

To: The Gardiner Planning Board and Town of Gardiner

From: Friends of Gardiner (“Friends”).

Re: Heartwood’s application.

Date: October 15, 2018

Friends of Gardiner (“Friends”) believes that the Planning Board is seriously remiss in its obligations under the Town Zoning Code, Comprehensive and Open Space Plan. We advise the Planning Board that we are consulting with an attorney at this time.

Friends understands property rights. Property owners’ rights do not extend to outside their property or allow uses prohibited by Code. The Heartwood project is a commercial development being proposed in a residential district. It is not a development as a matter of right, it is a development that requires a special permit. There are conditions that must be met in order for Heartwood to qualify for such a permit. Heartwood has failed to meet these conditions.

Friends submitted extensive written comment regarding the Heartwood project and has made seven key requests, “Heartwood 7”, or “7 Heartwood Requests,” to the Planning Board in this regard. In reality, at least 5 of the requests are not requests, but are required pursuant to its special permit laws. To not address these requirements is equivalent of violating the Law.

Below are “Heartwood 7” or “7 Heartwood Requests,” along with citations to the corresponding law.

### **1. Conservation Easement**

Should the Planning Board use an Open Space Development analysis to determine density under the special permit laws, then Friends is requesting a conservation easement in the amount the Gardiner Town Open Space Development requires. Should the Planning Board make determinations using open space density, it should require an open space conservation easement.

#### **Supporting Code:**

TZC 220-63 provides that will have no greater overall off-site impact than would full development of the property with uses permitted by right. By right a property owner would be entitled to 28 dwellings on this parcel.

For some unknown reason, the Planning Board/Town Planner determined that maximum development is 46 dwellings. This determination has no support in the Code. This super-density allotment is more akin to an open space development. There’s been no open space development showing. Thus, if the Heartwood project is being compared to a 46 dwelling density, then Heartwood has to comply with Open Space Conservation analysis and easements in the Code. <sup>1</sup> TZC 220-20 and 220-65(B)(21).

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<sup>1</sup> TZC 220-20 states that in order to obtain open space density allotments, the applicant is required to provide a conservation analysis; the Planning Board is to make findings on this conservational analysis and 50% of “net acres” placed into a conservation easement. TZC 220-20.

Thus either Heartwood is restricted to a development equivalent to 28 dwellings or open space development provisions apply. The 70 cabins with electric, septic, running water, and multiple-occupancy, cannot be shown to have less impact than 28 residences.

## **2. Noise Pollution & Event Frequency restrictions**

Friends is requesting: Amplified events to be held indoors and adhere to the existing town noise ordinances. Frequency of events will also be limited (i.e. no weekly techno parties).

### **Supporting Code:**

TZC 220-63(B)(12) states Major Special Projects “can have no greater off-site impact than full development.” And as stated above, this would no more noise impact than that of 28 homes. Thus noise, odors, events etc. cannot exceed what can be done by right. Heartwood bears this burden of proof.<sup>2</sup> The Planning Board’s expert, Sterling reported that the noise test is inadequate. The Planning Board has also openly admitted that a similar establishment located within a stone’s throw of Heartwood is causing excessive noise and is a nuisance to the community.

See also Ulster County Planning Board (UCPB) 6-7-2017 Recommendation. Required Modification 1: Event/mass gathering plan including noise control and frequency. No plan was ever submitted by Heartwood.

## **3. Maximum Occupancy Limits**

Friends is requesting that a maximum occupancy/density be established.

### **Supporting Code**

TZC 220-11 provides density as a matter of right. The super-density allotment provided by the Planning Board is unlawful under Code.

TZC 220-63. Heartwood is an unconventional development. Instead of dwellings, there are “luxury cabins.” There has been no determination as to how many cabins equals one dwelling. There also has been no determination as to how much, overall additional impact transitional guests (on perpetual vacation) would have in excess of traditional residents, or the additional offsite impact the proposed restaurant and event center would have. TZC 220-63. Heartwood bears this burden of proof. Heartwood has made no showing that their proposal would not exceed full development rights. Without such showing, the criteria needed to approve a major site plan is not met. TZC 220-63.

Note: There is precedent for concern regarding these types of developments exceeding density, noise, nuisance etc. restrictions and corresponding property devaluation. See Planning Board Minutes and Public Comment regarding Jellystone Expansion/Lazy River.

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Heartwood’s submission does not meet this requirement and must be amended. Currently Heartwood has allotted a mere 38% of gross acreage. According to Code, Heartwood is required to set aside 50% of unconstrained, “net acreage.”

<sup>2</sup> Friends have heard that there is a noise report. If there is a report, it has not been made public.

Note: Numerous Freedom of Information Law requests have been made for the document Sterling referenced from the Town Planner determining density at 46 dwellings. To date no such document has been produced. All reports, studies, assessments, evaluations etc. subsequent to this alleged density determination has been erroneously based on an unsubstantiated undocumented unfounded density determination. Further, Heartwood cannot receive a super density allotment without an open space showing which makes it additionally subject to the Town's Comprehensive and Open Space Plan, and requires 50% conservation easement and a host of conservation analyses and findings. TZC 220-19; 220-20; 220-65(B)21; and 220-66(F);

#### **4. Restaurant Usage for Guests Only**

Heartwood is located within the Rural/Agriculture zoning area – which does not permit construction of public restaurants. Friends is requesting that the dining facility be restricted to overnight guests only. This restriction follows established policy of “guests only” at Rocking Horse Ranch, Jellystone Campground, and the Minnewaska Lodge.

**See supporting Code TZC 220-63**

#### **5. Reasonable Setbacks from the Shawangunk Kill River and Buffers**

Friends is requesting that setbacks and buffers conform to the recommendations set forth either by the DEC or by Gardiner's TZC, Comprehensive and Open Space Plan (“OSP”)

##### **Supporting Code - Setbacks**

OSP Ch. IV pp. 41, 43, 44 and 46. TZC 220-65 Site Plan Review and Approval. This section incorporates Gardiner's OSP and Comprehensive Plan.

Gardiner's OSP was created to give a blueprint for development in the Town. It was created by the community with the purpose of prioritizing resources that the Community of Gardiner deemed worthy of protection from development. Every development in Gardiner is subject to the OSP. Two areas the community deemed most worthy of conservation is the Shawangunk Kill River Hub and Shawangunk Kill River Corridor, and states that “a conservation buffer of 535 or more is recommended to protect the river's water quality as well as its integrity as a wildlife corridor.”

Heartwood is proposing a development where an estimated 28 cabins will be placed much, much closer to the Shawangunk Kill Corridor than the 535 foot buffer specified in the OSP as a recommendation for development. Even if there was development “as of right” there would be fewer residences near the river and they would likely be held to the 535-foot buffer. Heartwood had made no showing as to why they need to have a much smaller buffer when the community has designated this area as environmentally sensitive. See 220-65(D)(1)(a).

#### **6. Establish Citizen Complaint Protocol**

Friends requests: Filing, reviewing, and enforcement of issues arising from the establishment of Heartwood and other tourist destinations in Gardiner will be funneled through a newly established Citizen Review Board.

There is precedent for concern regarding these types of developments exceeding density, noise, nuisance etc. restrictions and corresponding property devaluation. See Planning Board Minutes and Public Comment regarding Jellystone Expansion/Lazy River (no current recourse mechanism insuring that resorts stay within TZC). See also Ulster County Planning Board (UCPB) 6-7-2017 Recommendation. Required Modification 1: Event/mass gathering plan including noise control and frequency.

#### **7. Annual Permit Renewal requirement**

This will ensure that unresolvable issues relating to noise/light pollution, area aquifer viability, river degradation, or any other issues will be addressed annually during the renewal process. This ensures that the establishment will operate in accordance with Town Code, DEC and Ulster County Planning Board recommendations.

There is precedent for concern regarding these types of developments exceeding density, noise, nuisance etc. restrictions and corresponding property devaluation. See Planning Board Minutes and Public Comment regarding Jellystone Expansion/Lazy River (no current recourse mechanism insuring that resorts stay within TZC). See also Ulster County Planning Board (UCPB) 6-7-2017 Recommendation. Required Modification 1: Event/mass gathering plan including noise control and frequency. It is within the Planning Board's ability to limit the number of special events per year (this number can be changed) and renew said special permit annually.

#### **Conclusion:**

Heartwood's application does not address or meet the criteria mandated in the TZC special permit criteria (most of their submissions are not even professionally stamped). The Planning Board has allowed an incremental submission process that dodges the real issues surrounding special permits. The issues and demands outlined above have been made known in multiple correspondence and public hearings. These matters should have been addressed early on in the process and to this date they remain unanswered. Environmental protection through the use of larger setbacks and buffers from the river, and mitigation of noise by prohibiting outdoor amplification and restricting the yearly number of mass gatherings are fundamental to the project being consistent with the surrounding residential community and the Shawangunk Kill remaining a valuable environmental resource.