



Sterling Environmental Engineering, P.C.

November 6, 2018

Mr. Paul Colucci  
Chairman  
Town of Gardiner Planning Board  
P.O. Box 1  
2340 Rte 44/55  
Gardiner, NY 12525

Subject: Heartwood Lodge, Gardiner, NY  
Site Plan Application  
STERLING File #2017-29

Dear Mr. Colucci,

At your request, I am providing the following comments and observations regarding the "Heartwood 7" recommendations provided during the public comment period for the above referenced matter.

The "Heartwood 7" recommendations are restated below. I have reviewed the applicant's submissions made in response to the public comments, consulted with Planning board counsel and the Planner, and provide the following observations:

1. *Conservation Easement. This will ensure that the community is protected from additional development/unchecked growth within the confines of this property. This follows DEC recommendations.*

**Observation:** There are two parcels associated with this project. Should the requested lot line adjustment be granted, Parcel 1 will be 108.2 acres (the lodging facility) and Parcel 2 (the agricultural parcel) will be 33.1 acres. The applicant has agreed to place 21.1 acres of the 108.2-acre lodging facility site into a conservation easement. The entire 33.1-acre agricultural parcel will be subject to a conservation easement that will allow improvements associated with an agricultural operation. Additionally, the entire project site on Parcel 1 will be the subject of a Special Use Permit with use restrictions.

2. *Noise Pollution & Event Frequency restrictions. Amplified events to be held indoors and adhere to the existing town noise ordinances. Frequency of events will also be limited.*

**Observation:** The applicant has agreed to noise mitigation (including deploying noise-limiting equipment) and a 10:00PM curfew for outdoor events. The applicant has undertaken a noise assessment following the protocol outlined in the NYSDEC guidance document entitled "Assessing and Mitigating Noise Impacts" and has demonstrated there will not be an increase in noise levels at the property line of adjacent residential properties in excess of 3 decibels. The NYSDEC Policy provides that increases ranging from 0-3 decibels should have no appreciable effect on receptors.

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The Zoning Law at 220-57(E) provides a process for any person to file a complaint regarding a suspected violation of the Zoning Law (a violation of a condition of a Special Use Permit or Site Plan Approval would qualify). All such complaints must be investigated by the Building Inspector. The Building Inspector may issue a stop-work order or cease-and-desist order and/or institute an appropriate legal action or proceeding to permit, restrain, correct, or abate any violation of the Zoning Law to prevent the occupancy of premises, or to prevent any activity, business or use that violates the Zoning Law. Such legal action may include the issuance of an appearance ticket pursuant to the Criminal Procedure Law § 150.20 (Zoning Law § 22-57(C)).

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).*

**Observation:** The applicant has agreed to a maximum overnight occupancy limitation of 160 people. This is less than the 175-person limit recommended by the Heartwood 7.

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 will therefore be restricted to overnight guests only. This restriction follows established policy of “guests only” at Rocking Horse Ranch, Jellystone Campground, and the Minnewaska Lodge.*

**Observation:** A restaurant associated with a lodge will be the subject of the Special Use Permit. Certain restaurant uses are allowed in the RA District. See the Use Table in §220-10B and §220-10I. In addition, the Zoning Law definition of “Lodging Facility” states: “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 defines “Restaurant” as “An establishment where prepared food is sold for consumption on the premises or as take-out, including a bar or pub or other establishment that sells food and alcoholic beverages for on-premises consumption.” While a standalone restaurant is limited in the RA District, a restaurant associated with a lodging facility is allowed by Special Use Permit.

Nothing in the Zoning Law limits a restaurant at a lodging facility to overnight guests only. Rather, the Zoning Law allows restaurants in the RA District when located at a lodging facility. While three other local facilities limit access to food facilities as their policy, that appears to be a business decision by them, rather than a requirement of the Zoning Law.

The Rocking Horse Ranch is in the Town of Plattekill which makes it of limited utility as a comparable site. While Jellystone Campground is in the Town of Gardiner, the “Tiki Snack Bar” is not a traditional restaurant. The Minnewaska Lodge is in Gardiner. The Lodge’s website indicates that they offer a complimentary continental breakfast and that they partner with local Hudson Valley Restaurants to offer guests a wide variety of cuisine during their visit. While the Lodge provides a complimentary continental breakfast, there is no restaurant on-site and lunch and dinner are not available at the Lodge. As a result, the comparison is not appropriate.

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.*

**Observation:** The applicant proposes a minimum setback of 150 feet from the Shawangunk Kill. The NYSDEC has issued the 6 NYCRR Part 666 Permit which is, in part, based on the applicant's proposed setback.

The Dimensional Table in the Town Code at §220-11 requires a 50-foot minimum setback. The applicant's proposed 150-foot setback is three times greater than what is allowed under the Code. Moreover, a 150-foot setback from top of a stream bank is required by §220-35(D).

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.*

**Observation:** As noted above, the Zoning Law contains a provision and process for individuals to file complaints. The Building Inspector is tasked with evaluating complaints and instituting enforcement if necessary. That enforcement could take place in the local Justice Court or in Supreme Court. The applicant has proposed noise limiters on amplified equipment and real-time noise monitoring intended to minimize any adverse offsite noise impact. Further, the Town has separately retained a noise consultant to investigate individual noise complaints.

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.*

**Observation:** There is no provision in the Town Code authorizing the Town to impose an annual permit renewal requirement on the Special Use Permit. The facility will be required to operate in accordance with the Town Code, Special Use Permit and NYSDEC Permit.

The concept that a business or even a residence would be subject to a yearly permit renewal is likely to effectively eliminate the availability of financing for a project. That is, no lender is likely to lend money when there is a near constant review process for the permits necessary to operate. Similarly, many lenders require that the time to challenge permits has expired before closing on a project loan. As a result, such a requirement on this or any project is not tenable. However, the Planning Board and Town are not without authority to act if there are violations of the approvals or permits. The Building Inspector's authority has been described above. In addition, Zoning Law § 220-63(I)(2) and § 220-68(E)(2) permit the Planning Board to revoke a special permit or site plan approval if the permittee violates the conditions of the special permit/site plan or engages in any unapproved construction or alteration. With regard to the Part 666 Permit, the NYSDEC maintains a robust enforcement program and has the resources to commence and prosecute enforcement actions if necessary.

As a result, under the Zoning Law, the applicant is already at risk of losing approvals as the result of non-compliance. A yearly permit renewal is, therefore, redundant.

Please contact me should you have any questions.

Very truly yours,  
STERLING ENVIRONMENTAL ENGINEERING, P.C.

A handwritten signature in black ink, appearing to read 'MPM', is centered below the typed name.

Mark P. Millspaugh, P.E.

President

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MPM/bc  
Via Email

cc: David Brennan, Young Sommer  
James Freiband