



"The Heart of the Park... Where the Eagle Soars"

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**Town of Shandaken Zoning Board of Appeals
Minutes for Regular Monthly Meeting
October 15th 2025**

The regular monthly meeting was called to order with the pledge of allegiance at 7:00 pm.

Roll called by Secretary to the Zoning Board of Appeals Olivia Amantia, and attendance was recorded as follows:

Mark Loete Chair	Present
Gary Guglielmetti	Absent
Allen Vella	Present
Christian Lynch	Absent
Henry Williams	Present

Roll Call Summary: 3 Present, 2 Absent

Others Present: Zoning Enforcement Officer Grace Grant, Charles Gotelieb, Jeanne Maloney

Communications:

Minutes: Chair Mark Loete begins the regular monthly meeting, with the first order of business being the approval of last month's minutes. The secretary is not at this meeting due to being sick, and the previous meeting minutes are not ready. The minutes will be ready at the next meeting.

Jeanne Maloney 25.3-1-10 Interpretation/Appeal

The first order of business on the agenda is Jeanne Maloney for an interpretation/appeal. ZEO Grant states the Planning Board during their meeting last month approved the site plan with several conditions. ZEO Grant states, the application before you is a third-party appeal. A neighboring parcel holder is appealing my determination that the event use when accessory to a hotel/motel or lodge development is allowed. ZEO Grant states they disagree with her determination that it's allowed. ZEO Grant states if this Board disagrees with me, then that would essentially negate that cycle. Board Member Williams states that this appeal for interpretation was prior to the Planning Board's decision. ZEO Grant states yes it was, but the town's attorney said that the Planning Board did not have to state their decision based on this appeal. ZEO Grant states specifically if my determination that the use is allowed is correct. Board Member Williams states that the appeal is specifically for 116-10 of the zoning code and also 116-58-1. ZEO Grant states that 116-58-1 was not brought up during the Planning Board's review process. No written determination regarding that section of code as it pertains to this site plan approval was ever asked for. Board Member Williams states that the applicant is stating that the zoning code does not allow what the Planning Board decided.

ZEO Grant states neither the Planning Board or herself were concerned with 116-58 that it was the determination of both myself and the board through lack of action that it was not considered an expansion. ZEO Grant states she cannot speak for the Planning Board, but I can say that 116-58 is specifically about the expansion of a pre-existing non-conforming use. ZEO Grant states that she has a hard time calling something both accessory to and the expansion of an existing use. If this applicant had come to us or to my office requesting to add four rooms to a hotel or add another lodge, that's a clear expansion of a pre-existing non-conforming use. ZEO Grant states it was my determination that this use as presented the event use was accessory to that use. Chair Loete states the fact that it's not a permanent structure is not relevant. ZEO Grant states no it wouldn't be. The structure itself the site plan as presented all of those details are for the Planning Board to review. Board Member Williams states he feels that the Planning Board should have waited a week or a month, for this board to do this determination prior to voting on whether Leeway has a right to operate a wedding venue. ZEO Grant states to her knowledge the Planning Board was not under any calendar restraints. They received advice from town council that they could, should they choose move forward with the review, and they chose to move forward. Chair Loete states regardless of how we rule on this issue today, Board Member Williams interjects and states they cannot rule on this today, without a public hearing. Board Member Williams reads aloud an article with two definitions from the town's website for structures. Board Member Williams states that it shows that tents are a structure. ZEO Grant states that is not a part of this review.

ZEO Grant states this applicant is asking you to make a determination that event use as an accessory use to a hotel development is allowed in the Town of Shandaken. The nature of the interpretation in a hotel/motel use 116-10 in a residential one-and-a-half-acre zone. A motel is permitted with a special permit only. Without a special permit, motel is a pre-existing non-conforming with limitations enumerated in 116-58-1. Additionally, any proposed uses should

have a special permit, not merely site plan review in order to protect the neighbors and the community. This applicant is asking for an interpretation of my determination. Board Member Vella states per the code book in 116-58-3 – shall not be changed to another non-conforming use without prior approval by the board of appeals and then only to a use which as determined by the board of appeals is of the same or more restricted nature. Board Member Vella states he feels it is relevant. ZEO Grant states if this Board decides to review that, that's fine the appellant is asking for interpretation of my definition. And in regards to 116-58-1 in their opinion should have been applied to the process. Chair Loete states the argument is that it is not the same or it is of the same or more restricted accessory use. ZEO Grant states it is my opinion that the use was accessory to the pre-existing non-conforming use. At this time the Board asks for Mrs. Maloney to give a brief description of why she's here this evening. Mrs. Maloney lives directly next door to the Leeway and has a letter she'd like to read aloud to the Board. Mrs. Maloney is against the decision that the Leeway can hold weddings and events, it will impact her very negatively, and has already done so. Her quality of life, and peace and quiet will be greatly impacted by this new event tent to hold weddings at the Leeway.

Chair Loete states it's clear that the establishment is a motel not a hotel. But Chair Loete states he doesn't think it makes a difference, there isn't any difference in the code related to this issue or the difference in relating this issue to a motel or hotel. ZEO Grant states that in her opinion code puts motel, hotel, and lodge development use together. Board Member Williams states in review of your letter and it seems like the Leeway's project was delayed for several months based on no decision by the Zoning Office. Board Member Williams states that three weeks ago, a decision was made by the ZEO. Board Member Williams states in your letter it says that you reviewed the zoning code and accessory use, or event use is an accessory to a motel or lodge. ZEO Grant states she reviewed the zoning code and it was my determination that historically event use is considered accessory to hotel/motel and lodge development. Board Member Williams states his question to ZEO Grant is what exactly in the zoning code did you review that brought you to a determination? Board Member Williams adds, that the wedding venue should be approved by the Leeway motel. ZEO Grant states it was not said that it should be approved. Board Member Williams states that it was your determination, ZEO Grant states that the use is allowable, not that it should be automatically approved. Board Member Williams states the question is what exactly did you review that brought you to the fact that the determination for event use is accessory to motel/hotel/lodges. ZEO Grant replies I believe the letter states that I reviewed the code and historically those with my job have treated the use as an accessory as one that is accessory to those types of development. ZEO Grant adds, with these permits that you asked for and did not want anymore. Board Member Williams states we do want those permits, and we had asked for them previously. Chair Loete asks ZEO Grant if all of those permits were issued by the Town of Shandaken? ZEO Grant states yes by previous Zoning Enforcement officers. Board Member Williams asks if the permits that have been issued are for nonconforming preexisting properties, or if they're in residential or commercial lots? ZEO Grant states that Foxfire is a pre-existing non-conforming lot, but they also obtained a special use permit, which has not been found at this time. ZEO Grant adds that the hotel use

at Full Moon predates code , they've had previous site plans approved. Urban Cowboy is also a pre-existing non-conforming hotel/lodge development. All three establishments that were just mentioned are located in residentially zoned districts. Chair Loete states that we are not obligated to rule on precedent, we're obligated to rule on the individual merits of each individual case. Chair Loete states before we can offer any vote or make a motion for any vote, this matter needs a public hearing. ZEO Grant states, before that there's a concern here that I've not responded to the board's questions, and I'd like to know what it is you want from me so that I can do so.

ZEO Grant reads aloud the email she received from the ZBA, Board Member Williams asked for some clarity on the previous asked questions, because he felt the answers were vague. ZEO Grant states 116-10 is mentioned in the email, as it relates to accessory use tents, also 116-58A1 and 3 as it relates to a non-conforming pre-existing motel in zoning district 1.5. To assist the board in its deliberations and ensure the correct application of the zoning code request we provide a written interpretation of the following provisions. ZEO Grant states zoning code 116-58A1 and 3 which we discussed, do you need anything further from me about how I came to the determination. ZEO Grant states she understands this Board does not agree with my determination but have I made my self-clear in my opinion, this accessory use isn't an expansion. ZEO Grant states it's not a special permit use; it's permit by right. ZEO Grant states it does not require a special use permit. Board Member Williams states to expand by 50 percent means a lot of different things in different zoning codes. Board Member Williams states does that mean expansion in square feet, or does it mean if there were a flood or a fire? Would that be no more than 50% of the value of the property at the time of the disaster? ZEO Grant states in my opinion that question does not pertain to what this board is reviewing. Chair Loete states he does not think it's defined anyway.

Board Member Williams states that the Leeway has always been a sleepy 6 room motel. Board Member Williams states since the zoning code was in effect, did they expand on those other two buildings that are on the property? ZEO Grant states since the zoning code has been in effect prior owners have received a special use permit to operate an RV campground there. Other than that, were unaware if they've asked permission to do anything different than what's there right now. ZEO Grant states that she believes that all of the structures on the property pre-date code, but did receive special permit approval in the early 2000's for the rv's. ZEO Grant states 116-58 can be discussed amongst the Board, and disagree with her interpretation, but all I can tell you is what I based the decision on. ZEO Grant states you're asking me for how I applied 116-58A 1 and 3, and I believe I've answered that question. ZEO Grant states the second was the letter that was provided on September 25th, providing names of motels, hotels, or lodges in our community that are operating with a special use permit or tent permits for wedding venues. ZEO Grant states to her knowledge there is nobody operating an event use with a special use permit, it's not a special permit use. ZEO Grant states to her knowledge no zoning enforcement officer has ever issued a violation against anybody for an event use. Historically what people are doing is coming to the building department to get operating permits for the tents. ZEO Grant states those individuals are receiving those operating permits and having their events. ZEO

Grant states that Urban Cowboy, and Foxfire are using operating permits when they put up their tents. And in 2017 when Full Moon replaced one of their permitted tents with a structure that was permitted and the listed use was clearly event use. ZEO Grant states the operating permits that you have are for temporary tents, that are to come up, and come down. ZEO Grant states to my knowledge, this board's responsibility is the side of my determination that the event use is allowed when accessory to hotel lodge development. It's not a decision specific to any single development but rather the broader concept of the use. ZEO Grant states she has answered the questions from this board to the best of her ability. Board Member Williams states that this is not a public hearing, Chair Loete states if someone wants to speak, they should be able to speak.

Charlie Gotlieb Perpetual space LLC's attorney is here this evening. Mr. Gotlieb states they are aware of the appeal, and emailed a response back to the appeal that hopes to answer some of the questions which have been raised this evening. Mr. Gotlieb states just right off the bat before he'd like to summarize so you can digest this information before the public hearing. Mr. Gotlieb states that he highly recommends that this board have its council at the next meeting, he feels it would be very helpful for the board. Mr. Gotlieb states he's heard some things this evening that are not completely legally accurate. Mr. Gotlieb ask's that the operating permits and emails that grace has be placed into the administrative record.

Chair Loete ask's if the location of the tent is fixed at this particular time? Mr. Gotlieb states the location of the tent is the 60 ft by 40 ft that's shown. Chair Loete ask's if it is adjacent to the river? Mr. Gotlieb states it's not adjacent to the river but it is closer to the river than the existing structures. The river is on the left of the property and there is a 100 ft buffer from the river and you're probably over another 100 ft until you get to the event tent. Mr. Gotlieb adds that they can provide you with the exact setback number. Mr. Gotlieb states importantly there's a difference between non-conforming use and non-conforming structures. The existing buildings at the leeway are non-conforming structures, therefore you can add structures but they have to be in compliance with the zoning code, the setbacks and so forth. The tent is completely compliant with the zoning code and setbacks. Mr. Gotlieb adds the board keeps referencing where is the event use noted in the zoning code? Your code's definition of an accessory use is an accessory use or structure incidental to the permitted or special permit use and located on the same lot, not otherwise specified herein. Chair Loete ask's if Mr. Gotlieb can identify the regs? Mr. Gotlieb states that in the definitions 116-4. The fact that it's not defined and it's not a permitted use in any zoning district furthers the argument that it's actually accessory.

Another thing that Mr. Gotlieb wanted to highlight this evening, is they agree with Grace's determination, and would like this dismissed. Mr. Gotlieb adds that he has provided case law in the letter he's provided for the board. Mr. Gotlieb states say you do have a non-conforming use, an accessory use to that non-conforming use is permitted. It's not another non-conforming use or a new commercial enterprise that I heard this evening. It's a continuation of that non-conforming use. Chair Loete states he could not find any specific language. Mr. Gotlieb states it's in cases. Chair Loete states that we are not obligated to rule

on previous cases. Mr. Gotlieb states this is why the town's attorney should be present, this board when you're an appeal jurisdiction is known as a quasi-judicial board, meaning you do have to follow legal precedent. There's also prior precedent of this town; you are also under an obligation to follow prior precedent of the town. Mr. Gotlieb states that's a case called night via Melin, which went to the highest court in the state of New York. Mr. Gotlieb states this comes down to use, it's not a hotel it's a lodge development, and that use of a lodge the event tent, it's still the lodge use, it's just an accessory to that. Board Member Williams states if the accessory use is subordinate and incidental to a motel, if that use is greater than the principal use, that creates a problem. Mr. Gotlieb agrees and states yes there is case law on that exact issue from the town of Olive. Mr. Gotlieb states following all of the case law that I could find, the reasons the event tent is accessory is one, the accessory use is located on the same lot as the Leeway lodge. There are no event uses permitted anywhere in this town, which per this town's definition of an accessory use means it can be classified as accessory. The events are facilitated by leeway's staff, there will only be 13 events per year, per the Planning Board's conditions. That means it's a seasonal use not a full time compared to the lodge. There are other hotels, motels, and lodges in town that also have the occupancy permits for. The tent will go up, and come down, it's not permanent and there will be no land disturbance, there's no fill in the floodplain. There is a discussion amongst the Board and Mr. Gotlieb that tent was once defined in the code book, but no longer is, since changes have been made to the book. Mr. Gotlieb states that according to e-code which is your town's official publisher of its zoning code it is not in there, we even looked at the books during the Planning Board meeting when this issue was brought up.

Chair Loete states that this board operates on two premises, first of all preserving the character of the community, secondly enabling the economic development of the community.

Old Business:

New Business:

Adjournment:

There being no further business Board Member Vella made a motion to adjourn the meeting, Chair Loete seconded the motion, all in favor. Meeting adjourned at 8:12 pm. These minutes were prepared by the Zoning Board Secretary Olivia Amantia.

