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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ULSTER

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CATSKILL HERITAGE ALLIANCE, INC.,

Petitioner,

DECISION/ORDER

-against-

Index No. 16-0385  
R.J.I. No. 55-16-0244  
Richard Mott, J.S.C.

CROSSROADS VENTURES, LLC, and TOWN OF  
SHANDAKEN PLANNING BOARD,

Respondents.

-----X  
Motion Return Date: July 29, 2016. Final submission received August 9, 2016.

**APPEARANCES:**

**Plaintiff:** Claudia K. Braymer, Esq.  
Caffry & Flower  
100 Bay Street  
Glens Falls, NY 12801

**Defendants:** John J. Henry, Esq.  
Whiteman Osterman & Hanna, LLP  
One Commerce Plaza  
Albany, NY 12260  
For Crossroads Ventures, LLC

Richard J. Olson, Esq.  
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63 Washington Street  
PO Box 509  
Poughkeepsie, NY 12601  
For Town of Shandaken Planning Board

Mott, J.

In this Article 78 proceeding, Petitioner seeks to annul the Respondent Town of Shandaken Planning Board's (hereinafter, "Board") resolution approving Respondent Crossroads Ventures, LLC's (hereinafter, "Respondent") application for a special use permit

and site plan review claiming it acted beyond its authority because the site plan and special permit included proposed structures that are non-compliant with the zoning law.

Respondent opposes, seeking dismissal of the Petition and attorney's fees and costs.

### ***Background***

The facts that giving rise to this proceeding are documented in the Decision and Order of this Court, dated June 21, 2016, denying Respondent's pre-answer motion to dismiss. As relevant here, in 2000, the Zoning Board of Appeals (hereinafter, "ZBA") issued a resolution interpreting 'vacation resorts' under the Town of Shandaken Zoning Code (hereinafter, "SZC"). Said interpretation cites verbatim, SZC §§116.40 (O), defining a "hotel or motel or lodge development" (hereinafter, "development"). It also refers SZC § 116-4 defining the following:

- Accessory structures;
- Accessory use;
- Cluster Development;
- Conservation Areas Churches;
- Cultural Facilities (theatre, amphitheater, library, art gallery museum, etc.);
- Golf course or country club, and
- Nightclub.

The ZBA concluded that "[E]ach and every application must be looked at and evaluated on its own merits to see if the definition is appropriate," and that the law as a whole makes, "very clear other items that would be associated with a Vacation Resort...and [that they] should all be addressed as a single item."

In 2013, Respondent submitted its application for a site plan review and special permit. In November, 2015, after a lengthy State Environmental Quality Review Assessment (SEQRA) process, the Zoning Enforcement Officer (hereinafter, "ZEO") concluded that Respondent's plan met zoning density requirements. At the public hearing,

Petitioner expressed concern, *inter alia*, about the absence of variances, density of the units, the inclusion of "apparent cluster configurations" and the height of the buildings.

The Board's approvals reference the permit application, specific and general standards for a development special use permit, SZC §§ 116-39, 116-40(O) (4), (5), compliance with density restrictions and were premised upon the consolidation of the 11 affected land parcels into two.

Following the public hearing and Board approvals, Petitioner registered additional objections to the "stand alone" conference and community centers, claiming that by definition they were not accessory because they would be located upon parcels separate from the main hotels. They further objected to the lack of detailed information or identification of each structure's principal or accessory use. The petition herein also alleges that the proposed lodges and detached multi-unit duplex structures, (hereinafter, "lodges" and "duplexes", respectively) are multi-family dwellings that are not permitted in the respective zones because they are also not hotels, to wit:

"a multiple dwelling containing living and sleeping accommodations for transient occupancy, has a common exterior entrance or entrances and which may contain one or more dining rooms." SZC § 116-4(B).

Respondent's pre-answer motion to dismiss included a ZEO affidavit stating that the structures to which Petitioner objects are "all uses 'integral' to the development and/or are "permitted uses in the zoning districts where they are proposed to be located." He addresses each non-habitational structure's accessory use, referring to the following categories: club, cultural facility, meeting room or restaurant or dining facility, and asserts

that the lodges and duplexes are authorized because they are *similar to a "motel" or "inn"* and thus, not "dwellings" SZC § 116-4(B).<sup>1</sup>

SZC § 116-4(B) defines an "accessory structure" as:

"A structure, the use of which is customarily incidental and subordinate to that of the principal building and which is attached thereto or is located *on the same lot or premises*. Except for a guest cottage, which may be provided in accordance with Article VII of this chapter, "*accessory structures*" are not for the purpose of human habitation and include tennis courts, such buildings as garages, swimming pools, garden or tool sheds, barns, greenhouses and playhouses and such elements as satellite dish antennas, windmills and solar collectors.

SZC § 116-4(B) defines an "accessory use" as:

"A use, occupancy or tenancy which is customarily incidental and subordinate to the principal use, occupancy or tenancy and located on the same lot or premises."

SZC § 116-40 (O) (4) with respect to a hotel/motel or lodge developments, requires that:

All uses *integral* to the hotel or motel development shall either be *clearly accessory* to the hotel, motel or lodge development, *as defined within §116-4*, or be *permitted uses or special permit uses* within the zoning district in which the hotel or motel development is proposed.

Further, SZC § 116-40 (O) (5) provides that:

"*integral accessory uses* shall generally be limited to the following: meeting rooms; restaurants and dining facilities; recreational facilities, such as swimming pools and tennis courts; and small personal service/retail shops fully within the hotel, motel or lodge facility and selling newspapers, magazines, tobacco, small gifts and similar items.

The SCZ does not define a 'lodge' or an 'inn' and further provides that:

"...no structure shall be erected [...] until the Zoning Enforcement Officer has issued a certificate stating that the proposed use complies with all applicable provisions of this Chapter. SZC § 116-64(A) (1).

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<sup>1</sup> "A boardinghouse, dormitory, motel, inn, nursing home, fraternity, sorority or other similar building shall not be deemed to constitute a 'dwelling unit.'" SZC § 116-4(B).

### ***Parties' Contentions***

Petitioner maintains that the Board exceeded its authority by issuing the approvals before obtaining variances for the stand-alone conference and community centers and the lodges and duplex habitational structures which are otherwise prohibited. It cites zoning restrictions stating that accessory structures are not for human habitation and that the lodges and duplexes are multi-family dwellings<sup>2</sup> inasmuch as they do not fit the definition of a hotel.

Respondent contends that the site plan contains only permitted and accessory structures for the approved special use and that the 2000 ZBA interpretation confirms same. Further, it cites the ZEO's determination of compliance with density restrictions as constituting a rational basis for the Board's conclusion that the plan is zoning compliant as to all of the proposed structures. Finally, it claims that the lodges and duplexes are not multi-family dwellings because they are similar to a 'motel'<sup>3</sup> or an 'inn' and thus excluded from the definition of a dwelling. SZC § 116-4(B).<sup>4</sup>

Petitioner replies that the ZEO finding of compliance with density restrictions did not address the structures' accessory nature or the character of the lodges and duplexes and that the Board did not cite the 2000 ZBA interpretation in its decision.

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<sup>2</sup> Multiple dwelling is defined as "a detached, semidetached or attached building or portion thereof, containing three or more dwelling units." SZC § 116-40(B).

<sup>3</sup> A motel is defined as "a multiple dwelling intended for transient occupancy primarily by motorists, not over two stories in height, in which the exit from each dwelling unit or sleeping room is directly to the exterior." SZC § 116-40(B) and "inn", is not defined by the SZC.

<sup>4</sup> This conclusion is contained in an affidavit of the ZEO which was submitted in opposition to the within petition.

## ***Discussion***

### ***Standard of Review***

Judicial review of a local planning board's site plan approval "is limited to determining whether the action taken by the board was illegal, arbitrary, or an abuse of discretion." *Valentine v. McLaughlin*, 87 AD3d 1155, 1157 [2d Dept 2011]. Where a planning board's decision has a rational basis in the record, "a court may not substitute its own judgment, even where the evidence could support a different conclusion." *Id.* at 1158; *Metro Enviro Transfer, LLC v Vil. of Croton-on-Hudson*, 5 NY3d 236, 240 [2005] (a board has certain discretion in deciding whether to grant a special use permit). Further, said review is limited solely to the legitimacy of the grounds invoked as the basis for the administrative entity's decision. *Millpond Mgt., Inc. v Town of Ulster Zoning Bd. of Appeals*, 42 AD3d 804, 805 [3d Dept 2007].

Because the SZC does not require the Board to specifically address each structure's compliance with zoning requirements in order to approve a site plan, Petitioner's challenge thereto is unavailing. However, unlike a variance which gives permission to an owner to use property in a manner inconsistent with a local zoning ordinance, a special use exception involves a permitted use that requires compliance with stated conditions. While an applicant's burden of proof is much lighter than the hardship showing required for a variance, compliance with local ordinance standards must be shown before a special use permit may be granted. *Franklin Sq. Donut Sys., LLC v Wright*, 63 AD3d 927, 929 [2d Dept 2009]; *Wegmans Enterprises, Inc. v Lansing*, 72 NY2d 1000 [1988].

Here, the zoning code special conditions require that "all uses *integral* to the hotel or motel development shall either be *clearly accessory* to the hotel, motel or lodge

development,... or be permitted uses or special permit uses within the zoning district." SZC § 116-40 (O) (4). Thus, in contrast to *Gershowitz v Planning Bd. of Town of Brookhaven*, 52 NY2d 763 [1980] (planning board is without power to disapprove site plan on ground that proposed use violates town code, where special permit is granted by ZBA), here the Board, which lacks authority to interpret the zoning ordinance, is the responsible entity for approving a special use permit. Further, there is no specific requirement that it consult with the ZBA, unless a question arises requiring an interpretation of the zoning law. *Woodland Community Ass'n v Planning Bd. of Town of Shandaken*, 52 AD3d 991, 992-93 [3d Dept 2008]; *Rattner v Planning Commn. of Vil. of Pleasantville*, 103 AD2d 826, 826 [2d Dept 1984] (planning commission was without power to deny site plan approval on ground that proposed use is in violation of village zoning law).

As to the accessory non-habitational structures, there is no indication that the Board failed to take into strict account their 'clearly accessory' nature and its findings are entitled to deference. *E. Moriches Prop. Owners' Ass'n, Inc. v Planning Bd. of Town of Brookhaven*, 66 AD3d 895, 897 [2d Dept 2009]. Indeed, the Board's approval is premised upon parcel consolidation, thereby addressing Petitioner's initial objection to their definition as accessory structures. These non-habitational structures also fall within the clear definition of accessory uses such as meeting rooms and recreational centers, without resort to further interpretation. *Comm. to Protect Overlook, Inc. v Town of Woodstock Zoning Bd. of Appeals*, 24 AD3d 1103, 1104-05 [3d Dept 2005] (planning board's construction of zoning ordinance is entitled to deference and its determination will be upheld if it has a rational basis); *Jamil v Vil. of Scarsdale Planning Bd.*, 24 AD3d 552, 554 [2d Dept 2005] (planning board did not act arbitrarily and capriciously when it relied upon the building inspector's

determination that a proposed facility was permitted as a special use). *Thorne v Vil. of Millbrook Planning Bd.*, 83 AD3d 723, 726 [2d Dept 2011] (the Planning Board rationally determined that the requirements for issuance of the special use permit were met as per the town code, obviating any need for referral to the ZBA).

However, inclusion of the lodges or duplex habitational structures calls for an interpretation of the zoning code that is beyond the Board's authority because they do not fit the definition of a hotel or motel and lodges are undefined. SZC §116-40(0) (4); *Swantz v Planning Bd. of Vil. of Cobleskill*, 34 AD3d 1159, 1160 [3d Dept 2006] (planning boards are without power to interpret the local zoning law); *Woodland Community Ass'n v Planning Bd. of Town of Shandaken*, 52 AD3d 992-93 (question of whether proposed use was *substantially similar* to an explicitly authorized use required Board to refer question to the ZBA); see also, *Frigault v Town of Richfield Planning Bd.*, 107 AD3d 1347, 1353 [3d Dept 2013] (planning board's explanation of its special permit approval rationale does not directly address each of the conditions set forth in the ordinance and cannot rely upon the SEQRA, thus precluding a substantial evidence review). While no specific finding as to the nature of these structures was made by the Board such a finding is implicit in its approval.

Accordingly, the petition is granted, but only to the extent that the matter is remitted to the Board with the directive that it request that the ZBA determine whether the proposed lodges and duplexes are permitted under the SCZ. Within thirty days thereafter, the Board is directed to rule on Respondent's special use permit, based thereon. The parties' remaining contentions have been rendered academic by this determination or otherwise lack merit.



This constitutes the Decision and Order of this Court. The Court is forwarding the original Decision and Order directly to Petitioner who is required to comply with the provisions of CPLR §2220 with regard to filing and entry thereof. A photocopy of the Decision and Order is being forwarded to all other parties who appeared in the proceeding. All original motion papers are being delivered by the Court to the Supreme Court Clerk for transmission to the County Clerk.

Dated: Hudson, New York  
October 6, 2016

ENTER



RICHARD MOTT, J.S.C.

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OCT 17 2016  
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ULSTER COUNTY CLERK

Papers Considered:

1. Verified Answer and Opposition Affidavit of John J. Henry, Esq., dated July 15, 2016 with Exhibits A-B, Memorandum of Law of John J. Henry, Esq., dated July 16, 2016 with Appendix A, Certified Copy of the Administrative Record and Bate Stamped Electronic Submission;
2. Reply Affidavit and Memorandum of Law of Claudia K. Braymer, Esq., dated July 29, 2016.