



October 1, 2018

To: Paul Colucci, Chairperson, and Town of Gardiner Planning Board
From: Shinrin Yoku LLC, Applicant, for the Heartwood project

Regarding: Response to public comments about Heartwood (141 acres on Route 44/55)

Please find below our response to the “7 Requests” that were submitted by “Friends of Gardiner” as part of the public comment process. The “7 requests” are in bold, and our responses are written in line.

- 1. Conservation Easement (protection from unchecked expansion, i.e. Jellystone). This [would] ensure that the community is protected from additional development/unchecked growth within the confines of this property. This follows DEC recommendations.**

As submitted, the Heartwood site plan (submitted 6/1/2018) is respectful of scenic and environmental preservation. It proposes to put 54.2 acres (38% of the overall site) into conservation easements.

The DEC has reviewed the project in detail, provided feedback, and has issued draft permits which suggest that the project adheres to its standards.

- 2. Noise Pollution & Event Frequency restrictions. Amplified events [should] be held indoors and adhere to the existing town noise ordinances. Frequency of events [should] also be limited (i.e. no weekly techno parties).**

Adhering to town ordinances, including noise ordinances, is a requirement of any business or household in Gardiner, and Heartwood will be no different.

Heartwood is a wellness-oriented nature retreat. The aim of this lodging facility is to provide an ambiance of rest and relaxation for guests. Heartwood also seeks to be a positive contributor to the community, and this includes avoiding disturbance to neighbors.

To this end, the site plan was designed with the main, central buildings (i.e., the areas where guests will congregate) set back ~1,500 feet from Route 44/55 and ~900 feet from the Shawangunk Kill. The event space itself is approximately 1,200 feet from both of these property lines.¹

In order to estimate the potential impact of outdoor amplified music, an on-site sound study was conducted by acoustical engineers, Cerami Associates (submitted in Feb. 2018 and revised in April 2018). The study estimated the increase in noise level (dBA) at the Heartwood property line given a level of noise (dBA) at the outdoor event space, and it recommended maximum dBA

¹ These measurements describe distances to the Heartwood property lines. Distances to neighboring homes are even greater.

levels that would comply with both local code and DEC guidelines (which in this case are more stringent). The study took a conservative approach in its methodology.²

Based upon this study and information, Heartwood's site plan includes the following noise mitigation measures:

- Outdoor amplified events will end by 10pm ("quiet hours")
- Outdoor amplified music will make use of noise limiters (a hardware device which cuts power to the sound system if dBA limits are exceeded, as detailed in prior submissions)
- Outdoor amplified music will adhere to dBA limits of 125 dBA at the sound source during the day (7am-8pm) and 115 dBA at the sound source during the night (8pm-10pm)
- Outdoor events using amplified music will take place in the west and northwest area immediately adjacent to the indoor "event barn" as labelled on the site plan to maximize distance to neighbors.

This sound study, its recommendations, and Heartwood's proposed mitigation measures were subsequently reviewed by the Town's reviewing engineer, Sterling Environmental, as well as the Ulster County Planning Board (UCPB). The UCPB, in a letter dated 8/1/2018, indicated that since our mitigation measures are based upon noise levels at the property line, noise levels "will be even less at the closest neighboring residential property".

Several members of the public have expressed concern about loud music coming from other, existing commercial businesses in the vicinity. We are highly sensitive to these complaints and are equally unamenable to disturbingly loud music that is not compliant with Town code. However, comparisons to existing facilities in Gardiner are not appropriate or comparable given the differing facts and circumstances (e.g., smaller acreage, higher density, lack of noise limiting hardware and other mitigation measures that Heartwood has proposed).

We view the request that amplified music be restricted to indoor areas as unnecessarily restrictive given the data and information that is before the Planning Board. Prohibition on compliant amplified music by the pool or around the event space is overreach and would be detrimental to Heartwood while providing little-to-no actual benefit to neighbors. We believe it is reasonable for property owners to be allowed to use their properties, provided that ordinances on noise are adhered to. We are firmly committed to adhering to these limits and respectfully ask our neighbors to do the same.

3. Maximum Occupancy Limits. Due to village infrastructure/water limitations – maximum occupancy should be no more than 175 visitors per night (this includes adults & children)

² DEC guidelines state that while 0-3dBA increases clearly have no appreciable impact, "increases from 3-6 dB **may have potential** for adverse noise impact **only in cases** where the most sensitive of receptors are present. Sound pressure increases of more than 6 dB may require a closer analysis of impact potential depending on existing SPLs and the character of surrounding land use and receptors [emphasis added]." Cerami Associates took a conservative approach of limiting increases to <3 dBA, even though increases of 3-6 dBA may still have been found to have no adverse impact.

Additionally, DEC guidelines indicate that "appropriate receptor locations may be either at the property line of the parcel on which the facility is located or at the location of use or inhabitation on adjacent property...The most conservative approach utilizes the property line." The study utilized the property line.

This request is phrased in a manner that presupposes an impairment of infrastructure/water without presenting any data or evidence.

It is presumed that a Conditional Final Approval from the Gardiner Planning Board will require Heartwood to obtain a number of necessary permits, including from Ulster County Dept. of Health (DOH). The DOH is tasked with reviewing Heartwood's plans, occupancy, and expected water usage, and only if appropriate, issuing a permit.

As stated on the site plan, the number of overnight occupants is limited to 166 guests. This is inclusive of children.

4. Restaurant Usage for Guests Only. Heartwood is located within the Rural/Agriculture zoning area – which does not permit construction of public restaurants. Dining facility [should] be restricted to overnight guests only. This [proposed] restriction follows established policy of “guests only” at Rocking Horse Ranch, Jellystone Campground, and the Minnewaska Lodge.

The application before the Planning Board is for a Lodging Facility, not a Restaurant. Lodging Facility is defined in the Town Code 220-74 as:

LODGING FACILITY 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.

Accordingly, Heartwood's restaurant is an accessory use to the lodging facility, and the Town Code makes no mention of restricting the restaurant to overnight guests. Furthermore, the zoning characterization of this development was already challenged by project opposition and affirmed by the Gardiner ZBA in July 2017.

The claim that there is an “established policy of ‘guests only’” at other hotels is inaccurate and appears intentionally misleading. It cherry picks examples while ignoring other lodging facilities in the immediate area with restaurants open to non-guests (e.g., Mohonk Mountain House, Audrey's Farmhouse, Buttermilk Falls Inn & Spa).

In addition, Town Code does in fact permit “Restaurants” as an “Allowable Use” in the RA district, in connection with agricultural use or as provided in 220-10I.³

5. Reasonable Setbacks from the Shawangunk Kill River. Setbacks to conform with the DEC recommendation of 1,000 feet setback from the Shawangunk Kill River

This comment selectively cites a “DEC recommendation” but ignores the fact that the DEC has reviewed the site plan and the found setbacks to be acceptable.

Setbacks for this site plan have been extensively reviewed and discussed during SEQR. Early in this process and in response to public feedback, the Applicant has already voluntarily reduced the number of eco-cabins from 40 to 28 (a 30% reduction) and voluntarily increased the setback

³ 220-10I: ... “Structures previously used for residential and agricultural purposes may be used for business purposes by special permit, if allowed by the Use Table, provided that their exterior appearance is not significantly modified and that the business use does not occupy more than 5,000 square feet of floor area.”

of the nearly all the remaining eco-cabins to more than double the setback mandated by the Town Code.

We would like to reiterate that the vast majority of this proposed project, including all common buildings, is set back 900 feet or more from the Shawangunk Kill. All site development, including all cabins, are in compliance with the Town of Gardiner Code which requires a minimum set back of 150 feet from the Kill.

6. Establish Citizen Complaint Protocol. 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.

This comment appears broadly related to the handling of complaints but is not directed toward Heartwood for response.

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.

This request appears to be incongruent with the Town Code which provides for Planning Board "Approval" or "Denial" but does not provide for "Approval with Expiration Date".

As currently contemplated, a conditional site plan approval for Heartwood will already have conditions attached that address potential impacts on neighbors including noise/light pollution, water, storm water, and many other factors.

If a business is out of compliance with its Special Permit requirements, town ordinances, or other laws and regulations, there are already processes in place for requiring the business to remedy and/or cease operating. For example, in 220-68:

"A site plan approval may be revoked by the Planning Board that approved it if the permittee violates the conditions of the site plan approval or engages in any construction or alteration not authorized by the site plan approval."

The Town Board and the Planning Board should rely on existing and well-established processes to control land use rather than creating a new process (i.e., an annual renewal requirement) which is redundant, prejudicial, and inherently un-scalable. If an annual renewal policy were extended to other zoning applicants, the monthly Planning Board agenda would expand considerably over time and could become unmanageable.

The stated goal of the commenters' request is to "ensure that [Heartwood] will operate in accordance with Town Code, DEC and Ulster County Planning Board recommendations." Enforcement procedures to that end already exist and are in place.

Respectfully submitted,
Kristin and Phillip Rapoport
Heartwood