

Town of Shandaken Planning Board  
Town Hall  
7209 Rt. 28  
Shandaken, NY 12480

November 14, 2016

Keith Johnson, Chair  
Town of Shandaken Zoning Board of Appeals  
Town Hall  
7209 Rt. 28  
Shandaken, NY 12480

**Re: Request for Interpretation for Lodges and Duplexes at Crossroads Ventures, LLC  
Belleayre Resort**

Dear Chair Johnson:

The Planning Board of the Town of Shandaken submits this letter in support of its request to the Town of Shandaken Zoning Board of Appeals (“ZBA”) for an interpretation as provided under Town of Shandaken Zoning Code § 116-68 (A) (2) (a) and as required by the recently issued decision of Supreme Court Justice Mott. In connection with this proceeding, the Planning Board had submitted to the Court an affidavit from Town Building Inspector Warren Tutt explaining his review of the Project and appending exhibits relevant to this present request. A copy of Mr. Tutt’s affidavit is attached hereto as Exhibit 1.

In 1999, Crossroads Ventures, LLC (“Applicant” or “Crossroads”) first proposed a resort development to be known as the Belleayre Resort at Catskill Park (the “Project” or “Crossroads Resort”). In January 2000, the Town Building Inspector, Art Christie, received an interpretation from the ZBA of the types of uses permitted in connection with a vacation resort with associated hotel development, (Tutt Aff. Ex. A). In 2013, Crossroads applied to the Town of Shandaken Planning Board (“Planning Board”) pursuant to the Town of Shandaken Zoning Code for a special use permit and site plan approval for the Project, now reduced to a 742.24-acre Hotel Development/Vacation Resort (Tutt Aff. Ex. B). In August 2015, Crossroads requested confirmation from the Town Zoning Officer of the Project’s compliance with the Town’s zoning requirements and in particular the density regulations for a Hotel Development/Vacation Resort. (Tutt Aff. Ex. C). The Building Inspector’s response, dated November 10, 2015 (Tutt Aff. Ex. D), concluded that “the Belleayre Resort Project with lodging units as proposed is in compliance with the density requirements of the Shandaken Zoning Codes in effect at this time.” Neither the ZBA interpretation in 2000 nor the Building Inspector’s determination in 2015 were challenged by any aggrieved parties. On January 13, 2016, the Planning Board granted the Project special



permit approval and site plan approval with conditions. On February 11, 2016, Catskill Heritage Alliance, Inc. ("Petitioner") commenced a CPLR Article 78 proceeding challenging the Planning Board's special permit and site plan approvals in Supreme Court, Ulster County, Catskill Heritage Alliance, Inc. v. Crossroads Ventures, LLC and Town of Shandaken Planning Board, Ulster County Index No. 16-0385. The Planning Board submitted an Answer to the Petition dated July 15, 2016 and, as noted above, an affidavit from Town Building Inspector Warren Tutt explaining his review of the Project. However, by Decision and Order dated October 6, 2016 (attached hereto as Exhibit 2), Supreme Court (Mott, J.) rejected the majority of Petitioner's claims, but the matter was "remitted to the [Planning] Board with the directive that it request that the ZBA determine whether the proposed lodges and duplexes are permitted under the [Shandaken Zoning Code]." The Planning Board requests this interpretation from the ZBA as directed by Justice Mott.

### The Crossroads Resort

The Crossroads Resort will be centered around two hotels, as shown on drawings provided to the Planning Board by Crossroads attached hereto as Exhibit 3 and as described in the Statement of Findings issued by the New York Department of Environmental Conservation ("DEC") as lead agency for purposes of review under the State Environmental Quality Review Act ("SEQRA"). The Highmount Hotel & Spa will be a five-star property consisting of a central facility and detached "lodge" units. The central facility, i.e. hotel, includes both hotel units and suites. The central facility also includes a separate lodge building with 27 "lodge" units which are identical to the suite units in the hotel. There are also 16 detached "lodge" units intended for transient resort occupancy located in eight duplexes. The detached units will have multiple rooms to accommodate larger groups and somewhat longer transient stays, will occupy the same lot as the hotel whose operator will manage these units, and will not be subdivided or sold as individual residences.<sup>1</sup>

The Wildacres Hotel, a four-star family vacation and conference center, will have 413 lodging units. The main Wildacres Hotel building will contain 250 units, including both hotel rooms and suites. Wildacres will also have 163 detached lodging units located around an 18-hole championship golf course, grouped into two areas. One group, the "Front 9 Village," will consist of 11 buildings, each with multiple lodge units.<sup>2</sup> The Front 9 Village lodge units each will have multiple rooms for accommodating larger groups and families for somewhat longer transient stays, and will occupy the same lot as the main hotel building whose operator will also manage these units. The second group of lodge units at Wildacres, the "West Village," will be located near the main Wildacres Hotel building in seven buildings, each with multiple units<sup>3</sup> consisting of multiple rooms intended for accommodating larger groups and families for

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<sup>1</sup> For example, there is no homeowners' association proposed and no subdivision of lots for individual lodge units at either Highmount or Wildacres.

<sup>2</sup> See Tutt Affidavit Exhibits B and C.

<sup>3</sup> See Tutt Affidavit Exhibits B and C.



somewhat longer transient stays. These lodge units will occupy the same lot as the main hotel building whose operator will also manage these units and will not be subdivided or sold as individual residences.

### The Applicable Zoning Districts and Use Classifications

The Resort is proposed for three residential zoning districts, R1.5, R3, and R5, all of which permit “vacation resorts,” provided that certain density, setback, and lot coverage requirements are met. As provided in the ZBA’s prior 2000 determination, under Zoning Code § 116-4, a “vacation resort” would also include uses and structures accessory to the hotels, such as cluster development, conservation areas, churches, cultural facilities, a golf course or country club, nightclub, and a riding academy, if included in the application. The ZBA’s 2000 determination also found that all uses associated with a vacation resort should not be addressed on individual special permits, but rather should be considered “as a single item” in the context of reviewing a special permit for an overall project.

Similarly, a “vacation resort” may include a hotel, motel or lodge development, also all permitted uses in these zoning districts, subject to special use permit review in R1.5. A “vacation resort” that includes a “hotel development” may include “uses integral to the hotel or motel development,” including “meeting rooms; restaurant and dining facilities; recreational facilities such as swimming pools and tennis court and small personal service/retail shows fully within the hotel, motel or lodge facility and selling newspapers, magazines, tobacco, small gifts and similar items.”

### The Interpretations Sought

The Planning Board requests an interpretation of the meaning of “lodge” under the Town of Shandaken Zoning Code and whether the lodging units proposed as part of the Crossroads Project fit within this use and are thus permitted in the zoning districts where proposed.

As Justice Mott noted in his decision (see Exhibit 2), “lodges” are not defined in the Zoning Code, but a “lodge development” is permitted under the same provision of the Zoning Code § 116-40(O) that permits the “hotel development.” In the absence of a clear definition in the Zoning Code itself, the ZBA may consult other authorities. For example, Merriam-Webster’s Ninth New Collegiate Dictionary (1983) defines “lodge” to include “a resort hotel: inn” and “a house set apart for residence in a particular season.” The language of the Zoning Code indicates that a “lodge” is a similar use to a “hotel” or “motel” in that it provides similar transient-type occupancy, but is different enough in character to warrant a different term. For this reason, and because a “lodge” suggests something more separated from other units than a hotel, the Planning Board believes a “lodge” should be defined as two or more units to be used for transient occupancy where the units are operated by the same management as a hotel (and on the same property as the hotel) and are used to provide occupancy units for guests at a hotel development and/or vacation resort. The key difference between a lodge and a hotel is that a lodge can be in a



building detached from the hotel building and that it can have but is not required to have direct entrances to the units, as opposed to the common entrances specified for hotels.

Therefore, the Planning Board proposes that the ZBA interpret the meaning of “lodge” to include the following elements: “Lodge: A detached building containing one or more units of living and sleeping accommodations for transient occupancy in connection with a hotel or lodge development and/or vacation resort, with all units under common management. When developed in connection with a main hotel, lodge units may be considered hotel units.” Notably, “transient occupancy” is not defined in the Zoning Code. Therefore, the Planning Board also requests that the ZBA interpret this term to require that the occupants of these units have another place of residence or abode.

If the ZBA adopts this or a similar definition of “lodge,” the Planning Board also requests the ZBA’s interpretation of “lodge” under the Shandaken Zoning Code to be applied to the detached lodges and duplex units that will be managed as part of the two hotels. The Planning Board notes that the lodges and duplexes will be built on the same lots as the main hotels they are associated with, will not be separately owned from the hotel, will not be subdivided or sold as individual residences, and will be managed by the same company as the hotel with which the units are respectively associated, not a homeowners’ association. Therefore, the Planning Board believes the detached lodging units proposed for the Project should qualify as “lodges” and are thus allowed under Zoning Code § 116-40 (O) in the zoning districts where proposed.

Finally, the Planning Board notes that an interpretation of the existing Town of Shandaken Zoning Code is a Type II action under the State Environmental Quality Review Act, E.C.L. Article 8, and its implementing regulations at 6 N.Y.C.R.R. Part 617.5 (c) (31) and no further review should be required.

Thank you for your assistance with this interpretation.

Sincerely,



Don Brewer, Chair

Town of Shandaken Planning Board