

# Young / Sommer LLC

JEFFREY S. BAKER  
DAVID C. BRENNAN  
JOSEPH F. CASTIGLIONE  
JAMES A. MUSCATO II  
J. MICHAEL NAUGHTON  
ROBERT A. PANASCI  
ALLYSON M. PHILLIPS  
DEAN S. SOMMER  
KEVIN M. YOUNG

LAURA K. BOMYEA  
E. HYDE CLARKE  
JESSICA ANSERT KLAMI  
KRISTINA M. MAGNE  
KRISTIN LAVIOLETTE PRATT

COUNSELORS AT LAW

EXECUTIVE WOODS, FIVE PALISADES DRIVE, ALBANY, NY 12205

Phone: 518-438-9907 • Fax: 518-438-9914

[www.youngsommer.com](http://www.youngsommer.com)

SENIOR COUNSEL  
KENNETH S. RITZENBERG  
DOUGLASH H. WARD

OF COUNSEL  
SUE H.R. ADLER  
ROGER FLORIO  
LAUREN L. HUNT  
ELIZABETH M. MORSS  
SCOTT P. OLSON  
RICHARD E. OSTROV  
STEPHEN C. PRUDENTE  
KRISTIN CARTER ROWE

PARALEGALS  
ALLYSSA T. MOODY  
AMY S. YOUNG

Writer's Telephone: 257  
[aphillips@youngsommer.com](mailto:aphillips@youngsommer.com)

## MEMO

To: Gardiner Town Board

From: Allyson M. Phillips, Esq.

Date: October 5, 2018

RE: Zoning Audit – Tourism Related Accommodations and Short-Term Rentals

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This memo provides an overview of the procedural and substantive provisions of the Town Zoning Law that regulate tourism-related accommodations in the Town of Gardiner (i.e., “Camps”, “Recreational Camps and Facilities”, “Low-Impact Recreation”, “Resorts”, “Lodging Facilities” and “Bed and Breakfasts”). Provisions of the Town Code that regulate “Travel Trailer Parks” and “Tourist Camps” are also discussed.

The purpose of this memo is to identify the relevant use categories that are defined under the Town Code, and to review and discuss the dimensional, density and supplemental requirements that are applicable to each use. Inconsistencies and ambiguities that were identified in the text of the law have been noted and are discussed for the Town Board’s consideration. The law’s application to new uses that were not previously addressed or contemplated is also addressed. This discussion is intended to provide the Town Board with a basis to review and evaluate whether amendments to the law are needed at this time. To facilitate this review, a bullet list of suggested amendments is provided at the end of this memo (at **TAB C**), which seek to address the ambiguities, inconsistencies, and regulatory gaps that have been identified herein.

In addition, the memo discusses various approaches other municipalities have taken to regulate “short-term” rentals, including but not limited to rentals offered through peer-to-peer platforms such as AirBnB. Proposed terms are discussed, and sample local laws are also provided for the Town Board’s review and consideration.

## **I. Comprehensive Plan Review**

The Town of Gardiner Comprehensive Plan recommends policies that recognize and support tourism as an important part of the local economy. It is noted that the Town currently receives hundreds of thousands of visitors annually and the economic activity from existing visitors provides a financial benefit to the Town. For this reason, the Comprehensive Plan seeks to promote policies that will improve the tourist economy in ways that also maintain the Town's character.

Although the Comprehensive Plan includes minimal direct discussion of tourism-related uses and specific land use objectives and recommendations<sup>1</sup>, the Comprehensive Plan does include a recommendation that the Town review the structure of the Zoning Law and the densities in the zoning districts to ensure that they provide "sufficient incentives for creative development consistent with the plan goals". This recommendation would apply to the periodic review of existing uses, including tourism-related uses, *and* an evaluation of new proposed land uses that were not specifically addressed or contemplated at the time the Comprehensive Plan was adopted and subsequent zoning amendments were considered.

## **II. Zoning Law Review**

### **A. Defined Uses**

The Town of Gardiner Zoning Law defines a number of uses which can generally be described as tourism-related, visitor accommodations. Below is a list of defined uses regulated under the Zoning Law and their corresponding definitions. Notes have been added to bring potential issues or points of clarification to the Town Board's attention.

#### **1. Camps**

"Camp" is defined in the Zoning Law as follows:

Any area of land containing recreation facilities and which may contain cabins, tents, recreational travel vehicles, shelters, or accommodations used for what is commonly known as "overnight camp" or "day camp" purposes, or otherwise designed for seasonal or other temporary recreational and living purposes occupied by adults, children, or any combination of individuals, families, or groups.

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<sup>1</sup> Specific policies tourism-related uses are suggested, including promoting way finding and creating infrastructure to support tourism, however, specific land use or zoning regulations are not proposed. One exception is a recommendation to promote revenue-producing tourism-related uses in the hamlet areas. The Comprehensive Plan also recognizes private camping areas as an important part of the Town's tourism economy. The plan states that the use should be encouraged, but that further development of private camping areas adjacent to the Mohonk Preserve and Minnewaska State Park is not preferred (in the alternative, organizations/ entities that manage these areas will be urged to create camping areas on their own land to serve their visitors).

*The definition of “camp” does not differentiate between day camps and overnight camps. There is also no durational limitation specified to define what constitutes “seasonal or temporary” recreational and living purposes. The definition includes reference to “shelters, or accommodations”, but it is not clear that this would include yurts, lean-tos, or tents with platform foundations commonly associated with “glamping” facilities.*

*It is noted that the Zoning Law does not recognize or include a separate definition for “campground” use. The Zoning Law does define “recreational camps and facilities”, however, this definition specifically excludes “hotels, resorts, and facilities for travel trailers, campers, and other motorized camping vehicles”. Therefore, it would not cover all facilities that include “camp” uses. Similarly, the definition of “low impact recreation” specifically includes “temporary camping facilities” that do not involve “buildings”, but other structures such as a “lean-to” would be permitted.*

*Finally, although the terms “tourist camps”, “tourist camp space”, “travel trailer”, “travel trailer park”, and “travel trailer space” are defined in Chapter 200 of the Town Code, these uses are not specifically addressed, cross referenced or distinguished in the Zoning Law definition of “camp”.*

## **2. Low Impact Recreation**

“Low-Impact Recreation” is defined in the Zoning Law as follows:

Any recreational activities that do not involve buildings or motorized vehicles, with limited facilities such as trails, boardwalks, lean-tos, tents, gazebos, and other temporary camping facilities.

*This definition specifically includes “temporary camping facilities” that do not involve “buildings”, but other structures such as a “lean-to” and “gazebo” are expressly included. “Gazebo” is defined as an “unenclosed structure not exceeding 12 feet in height without solid walls, screens, electricity, or plumbing”. There is no definition for lean-to included in the Zoning Law.*

*It is not clear if tents or yurts constructed on a platform or other type of foundation would be included within this definition. It is also not clear if the addition of electricity or plumbing would disqualify a structure that would otherwise fit within this definition.*

## **3. Recreational Camps and Facilities**

“Recreational Camps and Facilities” are defined in the Zoning Law as follows:

Seasonal recreational uses that may involve seasonal cabins and other permanent seasonal structures, including but not limited to seasonal transient lodging, information kiosks, clubhouses, pools, tennis courts, exercise facilities, basketball courts, and other recreational structures, excluding golf courses, hotels, resorts, and facilities for travel trailers, campers, and other motorized camping vehicles.

*The reference to “permanent seasonal structures” is the main clause that distinguishes this use from other temporary camping facilities that would be included in the definition of “low-impact recreation” discussed above. However, the definition’s inclusion of the word “may” makes clear that this distinguishing characteristic is not even necessary and may not be present in all cases.*

*It is also noted that the term “permanent seasonal structure” is not defined and may be open to interpretation. For example, the definition may be interpreted to include tents or yurts constructed on a platform or other type of foundation commonly associated with a more modern “glamping” facility.*

*It is also not clear if short-term rentals of seasonal cabins, other permanent seasonal structures, or even vacant land that is offered by a homestay company like “AirBnB” or “Tenterr” could be subject to regulation under this definition.*

#### **4. Lodging Facility**

“Lodging Facility” is defined in the Zoning Law as:

Any hotel, motel, inn, or other establishment providing sleeping accommodations for transient guests, with or without a dining room or restaurant, excluding bed-and-breakfast establishments.

The Zoning Law does not separately define “hotel”, “motel” or “inn”.

*For this definition, the relevant clause is “establishment providing sleeping accommodations for transient guests”. This is a broad definition that would arguably encompass a “camp”, “low-impact recreation” facility, and “recreational camp or facility” provided it had sleeping accommodations for transient guests.*

*This definition could also be interpreted as applying to short-term rentals offered by homestay companies like “AirBnB” that are not owner-occupied and do not otherwise meet the definition of a “Bed-And-Breakfast”.*

#### **5. Resort**

A “Resort” is defined in the Zoning Law as follows:

A development that includes recreational, lodging, and second-home residential uses, combined to create a vacation environment, which may or may not also include a health spa, conference facilities, equestrian facilities, hiking trails, a golf course, ski facilities, and other related commercial and recreational uses. See § **220-18**.

*To qualify as a “resort” under this definition, the use must include a combination of recreational, lodging and second home-residential uses. The addition of “second-home” uses distinguishes “resorts” from the other tourism related accommodation uses listed above.*

## 6. Bed-And-Breakfast

The Zoning Law defines “Bed-and-Breakfast” as follows:

A dwelling in which overnight accommodations not exceeding five bedrooms and breakfast are provided for transient guests for compensation. A bed-and-breakfast must be the primary residence of the owner/proprietor.

*The requirement that a bed-and-breakfast: 1) be the primary residence of the owner occupier; and 2) provide breakfast limit the scope of the use.*

*A bed-and-breakfast is considered a “dwelling”, which is defined as a building designed or used exclusively as living quarters for one or more families. However, the number of accommodations that can be offered is limited to five bedrooms.*

*The definition of “Bed-and-Breakfast” would not include a short-term rental offered by a homestay company like “AirBnB” if the dwelling was not owner-occupied, offered more than five-bedrooms for rent, and/or did not provide breakfast.*

### B. Allowable Uses

#### 1. Use Table at Zoning Law 220-10(B)

The use categories incorporated in the Use Table as Zoning Law §220-10(B) are intentionally broad in order to allow “flexibility and responsiveness to innovation”. See Zoning Law §220-10(A). All defined uses are not included in the Use Table, but that does not mean the use is prohibited. To the contrary, the law specifically provides that a use proposed outside the Shwangunk Ridge Protection (“SP”) District that does not “fit” into one of the categories shown on the Use Table and is not expressly prohibited, will be allowed by special use permit issued by the Town Board.

The Use Table at Town Zoning Law §220-10(B) includes “camps”, “lodging facilities”, and bed-and-breakfast use categories:

Use Category	RA	HM	HR	CLI	HC	SP-1
Camps	S <sup>2</sup>	-	-	-	-	S
Lodging Facility	S	PS <sup>3</sup>	-	-	PS	-
Bed and Breakfast	PS	PS	PS	-	PS	S

“Recreational Camps and Facilities” and “Low Impact Recreation” are not included in the Use Table at Town Zoning Law §220-10(B). Therefore, they would be allowed anywhere outside the SP District by special use permit issued by the Town Board.

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<sup>2</sup> S - Designates a use permitted by special permit issued by the Planning Board.

<sup>3</sup> PS - Designates a use permitted by right, subject to site plan review by the Planning Board

*“Resort” is also not listed in the Use Table at Town Law §220-10(B), however, it is not clear that this use could be permitted by Special Use Permit by the Town Board. The specific reference to Zoning Law §220-18 in the definition of “resort” indicates that a zoning map amendment is needed to allow the development of a resort use. See discussion of RDF District on p. 6-7 below.*

## 2. Use Table at Zoning Law §220-16(I)

Permitted uses in the SP-2 and SP-3 subdistricts are established in the Use Table at Zoning Law §2201-16(I). Here, the law specifically provides, if the use category is not listed in the table, it is prohibited in the SP-2 and SP-3 Districts. *See* §220-16(D)(2).

The SP-2 and SP-3 Use Table at Town Zoning Law §220-16(I) includes “low-impact recreation” and “recreational camps and facilities”:

Use Category	SP-2	SP-3
Low-impact Recreation	P <sup>4</sup>	P
Lodging Facility	S	-

Although the SP-2 and SP-3 Use Table at Zoning Law §220-16(I) lists “low impact recreation” as a permitted use in both the SP-2 and SP-3, a special use permit is required if a parking lot is proposed as part of the use, but the law does not specify what board would issue the Special Use Permit under this scenario. *See* Zoning Law §2201-16(I).

*It is assumed that the Planning Board would issue a special use permit under this scenario as the Planning Board is delegated general authority to issue special use permits except where the Town Board retained that jurisdiction to itself.*

“Camps”, “lodging facilities” and “bed and breakfasts” are not listed in the Use Table at §220-16(I) and so, are expressly prohibited in the SP-2 and SP-3 Districts.

The SP District regulations also specifically prohibit the development of “privately owned central sewage systems or sewage disposal facilities as defined in this chapter”, and “privately owned central water system”. *See* Zoning Law §220-16(D)(3)(a) an (b).

*These uses are not defined in the Zoning Law, but it is presumed that this provision would cover a central sewage or water system proposed to serve multiple temporary camping facilities or other accommodations that fit the definition of “low-impact recreation” or “recreational camp or facility”.*

## 3. Resort Development Floating District (RDF)

The RDF District is a floating zone designed to provide “use and design flexibility to encourage the development of inns, hotels and small-scale resorts that fit into the rural character of the Town and protect its scenic, historic, and environmental resources.” Zoning Law §220-10(A)(“the district provides a procedure for master planned development of large properties to

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<sup>4</sup> P - Means use is permitted as of right.

promote tourism, recreation, and open space protection”). A zoning map amendment from the Town Board is required to establish an RDF. *See* Zoning Law §220-18(B).

The Zoning Law permits the following uses within an established RDF District:

- All uses allowed in the RD District, as shown on the Use Table in §220-10(B).
- Lodging Facilities, meeting rooms and conference facilities.
- Restaurants
- Retail, recreational, and service business associated with the resort use, including health spas
- Riding academies and other equestrian uses
- Such other uses as may be approved by the Planning board in issuing a Special Permit for a development plan

*See* Zoning Law §220-18(C)(1). It is noted that “resort” use is not specifically listed as being allowed in an established RDF District.

*Under this section, “Camps”, “Bed-And-Breakfasts” and “Lodging Facilities” would be permitted within an established RDF District. It is presumed that any other tourism-related accommodations could also be permitted if approved by the Planning Board in issuing a special permit for a development plan.*

### C. Applicable Density and Dimensional Requirements

#### 1. In the RA, HM, HR, CLI, HC and SP-1

The density and dimensional requirements that are applicable in the respective districts is set forth in Zoning Law §220-11(B). A copy of the Dimensional Table is attached here as **TAB A** for ease of reference.

Notable density and dimensional requirements applicable to “camps” include a five (5) acre minimum lot size, setbacks that range in size from 30 feet to 75 feet, 10% maximum impervious surface coverage, and a 6,000 square feet maximum footprint for non-residential structures. In the RA, the maximum base density is 2 acres per “dwelling unit”.

For lodging facilities, the minimum lot size varies from a five-acre minim in the RA District, 4 acres in the RM District, and 2 aces in the HC District. Road and yard setbacks applicable to Lodging facilities also varies widely from 10 feet to 50 feet, as does the maximum impervious surface coverage (10% in the RA District, 70 % in the HM District, and 60% in the HC District). There is a maximum base density of 2 acres per “dwelling” unit in the RA District, and no maximum base density for development in the HM District or HC District.

However, it is noted that additional supplemental regulations applicable to non-residential uses and “camps” specifically, modify some of these requirements, including but not limited to setbacks from a wetland or stream. See discussion at p. 10-11 below.

*The Zoning Law defines “dwelling unit” as a “building or portion thereof providing complete housekeeping facilities for one family” and “[f]or purposes of density calculations [] a studio or one-bedroom dwelling unit shall be counted as 0.5 dwelling unit, a two-bedroom unit shall be counted as a 0.75 dwelling unit, and a three-bedroom unit shall be counted as 0.75 dwelling unit, and a three-bedroom or larger dwelling unit shall be counted as one dwelling unit”*

*This definition is not easily applied to non-residential uses that may include units without complete housekeeping facilities, or campsites or camping units that do not contain any bedrooms.*

*Although Chapter 200 of the Code (regulating Travel Trailer Parks and Tourist Camps) regulates the size and number of “travel trailer sites” and “tourist camp sites” these definitions are limited and would not apply to all “Camps”, “Low-Impact Recreation”, “Recreational Camps and Facilities” and “Lodging Facilities” that are allowed under the Zoning Law.*

## 2. In the SP-2 and SP-3 Districts

For uses allowed in the SP-2 and SP-3 District, the density and dimensional requirements applicable in the SP-1 District would apply except as modified by Zoning Law §220-16(E)(3) and (4).

This would apply to “low impact recreation” and “recreational camps and facilities” that are allowed in the SP-2 or SP-3.

In the SP-2 District, these modifications would include:

- A minimum lot area of 10 acres, except in open space developments.
- A maximum base density for open space developments shall be 10 acres per unit.
- A maximum building height of 25 feet.
- The maximum total floor area of all structures shall not exceed 6,000 SF, unless the Planning Board finds that a structure of greater size will not compromise the purposes of the SP District or conservation findings, and special design features or other mitigating factors justify allowing an increased floor area.
- No lot shall have more than 5% impervious coverage.

See Zoning Law §220-16(E)(3).

Modifications applicable in the SP-3 District would include:

- A minimum lot area of 20 acres, except in pen space developments.
- A maximum base density for open space developments shall be 20 acres per unit.
- A maximum building height of 25 feet.
- The maximum total floor area of all structures shall not exceed 4,000 SF, unless the Planning Board finds that a structure of greater size will not compromise the purposes of the SP District or conservation findings, and special design features or other mitigating factors justify allowing an increased floor area.
- No lot shall have more than 3% impervious coverage.

See Zoning Law §220-16(E)(4).

(i) In the RDF District

The dimensional standards set forth at Zoning Law §220-11(B) do not apply in an established RDF District. Instead, the maximum impervious surface coverage and dimensional standards set forth in Zoning Law § 220-18(C)(5) will apply. Under that section, the maximum building height is 35 feet and the remaining dimensional and density standards are “as approved by the Planning Board”. The maximum impervious surface coverage is limited to 15% of the total site area, including preserved open space areas (excluding land and buildings used to house employees of the resort).

D. Supplemental Regulations

(i) Supplemental Regulations Applicable to All Regulated Uses

Tourism-related accommodations area also subject to supplemental regulation under Zoning Law, Article VII (§§220-30 – 220-52). These regulations specifically include and address rural siting principles, water supply and municipal infrastructure, wetland and water course protection, steep slope regulation, protection of agriculture, and off-street parking.

Specific regulations relating to wetland and watercourse protection, environmental performance standards, and off-street parking are discussed in more detail below. Supplemental regulations applicable to “Camps” (§220-45 are also discussed).

(ii) Off-Street Parking and Loading

The supplemental provisions at Zoning Law §220-38 seek to “balance the need for adequate parking with the need to minimize harm from the provision of parking, and to avoid the negative impact of excessive parking lot construction”. Zoning Law §220-38(A)(1).

Provisional parking standards are provided for non-residential uses which may be varied by the Planning Board according to specified criteria. It is also noted that the Planning Board can waive

the parking requirements entirely for preexisting lots located with the HM District. Zoning Law §220-38(3)(a).

For Lodging facilities, “one space for each bedroom plus one space for each nonresident employee and on space for every 200 square feet of floor space for meetings and functions” is required. Zoning Law §220-38(3)(a)(4).

There are no provisional parking standards for “Camps”, Low-Impact Recreation”, “Recreational Camps and Facilities” or “Bed-And-Breakfasts” listed in this section. Pursuant to Zoning Law §220-38(3)(b), parking will be required for such uses “as appropriate to the circumstances”.

(iii) Wetland and Watercourse Protection

Among these supplemental regulations are provisions intended to protect wetlands and designated watercourses. *See* Zoning Law §220-35(D). These regulations require, within 150 feet of the top of the bank of any stream classified as AA, A, B or C(t) by the DEC, the Planning Board must ensure that any development subject to its approval:

- Will not result in erosion or stream pollution from surface or subsurface runoff;
- Will not result in impervious surface coverage exceeding 2% of the regulated area (i.e., the land lying within 150 of the stream bank);
- Will provide an adequate vegetated buffer along the stream to prevent adverse impacts on the stream; and
- Will maintain existing tree canopy over the stream and the stream bank

*See* Zoning Law §220-35(D).

In addition, “required setbacks” prohibit the following improvements within 100 feet of the top of the bank<sup>5</sup> of a stream classified as AA, A, B or C(t) by the DEC:

- Principal and accessory structures 200 square feet or larger in footprint area;
- Septic systems, leach fields, and wells;
- Driveways, roads, and parking lots (with certain exceptions);
- Excavation and fill areas;
- Herbicide and fertilizer applications;
- Storage of chemicals;
- Vegetation removal, except as necessary to allow hiking trails and water-related structures that are allowed within the 100-foot stream setback.

*See* Zoning Law §220-35(E).

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<sup>5</sup> In the absence of a clear bank, the regulation applies from the outer edge of the riparian wetland adjacent to the stream.

Notwithstanding the foregoing, the Planning Board does have discretion to reduce the stream protection setbacks in the course of its approval process if it finds that topographic conditions and/or project design features will adequately protect stream water quality. *See* Zoning Law §220-35(E)(3).

(iv) Environmental Performance Standards

All uses are subject to the performance standards set forth at Zoning Law §220-40. The Zoning Law specifically provides “[n]o use shall hereafter be established, altered, moved or expanded unless it complies with the performance standards set forth in this section” and that continued compliance is a requirement for the continuance of any certificate of occupancy. Zoning Law §220-40(A).

The performance standards include specific provisions intended to address noise, vibration, smoke, dust and other atmospheric pollutants, odor, toxic materials, radiation, electromagnetic interference, fire and explosion hazards, heat, lighting, exterior illumination and glare, and liquid and solid wastes. *See* 220-40(C)-(M).

*These standards would apply to all tourism-related accommodation uses discussed in this memo and can be enforced in the same manner as other provisions of the Town Zoning Law.*

(v) Supplemental Regulations Applicable to “Camps”

Section 220-45 of the Zoning Law includes supplemental regulations specific to “camps”. These regulations provide that “[c]amp structures shall be set back at least 250 feet from property lines, unless the property line is the shoreline of a stream or lake, in which case the setback requirements of § 220-14D shall apply”. *See* Zoning Law §220-45(A).

*It is noted that the reference to §220-14D appears to be an error as there is no section 220-14(D) in the Zoning Law. To the extent this reference was intended to apply to the stream protection setbacks in §220-35(D) and/or (E) (discussed above), this language would seem to indicate the stream setback in §220-35 would apply.*

Additional regulations in Zoning Law §§ 220-45 provide as follows:

- Within the 250-foot setback area, a natural buffer of wooded vegetation shall be maintained to screen camp structures and reduce the impacts of noise, odors, dust, and light on surrounding areas;
- Depending upon the type of camp operation, the Planning Board may impose restrictions on hours of operation and on those activities that might disturb neighboring properties;
- Camps shall comply with all applicable state licensing requirements;
- A camp that has been approved by special permit, or that was in existence prior to the imposition of a special permit requirement, may add or remove structures without

obtaining a special permit or special permit amendment. Such changes to the camp property shall require site plan approval only, provided that the setback and buffer requirements listed above are satisfied.

The supplemental regulations applicable to “camps” do not specifically address or cross reference temporary camping facilities that would be included within the definition of “Low-Impact Recreation”, or other structures that could be permitted as a “Recreational Camps and Facilities” or “Lodging Facilities”. *See* Zoning Law §§240-45. However, the setback included at Zoning Law §220-45(a) requires that “camp structures” be at least 250 feet from the property line (where shoreline setback is not otherwise applicable).

*Although it is not clear that the supplemental regulations applicable to “camps” at Zoning Law §220-45 would apply to camping facilities that qualify as a “Low-Impact recreation”, “Recreational Camp or Facility”, or “Lodging Facility”, it appears the setback at Zoning Law §220-45(a) would be applicable to any related improvement that qualified as “camp structure”. This could include cabins, tents, or other similar types of structures that provide sleeping accommodations for transient guests. This phrase “camp structure” is not defined in the Zoning Law and so is open to interpretation.*

Finally, it is noted §220-45(E) requires that “Travel trailer parks and tourist camps”, as defined in Chapter 200 of the Town Code, “shall comply with the provisions of Chapter 200 and this section; the more restrictive provision shall apply”.

*The definitions for “Travel Trailer Parks” and “Tourist Camps” and procedural and substantive requirements applicable to those uses under Chapter 200 of the Code are discussed in more detail at p. 13-15, below.*

(vi) Supplemental Regulations Applicable in an RDF District

Zoning Law §220-18(C) includes supplemental regulations that are applicable to development within an RDF District. In addition to the maximum impervious surface coverage and dimensional standards discussed above, this section requires the preparation of a conservation analysis and master development plan requirement, “for any development that involves any use other than those allowed in the RA District”. *See* Zoning Law §220-18(C)(2) and (3).

*“Camps”, “Lodging Facilities” and “Bed-And-Breakfasts” are allowed in the RA District by special use permit and/or site plan approval issued by the Planning Board. See §220-11(B), therefore, it does not appear that a conservation analysis or master development plan would be required to develop these uses in an RDF District.*

An additional “buffer requirement” mandates that a master development plan in the RDF provide open space buffers of at least 200 feet from any existing residential uses that are not within the RDF District. The buffers may be wooded or open and may contain trails; they cannot contain any buildings or other recreational areas. *See* Zoning Law §220-18(C)(6).

(vii) SP District Regulations

In addition to the modified dimensional requirements and general supplemental regulations discussed above, “Low-Impact Recreation” and “Recreational Camps and Facilities” allowed in the SP-2 and SP-3 by Special Use Permit, are also be subject to the special resource protection design requirements for the SP District. *See* Zoning Law §220-16(F). This section mandates that a conservation analysis be prepared and that the Planning Board make conservation findings as provided in Zoning Law §220-20(A)(8).

Provisions regulating building envelopes, land disturbance (including steep slopes), revegetation, clear-cutting, retaining walls, roads, driveways, and utilities, water protection, visual screening and landscaping, protection of habitats, forest management, lighting, water and sewer facilities would also be applicable. *See* Zoning Law §220-16(F)(1) – (11).

It is noted that the “protection of water resources” regulations applicable in the SP District prohibit “structures” within 100 feet of a watercourse, wetland or spring.

**III. Town Code, Chapter 200 – Travel Trailer Parks and Tourist Camps**

Chapter 200 of the Town Code was first adopted in 1984 and regulates “Travel Trailer Parks” and “Tourist” Camps. As discussed in more detail below, the law imposes a license requirement on applicable uses and imposes “plan requirements” which seek to regulate the development and use of qualifying facilities.

**A. Definitions**

Chapter 200 defines the following relevant terms:

- Tourist Camp - Any plot of ground whereon are located or placed two or more tents or tent houses.
- Tourist Camp Space - A plot of ground within a tourist camp designed for the accommodation of one tent or tent house.
- Travel Trailer - A vehicular portable structure built on a chassis, designed to be used as a temporary dwelling for travel and recreational purposes, and having a body width not exceeding 8.5 feet.
- Travel Trailer Park - Any plot of ground upon which two or more travel trailers occupied for dwelling or sleeping purposes are located.
- Travel Trailer Space - A plot of ground within a travel trailer park designed for the accommodation of one travel trailer.

*The term “Tourist Camp” is limited to “tents” and “tent houses” and so is more limited than the definition of “Camp” and “Recreational Camp or Facility” in the Zoning law. Regardless, there is considerable overlap in the definition of “camp”, “low-impact recreation”, and/or “lodging facility” included in the Zoning Law and “Tourist Camp” and/or “Travel Trailer Park” regulated under Chapter 200. However, there are virtually no cross-references between the two chapters.*

*The term “tent house” is not defined in the law, therefore, it is not clear if it would apply to yurts or tents constructed on platforms or foundations. The inclusion of this term creates an ambiguity that is subject to interpretation.*

*It is noted, that the substantive regulations in Chapter 200 (discussed in more detail below), state the only “permanent structures” permitted in a “Tourist Camp” or “Travel Trailer Park” are a single owner or caretaker dwelling, recreational buildings, and service and office buildings. Therefore, it appears facilities developed to provide accommodations to transient guests in a “permanent structure” would not be subject to regulation under this Chapter.*

*The term “Tourist Camp” is not defined to include a seasonal or durational limitation, however, the license that is required under Chapter 200 is limited in duration from April 1<sup>st</sup> through October 31<sup>st</sup> of each year. Thus, it is presumed, but not stated that “Tourist Camps” are intended as a seasonal use.*

*The definition of “Travel Trailer” is defined as being designed as a “temporary dwelling” for travel and recreational purposes. However, there is no durational limit to explain what should be considered “temporary”, and is therefore, the term is open to interpretation.*

*It is also not clear if short-term rentals of tents or “tent houses” that are offered by a homestay company like “AirBnB” or “Tenterr” are subject to regulation under this definition.*

## **B. License Requirement**

Chapter 200 provides that a license must be obtained from the Town Board in order to maintain or operate a “Travel Trailer Park” or “Tourist Camp” in the Town of Gardiner. Chapter 200, §200-2. The license is issued for the period of April 1<sup>st</sup> through October 31<sup>st</sup> of each year. All qualifying facilities in existence when Chapter 200 was adopted were given ninety (90) days to “obtain a license and comply fully with the requirements of this Chapter”. Chapter 200, §200-3.

A yearly licensing fee is required, presumably to cover the Town’s costs and expenses in administering the licensing program and any necessary inspections. Chapter 200, §200-3.

## **C. Substantive Standards – Plan Requirements**

Travel Trailer Parks and Tourist Camps regulated under Chapter 200 are subject to the substantive requirements at §200-5 which are summarized in relevant part below:

- The travel trailer park or tourist camp must be located on a well-drained site, properly graded to insure rapid drainage and freedom from stagnant pools of water.
- Each camping space or accommodation shall have a minimum of 2,400 square feet of usable space with a minimum width of 25 feet. Each space shall be provided with a safe and convenient parking space, and water supply approved by the Department of Health and sanitation facilities meeting all New York State Departments of Health and Environmental Conservation requirements.
- Access to the park must be from a state or county road and shall be constructed to town road specifications for a minimum of 150 feet into the park, or to the first interior lane, whichever is longer.
- No travel trailer or tent shall be located closer to a public highway than 75 feet from the center line of such highway.
- There shall be provided at least one off-street parking space for each travel trailer or tourist camp space.
- There shall be provided one safety or street light of at least 7,000 lumens for each 375 feet of driveway, road, or street in the park or camp.
- There shall be provided in each park or camp service buildings to house toilet facilities and other sanitary facilities, as hereinafter more particularly described.
- There shall be provided 6,000 square feet of usable open space for each travel trailer or tourist camp space. Usable open spaces shall include facilities for both passive and active recreation. Usable open spaces shall not include parking areas.
- Screening, in the form of fences, trees, or plantings, shall be provided between a travel trailer park or tourist camp and any other use, and any street or highway on which such park or camp fronts.
- A buffer area of 50 feet shall be located along side and rear lot lines between a travel trailer park or tourist camp and any other use. Such buffer area shall be suitably landscaped and screened.
- The only permanent structures permitted in such park or camp are a single owner or caretaker dwelling, recreational buildings, and service and office buildings. There shall be no other year-round dwellings provided of any type. No mobile homes shall be placed at any point within the park property.

In addition to the above-listed requirements, Chapter 200 requires that Tourist Camps and Travel Trailer Parks include an adequate water supply, including hot water in service buildings for bathing, washing and laundry facilities. §200-6.

Provisions requiring adequate sanitation facilities and regulating sewage and refuse disposal are also included. §§200-7 – 200-8.

Notwithstanding the foregoing, Chapter 200 provides that the Town Board may waive any of the requirements of this Chapter if, in its judgement, “the special circumstances of a particular property are not requisite” to protect the public health, safety and welfare or would cause unusual hardship. §200-17.

#### **D. Supplemental Regulations Applicable to “Camps”**

As discussed at p. 11-12 above, the supplemental regulations applicable to “Camps” under § 220-45 of the Zoning Law are also applicable to Travel Trailer Parks” and “Tourist camps” subject to regulation under Chapter 200. That section dictates the more restrictive requirements will apply.

*While this provision makes clear the more restrictive setback and buffering requirements under §220-45 will override the requirements in Chapter 200, there is no corresponding directive as to whether the open space, density, and parking requirements applicable here would override applicable regulations found in other sections of the Zoning Law.*

#### **IV. Short-Term Rentals**

The Town of Gardner has not adopted a local law specifically aimed at short-term rentals, including but not limited to, peer-to-peer platforms like AirBnB. Such rentals can range from an entire single-family home, to a spare bedroom or even a single couch; the rental term can be on a nightly or monthly basis. While many advocates claim short-term rentals are good for both users and the local economy, critics cite common complaints, such as noise, large public gatherings, and reduced parking, which can have a negative impact on the Town’s character and quality of life.

In recent years, municipalities throughout New York have responded by adopting a wide range of regulations for short-term rentals. At one extreme, some municipalities have imposed a total ban on short-term rentals; others have taken the opposite approach and refused to impose any regulations on the use. Many communities have taken a middle of the road approach that allows the use of short-term rentals but with certain limitations. Examples of limitations or affirmative requirements that may be incorporated in a short-term rental law are provided below:

- Requirement that any rented dwellings be owner-occupied (i.e., the owner’s primary residence).
- A less restrictive version of the owner-occupied requirement allows the owner to be absent from the property, provided that a local contact is available at all times to address complaints.

*This kind of regulation serves two purposes. First, an owner-occupancy requirement limits the ability of individuals to purchase multiple properties for use as short-term rentals and may*

*mitigate the impact short-term rental regulations have on local housing stock and rental prices. In addition, owner-occupancy creates a level of accountability as the owner can observe the guests and respond to complaints from authorities or neighbors if prohibited or disruptive conduct occurs.*

- Durational limits that include caps on the length of any individual rental, limits on the number of consecutive days a dwelling may be rented out, and/or aggregate limits on how many days per month or year that the dwelling may be used as a short-term rental.

*Durational limits primarily serve to protect the residential character of a neighborhood, ensuring that residences do not become full-time commercial uses.*

- A requirement that property owners acquire rental permits, and then condition the issuance and renewal of such permits on the property owner's compliance with various regulations.

*A permit requirement would allow the Town to address quality of life concerns when raised by local property owners. For example, the Town can make clear that the environmental performance standards, including noise limitations, at Zoning Law §220-40 are applicable to short-term rentals. Permit requirements can also provide ancillary benefits to the Town by requiring that owners report information about the properties being used as short-term rentals.*

*The Town may also impose a license fee to cover the administrative expense of the program and any necessary inspections.*

- Limitations on the use of short-term rentals for public assembly (i.e., regulations that prohibit certain types of gatherings, such as wedding parties, or generally limit the number of non-residents on the property).
- Limits on the number of rentals per property at any given time and impose off-street parking requirements.

*These limitations would help to to blunt the impact of multiple guests with respect to on-street parking.*

Attached here as **TAB B** are a selection of local laws regulating short-term rentals for your review and consideration.

## **V. Conclusion**

This memo is intended to provide the Town Board with a basis to review and evaluate whether amendments to the Zoning Law (and other code provisions discussed herein) are needed to streamline the Town's regulations and to specifically address new uses that are not addressed or contemplated under the Town's existing regulations. Building off this analysis, a bullet list of suggested amendments is provided at **TAB C** for the Town Board's review and consideration. The proposed amendments seek to address the ambiguities, inconsistencies, and regulatory gaps

that have been identified in this memo, but also, to facilitate a more open discussion of the Town's existing regulations and the need, if any, for modifications.