

**TOWN OF CLINTON
ZONING BOARD OF APPEALS
FINAL MINUTES
February 22, 2024**

MEMBERS PRESENT

Joseph Malcarne, Chairman

John Calogero
Charles Canham
Frank McMahon
Ron Mustello
Russel Tompkins
Daniel Vonderbrink

MEMBERS ABSENT

ALSO PRESENT

Arlene Campbell, Secretary

Katherine Mustello, Liaison Officer

Chairman Malcarne called the meeting to order at 6:32 pm. He welcomed everyone and asked his colleagues to introduce themselves. He noted that this meeting can be watched on Local TV Channel 22 and is streaming live via YouTube.

Chairman Malcarne asked the secretary if the applications on the agenda were properly advertised and adjoining neighbors were notified. Ms. Campbell responded positively.

VARIANCE:

Popolow Area Variance – property owned by Jonathan Popolow and Nicole Skalla located at 205 E. Fallkill Road, **Tax Grid No. 6466-00-819678.**

Applicants request an area variance to Sec. 250-22 A-4 to increase the number of accessory structures in order to build a 39' x 26' detached garage on a 37.8-acre lot in the AR5 Zoning District.

Sec. 250-22 A-4 (Accessory Structures) states that “Not more than three such accessory structures, other than permitted signs or agricultural buildings on a farm as defined herein, of which no more than one shall be a private garage, shall be permitted on a lot in a residential district.

Dennis Loveland from Loveland Landscaping along with the Popolows all appeared for this application. Mr. Loveland briefly explained that they needed an area variance to build a garage.

Chairman Malcarne asked for comments and questions from the board.

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Mr. Mustello read the Planning Board's recommendation dated February 6, 2024 that is positive and with a question to the board – "Does the property require an additional variance or is the barn/gym incorporated into the pool area truly a pool/pool house?"

Mr. Mustello indicated the letter issued by the MCEI to the property owners detailing the structures on the property such as principal dwelling, existing barn or gym (for identification purpose), second barn i.e. two-story structure, pool and a goat shed.

Mr. Mustello commented that there are currently four accessory structures on this property. The question to the board is whether one of these structures can be characterized as a pool house. He commented that there is also a precedent for considering a structure adjacent to the pool i.e. a pool house, and in combining these two structures as one entity. He's not sure if this is applicable.

Mr. Mustello said that there is a sauna and pool equipment in the existing building. There's also a hot water heater for showering presumably used when you got out of the pool. Mr. Loveland and him came up with an estimate of 25% of the building could be construed as pool related stuff. Mr. Mustello stated that 75% of the building is definitely not related to the use or operation of the pool but basically use for storage of hay.

Mr. Mustello opined that this building is not a pool house but then came a question about the allowed number of accessory structures per the zoning regulations. He commented that it would be prudent and probably practical to consider expanding the motion to incorporate the existing structures and the proposed structure into one motion.

Mr. Canham said that two of the barns on this property are two hundred years old. On a 5-acre parcel, three accessory structures is a lot, however, on a 35 acre parcel, three accessory structures is not uncommon particularly when two of them are old barns. People come for a variance request due to special conditions of the property. If the board adhered to the three restrictions, then they might have to tear down two old historic barns. He cited past cases about variances that were granted to expand the number of accessory structures.

The board agreed to open the public hearing.

Chairman Malcarne motioned to open the public hearing, seconded by Mr. Canham, all Aye, Motion carried, 7-0.

Hearing no comments from the public, Chairman Malcarne motioned to close the public hearing, seconded by Mr. Tompkins, all Aye, Motion carried, 7-0.

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Mr. Calogero commented that it seems prudent to follow on a suggestion rather than trying to figure out what percentage of the building is a pool house and what percentage is not since variance runs with the property and the board doesn't know how the use of that building is going to be maintained through the years.

After all the deliberations were made, the board passed a resolution.

Mr. Mustello motioned that the Town of Clinton Zoning Board of Appeals approve the requested area variance to Section 250-22 (Accessory structures) to allow construction of a detached garage as requested by Jonathan Popolow and Nicole Skalla, located at 205 East Fallkill Road, tax grid number 132400-6266-00-819678 on the AR 5.

Additionally, the Town of Clinton Zoning Board of Appeals expand the variance to encompass the four existing accessory structures to bring the parcel in compliance with Section 250-22

WHEREAS:

1. The applicants currently have four accessory structures on the parcel, the maximum allowed per Town of Clinton Code is three. The applicants wish to add another, that being a 39' x 26' barn requiring an area variance from A4 Section 250-22 re Accessory Structures.
2. The four existing accessory structures are identified as follows:
 - a. Barn/Gym
 - b. Barn
 - c. Pool
 - d. Goat Shed
3. While one of the barn structures could conceivably be interpreted as a pool house because of its proximity to the existing pool, a small portion of this building (under 25%) houses nominally related pool use items, and the majority of the remainder of the building is used for storage, and is separated from the pool area
4. While the barns likely predate any other structure on the parcel, the Goat Shed was recently constructed and should have required a variance under Section 250-22, but due to human error, it was granted a building permit

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and CO.

5. The 37.8 acre property is in a AR5 zoning district
6. The property is not within an Ag District or CEA
7. It is noted that an area variance is a type II action under SEQRA and requires no further action.
8. The site is on a Clinton Scenic/Historic Road, that being East Fallkill Road and must confirm to Local Law#3 of 2001
9. An undesirable change will not be produced in the character of the neighborhood or be detrimental to nearby properties.
10. The benefit sought by the applicant cannot be achieved by any other feasible method without this variance, given each of the structures complement the property and serve specific, necessary purposes.
11. The proposed variance should not have an adverse effect or impact on the physical and environmental condition of the neighborhood.
12. The alleged difficulty is self-created but should not necessarily preclude the granting of the area variance, considering the limited impact on surrounding conditions.
13. There are no other known outstanding zoning violations.
14. A consent authorization is on file with the clerk for Dennis Loveland

With the following condition:

- All fees have been paid

Seconded by Mr. Canham,

Discussion. Mr. Calogero stated that the property has been cleaned up and improved. He hates to see the historic barns be removed. He would rather see an extra structure rather than see an old historic barn taken down.

All Aye except for Mr. Vonderbrink who abstained, Motion carried, 6-0-1.

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Brown Area Variance – property owned by Lyndsay Brown located at 99 Willow Lane, **Tax Grid No. 6567-00-193832.**

The applicant requests the following area variances in order to install 247 square feet Tool shed on a 2.3-acre lot in the AR5 Zoning District.

Sec. 250 Attachment 2 (Schedule of Area & Bulk District Regulations) – Rear yard setback reduction from 75 feet to 50 feet

Sec. 250-23 -D-(6) (Measurement and use of yards) that states Bus passenger shelters, playhouses, tool houses, garden houses, or similar nonpermanent structures, not to exceed 50 square feet, and located not closer than 10 feet to any lot line or street right-of-way line. Such nonpermanent accessory structures shall not be included in the maximum number permitted by § 250-22, Accessory structures.

Lyndsay Brown and her husband FD Schilling both appeared for this application. Mr. Schilling explained that he needed a variance to construct a tool shed. The regulation calls for 75 feet and they are proposing to install the shed 50 feet off the rear.

Mr. Tompkins stated that he visited this property a couple of times since he has questions. He indicated his query about the discrepancy in the variance request. The application shows 50' from the rear property line but the map shows 35 feet. Mr. Newman's denial letter states 50 feet. Per his conversation with Mr. Schilling, he is actually looking for 50 feet.

Mr. Tompkins stated that per his measurement and calculation, the proposal needs two variances. This also needs front yard variance since it's supposed to be 100 feet from the centerline of the road. He also indicated that the proposed shed is in the wetland or buffer area which is 50 feet. The applicant is also before the Planning Board for a wetlands' permit and the Planning Board declared lead agency at the last board meeting.

Mr. Tompkins indicated the missing scaled plot plan showing all existing structures and its dimensions and setbacks, surrounding property owners, etc. There were pictures taken with red marker indicators that were submitted on file.

Mr. Schilling handed the board a site map (not a scaled map) showing his proposal. He noted that page 2 and page 3 shows the wetlands area.

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Ms. Campbell said that the map about the wetlands was included with the wetlands permit application to the Planning Board. The applicant submitted two applications (variance and wetlands permit).

Mr. Tompkins read the Planning Board's recommendation dated February 20, 2024 that is neutral.

Mr. Tompkins expressed his comments per his site visit. There are considerable activities in the wetlands' controlled area as evident by the excavation and the mounds of dirt and ditches that are full of water. This is a concern. He also commented about the two driveways on the property. He said that he wasn't aware that two driveway entrances are allowed in one location. He added that the proposed shed can be moved closer to the barn to avoid the wetland buffer area. This is the Planning Board's purview and noted that this property is also before the Planning board for wetlands permit application.

Mr. Mustello concurred with Mr. Tompkins that there is a lot of activity on this parcel. He indicated the small pond that looks like a frog pond on the property with some plantings around it that is not on the submission. It seems that it is about 10-15 feet off the driveway. He also commented about the second driveway further up the hill that looks like it's going to the area where the pond is. He's not sure how the driveway relates to the wetland. The sketch map that was submitted seems inaccurate. He asked the applicant where the pond is.

Mr. Schilling responded that he wouldn't call it a pond. It is an area with water. He pointed out on the map the wetlands on the property.

The panel had a lengthy discussion about the wetland areas on the property.

Mr. Canham stated that this is a pre-existing and nonconforming lot in the AR5 Zoning District. Variance request is not uncommon on this lot. Based on his measurement, the distance from the center of the road to the back property line is less than 200 feet. There is a 25-foot strip down the middle where a shed can be placed without a variance.

Mr. Canham said that one of the factors in granting a variance is whether there is another feasible method other than granting the variance. This is also the bedrock principle of the wetlands law to minimize disturbance to the wetlands or the buffer. He opined that this clearly encroaches the wetland and the buffer. He was surprised at the extent of the hard surface that's planned throughout this project given the proposed small tool shed. There are two driveways and a very large parking area. It looks like a great deal of disturbance in the wetland or the buffer area.

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Mr. Schilling remarked that they tried to rehabilitate the land as it's being used for commercial waste and never been cared for decades. It's been overrun with poison ivy. It's invasive and there is a procedure for getting rid of it. He underscored that he is a landscaping designer and is pretty aware of what these things can do to overtake the existing vegetation.

Mr. Canham commented that this doesn't mean that he can now put all the hard surface in the shed in the wetland or wetland buffer.

Mr. Canham commented that it's hard to tell where the wetland buffer is given the insufficient mapping of the wetland that was submitted. The drawing is not scaled. The issue about whether it's 50 or 100 feet off the buffer will be addressed at the Planning Board meeting. He asked the applicant if there is an alternative to achieve his objective without encroaching the wetland.

Mr. Schilling said that the entire width of the property is at its maximum. He indicated the structures on the property such as the 240-year-old barn that he claimed to spend the last 15 years rehabilitating and restoring it. The cottage and the house are all in the center area. If he put the proposed shed on either side of any of those structures, it would still need a variance. He doesn't think that there is another area to locate the shed without getting a variance.

Mr. Canham felt that there is a room behind the house or the barn to put the shed. This will still require an area variance but will avoid the wetland encroachment. Looking at the map, it appears that there are options that do not involve moving into the buffer. This is an issue for the board.

Mr. Calogero expressed his concern in making a decision without accurate measurements or wetland delineations. The board typically relies on the Planning Board's careful examination with the involvement of the town consultants. He stated that he needs the missing data before he can make a clear decision.

Ms. Brown stated that her husband is a land designer and wants to make their property beautiful. This used to be a dumping ground and swampy area. They want to improve this area and put some plantings in it to make it beautiful. She noted that this is not a commercial endeavor. She spurned the rumors that she is planning to create parking spaces for her business. She remarked that this has nothing to do with her art business. This has something to do with making the property beautiful and having access to drive in and have a shed that her husband needs for storage. She exclaimed that this is a beautiful project.

Mr. Schilling stated that one of the biggest problems that they have on this property is parking. If anyone comes to work for them or visits them and they are home then these people are forced to park on the street. They only have a

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maximum of three parking spots and this is basically primarily for loading and unloading tools into the shed. If you look at the map, there is no parking,

The board had a very lengthy discussion about the application on hand.

Chair Malcarne solicited comments from the board.

Mr. Calogero stated that he can give a more informed decision once the Planning Board addressed the wetland permit. Maybe there's only minimal encroachment but they need to know this.

Mr. Canham echoed Mr. Calogero's comment. He'd like to know where this encroaches and how much. This would help.

Mr. McMahon concurred with the above comments.

Mr. Mustello said that it would help the applicant's case to have a detailed map though he's leaning towards Mr. Tompkins and Mr. Canham's earlier comments about an alternative location for the proposed shed. It would be in everyone's interest to know exactly where everything is proposed.

Mr. Schilling asked the board if they will be opposed even if they satisfy Mr. Tompkins wishes.

Mr. Canham said that one of the variance criteria is to determine whether there is an alternative to avoid the variance. In this case, there is an alternative rather than encroaching on the wetland and the buffer. It's up to the applicant and they want to get further more information. The board can leave the public hearing open.

Ms. Brown said that they met with the Dutchess County Soil Water people and discussed all of this. They talked to Mr. Newman at length about what they needed to do. This is not like they just wing it. She indicated that the town engineer needs to visit the property to review the proposal. That is already set in motion at the Planning Board. She asked if this would give the board the lacking information they're looking for.

Mr. Calogero responded that might provide more clarity for the missing information.

Mr. Canham reiterated that they needed an overlay map showing what's on the property and what is being proposed.

Chair Malcarne summarized the comments. The submitted drawing does not help the board. They need an accurate drawing or survey showing all the structures and the proposed structure, setbacks and wetlands and wetlands buffer on the property. The wetlands need to be delineated. Everything needs to

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be on the same map, It needs an overlay showing the proposal. A map that shows a scale.

The board agreed to open the public hearing.

Chairman Malcarne motioned to open the public hearing, seconded by Mr. Canham, all Aye, Motion carried, 7-0.

John Lyons, an attorney who represented John Caccia, an adjacent neighbor, spoke and commented that it is nice to see that the board zeroed in to what he perceived to be the key issue. He asked the board to table the application until more information is received. There are two factors that need to be considered in a statutory test in an area variance that cannot be determined right now due to insufficient information. The board already alluded to these factors i.e. consideration of feasible alternatives and impacts to the environment. His client is aware about the Planning board's application for the Wetlands Permit. He underscored that the real issue here right now is that nobody has the information that's necessary to answer the question about the real impact of the project. He stated that they asked the Planning Board to require the applicants to get a professional wetlands delineation done to know exactly where the boundaries are. He added that the NWI wetland boundaries that are on the county tax map can't be used for the kind of work that they're doing. He remarked, "You can't even rely on the parcel lines that are on the county tax map! These county maps put you on notice that you should be drilling down deeper on the application."

Mr. Lyons submitted Hudsonia maps to the board and explained that it appears that the NWI wetlands that are partially on the applicant's property and partially on Mr. Caccia's property are significantly larger. He compared the 2021 Hudsonia map with the terrain of the county tax map. He said that there are three areas of wetlands on the applicant's property. He pointed out on the map the three areas of the wetlands such as hardwood, swamp and marsh wetlands. He commented that this is evidently significantly larger than the one shown on the county tax map. The hardwood swamp wetlands come much farther closer to the road and the barn than is shown on the county tax map. This is a good case to have a professional wetland delineator visit the site. He opined that it's possible that the proposed shed may be in the wetlands. He added that it makes a big difference when the board is making a decision about the impacts to the environment.

Mr. Lyons stated that the Town Wetland Law was crafted in a way that the size of the wetland dictates the size of the buffer. He commented that they don't really know what buffer to apply if they don't know the size of the wetland. He doesn't think that the board is in the position to make a decision with this missing info. He asked the board to keep the public hearing open and set the application aside

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until the Planning Board wetlands' permit is addressed. The Planning Board declared the lead agency and referred this application to CAC. Mr. Lyon indicated that they sent information to the Planning Board and advocated the Planning Board to engage Hudsonia as a consultant as Hudsonia already has a lot of information about the Town of Clinton. They'll be able to give the Planning Board information not only about wetlands but most importantly how development in these wetlands might have an adverse impact on the resource and wetland habitats. He asked the board to table the application. They want to make a comment further once the wetland buffer is identified.

Mr. Schilling boldly asked the attorney how much he gets paid to take this case and which neighbor he represents. Mr. Lyons responded that he is representing John Caccia and his hourly rate is \$295.00/hour.

Peter Vlaychan, who lives in Pleasant Valley and a realtor, spoke and expressed sympathy to the applicant. He commented on different kinds of wetlands. There's also a beaver dam for hunters and fishermen. A beaver dam downstream that has water back up due to heavy rains and everybody thinks it's a wetland. He remarked, "If it is just a shed for tools, I don't know why you're putting your people through this process?"

After a lengthy discussion, the board agreed to table the application and leave the public hearing open to get more information.

Chairman Malcarne motioned to table the application, seconded by Mr. Canham, all Aye, Motion carried, 7-0.

No action taken.

The board took recess at 7:26 pm and resumed at 7:40 pm.

ADMINISTRATIVE/INTERPRETATION:

StopSixSensesNY, Appeal re MCEI determination dated 12-12-2023 -property located at 68 Naylor Road, **Tax Grid No. 6268-00-59136 (Clinton parcel)** and 2450 Route 9G Hyde Park, **Tax Grid No. 6268-03-46140 (Hyde Park parcel)**.

The appellant is appealing MCEI Michael Cozenza's December 12, 2023 determination on CECNY Land Holdings LLC application for Amended Site Plan and Special Permit approval, in which MCEI Cozenza determined that CECNY Land Holdings LLC's application to use 68 Naylor Road, Tax Grid No. 6268-00-59136 (Clinton parcel) and 2450 Route 9G Hyde Park, Tax Grid No. 6268-03-46140 (Hyde Park parcel) as a Conference Center,

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Shane Egan, town attorney, was present for the town. Warren Replansky, who represented the neighborhood group called Stop Six Sense was also present. Victoria Polidoro, CECNY attorney, also appeared with her team.

The meeting room was packed with audience from both sides (opposed and supporting).

Chair Malcarne reminded the public to address all their comments to the board when making comments. Keep the comments brief and avoid reiteration of comments already made.

Katherine Mustello, board liaison thanked the public for attending the meeting and underscored that board members are volunteers. She asked the public to be kind and respectful when making comments.

Mr. Canham explained the interpretation application on hand i.e. to interpret the request of the neighboring property owners about the December 12, 2023 decision of the acting MCEI that the proposal from the CECNY about the development of the property falls under the definition of Conference Center under the Town Code and therefore allowed use in the AR3 and AR5 Zoning Districts. He noted that a conference center requires site plan and special permit approvals from the Planning board. He added that the previous owner received a site plan and special permit approval in 2005 to operate dude ranch/conference center.

Mr. Canham indicated that the applicant also raises other fundamental issues. One of the questions to the Zoning Board of Appeals is about whether the proposal falls within the Town code definition under "Conference Center". He acknowledged the many written comments that were already received. Most of these concerns are about environmental issues related to the proposed development. The board likes written comments for record purposes. He encouraged the public to send their comments electronically via Ms. Campbell's email at pbzba@townofclinton.com.

Warren Replansky, legal counsel, took the floor and introduced himself. He specialized in land use, planning and zoning and worked in Rhinebeck and other municipalities like Town of Pleasant Valley, Town of Pine Plains and Town of Northeastern. He also noted the memo that he filed to the town of Hyde Park.

Mr. Replansky said that he represents the group of individuals who are named in his letter to the board dated January 12, 2024 which contains a good deal of his arguments to the board. The clients that he represents all live adjacent or close proximity to the property in question. Under the NY Decisional Law, his clients have the requisite standing administratively to appeal the decision of Mr.

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Cosenza, acting MCEI. They are appealing Mr. Cosenza's letter dated Dec. 12, 2023. This appeal is much broader than just the definition of the hotel. He addressed a number of issues as noted in his letter dated January 12, 2024 along with the attachments, they feel are applicable with the provision of the zoning code.

Mr. Replansky commented that they feel that the CECNY application is a large-scale hotel or resort as opposed to an extension of what they claimed as existing small conference center or dude ranch. He noted that he is very familiar with this property as he represented the previous owners many years ago when they operated a small holistic, they called Conference Center or Dude Ranch for just a limited number of people by giving yoga, seminars, training and horseback riding classes.

Mr. Replansky stated that Mr. Cosenza has been charged in making a legal and threshold determination of this case because Jeff Newman, current MCEI is currently employed by the applicant. He was a previous employee of the Kahns (previous owners of Old Stone Farm) and many of the subsequent owners of this property. He remarked, "This is a conflict of interest". He understands that Mr. Newman had recused himself but unfortunately, the most troubling aspect of Mr. Cosenza's determination, based on his reading of his analysis, is that Mr. Cosenza did not perform an independent evaluation or investigation. He relied on the record that has been provided to him by Mr. Newman, who he respected as the Zoning Enforcement Officer or "MCEI."

Mr. Replansky stated that Mr. Newman has a real conflict of interest in this case. They don't think that it is appropriate for Mr. Cosenza to rely on the documentation and information supplied by Mr. Newman. He stated that they foiled all the records that were before Mr. Cosenza before he made his decision. He stated that if you read those documents, you will see that it is replete with reference to records and information supplied by Mr. Newman. Mr. Replansky remarked that they are troubled by that.

Mr. Replansky said that the bulk of the facility is sited on a 228-acre lot located off Route 9G that is in the AR3 and AR5 Zoning District. This is also in the Town's Ridgeline, Scenic and Historic Overlay District. Known as the Old Stone Farm, Mr. Replansky commented that this property is significant to both the Town of Clinton and Town of Hyde Park. This is also environmentally sensitive given the creek and the class of stream/wetlands on the property. He indicated the Town, Federal and State Regulated Wetlands that threatened or endangered species.

Mr. Replansky stated that "Hotel" is a prohibited use in the AR3 and AR5 Zoning District in the Town of Clinton. A Conference Center is a permitted use with

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special permit and site plan approval. He was curious about the Conference Center portion of the town code that was amended in 2021 with the significant input if not controlled by Mr. Newman at a time when he was employed by the previous property owner. He opined that the amendment opened the door for the argument that the new application for the Conference Center now fits the definition of the Conference Center rather than a hotel. If you read the definition of a conference center prior to the amendment, you will see that it did not encompass in any way what is now proposed. Certain language was added to that definition by Mr. Newman and whoever he worked with the town at a time when he was working with the developer. They suspect that the purpose behind it is to allow this application to proceed. The 8.28-acre portion of the property that lies with the Town of Hyde Park is located in the Greenbelt Zoning District. In this zoning district, Mr. Replansky noted that both conference center and hotels are not permitted uses. They are prohibited.

Mr. Replansky stated that the applicant proposes to provide the necessary road frontage and driveway access through the Hyde Park parcel where hotels and conference centers are prohibited. They would have to cross from the creek via two bridges. He noted that there is currently an existing bridge there right now.

Mr. Replansky indicated the two determinations made by Kathleen Moss, Town of Hyde Park Zoning Administrator. On February 9, 2024, Ms. Moss denied the application of CECNY to construct an additional bridge and location of two driveways to and from Route 9G to be used in conjunction with the hotel. Mr. Replansky read Ms. Moss letter which he quoted, "Courts have held that "Generally, use of land in one zoning district for an access to uses that would themselves be barred if they had been located in the first zoning district,"

Mr. Replansky said that you basically cannot use the Hyde Park parcel to access the Town of Clinton parcel if the zoning regulation prohibits the use. He indicated the number of case law that Ms. Moss cited in her letter and his letter to the Planning Board. He noted that Ms. Moss concluded that because the lodging facility is not permitted in the Greenbelt Zoning District, then the associated access drive is also not permitted and the application would require a use variance.

Mr. Replansky indicated the second denial letter issued by Ms. Moss. He noted that Ms. Moss also rejected the developer's request for a determination that the expanded access is eligible for expansion of nonconforming use under the town zoning law. Given this determination, Mr. Replansky pleaded that Mr. Cosenza's determination must be reversed. He added that the other error of Mr. Cosenza is about his determination or decision that what is being proposed is in fact a conference center per the current definition of the term as contained in the zoning code. This conclusion is basically just based on the two definitions (hotel

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and conference center) as contained in the zoning regulation without an independent verification or analysis of the complete application and narrative of Six Senses. He criticized Mr. Cosenza about his premature decision/determination before the application gets flushed out at the ZBA and Planning Board meeting. You need to find out what the actual uses are! How is it going to run and who will be staying there? Then - under these terms, a determination can then be made as to whether this is a hotel or a Conference Center.

Mr. Replansky opined that based on the empirical evidence that they have, Mr. Replansky stated that this is clearly a resort or a hotel. A conference center, in a traditional sense, is an establishment where events are used for business professional conferences and seminars, sometimes with rooms for lodging, eating and recreational activities for the guest.

Mr. Replansky continued that the fact that the definition used to be in the zoning code until it was changed by Mr. Newman, they felt that this law was amended to allow this application to proceed. What they proposing is a large-scale resort and hotel which will include 65 guest rooms, 240 employees a variety of other uses for patrons, 50 Equine Center, bar, several dining areas, program areas as well as several on-site swimming pools. This is just the basis of the preliminary plans that they have before us for now.

Mr. Replansky stated that the Zoning Board of Appeals and the MCEI must use common sense when making a determination. Given the large scale and amenities, this facility can merely be called a conference center. They added all the accessory events for the patrons to participate in. Mr. Replansky remembered when he was in college and used to work in Catskill. He remembered seeing the patron coming out of this huge hotel. They had amenities like yoga, dancing classes and entertainment. They also had seminars. He underscored that they have all these things that this facility would have for its patrons. This wasn't a conference center! It was a large hotel resort and this was being proposed here.

Mr. Replansky disagreed in regards to Mr. Cosenza's determination that the property constitutes a nonconforming use of the property and the special permit issued back in 2005 has not expired. He commented that this is based on insufficient conclusory statements provided by Mr. Newman. The record that was provided to Mr. Cosenza is replete with documentation and affirmation given by Mr. Newman. He commented that it is improper for Mr. Cosenza to have done without making his own in-depth analysis of what's going on here and what is being proposed.

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Mr. Replansky indicated the violation letters that were issued by various Zoning Administrators (MCEI) during the period of June 11, 2019 through February 25, 2021 when the property was converted illegally to a clearly encompassed, - a hotel and restaurant. He noted that the courts of the state have held that if you have a nonconforming use and you convert that nonconforming use to a prohibited use, then that constitutes an abandonment of use. The same rationale applies to special permits in regards to the claim that the special permit is still in existence, Mr. Replansky commented that this was abandoned when the property was illegally converted and used as a hotel and restaurant. He noted that he will be submitting several cases to support that contention.

Mr. Replansky commented that there is plenty of empirical evidence that the use of the property as a conference center has been discontinued by other property owners in the past. He also commented on Ms. Polidoro's letter that the neighbors don't have the requisite standing to appeal. The cases that were cited related to standing in litigation when you're challenging a determination of the Zoning Board of Appeals, is a bit more rigorous but when you're appealing an administrative appeal from a Code Enforcement Officer to the Zoning Board of Appeals, then you don't have that rigorous standard. If you're a neighboring property or live nearby, then unquestionably, you have standing to an appeal.

Mr. Replansky stated that the applicant dismisses the notion that the Town of Hyde Park should be included and considered by the board. Its zoning law should be considered. He remarked, "This is a lot of nonsense!" This is a Type I action, coordinated review under SEQR. The Planning Board is required to coordinate not only its SEQR review but also its planning board review with the Town of Hyde Park. He added that the Town of Hyde Park has a huge stake in this application given the fact that the only road frontage that exists is through the Town of Hyde Park parcel. He doesn't believe that there is enough road frontage and without that then that's another issue. Mr. Cosenza decided that there is a required road frontage per his letter but when you read the Town of Hyde Park's letter from the Zoning Administrator, you will see that there is no requisite road frontage. Mr. Replansky underscored that there is no legal access to this facility.

Victoria Polidoro, CECNY for Six Sense attorney, introduced herself and noted that like her colleagues, she also specialized in Land Use and Zoning. She also represents a couple of municipalities like the Village of Red Hook Zoning Board of Appeals and Town of Red Hook. CECNY currently operates as a Conference Center and has applied to expand the Conference Center as a conforming use permitted by Sec. 250-45 of the zoning regulations. As pointed out earlier, the main question before the board is – Does the proposed project fit the zoning law definition of Conference Center? The Zoning Board of Appeals members are the experts. The language of the zoning and the language of everyday life are often

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very different. People don't post on their Facebook that they just bought a new single-family dwelling but instead post "A new home!" Likewise, you read blogs about people in their luxury tiny homes. They don't describe it as "Mobile home" in an individual lot. A non-zoning person saying that it must be a hotel because it provides overnight accommodation does not make it so. In fact, Northern Dutchess also provides very expensive transient overnight accommodation. We don't call that "hotel". She opined that the board's job here is to step into the shoes of the MCEI and apply the language of the zoning law, and not the everyday language to this project, regardless of whether you like the project or not. The Town Board is the elected body who makes the law of what's allowed. The Zoning Board's role in this case is to interpret what the town intended when they adopted this new law and definition. She reiterated that it is what the town board intended and not what the opposition thinks. Their chance to challenge the law expired back in 2021.

Ms. Polidoro submitted for the record copies of the resolution adopting the 2021 Conference Law Amendment along with comments from the Dutchess County Planning. She commented that it does go to show that the Town knew what they're doing when they expanded the definition of "Conference Center". The law was referred to the DC Planning which they commented that the size for this lot should be reduced. In turn, the town reduced the size of conference centers. Ms. Polidoro opined that this regulation was intentional and thought out. Majority of the elected town officials voted and adopted it. All the talk about conspiracy is irrelevant. There is a definition of conference center in the regulation. It's here and it's valid. It's what we have to deal with.

Ms. Polidoro read the definition of Conference center per Sec. 250-105 as stated below.

CONFERENCE CENTER - An establishment for hire as a location for events used for business or professional conferences and seminars, often with rooms for lodging, eating, and recreational activities. Also, an establishment which attracts clients principally for recreational or health activities and contains rooms for lodging and eating for its clients.

[Amended 6-8-2021 by L.L. No. 4-2021, effective 6-17-2021]

Mr. Polidoro commented that the second part of the definition was added in 2021. She underscored that nowhere in the definition does it say that a conference center must be small, cute or quaint or otherwise acceptable to Mr. Replansky. There is no size qualification. The property currently operates within the first sentence of the definition. The project proposed to expand the facility falls under the second statement of the definition. The primary purpose under the second portion of the expanded definition is recreational and health activities with

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overnight accommodation. Ms. Polidoro exclaimed that this is different from the hotel which is defined as follows per Sec. 250-105.

HOTEL - A building or group of buildings which offers rental sleeping rooms, and which may also include dining rooms, bars, kitchens, serving rooms, ballrooms and other facilities and services intended primarily for the accommodation of its patrons.

Ms. Polidoro continued that “Hotel” could simply be a simple place to lay your head. She remarked, “Not in here!”. The focus here is doing wellness programs and activities. She asked Ms. Liebolt to describe and walk them through the process about their proposal similar to the facility that Six Senses operates in India. She asked to put this on the record in response to the allegations that there wasn’t enough research done.

Kelly Liebolt from KRC Planning Consultant, CECNY planner took the floor and described their proposal. This facility is a program-based health and wellness retreat. The emphasis is on “program”. The programs broadly include education training classes, dining and lodging for clients. Each client is defined as someone who’s attending the program, and is required to select and reserve a program before they arrive at the site. There’s a gate house and you would have to be previously registered to a particular program in order to gain access to the facility. If someone arrives at the gatehouse and has not previously selected a program, then they are not allowed attendance into the facility program duration. Program durations vary. They run for hours, days or weeks. Overnight stays are not required for all programs. Some programs are simply just for a day. The length of someone’s stay depends on the program that they select. A client is not permitted to stay overnight if they are not registered to partake in a program that requires overnight stay. She noted that multiple programs will be offered at the facility. The programs will vary and based on the season.

Ms. Liebolt made a powerpoint presentation of the sample programs such as holistic prenatal care, the art of staying young, Pilates and wellness weight management, yoga, etc. She highlighted some of the benefits of this program that include healthy lifestyle habits, mindfulness and stress reduction, etc. She also explained the Equine therapy program horse riding lesson. Page 5 of the brochure shows a sample of a daily schedule of someone who would be arriving at the property. She reiterated that this facility is program based. You need to sign up and reserve a program that will determine the length of stay.

Ms. Polidoro spoke about the public concerns in regards to the number of the employees, cars, structures, etc. She stated that when you do planning, you plan for the worst scenario. In regards to the number of employees, she stated that it includes all three shifts at all capacity and full programming.

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Ms. Polidoro understands that this might be called a health and wellness program facility in everyday talk but in the Town of Clinton Zoning Law, this is called a Conference Center. It fits squarely within the expanded definition. The opposition argues that the project is not a conference center because it defies logic because it's clearly a hotel and that it must be a hotel. She commented that these arguments are just conclusory. No analysis is provided as to why this project does or does not fit within those words that the board is tasked with interpreting.

The opposition has not provided a rational basis for their argument and the MCEI determination must be upheld.

Ms. Polidoro addressed the argument raised about the Town of Hyde Park zoning law. She remarked that the Town of Hyde Park zoning law is completely irrelevant in regards to the Zoning Board of Appeals interpretation. She stated that Mr. Cosenza's has no jurisdiction over Town of Hyde Park zoning law. It's a completely different language and therefore the board has no jurisdiction over that matter. The argument that the Town of Clinton MCEI should have a similar decision with the Town of Hyde Park Zoning Administrator is nonsense. The questions asked of Ms. Moss (Town of Hyde Park ZA) were completely different to the question that Mr. Cosenza was tasked with answering. One had to do with the access while the other was about whether a use fit into a certain category. Different zoning languages and one has no bearing with the other. She underscored that the Town of Hyde Park ZA's decision is being appealed.

Ms. Polidoro commented that the opposition knows that they don't have a lot to rely on because they spent a significant amount of time talking about something completely irrelevant. The existing conference center use has not expired. The conference center has been used continuously as determined by MCEI Cosenza. The use would have expired if the use was discontinued for 12 months. She accentuated, "It was not!" The burden of proof is on the opposition to show that the determination is wrong. They haven't met this burden. Mr. Replansky's letter talks about proof that will be provided by the neighboring properties but they haven't seen any. He said that there's substantial empirical evidence but such evidence has not been supplied. The fact that the previous owners may have received a violation for doing something they were not supposed to doesn't mean they abandoned what they were allowed to do. One can build a pool to their property illegally without giving their right to a single-family home.

Mr. Polidoro asked to put into the record her submission about the map they had prepared showing the distances of the neighboring properties listed on the letter to both property lines and the entrance to the hotel (note- the term she used). What their argument is that - the use has expired though it proves that the property is appropriate as an event center since events have been happening as the neighbors were unaware and unbothered by such events. She indicated the two invoices that she submitted to the board as evident of the two meetings that

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happened in the facility. She also indicated the sworn testimony from the Vice President of International Hotel Group that an event was held on June 7, 2023 and such notice of event was provided to the town in advance.

Mr. Polidoro submitted for the record a copy of the IHG website which currently markets the conference center for retreats and conferences. The use is active and more events are planned in the spring and therefore the ZBA must find that the use is continuous. The argument that this would be a prohibited expansion of nonconforming use is a mischaracterization. She explained that per Mr. Cosenza's letter, the property currently has a special use permit but since the zoning law regarding conference center changed in 2021, continuance under the previous regulation would be nonconforming. An application to bring it into full compliance with the 2021 regulations will be completely conforming use. This will not be an expansion of nonconforming use. She asked the board if she can have a few minutes at the end of the meeting to address any issues that have been raised at the meeting.

The board agreed to open the public hearing.

Chairman Malcarne motioned to open the public hearing, seconded by Mr. Canham, all Aye, Motion carried, 7-0.

Dal Lamagna, who owns the Rhinevalley Fam, 439 Schultz Hill Road, spoke and said that he lives next door with his wife Sara. He understands that a special use permit expired, if the property has not been used for 12 months. He indicated that he knows the history and all the previous owners of the property from the Kahns to the Dutchess LLC, etc. The Dutchess LLC sold it to Liberty Friedman LLC. He noted that Remit from Liberty Friedman LLC did not operate a conference center. They bought the property on October 12, 2021 with a plan to have a horse sanctuary. They sold it more than a year later in November of 2022. During that time of possession, per his recollection, there were no events transpired during those times but family parties. The proof of events that Ms. Polidoro presented was during the CECNY ownership time. He pointed out that there was a lapse in the special use permit during the Remit's ownership.

Wendy Maitland, realtor, said that she was born and raised in the area and who is also very familiar with the property. Ramit Chawla asked her to sell the property which she didn't end up selling since he sold it to one of his investment partners, Chid Liberty and Annie Friedman. They closed in September of 2021. In January of 2022, Ms. Maitland said that she got a call from the International Hotel Group. She underscored that this is the first time that IHG ever contacted anybody, which is in 2022. She noted the time frame in response to the issue that the conference center regulation was amended in 2021 to fit the proposal of the IHG. She underscored that Six Sense did not step on the property until 2022. She has documentation about these facts as shown on her phone and email.

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She indicated the history of the property from the previous owners to the current owners. She also addressed the comment about the no events on the property for 12 months and that special permit has lapsed. She indicated that they were not allowed at the property several times due to an event or retreat. She noted that she has email documentation about all this.

Ms. Maitland expressed her strong support about the proposed use of the property. She reiterated that the amendment of the regulation in 2021 has nothing to do with the current owners. They did not know each other that time. They hadn't even been introduced to Jeff Newman that time.

Ms. Maitland stated that she was told during the process of planning and purchase of the property that this is going to be heavily programmed. People would be required to engage in a program to stay there. This won't be a straight hotel.

Chairman Malcarne asked Ms. Maitland to send the documentation for the record.

Donna Burns, who is on the opposition side, spoke and said that she's been a town resident since 2006. She lives on 92 Coyote Ridge Road, which she quoted as "next road from the proposed resort". She watched a lot of board meetings and read a lot of board minutes and what she found was disturbing. She discovered that there was a private person who was promoting illegal hotel operations on the property. She stated that this person was intimately involved in crafting the 2021 Conference Center Law, line by line. She remarked, "You can watch all this on the videos. She indicated the over 100 pages of documentation with the site and everything about the individual who then became the Town ZEO in charge of interpreting the law. She said that he is in charge of interpreting the law and he did it to favor his former employer, The Dutchess.

Ms. Burns stated that the Town ZEO/MCEI (Newman) admitted that he was a paid property consultant by the International Hotel Group. Ms. Burns commented that Mr. Newman interpreted the law in a way that is fundamentally contrary to the intent of what the town wanted when they worked very hard to make sure that the rural character and scenic beauty of this town remains. She submitted a town board meeting where it was clearly indicated that hotels are not permitted in this town. She indicated that during the conference center public hearing, Mr. Newman was told point blank by a town member that what they didn't want is an event hotel.

Ms. Burns commented that the MCEI interpreted the law to confirm the legality of the proposed resort. He advised that the legal requirement of Town wetlands permit and SEQRA review wasn't needed even when Blanding Turtles habitat were involved. He made the decision to accept the Six Sense's resort application

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and stated it conforms with the new Conference Center Law. He even stepped in to answer applicant's questions at the Planning Board meeting regarding Conference center uses. Ms. Burns commented that this history raises serious questions of integrity and fairness in this town. She understands that he finally recused himself but this only happens after a group of citizens raises this conflict of interest. She feels that it is incumbent for the Zoning Board of Appeals to not rely on the decision that he made and consider the matter anew.

Ms. Burns noted that she lives next door and it wasn't until 2017-2018 until the property use became an issue. She came home one day and there was a bottle of wine with an unsigned note stating they are the new property owners and to call this number if you have any questions. It was Jeff Newman who answered the call and assured her stating, "Don't worry, you won't even know there's an event going. It will be a quiet event like yoga and similar activities. It's going to be quiet."

Ms. Burns stated that's not what happened in 2018-2019. People were wondering at their properties, lost, and said that they are staying at the Dutchess Hotel. Not knowing any hotel nearby, they were polite in telling them that this is a private property. They pointed them to the direction of Route 9G. She indicated the multiple events, party noises, loud music that transpired in 2019. It was summer. They had a choice to either close the window to block the noise and cool air or leave the window open with pounding music all night. She commented that it was not okay. Once the pandemic started, things got quiet, though they knew some of the weddings there including one of her neighbor's son. At the end of summer in 2021, Ms. Burns said that things had just stopped and nothing was happening. Everything is pitch black. She underscored that she knows these things since she drives by there all the time.

Ms. Burns stated that Mr. Newman admitted that he was employed by the International Hotel Group. She added that Six Sense advertised themselves as the number one hotel brand worldwide. This company uses the hotel classification in their traffic usage report. This is clearly a hotel. She commented that we can call it however we want but the fact is – this is bigger than a hotel. This is 35% bigger than Mirabeau Hotel in Rhinebeck. To interpret the law the way it is being urged us to do is a mockery of all the other laws that are in place to protect the historical, scenic and rural character of this town. She cited the Short Term regulation like AirBnB. All you have to do is call it a conference center. This is setting bad precedent. What they want is an evergreen event permit that goes on and on everyday for \$300.00 for 365 days a year. This is torturing the laws and undermining the other laws that would protect massive development in this town.

Mike Oates, President and CEO of the Hudson Valley Economic Development Corporation spoke in support of the Six Sense project. This proposal fits the

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conference center definition based on his reading of the Town zoning law. He believes that this is good for the town. This will be a great addition to Dutchess County and Hudson Valley as a whole.

Ed Pells, 216 Long Pond Road remarked that (quote) "This housing project being proposed by the IHG from Saudi Arabia to house transients is really not our interest." He cited a sample of a Woodstock party with cocaine and drugs. He'd like to know if the town will be allowed to screen the waste system to know what kind of illegal drugs are being used on the property. He commented that what the Town of Clinton is missing is to house new settlers. He said that he prefers to call them new settlers though some people call them illegal aliens. He said that this is an excellent place to house new settlers just as Manhattan houses new settlers. He spoke politics in his comments.

A realtor who did not give his name took the floor and said that as much as he wants to have a cold beer with a friend in a commercial pub in the Town of Clinton, this beautiful 221 acres with a driveway on Hyde Park, collects revenue. Commercial properties are needed for a lot of reasons. Whether it's a conference center, hotel or dude ranch, this is a commercial use. The town already has Omega which is very similar to this. He indicated the noise ordinance in the town. He said that he would vote for the commercial use of the property if the commercial use is allowed in the zoning. He heard that this property is in the AR3 and AR5 Zoning District. There's a lot of zoning and pre-planning issues. He indicated his opposition to the proposal.

Jason Kourdos, realtor, said he has lived in Clinton for years. He is currently building a new home in the town. He noted that he doesn't have any connection with Six Sense. He attended weddings at the Dutchess and knew Remit. He expressed his understanding about the concerns. He is open to hearing about the programs. We love this area for a reason and nobody wants to see it overdeveloped. He indicated his amazing stay in Six Senses in Portugal. It's about programs such as yoga, wellness and nutrition. He asked, "Would I want a big hotel?" He responded, "Absolutely Not!" He doesn't want big hotels but he is interested in hearing about this if it's more about the programs.

Richard Perkins, immediate neighbor, said that he has lived here for 20 years and he is a doctor in the Northern Dutchess Hospital. He moves to Clinton given the rural character of the area. He stated that when Remit runs the hotel or whatever you call it, there were parties all night every Saturday night. He said, "He even sent us letters to apologize about the noise! There was so much noise and complaints. Mr. Perkins indicated all the people who get lost on their property on so many occasions. He expressed safety concerns about his youngest kids that time and indicated to the people in their backyard that he and his wife ended up taking them back to their place. He also commented about the

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traffic on Route 9G. It is significantly worse now than 15 years ago. Accidents are atrocious and he is concerned about it.

Richard Morse, Hollow Road read a letter from his neighbor, James Boyd who expressed strong support to the Six Sense's project. Mr. Boyd indicated that he knew Neil Jacob, CEO of Six Senses in a business capacity for two decades and vouched for his professionalism and utmost integrity particularly in management of several properties throughout Asia. He distributed copies of the letter to the board.

Mr. Morse gave his personal comment about the subject matter. This is a beautiful property. We all want the Town of Clinton to remain rural. He grew up riding horses across Route 9G. If this project doesn't go through, and instead a development happens in this area like 50 houses, then that is the end of rural areas. Mr. Morse commented about the earlier comments about all the concerns about noise, people getting lost in someone else's backyard, He encouraged the board to look into the zoning aspect. This is nicely wooded right now. He agreed with Mr. Cosenza's interpretation. If it is correct then it should be allowed.

Sara Drew, wife of Dal Lamagna spoke and said that their property abuts the proposed Six Sense (quote) "Resort". She thanked all the people who showed up at this public hearing. It shows that a community is concern. She talked about the parties, weddings and loud noises that transpired at the property during Ramit's time. People were wandering and getting lost to someone's else property. She indicated the "No Trespassing" signs that the current owners of this property posted along the borders. She reiterated everyone's desire of keeping the rural nature of our community. She talked about the nature and environmental concern. The preservation of the ecosystem. She also indicated the big concern among many of the residents is the well and the water usage. The average two-person household in the Hudson Valley right now is 240 gallons/day. Are they calculating the usage for the 64 rooms that will be there? How many people would be there? The use of three pools, the kitchen, the conference center events. She expressed her concern about the water usage especially if there is a drought. She proposed that if this project goes ahead, to put some sort of constraint about the amount of water that can be drawn. The sanctity of our watershed is everything. She stated that one of the things that was not addressed is the calculation for global change for the water usage.

Ms. Drew commented that it sounds like a nightmare to have at least 18 months of 64 buildings being built. You hear one building happening on Browns Pond Road and it's already loud. She indicated one of their fields that they leave with milkweed so that monarch butterflies can come and lay their eggs. She commented that monarch butterflies are affected by sounds. She commented about the size of this development. She asked the board to put some constraints on how this will impact the environment, the noise, the increase in traffic

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especially during rush hour. Will there be helicopters bringing guests to the property?

Ms. Drew said that the average room for the Six Sense Resort in India is \$1,000/night and goes up to \$3,000. She asked, "What type of people are going to come in here?" In terms of jobs being provided, are they going to be bringing people in on temporary work permits since they are an international billion-dollar company? What is the ethos of our community? Will we support this multibillion-dollar corporation international hotel group which appears to be extracting our own town resources, time and treasury? Ms. Drew said that she wants to open the doors for the Integrity of our precious ecosystem and rural community. She asked, "Is this what we want to leave our future generation?" She thinks that there is a bridge and they can compromise. There's a lot of work to be done. Lots of splitting hair whether this is a hotel or conference center. Ms. Drew opined that at the end of the day the designation is moot because the long-term effect and impact will be the same as a 64 plus unit hotel in our real community no matter what you call it. She thanked the board.

Josh Sager who lives in the village of Rhinebeck said that they moved up here two and ½ years ago for the same reasons that many of us have i.e. the peaceful nature of this landscape that we get to call home. He worked in the real estate in the city and he was part of the process with Amazon trying to come to Long Island City that is parallel to what is going on here. Why we all moved here and why we love this area, why Six Sense chose this area – should not be lost? He feels that we should not lose out on the economic opportunity that it creates. The future growth and development of this area in a positive way is something why he and his wife want to raise their kids here, to make sure that Dutchess County is healthy economically, providing opportunities, and providing jobs. He feels that there is a way to make this equitable. Maybe the younger generation wants to spend the rest of their lives in Dutchess County. He said that we all love it here. We want to see it growing and vibrant. He commented about the people who will be staying here. He remarked, "The people who will be staying here are the people who are eating at our restaurants who keep our restaurants healthy. They're going to spend money on our shops, on our stores. This is about the overall long-term health of the community. He doesn't live next door but he understands all the concerns about the noise, environmental concerns, etc. He hopes that everyone can come into an agreement about the issues.

Adam Diexel who's been a homeowner in the Town of Clinton for 30 years said that he is not an immediate neighbor of the subject property but can give an insight about what it's like to be an immediate neighbor to a big institution that takes in a lot of guests. He lives about 400 feet from Omega's parking lot. He added that they love Omega! They are good neighbors and they have worked hard to become good neighbors. He underscored that Omega is a non-profit institution. It is a mission driven institution. They have proven themselves to be

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good neighbors to this town and to the immediate neighbors. Living close to a big institution like that is not nothing. It brings noise, water impact, etc. He remarked that he called Omega and Skip Backus will respond immediately about the issue. He doesn't think that the people on Coyote Ridge and Browns Pond Road will be able to pick up the phone and call the CEO of the Six Sense and say, "You know it's after 10 pm and we're trying to sleep. Can you turn down the music please?" He commented that he can do that but doesn't think that the neighboring properties can.

Mr. Diexel made a comment about the earlier comment about the zoning law. He said that the Six Sense's attorney made a big point about the fact that the conference center law changed in 2021. He remarked, "It did! The definition was expanded. The law is a law. What they didn't point out is that the law is not just the first sentence or the first two sentences that define what a conference center is. The law is a whole set of regulations about how a conference center operates. He believes that it is the responsibility of this board not just to decide whether the proposal fits the definition but whether their proposal can be operated in a way that is compliant with those regulations. There was the old definition which involves events and the new definition which includes recreation and health. He quoted paragraph 12 of the law which states "Lodging facilities. Lodging rooms at the conference center, if any, shall not contain kitchen facilities for cooking or dishwashing and lodging facilities shall be for use of attendees at events and employees of the conference center only. Non-Event attendees are not permitted to utilize housing or lodging facilities and shall in no event be permitted to utilize such facilities as overnight guests. All lodging or housing facilities must be approved by the Dutchess County Department of Behavioral and Community Health.

Mr. Diexel also quoted #11 of Sec. 250-45 that states...Food and beverage service. Food service, dining facilities, lodging, recreational and other facilities shall be solely for attendees of events held at the conference center and staff, and shall not be open to the public.

Mr. Diexel commented that Events is defined in the first paragraph which is in the old definition of Conference Center. It is a sort of the definition that sort of aligns with an English language of what we all understand what a conference center is. It says an Event (with a capital E) events used for business or professional conferences and seminars. He said, "That's the definition of "Events" in this law in the Town of Clinton. It doesn't say bee keeping hobbies or stargazing. He accentuated, "It says business or professional conferences or seminars. This is not what they're doing. They might be compliant with the definition but they are proposing to manage it in a way that does not comply with the regulations. He asked the board to take this into consideration. Accept the appeal and deny the application.

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James Beitman, Browns Pond Road, said he has owned his property since 2007. He wants to address the very practical issue which is related to the scale of the entire plan. They use "Hotels" as a basis for the calculation of 18,000 gallons of water/day by this facility. He said that he and the property owners on Browns Pond are at an elevation of 500 feet, several feet higher than the planned development. He expressed potential shortage of well water during dry weather. He remarked, "These folks are trying to take 18,000 gallons of water/day. The scale is based on their own calculations of "Hotels". He underscored the word "Hotels". This is what they call it in the document they presented to the Planning Board. He hopes that the scale issue goes with the board's decision making.

Dal Lamagna spoke again and said that they are going to build this whole thing and it is not going to work. Omega is very successful. He asked, "Will they be able to bring people here day in and day out during winter to make profit?" He thinks that we would be helping them by not letting them do that. Save them the trouble and effort of doing it. He talked about the 64 homes on the site if things don't work out for them.

Rachel HymanRose commented that she is sensitive to all the comments made and the needs of the neighbors. Everybody's voice should be heard and considered since the only thing we have here in the Hudson Valley is the quality of life. We used to have IBM in the area that employed a lot of people. We don't have that anymore and all we have now is the ability to have a place that people want to come to. Ms. HymanRose said that it is amazing that they want to come to this area. There are some places in the region that have done this successfully. She cited a restaurant in another town that is in the residential area. She is curious to know if the neighbors around this institution are unhappy or happy about it. In this case, this is a 200-acre property with existing buildings. She expressed her understanding about the neighboring properties' concern but feels that is also important to have a vibrant economic area.

Ed Pells spoke again and said that Mr. Newman received money from the developer. He underscored that he is not saying that it was bribery. He asked the board to subpoena Mr. Newman's bank record to find out how much money he was paid and to consider referring this to the State Attorney's General Office for the same reason.

Mr. Replansky took the floor and said that if you read the event law, you will see that it was not designed for what they were proposing. He stated that this application is also before the Planning Board and referred the application to the Dutchess County Planning under 239 M Municipal referrals. His understanding is that DC Planning will be doing another set of comments but one comment received stated that the proposed project needs to be scaled down. It's too big!

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The supplementary regulations for Conference Center regulate the maximum number of events per day. It is set by the Planning Board and the Planning Board will be conditioning those events. The hours of operation for the conference center is from 10 am to 10 pm from Sundays to Thursdays and 10 am through midnight during Fridays and Saturdays. It's highly regulated events and not what they're proposing here like wellness SPA hotel.

Bob Reckert spoke and said that he has had a cabin in the Town for almost 40 years. We have to keep our airspace open. This is why people want to come to Rhinebeck. He cited when Walmart was moving in across the river. They originally wanted to move to Rhinebeck. He commented that if Walmart is allowed to come in here then this is how the town is going to look like. He remarked that we do not want that in our town. There is a reason why people come in here. They are better off in Kingston.

Chairman Malcarne solicited more comments from the public. He asked the public to send more information or comments via email. Once public hearing is closed, the board will stop taking these comments.

Ms. Polidoro asked the board to close the public hearing but keep the comments open so that they can submit rebuttal. She opined that the board heard a lot tonight and she doesn't think that there is a need for another public hearing. The board didn't really hear anything about the conference center. What the board heard was about prior owners who are apparently not well liked. She commented that this is not an issue before the board. People are concerned about the traffic. Again, not an issue before the board but unfortunately an issue before Mr. Thomas (Planning Board chair). People don't like for profit business, again, not an issue before the board. She is not sure why there will be a need to keep the public hearing open. She wanted to submit final comments and move on with the decision.

Ms. Polidoro commented that what the board didn't hear that night is about any evidence overcoming MCEI Cosenza's determination. She commented about all the comments from the opposed party but noted that no real analysis of the zoning law was made. She reminded the board that every time there is an ambiguity in the zoning law, if the drafter made a little mistake, you read that in favor of the landowner. She commented that in America, you have property rights unless they're taken away. Unless there is some intention to take those rights away intentionally, you give the landowner the benefit of the doubt. She cited case laws and discussed the burden of proofs. The opposition is appealing a determination and that's their burden to prove that the MCEI's determination was wrong. She also commented about all the talks about the standards used in the Planning Board review. She underscored that this is not a matter before the

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Zoning Board of Appeals. The National State Standard does not use Town of Clinton Zoning Law terms. She commented about the national classification and the engineering classification of some terms given the earlier comment about the hotel classification in regards to the traffic study. She stated that it is not relevant that for the purpose of traffic, they relied on the National Traffic Standard for a particular category. This is not zoning talk; this is engineering talk. She said that they don't want the board to make an absurd interpretation but rather a reasoned, rational interpretation. She reiterated her plea to close the public hearing with two weeks of rebuttal.

Chairman Malcarne asked the board for comments and questions.

Mr. Canham stated that there's a lot for the board to consider. He favors leaving the public hearing open. If the public hearing is closed and the board gets more written comments and materials in the next two weeks then they only have two weeks to work up the decision. Lots of materials to be reviewed and considered. He indicated and explained the process if the public hearing gets closed at the March meeting. The board needs enough time to review an enormous record of both written public comments and all the documents going back almost two decades on this property. They have a lot to do. He appreciated all the comments and opinions made.

After all the comments were made, the board agreed to leave the public hearing open.

Chair Malcarne motioned to table the application and leave the public hearing open, seconded by Mr. Tompkins,

Discussion. None, all Aye, Motion carried, 7-0.

The next meeting is scheduled on March 28, 2024 at 6:30 pm. Written public comments are welcome.

No action taken.

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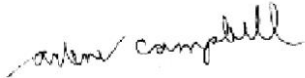
APPROVAL OF MINUTES:

No minutes were approved.

ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting at 9:58 pm, seconded by Mr. Mustello, All Aye Motion carried, 7-0

Respectfully Submitted By:

A handwritten signature in cursive script, appearing to read "Arlene A. Campbell".

Arlene A. Campbell
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk