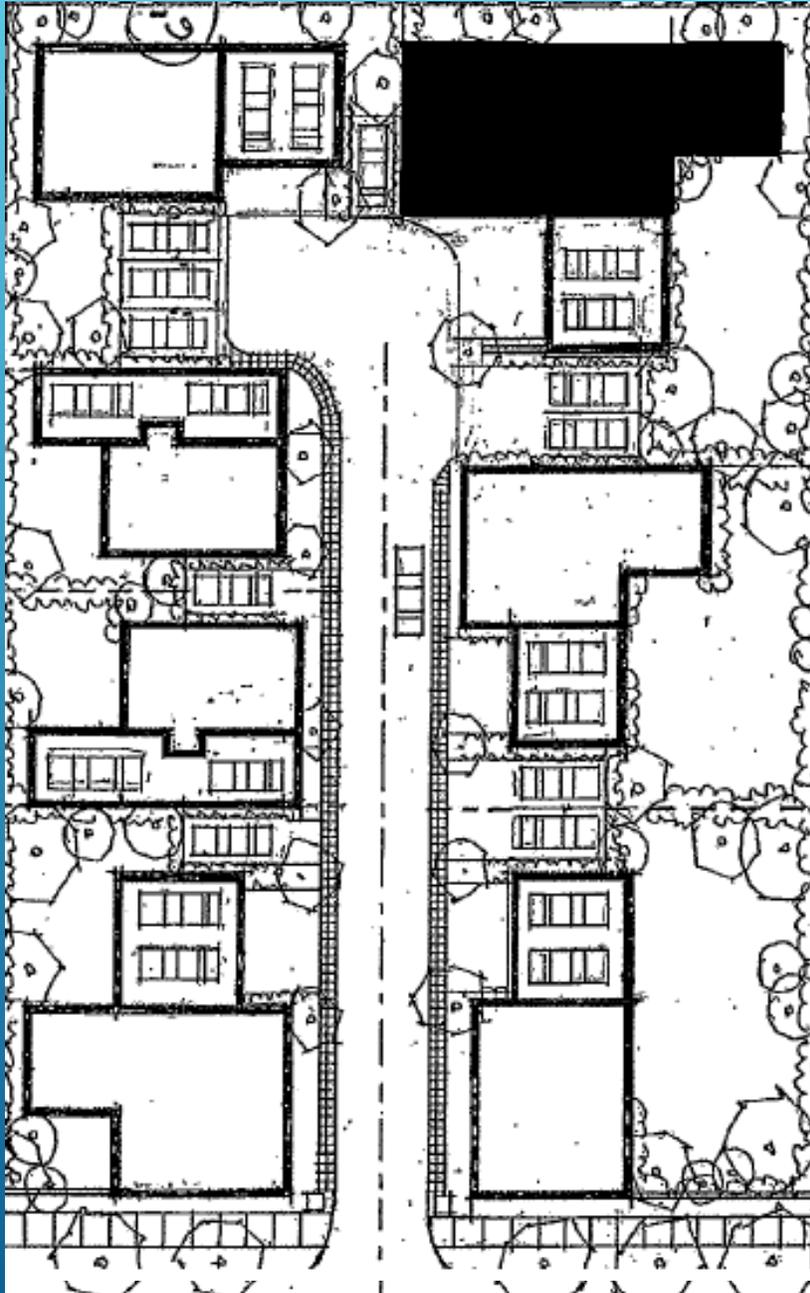
The current project is depicted here.

1 lot, 7 buildings, 7 dwelling units, 7 families.



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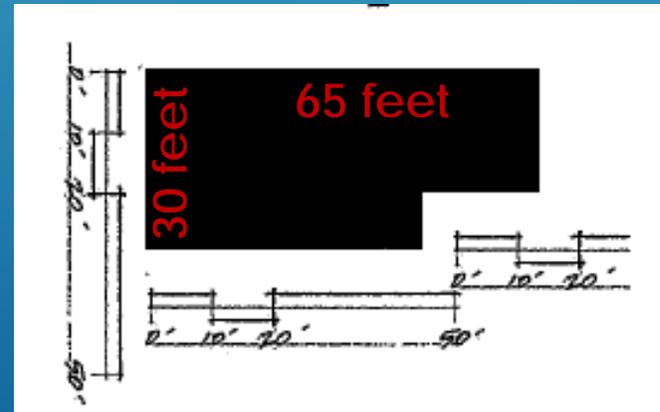
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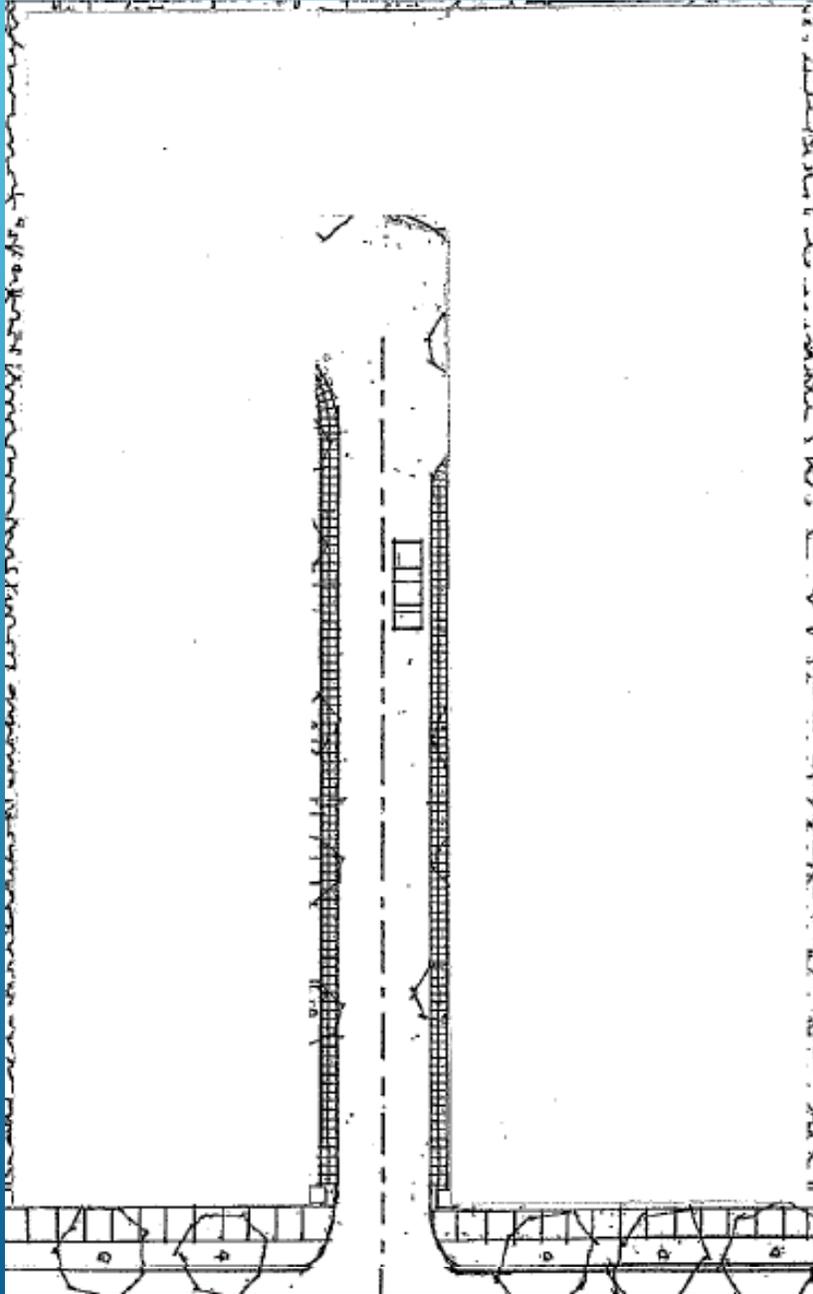


PRECEDENTIAL IMPACT

Use one of the currently proposed building footprints (excluding garage) as an example.

According to the scale provided, the footprint of the selected building footprint is approximately 1,750 square feet:





PRECEDENTIAL IMPACT

Same 0.80 acres

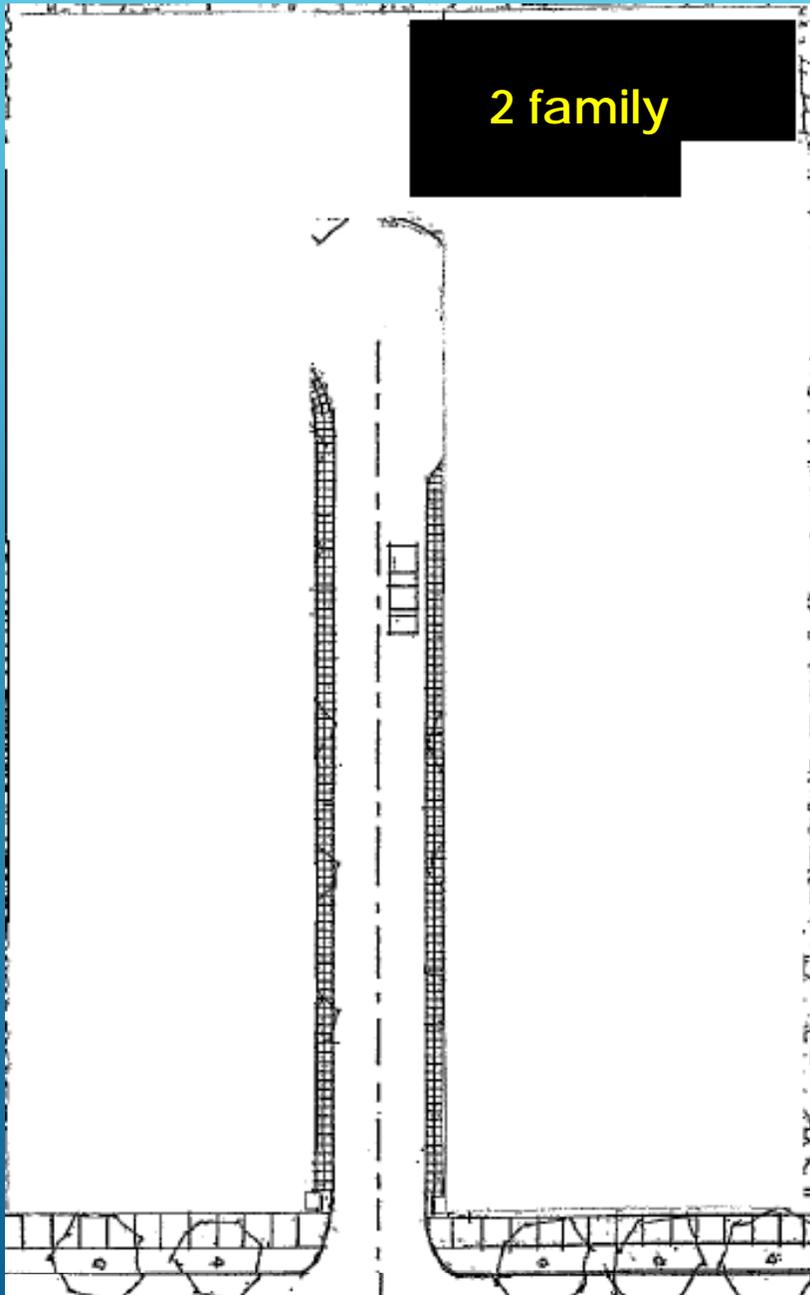
Clean slate, other than access road.

Same zoning district (UR-3)



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PRECEDENTIAL IMPACT

UR-3 also allows **two-family residences**

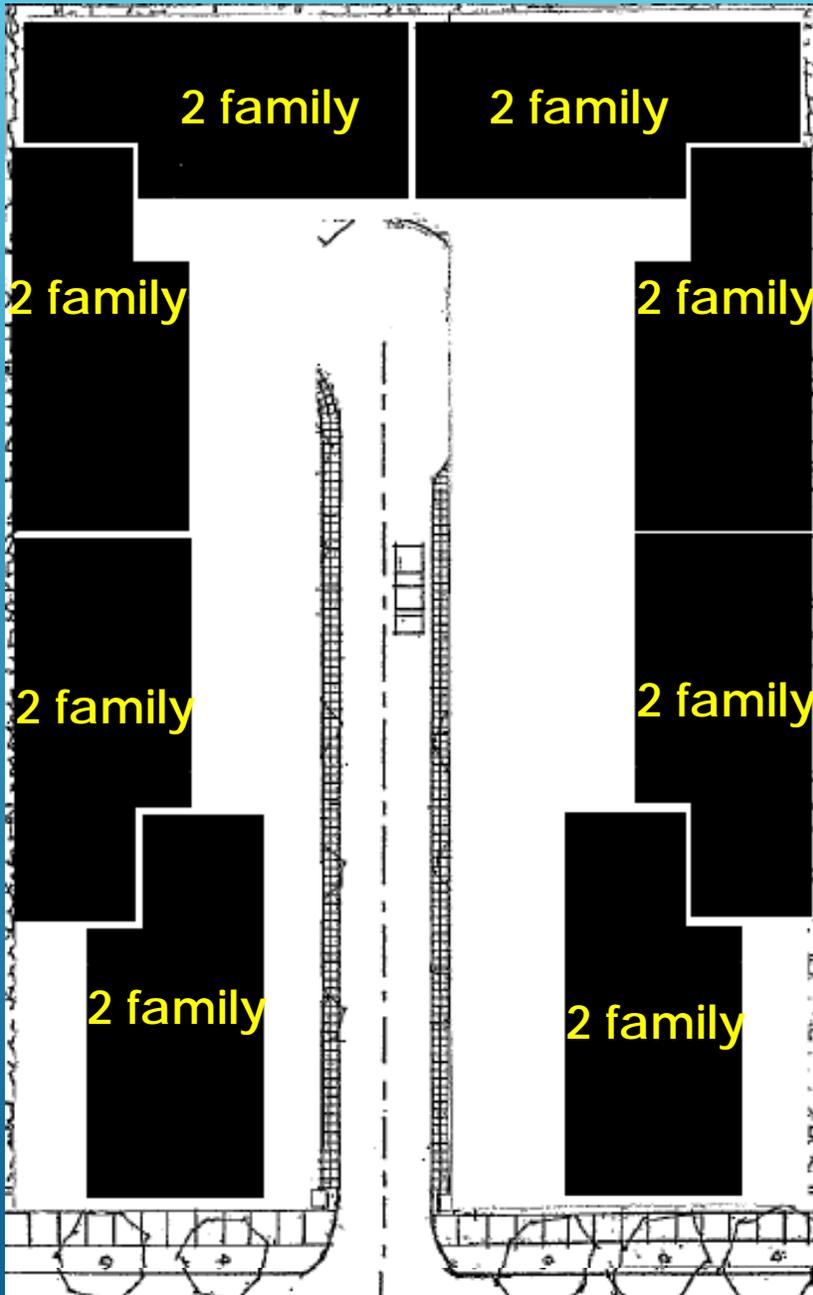
Two floors of 1,750 square feet footprint totals 3,500 square feet of living space.

Each floor could be a separate dwelling unit in which a separate family resides.



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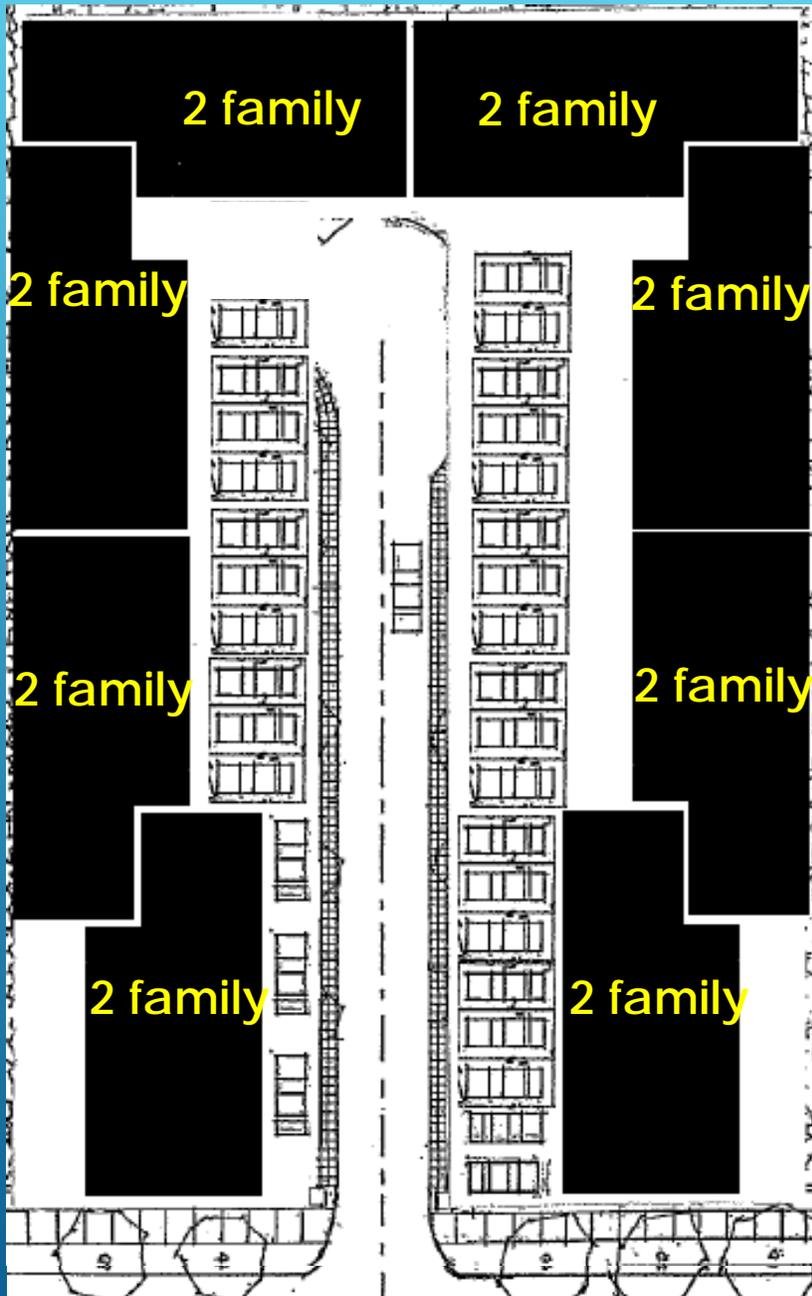


PRECEDENTIAL IMPACT

Approximately **8 two-family structures could be built on this 0.8 acre** lot if granted area variances.

8 two-family structures would amount to **16 separate dwelling units, 16 separate families.**





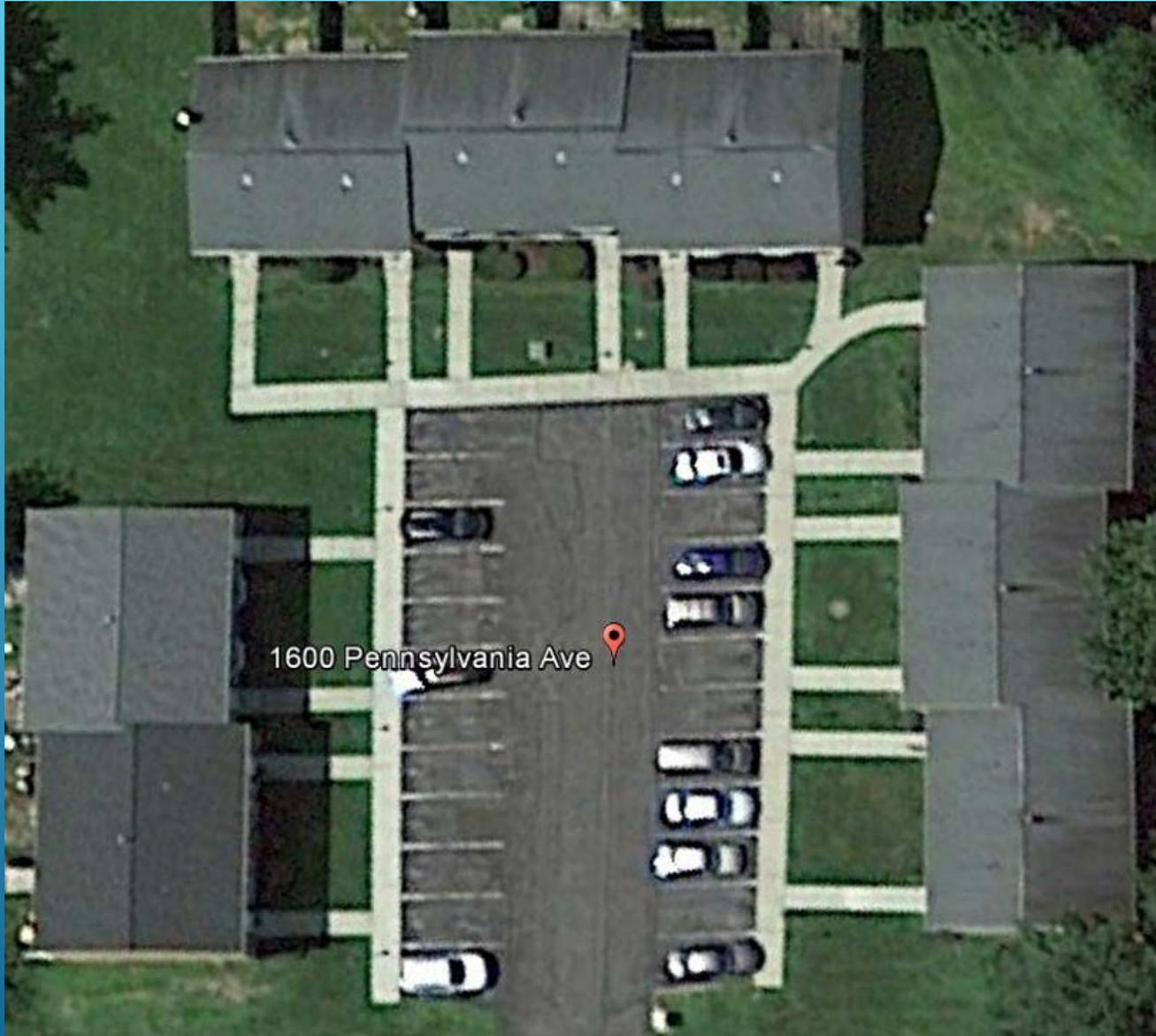
PRECEDENTIAL IMPACT

Zoning Ordinance requires 2 off-street parking spaces per residential unit in the UR-3 zoning district.

16 dwelling units would require 32 parking spaces.

This amounts to an apartment complex, and would be permissible in the UR-3 zoning district under the February 22, 2016 determination.





PRECEDENTIAL IMPACT

Presidential Estates in
Guilderland, New York.

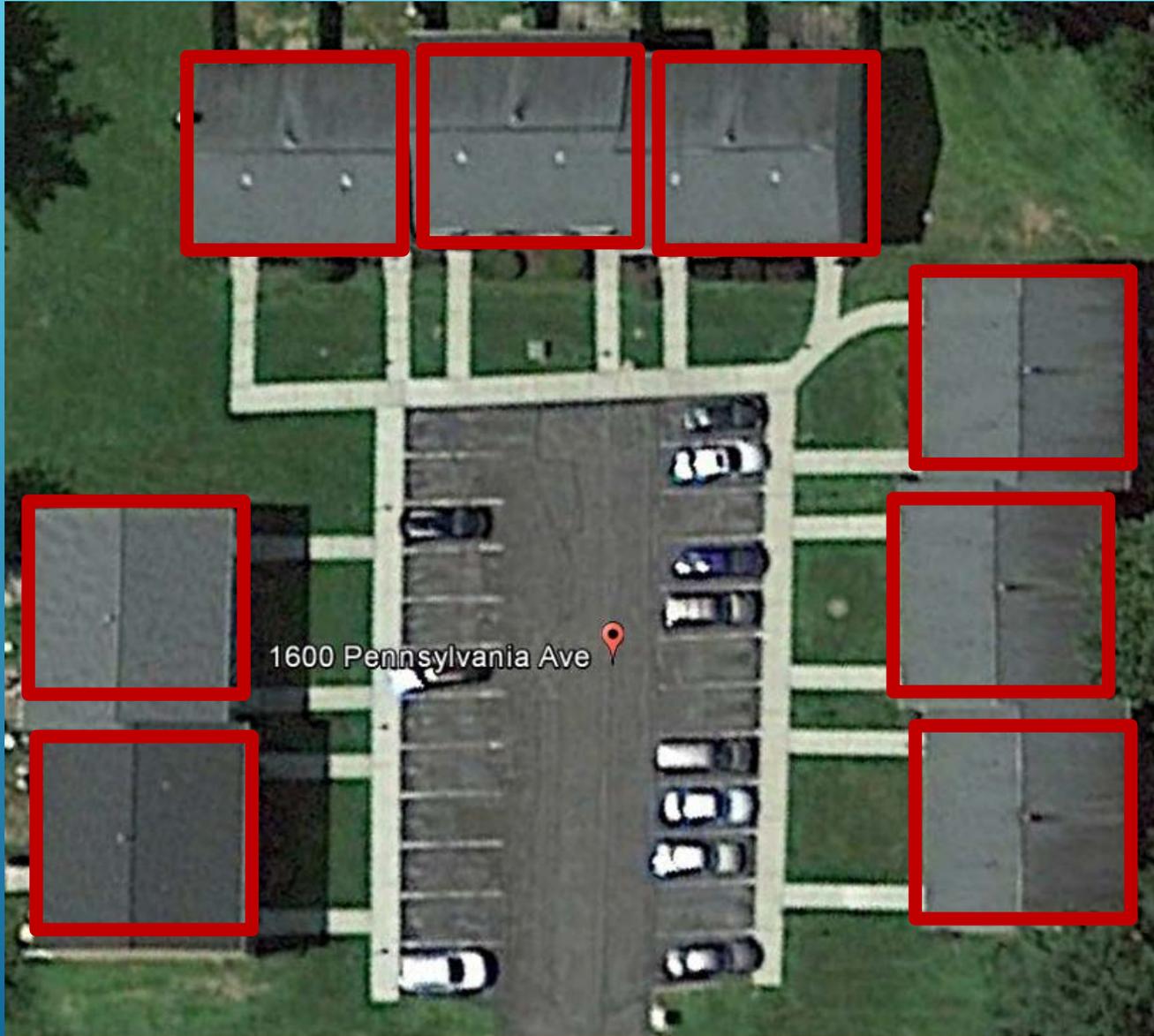
Presidential Estates is an
Apartment Complex.

According to Google
Earth, each two-family
building has a footprint
of 1400-1,600 square
feet.



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PRECEDENTIAL IMPACT

Residential Estates
in Guilderland, New
York.

Structures Could
Have Been Built
Without Common
Walls.



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Presidential Estates Apartment Complex in Guilderland, New York.



Presidential Estates Apartment Complex in
Guilderland, New York.



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ON THE MERITS

The project proposes **seven dwelling units**, with **seven separate families**, on a **single lot**.

The proposed use of the land is a multi-family residential use, which is **appropriate for the UR-4/4A and UR-5 zoning districts**, but not UR-3.

Upholding the February 22, 2016 determination would give rise to **precedent which would allow construction of apartment complexes in the UR-3 zoning district** as long as each building only contained 2 dwelling units.

