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 Fax: (845) 688-2041
 P.O. Box 134, 7209 Rte. 28, Shandaken, NY 12480

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**Town of Shandaken Planning Board
 Minutes for Regular Monthly Meeting
 February 10, 2021**

The regular monthly meeting was called to order with the pledge of allegiance at 7:05pm.

Roll called by acting Secretary to the Planning Board Grace Grant, and attendance was recorded as follows:

Cliff Rabuffo, Chair	Present
Art Christie	Present
Joanne Kalb	Present (via teleconferencing)
John Horn	Present
Allen Shiner	Present (via msteams meet)
Sam Spata	Present
Vivian Welton	Present

Roll Call Summary: 7 Present, 0 Absent

Others Present: Howie McGowan (CEO,) Audrey Malloy and Daniel Hochberg for Sparkwood, Don Brewer. Via msteams: Ellen Hart, Mark Moriello, Marc Carabetta, Matt Rudikoff and Luke Interrante for Aurum.

Minutes:

Motion was made by Board Member Welton to accept the minutes from the previous meeting as written, seconded by Board Member Spata. All in favor.

Old Business:

Crossroads/Belleayre Resort at Catskill Park

The Board is in receipt of a letter dated February 8, 2021 requesting an extension of the current Special Use Permit and Site Plan Approval. Motion made by Board Member Christie to add Crossroads/Belleayre Resort at Catskill Park to the Agenda for the March 10, 2021 meeting for review, seconded by Board Member Spata. All in favor.

Copperhood Properties LLC/Branches

Since the meeting on January 13, 2021 the Board is in receipt of a drafted resolution regarding the Conditional Approval for Special Use Permit and Site Plan Review. Said resolution was reviewed and discussed. Since the last meeting, one of the conditions has been met in that a signed Flood Plain Permit has been delivered to the applicant, and a copy of such has been provided to the Board. The condition regarding the Area Variance being sent to public hearing and voted on in regards to parking will be addressed at the Regular Monthly Meeting of the Zoning Board of Appeals on February 17, 2021. Comment by Ellen Hart, Mike Moriello, lawyer for the applicant, has reviewed the resolution. She stated that the rest of the language was standard, and noted that the clause at the end regarding the Covid-19 pandemic causing delays in permit issuance, and likely meaning that Board will have to extend the Special Permit doesn't commit the Board to anything. There were no objections made by any Board Members to the Conditional Approval Resolution/Decision as written.

Aurum

Matt Rudikoff and Luke Interrante were present via msteams. The Board went over the comment letter that was prepared by Ellen Hart regarding the project.

Ellen Harts commented as follows:

The project has been scaled back quite a bit. She reiterated the need for Lead Agency Packets to be circulated. Lisa Massey at NYS DEC had sent a comment to the Town regarding possible impact the project may have on Timber Rattlesnakes, and the applicant has been asked to reach out to her regarding that. The architectural schematics including the boundaries of the wetlands are still being worked on, and should be submitted once complete.

Matt Rudikoff and Luke Interrante commented as follows:

They have reduced the scope of the work to the lower portion of the site, essentially making the hotel the furthest thing up the mountain. No change to the size of the hotel. The house furthest to the north-west below the pump house is being proposed as a restaurant. They are also demolishing the existing pool as it is in disrepair, and they have plans to replace it. Septic plans have been submitted to the Ulster County Health Department and the DEP for review. The architectural plans are almost done and a copy of such will be submitted to the Board when complete. Applicant noted that the paperwork regarding Lead Agency had been submitted in July for circulation, but is not sure that it was ever sent to the appropriate agencies. If it has not gone out, they will have to send it out again.

Comment was made that the Board may need to have Public Hearing regarding SEQRA review. The board has not made that determination yet.

Sparkwood

Prior to the start of the meeting a Site Plan for the project was submitted by Don Brewer. Board Chair Rabuffo and Board Member Christie are recused from this application. Board Member Spata is Acting Chair for this project.

Howie McGowan reiterated the comments he made during the last workshop stating that he feels the application should be sent to the Zoning Board of Appeals for determination of the type of business that is being proposed, whether it be a restaurant or retail establishment. He provided the Board with the definition of a Convenience Food Store (§116-4.)

Don Brewer stated that the Site Plan has the location of the sign, shows the septic area, and distance to abutting houses. He discussed possible privacy screening, and the drainage stream is sited on the map. Board Member Horn asked if the appropriate abutters were notified. After speaking with the Towns attorney, it has been determined that notified abutters include any parcel that directly abuts the property in question, as well as any parcel that is directly across any public or private road. In this case, the appropriate people were notified. Board Member Welton noted that the parking spaces on the Site Plan differ from the previously submitted annotated survey. According to the applicant, two of the spaces in the back would be for employees and the rest would be for guests. After a question by Board Member Welton regarding privacy screening, Audrey Malloy stated that there would be privacy screening or natural barriers wherever guests would have access. Acting Chair Spata made the following statement:

‘I will begin with my intention, namely, to persuade my fellow Board members that we should deny the application and not approve this Special Permit. I will give my reasons below.

First, I want to acknowledge that my opinion on this matter has changed as I considered both facts and the voice of our community, as expressed in letters supporting and opposing this action. Neither community opposition nor support is a reason to deny or approve a Special Permit. What matters is whether the opposition is reasonable, in other words, brings important facts to light. Not all behavior has been reasonable. We’re aware of a social media post attacking this Board. We’re your neighbors, that behavior has no place in our Town.

Second, this Special Use Permit was deserving of consideration because a local landlord was willing to support an attempt to revitalize Phoenicia property fronting Main Street and partially within the Hamlet Commercial Zone. That zone permits as-of-right a “Restaurant not integral to hotel, motel or lodge development.”

Finally, I recommend to my fellow Board members that we vote to deny this application for these reasons:

- 1. We have properly held and closed the Public Hearing on this action. There is no need to reopen.*
- 2. There is a question whether or not the proposed use is a Restaurant, or some form of Retail – which is not a permitted use in Hamlet Residential. I believe it is a restaurant; we’ve all experienced how COVID has turned all restaurants into take-out. However, if we were to approve this Special Permit, we may be making an “interpretation” of the use type and that can only be done by the Zoning Board of Appeals.*

3. *A close reading of the Town Code provisions for Special Permit reveals these facts:*
 - a. *Section 116-3 Purpose; subsection A – ‘to guide the future growth...and promotes beneficial and convenient relationships among residential, commercial and public area...’*
 - i. *Not achieved by this Special Permit*
 - b. *Section 116-3, subsection C reads in full “To protect and conserve the character, the environment and the social and economic stability and property value and to encourage the orderly and beneficial development of all parts of the Town.”*
 - i. *Not achieved by this Special Permit*
 - ii. *The existing land use at the Hamlet Residential are of this property sits within a high-density, low rise existing development of residential properties having – in my opinion – more of a bungalow character than a town development.*
 - c. *Section 116-3, subsection D – ‘to bring about the gradual conformity...to the comprehensive zoning plan’*
 - i. *Not achieved by this Special Permit*
 - d. *Section 116-39 General Standards for Special Permit*
 - i. *Subsection G ‘The character and appearance of the proposed use...shall be in general harmony with the character and appearance of the surrounding neighborhood, shall not be more objectionable to nearby properties by reasons of noise, fumes, vibration or flashing lights that would be the operations of any permitted principal use...’*
 1. *Not achieved by this Special Permit*
 - e. *Section 116-40 – Additional Specific standards*
 - i. *Silent on restaurants when not part of hotel, motel or lodge development*

For these reasons, after due further deliberation, I call for a motion to deny this application.’

Following his statement Acting Chair Spata asked for comments from the Board. Board Member Welton stated that feels that the statement covered all the issues that were brought up by Ulster County Planning, following their referral statement. Board Member Shiner asked for clarification on what was being suggested. Board Member Kalb had no comment regarding the statement, and had questions regarding the workshop that is on Mr. Houskas property. Acting Chair Spata feels that the workshop in question isn’t pertinent to the application in question. Board Member Horn feels that a denial would rule out similar proposals going forward for the Hamlets of Pine Hill or Phoenicia. He also had questions regarding the other pre-existing non-conforming structures surrounding the property.

The Board recognized Art Christie as the owner of the property who stated the following: Mr. Christie listed the permitted uses in the Hamlet Residential Zone, for example a crematorium, kennels, and agricultural space for animals. Mr. Christie expressed his unease with a social media post he’s seen about the Board, and feels that the Board deserves an

apology regarding that post. He also feels that each case before the Board should be judged by its own merit, and asks that should the Board deny the application, language to that effect be included in the Denial, making it clear that any further development that may happen on the parcel will not be stifled by this decision. Mr. Christie feels the neighbors are concerned about this current application due to problems with the previous owner running a noisy business out of the lot. He states that when he first purchased the property, he went to the neighbors and let them know he would be cleaning up the property and asked that they come to him with any concerns, he received no comments from the neighbors. Regarding the workshop on Mr. Houska's lot, Mr. Christie and he had a conversation about the workshop being over the property line and Mr. Christie informed him to leave it alone, it would be fine. Also, Mr. Houska has cut down many oak trees since Mr. Christie purchased the lot, that provided privacy screening between the lots. Mr. Christie states that between Mr. Houska's lot and the Phoenicia Market lot there are 7 violations that have been overlooked. He feels that the Special Use asked for by the applicant is the least offensive use there could be of the approved uses in that Zone. In speaking to Acting Chair Spata's comments regarding the Comprehensive Plan for the Town of Shandaken, Mr. Christie states that he helped to develop the Comprehensive Plan and does not feel this application would be acting against the spirit of the Comprehensive Plan. Its intention being to bring people back with good memories, to have a clean Town, clean water and neighbors that get along and understand each other.

Board Member Welton states that after conversation with neighbors, it seems they feel Mr. Christie is a good neighbor and are happy that he renovated the property. It's only the operation of a business that they are in objection to.

Mr. Christie states that he feels that the Board should investigate whether or not all the surrounding structures are indeed pre-existing/non-conforming. Howie McGowan states that he is required to investigate any complaints that come into his office, and will be doing so. Mr. Christie also states that the neighbor has a license to sell used cars, as well as a license to sell fire arms.

There being no further discussion on the matter, Board Member Welton made a motion to deny the application for Special Use Permit. Seconded by Acting Chair Spata. Roll Call Vote as follows:

Sam Spata	Yes
John Horn	No
Vivian Welton	Yes
Joanne Kalb	No
Allen Shiner	No

Motion Denied.

A motion was then made by Board Member Welton to forward the application to the Zoning Board of Appeals for definition of the type of use being applied for. I.e. retail vs a restaurant. Applicants Audrey Malloy and Daniel Hochberg asked for clarification as to why the application needed to be moved to the Zoning Board of Appeals. Regarding previous comments that they would be running a "Convenience Store," they state that is not their intention. Acting Chair Spata states that the Planning Board is not allowed to make interpretation of the Code, and that since there is no definition of a "restaurant" in the Code Book, it falls to the Zoning Board of Appeals to decide what type of business is being applied for. Board Member Welton read the definition of Convenience Store from the Code Book. Definition as follows:

A facility of 3,000 square feet or less of gross floor area with any combination of the following primary characteristics:

- (1) Retail sale of food and beverages for consumption off-premises.
- (2) Sale of prepared foods, such as sandwiches, soups, ice cream, etc., for consumption on or off the premises, and may include indoor seating for such purposes.
- (3) Sale of gasoline or other fuel, oil or other lubricating substances or other motor vehicle accessories and generally of a self-service type.

The motion to move the application to the Zoning Board of Appeals was seconded by Acting Chair Spata. Roll call vote as follows:

Sam Spata	Yes
John Horn	Yes
Vivian Welton	Yes
Joanne Kalb	Yes
Allen Shiner	Yes

Adjournment:

There being no further business before the Board, a motion was made to adjourn the meeting by Board Member Spata, seconded by Board Member Welton. All in favor. Meeting adjourned at 8:48pm.