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TOWN OF SHANDAKEN, NEW YORK
ZONING BOARD OF APPEALS

-----X
In the Matter of a request for Interpretation from the
Town of Shandaken Planning Board for uses
permitted at the Belleayre Resort at Catskill Park
-----X

DECISION

This request for interpretation comes before the Town of Shandaken Zoning Board of Appeals (the "Board") from the October 6, 2016 decision by Hon. Richard Mott, J.S.C. in an Article 78 proceeding brought by Catskill Heritage Alliance, Inc. ("Catskill Heritage") against the Town of Shandaken Planning Board ("Planning Board") and Crossroads Ventures, LLC ("Crossroads") directing the Planning Board to obtain this Board's interpretation as set forth herein.

PRELIMINARY STATEMENT

Crossroads originally proposed a "Vacation Resort/Hotel Development" in the Towns of Shandaken and Middletown in 1999 known as the Belleayre Resort at Catskill Park. This matter has a protracted procedural history. The application was the subject of an extensive review by the New York State Department of Environmental Conservation (DEC) as Lead Agency under the State Environmental Quality Review (SEQR). That review commenced in 2000 and culminated in 2015 with a Findings Statement issued by the DEC on December 2, 2015.

On October 28, 2013, during the pendency of the SEQR review, Crossroads filed a site plan/special permit application with the Planning Board. On January 12, 2015 the Planning Board conducted a public hearing on the application and thereafter continued its review based upon the public comment. Finally on January 14, 2016 the Planning Board granted special permit and site plan approvals for the following:

Highmount Hotel & Spa consisting of a central facility consisting of hotel units and suites with 27 "lodge" units identical to the hotel suites, together with 16 detached "lodge" units for transient resort occupancy in eight duplex buildings.

Wildacres Hotel is comprised of 250 units including hotel rooms and suites together with 163 detached lodging units located in 18 buildings consisting of multiple lodge and room units for transient stays. (Collectively referred to herein as the "Project")

The Project will be located on a single consolidated lot, mandated as a condition of the approval and will be managed by the operator of the hotels. Some of the lodge units are intended to be sold as time share interests but the fee ownership will remain with the operator of the hotels.

Catskill Heritage initiated an Article 78 proceeding challenging the Planning Board approvals. In a decision dated October 6, 2016 Judge Mott directed that the Planning Board “request that the ZBA determine whether the proposed lodges and duplexes are permitted under the SCZ” (Shandaken Zoning Code)

DOCUMENTS REVIEWED

In addition to the Planning Board file, the Zoning Board has been provided with the following documents for review:

- 1). November 14, 2016 letter from the Planning Board with the following attachments:
Affidavit of Warren P. Tutt sworn to March 17, 2016 with exhibits:
 - A. May 18, 2000 application for interpretation and June 15, 2000 Zoning Board Interpretation concerning definition of “Vacation Resort”
 - B. October 28, 2013 letter from Crossroads attorney submitting special permit and site plan application to Planning Board
 - C. August 18, 2013 letter from Crossroads attorney requesting density calculations.
 - D. November 10, 2015 letter from Zoning Enforcement Office discussing density requirementsDECISION/ORDER dated October 6, 2016
- 2). November 16, 2016 letter from Catskill Heritage attorney with the following attachments:
Town of Shandaken Planning Board Resolution dated January 13, 2016
Catskill Heritage Article 78 Petition
DECISION/ORDER dated October 6, 2016
- 3). November 22, 2016 letter from Crossroad’s attorney responding to item 2) above
- 4). December 21, 2016 letter from Catskill Heritage attorney.
- 5). December 21, 2016 letter from Kathy Nolan

The Zoning Board also conducted a public hearing on December 21, 2016 at which twenty-one separate speakers presented their views including the legal representatives for both Crossroads and Catskill Heritage.

DISCUSSION

This Board is tasked with the question of whether lodges and duplexes are permitted under the Town of Shandaken Zoning Code (the "Code"). The Schedule of District Uses is set forth in §116-10. The Project site is located in the R5; R3; and R1.5 zoning districts of the Town of Shandaken which allow by Special Permit a "Vacation resort" and a "hotel, motel or lodge development"

The terms hotel and motel are defined in the Code §116-4 as follows:

HOTEL: A multiple dwelling or any part thereof which contains living and sleeping accommodations for transient occupancy, has a common exterior entrance or entrances and which may contain one or more dining rooms.

MOTEL: 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, including but not limited to such terms as "motor court", "motor hotel" or "tourist court".

The terms "lodge", "duplex" and "vacation resort" are not defined in the Code, nor are the terms "motor court", "motor hotel" or "tourist court". §116-10 B. of the Zoning Code states:

"Any use not listed specifically or through a similar use, **as such use may be deemed by the Zoning Board of Appeals**, as a permitted, special permit or accessory use in the attached schedule shall be considered a prohibited use under this chapter." (Emphasis added)

Accordingly it is up to this Board to determine whether the terms "lodge" and "duplex" are permitted uses or a similar use to any of the listed uses in the Code. As an initial matter, this Board finds that a lodge development necessarily includes "lodges", and may include other uses as provided in the Code.

Catskill Heritage has urged that this Board should determine that the lodge and duplexes are "multiple dwellings" as that term is defined in the Code. The Code defines a multiple dwelling as follows:

DWELLING, MULTIPLE: A detached, semidetached or attached building, or portion thereof, containing three or more dwelling units.

The Zoning Code further defines a dwelling unit as:

DWELLING UNIT: A building or entirely self-contained portion thereof containing complete housekeeping facilities for only one family, including any domestic servants employed on the premises, and having no enclosed space (other than vestibules, entrances or other hallways or porches) or cooking or sanitary facilities in common with any other "dwelling unit." A boarding house, dormitory, motel, inn, nursing home, fraternity, sorority **or other similar building** shall not be deemed to constitute a "dwelling unit."
(Emphasis added)

It is interesting to note the exclusions from the definition of "dwelling unit". Each of the listed exclusions provides, in this Board's opinion, accommodations for what would be referred to as "transient occupancy" rather than a permanent occupancy (perhaps with the exception of a nursing home). Additionally, based upon the directive of Judge Mott in his October 6, 2016 decision this Board is limited, under its discretionary review to define similar uses, to make a finding of whether a lodge and duplex as proposed are similar to any of the listed uses in the Code. The question of whether the lodges and duplexes were "multiple dwellings" also was argued by Catskill Heritage in the Article 78 proceeding. Judge Mott determined that the "parties remaining contentions have been rendered academic by this determination or otherwise lack merit". Therefore, this Board finds that the lodge and duplexes proposed are not multiple dwellings as defined by the Code as the exclusions listed apply to transient occupancy and now turns to the question of whether they are similar to any of the listed uses in the Code.

The use provided in the Code allows for a "vacation resort" and "hotel, motel or lodge development". Therefore, "lodges" as a specific use are permitted under the Code, and with respect to them, this Board must determine whether the uses propose fit within a reasonable definition of that undefined term. The Project as proposed by Crossroads envisions a large complex providing recreational opportunities, specifically geared for winter activity at the ski resort and seasonal recreation activity at the golf course to be constructed. The condition set forth in the Planning Board decision was that all of the individual lots are to be consolidated into one lot to be retained in common ownership by Crossroads. Crossroads therefore will retain ownership of the real property and will manage and lease the lodge and duplex units to guests who visit the resort.

When a term is not defined in the Code this Board often resorts to a dictionary definition of the term. This Board has reviewed the on line Merriam Webster Dictionary to determine how the word "lodge" is defined as a noun. That definition is set forth as follows:

Lodge: 1. a crude shelter or abode

2 a: a house set apart for residence in a particular season (as the hunting season)

b: a resort hotel: inn

The Board then looked for synonyms for the word lodge and found the following:

Lodge: auberge, caravansary, hospice, hostel, hostelry, inn, hotel, public house, tavern

The following words were listed as "related words" to the word lodge:

B&B, bed and breakfast, guesthouse; apartment hotel; accommodations, lodgings rest; court, motel, motor court, motor inn, motor lodge, resort, spa, tourist court, youth hostel; camp, campground. bunkhouse, dorm, dormitory, boardinghouse, lodging house, rooming house.

The Board also looked for the Merriam Webster definition of "duplex" as a noun:

Duplex: either a two family house or a two story apartment

In researching synonyms for the term duplex the following were found:

Duplex: binary, bipartite, double-barreled, double-edged, dual, double, twin, two fold

The dictionary definition of "lodge", a use permitted by the Code, though undefined, clearly includes terms that are defined in the Code such as "motel" and "hotel" and the related terms listed in the definition of motel as "motor court" and "tourist court".

The definition of "duplex" is more limited in that it seems to describe the type of building, not the use of the building, since it can either be a house or apartment signifying permanent or temporary occupancy.

Accordingly this Board finds that the term "lodge" as used in the Code should be interpreted in the manner as proposed by the Planning Board, i.e., as including the detached buildings (including for example, duplexes and Front 9 buildings) containing one or more units of lodging and sleeping accommodations for transient occupancy in connection with the special permitted use of hotel or lodge development and/or vacation resort held under common ownership. Furthermore this Board finds that the term "transient occupancy" requires that users

of the lodge units have another place of residence or abode, so that the lodge units will not serve as a primary residence.

Dated: Shandaken, New York

February 15, 2017

RESOLUTION MOVED BY: Keith Johnson

RESOLUTION SECONDED BY: Joe Michaels

BOARD VOTE: Keith Johnson

Gary Guglielmetti

Mark Loete

Joseph Michaels

Rolf Reiss

✓ Y
✓ Y
✓ Y
✓ Y
✓ Y

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FEB 23 2017

RESULTS OF THE VOTE ON THE DECISION WERE:

Roll Call Vote:

	<u>Yes</u>	<u>No</u>	<u>Abstain</u>
Keith Johnson, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Gary Guglielmetti	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Loete	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Joseph Michaels	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Rolf Reiss	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Shandaken Town Clerk

VOTE IS CERTIFIED BY:

Anne Ricciardella

Anne Ricciardella
Secretary, Town of Shandaken ZBA

2-23-17

Date

THE DECISION IS HEREBY APPROVED AND ORDERED TO THE RECORD BY:

Keith Johnson

Keith Johnson
Chair, Town of Shandaken ZBA

2/23/17

Date

FILED WITH THE TOWN CLERK:

Joyce Grant

Joyce Grant
Shandaken Town Clerk

2/23/17

Date

