

**TOWN OF CLINTON
ZONING BOARD OF APPEALS
MEETING MINUTES
March 28, 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 6:34 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.

Chair Malcarne addressed the presence of the large crowd at this meeting. He also acknowledged the presence of some of the Town Board and Planning Board members. Chairman Malcarne asked the secretary if the applications on the agenda were properly advertised and adjoining neighbors were notified. Ms. Campbell responded positively.

VARIANCE:

Dailey Area Variance – property owned by Allen Walther and Leslie Dailey on property located at 37 Shadblow Lane, Tax Grid No. 6469-00-965259.

The applicants request an area variance to Sec. 250 Attachment 2 for a side yard setback reduction from 50 feet to 17'8" for an existing garage that was installed in 2001 in order to convert the existing garage to an accessory dwelling unit.

Marty Willms, applicant's engineer, appeared for this application. He explained that the Daileys wish to convert the existing garage to a one bedroom accessory dwelling unit. An area variance was granted to this garage in 2001 that is prior to the ownership of the Daileys. They are currently before the Planning Board for a special permit application when it was discovered that there is an overhang that is in the setback. He noted that the garage has a certificate of occupancy. They were preparing their plans when they realized that the garage is not 30 feet from the property lines. The garage is 25 feet off the property lines and the shed roof is 17'8" off the property lines. The current owners did not realize that the garage is too close to the property lines. They are now before the board to correct this issue.

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Mr. Wilms explained that there will be no changes to the exterior of the garage. They submitted an application to the Department of Health for a one bedroom septic design and a reserve system. They are either going to drill a new well or tie it up to an existing system. He explained the details of the proposed septic system.

Chair Malcarne asked about the number of acreage on this property. Mr. Wilms responded that this property has 10.54 acres.

Mr. McMahon read the Planning Board's recommendation which is positive.

Chair Malcarne solicited questions and comments from the board.

Mr. Canham stated that the town law has a square footage limit for an accessory dwelling unit. The board often gets this kind of variance request and he is hoping that this restriction can be addressed at the new zoning law. The fact that there are no changes on the exterior structure favors the proposed action. He indicated no objection to the proposal and expressed favor to an ADU that fits the character of the neighborhood. The town law requires double the acreage and this property has 10.54 acres in the AR5 Zoning District. This proposed action clearly meets the requirements of the law.

Chair Malcarne motioned to open the public hearing, seconded by Mr. Canham, all Aye, Motion carried, 6—0.

Hearing none, the board closed the public hearing. Chair Malcarne motioned to close the public hearing, seconded by Mr. Canham, all Aye, Motion carried, 6-0.

There were no correspondences from any of the adjoining property owners.

Mr. Calogero commented that it doesn't seem to have any impact on the surrounding properties.

Mr. Tompkins agreed. There are cedar trees to the left of the garage and the only neighboring property that seems affected is the property owned by the applicant. The other neighboring property received a large variance in the past for an accessory dwelling unit. The rest of the neighbors never responded so he doesn't think that the proposed action has any impact on them.

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

Mr. McMahon motioned that the Town of Clinton Zoning Board of Appeals approve the requested area variance modification to Section 250 Attachment 2 for a side yard setback reduction to 17'8" from the required 50 feet for an accessory dwelling unit for property owned by Allen Walther and Leslie Dailey. The property is located at 37

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Shadblow Lane, **tax grid number 132400-6569-00-965259**, and is a 10.54 acre conforming lot in the AR5A Zoning District in the Town of Clinton.

Factors:

1. The applicant wishes to convert the 2nd level of an existing garage to an accessory dwelling unit (ADU). The garage was initially constructed by the previous owners. The applicant has an existing variance from Section 250 Attachment 2 for a side yard setback of 30 feet which was approved in 2001, prior to the current owners' purchase of the property.
2. A new variance is required in Section 250 Attachment 2 for a side yard setback to 17 ft 8 in from the required 50 feet for an existing attached shed roof overhang that was constructed by the previous owner.
3. The request is substantial as it increases the original 30 ft variance of the previous owners which was 40%, to the additional variance of 17 ft 8 in increasing it to 64.8% for the side yard setback.
4. It is not expected that the proposed variance would cause an undesirable change in the neighborhood, nor be detrimental to nearby properties.
5. This difficulty was created by the previous owner. The applicant's reason for this variance is to bring the property into compliance.
6. This request would not have an adverse physical or environmental effect on the neighborhood.
7. Per the Zoning Enforcement Officer, there are no known violations associated with this property.
8. The Planning Board reviewed this area variance request at their meeting on March 5, 2024 and issued a positive recommendation.
9. The application fee has been paid.

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10. An area variance is a type II action under SEQRA and requires no further action.

Condition:

1. All fees have been paid.

Seconded by Mr. Canham,

Discussion. None.

All Aye, Motion carried 6-0.

333 North LLC (Koppelman) Variance - on property located at 146 Seelbach Lane, Tax Grid No. 6367-00-283793.

The applicant requests the following area variances in order to construct an inground pool in front of the principal dwelling on a 5.2 acre lot in the AR5 Zoning District.

Stephen Obrien, President of Nejame Pools appeared and commented that this property is unique. Given the location of the septic system, well and utilities, the only feasible area to install an inground pool is the front yard. He described the terrain of the property. They are trying to do their best to not disturb the terrain of the lot. The front yard is sloped towards the road. They do not want to cause storm water issues and soil erosion. He also indicated the elevation to the northeast that is not good. The back side of the property could potentially impact the current drainage so the only left that is feasible to locate the pool is the front yard. He added that there will be screening and plantings so that the proposed inground pool will not be visible from the road as well as to the neighboring properties. These tall trees will block the line of sight from any cars or large trucks going by the road.

Mr. Calogero read the Planning Board's recommendation dated March 20, 2024 that is positive. No correspondence received from any of the neighboring properties.

Mr. Calogero commented it's hard to tell which is the front of the structure. It's a very unique design. One can argue that it is not the front of the structure given the unique nature of the parcel. but according to the way our town defines "Frontage", the proposed location is in the front yard.

Chair Malcarne motioned to open the public hearing, seconded by Mr. Canham, All Aye, Motion carried, 6-0.

Hearing none, the board closed the public hearing.

Chair Malcarne motioned to close the public hearing, seconded by Mr. Calogero, all

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Aye, Motion carried, 6-0.

Mr. Canham commented that if Seelbach Road could have gone straight south instead of curving to the east, the proposed pool would be in the side yard. When you look at the property, this is one of the many definitions of a front yard that is arbitrary. In this case, you are technically in the front yard but functionally in the side yard.

After all the reviews were made, the board passed a resolution, to wit:
John passed a resolution, seconded by Russ,

Mr. Calogero motioned that the Town of Clinton Zoning Board of Appeals grant an area variance to 333 North LLC, 146 Seelbach Lane, to Section 250-74(B) which prohibits placing a swimming pool in front of the principal use of a property.

FACTORS:

1. Brian and Amy Koppleman are parties with 333 North LLC, all at 333 West End Ave., apt11B, New York, N.Y.
2. 333North seeks to install a swimming pool on its 5.3 acre property in the AR5 zone, 146 Seelbach Rd, Tax Grid No 6367-00-283793.
3. The zoning code prohibits placing a pool in front of the principal use while it does allow accessory structures to be placed as long as they are beyond the required setback.
4. There are alternative locations for a pool but a physical examination of the parcel reveals that due to placement of utilities and septic, and the unusual topography of this parcel, this proposed placement offers less visibility from the road or for neighbors than any of the limited alternatives.
5. The proposed location is elevated above the road, and the applicant has provided a very detailed landscape and screening plan which should eliminate any negative visual impact to the neighborhood.
6. The variance is substantial but should have no adverse impact on environmental conditions.
7. The difficulty is self-created.
8. An area variance is a Type II action under SEQRA and requires no further action.
9. The Town of Clinton Planning Board has made a positive recommendation to the ZBA regarding this variance.

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Condition:

- All fees have been paid.

Seconded by Mr. Tompkins,

Discussion. None.

All Aye, Motion carried 6-0.

Ustad and Oyen Area Variance - on property located at 12 4th Avenue, Tax Grid No. 6469-10-284628.

The applicants request the following area variances in order to construct a deck on a 0.09 acre lot in the C Zone District.

Sec. 250 Attachment 2 (District of Area and Bulk Regulations)

- Front Yard setback reduction from 100' to 27'
- Side yard setback reduction from 50' to 13'
- Side yard setback reduction from 50' to 14'
- Rear yard setback reduction from 75' to 34'
- Maximum building coverage from 7% to 27%

Sec. 250-23-D Minimum yards may not be encroached upon construction.

Sec. 250-83-C Non-Conforming Buildings or structures states that
"Nothing herein shall prohibit normal repair and maintenance or structural alteration of a nonconforming building, provided such action does not increase or create any new nonconformity.

Lilian Ustad appeared for her parents, Margaret Oyen and Ula Ustad. Ms. Ustad explained that they are seeking an area variance to build a deck on the back of the home that is on the lakeside. It is proposed to be built on top of the existing patio. The deck will be off to the south end of the home and is measured 11' x 17' and additional 4' x 8' area to connect the deck to an existing landing off the south side of the property. She indicated the positive recommendation that they received from the Planning Board and noted the wetlands permit application that is currently reviewed by the Town Engineer.

Ms. Ustad explained that there will be no impact to the environment or to the south side of the property since they have a common access area. She added that they have another home to the north side that is owned by a family.

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Mr. Canham read the Planning Board's recommendation that is positive. He commented that parcels in this area are substandard by code. They require variances for anything they do given the small sizes of the lots. The town has a long history of granting variances in this area as long as they meet the zoning requirements in terms of the environmental impacts and changing the character of the neighborhood.

Mr. Canham indicated that this property was before the board in 2019 for an area variance of an addition. He asked the applicant if they ever resolved the court issue with the neighboring property to the north. Ms. Ustad responded that her family won the court case and her grandmother now owns the property to the north.

Mr. Canham commented that putting a deck close to the lake is a fairly common variance request. Assuming they can meet the wetlands permit requirements, this is a straightforward application.

Chair Malcarne motioned to open the public hearing, seconded by Mr. Tompkins, all Aye, motion carried, 6-0.

Hearing none, Chair Malcarne motioned to close the public hearing, seconded by Mr. Canham, all Aye, Motion carried, 6-0.

The board passed a resolution.

Mr. Canham read the resolution that was crafted by Mr. Mustello, to wit:

Mr. Canham motioned that the Town of Clinton Zoning Board of Appeals approve the requested area variance to Section 250-23, 250-83 and Attachment 2 to permit the construction of an uncovered 11' x 17' deck with additional "walkways" (totaling approximately 68 sq ft) to an existing home within the rear setback as requested by **Margaret Oyen and Ola Ustad** on a 0.09 acre property located at 12 Fourth Avenue in the Town of Clinton NY, **tax grid number 132400-6469-10-284628** in a C Zoning District.

WHEREAS:

1. The applicants are seeking to construct an 11' x 17' uncovered deck with additional walkways attached to the existing home, which is on a nonconforming lot with a current rear yard setback of approximately 45 feet, a side setback of approximately 16 feet and a building coverage of approximately 20%
2. The property is in the Conservation (C) Zoning District and pursuant to Section 250 Attachment 2 District of Area and Bulk Regulations, the front yard setback is 100 feet, the side yard setbacks are 50 feet and the rear yard setback is 75 feet.

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3. In addition, Section 250-23 states that minimum yards may not be encroached upon for construction and section 250-83 states that structural alterations may not increase or create any new non-conformity
4. The applicant has applied for a wetlands permit given the location of the proposed construction is within the wetlands buffer area. If a wetlands permit is granted, the requested change would not present an environmental threat or significant change in the current character of the property.
5. The variances requested would reduce the front setback from 100 feet to 27 feet, the side yard setbacks from 50 feet to 13 and 14 feet, the rear yard setback from 75 feet to 34 feet and increase the maximum building coverage from 7% to 27%. In addition, variances are required for Sections 250-23 and 250-83. Granting variances would not have a noticeable impact on the building and therefore are not substantial.
6. An undesirable change will not be produced in the character of the neighborhood, nor be detrimental to nearby properties.
7. The proposed variances should not have an adverse effect or impact on the physical or environmental conditions of the neighborhood
8. The alleged difficulty is self-created, and/or is due to the limitations of the lot size, but this should not necessarily preclude the granting of the variances, considering the negligible impact of the project.

Conditions:

- Issuance of the wetlands buffer permit.
- All fees have been paid.

Seconded by Mr. Mustello,

Discussion. Mr. Mustello apologized for coming late due to other engagements. He explained the resolution that he crafted and indicated his comments about this application.

All Aye, Motion carried 7-0.

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

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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,

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

The meeting room was packed with a large 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 that were already made. He also acknowledged and appreciated the tremendous amount of comments received via email but asked the public to please refrain from repeating the comments already made. The board is reviewing all these comments and are looking for new insightful information.

Chairman Malcarne indicated that the town supervisor has been receiving many messages asking him to vote against this proposal. Chairman Malcarne pointed out a clarification that it is the Zoning Board of Appeals who will vote on this and not the Town Board.

Mr. Canham stated that the public hearing is still open. He suggested for both legal counsels to give introduction first before opening up the floor to the public.

Mr. Replansky, Common Sense's legal counsel, started by reviewing his March 14, 2024 letter to the ZBA. First section of the letter was in response to the letter submitted by the attorney for the developer. It is clear and it is a fact that the neighbors to this project have the requisite standing to file this appeal (including Article 78) by virtue of their proximity to the property. They also argued in the letter the notice of violation issued to the previous property owners has substantial relevance to this appeal. The

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notices of violation are evidence of the fact that the prior non-conforming use and the prior special permit use did in fact expire for more than the requisite period of one year. They believed it was at least 3 years. These notices of violation are very much important and should be considered by the board and the Town of Hyde Park zoning code of great relevance to this project mostly because the entrance to this property is an 8 acre parcel which provides the only access to and from to this (quote) "hotel resort". The Town of Hyde Park Zoning Administrator made a determination that the developer cannot move forward this application in the Town of Hyde Park because the use is not permitted. The use as a "Hotel" or "Conference Center" is prohibited by the Town of Hyde Park zoning code. Mr. Replansky commended the Town of Hyde Park Zoning Administrator for doing a very good job in citing the relevant case law. Mr. Replansky stated that the basis of this law is that if a property is bifurcated between two towns has a use on one side of the property in one town that is prohibited in that town then the town cannot issue a permit or approval, in this case, the use of "Hotel" and "Conference Center" is prohibited in the Town of Hyde Park. Mr. Replansky commented that this is the rationale for this decision and this decision still stands. He noted that the developer has appealed to the Zoning Board of Appeals and the public hearing is scheduled to be opened on April 24.

Mr. Replansky noted that until that decision is reversed, the developer does not have the required Road Frontage for this project. He opined that for this reason alone, the MCEI's determination needed to be reversed because he determined that they did in fact have "road frontage". They have argued the MCEI determination that the proposed project is a conference center rather than a hotel is incorrect. He commented that part of the problem is that the acting MCEI (Cosenza) made his decision simply on the basis of comparison of the definitions of Hotel and Conference Center and didn't dig into the actual proposed use of the property.

Mr. Replansky said that they have laid out in sufficient detail that this is in fact a hotel though it might have an accessory use of a conference center. Per the zoning code, hotels and resorts are not permitted in the AR3 and AR5 Zoning District. He commented that the problem is that there's simply not enough information to make an intelligent decision as to what the nature of the use is. It would have been impossible for the MCEI to make a determination as to whether this is a hotel or conference center. The decision is at least premature until the Planning board has the opportunity to hear what this project is all about. In reading the transcript of the meeting, Mr. Replansky commented how the development consultants often refer to this project as a hotel during the workshop discussion, the immense amount of employment that is going to be generated and the huge increase in traffic. He said that this is not a project that the town wants to happen in the town. There's a history in the town that the Comprehensive Plan does not want a hotel and resort of this size in the residential district.

Mr. Replansky underscored that there was no environmental review made when the Town board approved the amended conference center regulation. He was surprised that

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it was determined that this was a type II action under SEQRA which was not subject to environmental review. He questioned how a project of this size which did not go through an environmental review and will have an environmental impact on the town can be permitted. He asked that the Town Board resend this local law because of the failure of the town to comply with SEQRA. He commented that this is void. He also noted that the Federal and State Wetlands Law are going to undergo a substantial change in January 2025. This will impact DEC regulated wetlands and the definition of what's covered by DEC. There will be a much rigorous process. He indicated that the Town of Red Hook has just issued a moratorium which Ms. Polidoro is fully aware of as she is the attorney for the Town of Red Hook. The moratorium is about development applications within 300 feet of a wetland and how they may impact a project. He stated that they are going to ask the Town Board to also issue a similar moratorium. Given the sensitivity of this project, Mr. Replansky thinks that it's incumbent to resend this local law which was illegally passed and to consider a moratorium on any development project within 300 feet of Federal and State Wetland until those regulations are promulgated.

Mr. Replansky said that they have gone to great lengths to research the history of this developer. This is a hotel developer. It is clear that prior development projects undertaken by this developer (Six Senses) are hotels as evidenced by more than sufficient documentation and evidence they gave the board. He said, "It's one of these cases where if it walks like a duck and quacks like a duck then it certainly is a duck. In this case, if it walks like a hotel and quacks like a hotel then it certainly is a hotel." He thanked and asked the board to consider in making a determination that they will rule that this is an impermissible use under the current zoning regulation.

Mr. Canham asked Mr. Replansky for clarification about which law he is proposing to be repealed. Mr. Replansky responded that the amended code of conference center did not undergo an environmental review. If that law had not been passed then this development could clearly not occur. He questioned how the town can pass a law with that type of implication and declared that it's exempt from any environmental review. He said that if you look at the public hearing when the amended law was being crafted, it was 55 minutes long and that was the total scope of the review by the Town Board of this law. He commented that the applicant had relied on this law for this project. He reiterated that the law was improperly enacted. He thanked the board and said that he will give written submission and follow up about these remarks.

Victoria Polidoro from [Rodenhausen Chale & Polidoro LLP](#), CECNY's attorney, took the floor and gave her rebuttal. She introduced Kelly Libolt on her side who is their planner. She gave the summary of her comments from the last meeting and how the language of zoning and everyday life are very different and should not be confused. Despite this, Ms. Polidoro stated that the board still continued to receive comments about how the use of this facility is not a conference center with no regard for how the word is actually defined in the zoning law. She stated that the zoning board's role is to step in the shoes of the MCEI, review the language of the zoning law and not the everyday language and

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apply the zoning law to this project. They already addressed why the determination that this project was a conference center is 100% absolutely correct. She doesn't want to repeat that argument for the sake of time and instead wants to focus on rebutting the issues recently raised by the opposition intended to distract the board from the real issue that was before the board. None of that matters and all that matters is the determination that was made and what constitutes a conference center under the Town of Clinton Zoning Law. She noted their continued objection to the neighbors' standing to bring this appeal. She remarked that the Stop Six Senses have not even attempted to provide the board the most basic information about standing such as addresses proximity to the project site. It's a legal concept that ensures that people's property rights are not questioned or challenged or subject to unnecessary review by persons that have no skin in the game. It requires someone to show that they are grieved and that the injury causing this agreement is within the zone of interest of the zoning law. She added that site plan issues such as traffic, noise, lighting, landscaping etc, are within the zone of interest of site plan regulations. If they were able to show they had injury and that injury was something that should have been covered by the site plan then they get to challenge this with Article 78. The use classification is the first step in a long land use review process in this project. The appellants have not demonstrated that these claimed injuries about traffic and their quality of life have anything to do with how the use is classified. These injuries came later. When the project is reviewed and approved, these are not injuries stemming from a use classification. She asked the board to dismiss the appeal on this basis alone.

Ms. Polidoro responded to the issue raised about prior violations on the property. Throughout the process the opposition has claimed that the existing Conference Center use has expired under prior ownership. On August 17th 2021 MCEI Fenton issued a determination to the prior owners that The Duchess LLC may continue to operate as a conference center under certain conditions. She commented that this letter which confirmed that the use existed and was in effect was not challenged within 30 days under the Town of Clinton Zoning law. The current MCEI (Newman) also issued a letter to the current property owners that all previous violations have been resolved and there are currently no violations on the property. This determination was issued before the current owners bought the property. A letter was also issued on the same day confirming that the conference center use of the property is in effect. They relied on this determination before purchasing the property. She noted that there was no appeal made on the September 15, 2022 determination letter and 30 days have gone by. It's the statute of limitation. You can't just keep on bringing up claims and re-litigating them. There's an inherent unfairness to subjecting the property owners to scrutiny about acts of prior owners when they relied on a town determination that the use was valid and that all violations had been cleared. She added that New York's highest Court has held that mere repetition of a prior determination does not restart the timeline for an appeal. It's basic fairness for people who rely on government approvals. She commented that any questions about the prior Conference Center use are time barred and should not be considered by this board.

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Ms. Polidoro addressed the appellant's comment about the Town of Hyde Park matter. She opined that the Town of Hyde Park Zoning Law has absolutely no bearing on the Town of Clinton Zoning Law. Different language, different zoning codes and different zoning board of appeals. The notion that the Town of Hyde Park is not allowing them access at this moment and that they don't have road frontage is absurd. She remarked, "That is not a realistic interpretation!" Frontage is the way that the property boundary runs along the road. She opined that the property has frontage that hasn't changed. What has changed is the ability to use the existing access way. They believed that this is a temporary change since the Town of Hyde Park has allowed the conference center to continue without any violations for 19 years. They strongly believe that the Town of Hyde Park will allow this use to continue and they will be able to move forward. She underscored that this issue has no relevance with the board's decision.

Ms. Polidoro stated that the appellant gave the board a letter with numerous pages of marketing materials and spent time reviewing the corporate structure and marketing materials for hotels all across the globe. It goes without saying that all these communities all across the globe have different zoning provisions. This demonstrates the neighbors' complete misunderstanding of how zoning works. You can open a restaurant in the Town of Clinton and market it as Moe's Tavern. She commented that calling it a "Tavern" does not mean that it's not a restaurant in the Town of Clinton under the Town of Clinton Zoning Law. She cited an experiential dining in New York City (though she's not sure what it meant), and is certain that it would be considered as a restaurant in the Town of Clinton. How other facilities are marketed across the globe really has no bearing on the question before the board.

Ms. Polidoro addressed the comment about the use of the word "hotel" in one of the Planning Board's workshops. One of their consultants mentioned "hotels" but noted that it was in the context of the numbers. There are specific tables in engineering that help generate numbers for particular categories of uses. The tables are used throughout the United States. She commented that they're not specific to the Town of Clinton. When the traffic consultant was talking about numbers for a hotel, he was talking about traffic numbers for general classification. This has nothing to do with the Town of Clinton Zoning Law. She added that she thinks that the appellants are trying to buy time by saying that the application is not complete enough for determination. She noted that at this point in time, the applicant has submitted site plan, special permit application, Wetlands Permit application, Full EAF, drainage report, water, traffic evaluation, aquatic resources protected species and habitat report, letter from the Fire Chief, Agricultural Data Statement, letter of no effect from SHPO, landscape and lighting plan, building elevations, renderings, etc. The only missing items are some required details on the site plan that can be worked out. Ms. Polidoro stated that they have provided the board with the samples of the health and wellness programming that they intend to have but a set schedule of programming at this point is premature and is not necessary for the board's determination.

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Ms. Polidoro addressed the appellants' concern in setting precedential effect that by allowing a conference center, the town will be creating a loophole for Non-hosted Short Term Rentals. She found this completely unfounded. Both conference center and non-hosted short term rentals require special permits from the Planning Board. Both need to demonstrate the use. Arguably, the conference center regulations are much more onerous. She doesn't see abuse for these provisions.

In regards to comment about failure to do SEQRA, Ms. Polidoro stated that like her, Mr. Replansky is also a municipal attorney and knows fully well that a SEQRA challenge to a local law has to be filed within four months. She noted that the time to challenge that local law has long passed. There's the statute of limitation. It should have been challenged in 2021. She added that this is completely irrelevant at this point. The law is in effect and the board is stuck with it. She also agreed that the law did not change the definition in any meaningful way. It only added additional regulations to the Conference Center uses and got rid of the Dude Ranch definition.

Apropos taking consideration to the Comprehensive Plan in making a determination, Ms. Polidoro commented that the Comprehensive Plan is relevant when a local law is adopted. All zoning has to be in accordance with the Comprehensive Plan. The town made a determination in 2021 when the conference center law was adopted that it was in accordance with the comprehensive plan. She underscored that there are provisions in the Comprehensive Plan that supports the conference center use. She identified this in her submission. There is the Economic Development restoration and adaptive reuse of historic uses of rural open space. She noted that 96% of the property is going to remain open so the project is consistent with the Comprehensive Plan goals. She thanked the board.

Chair Malcarne solicited comments from the public.

Donna Burns took the floor and said that she represents Common Sense Group. She read the letter that she submitted (letter on file) to the board. She also indicated the Common Sense group letter that contains 175 signatures from local residents. This number of signatures was almost 200 by the time she came to this meeting. She read that the undersigned are calling the Town of Clinton to reject the proposal of IHG Six Sense application. The project is clearly an impermissible hotel under the Town Code despite the IHG attempt to label it as a conference center. It violates the intent of the town of Clinton's laws, its comprehensive plan and policies that reject development in agricultural and rural residential areas to protect our natural resources and rural character. She added that it will have devastating environmental impacts on at least five Federal and State endangered species and violates New York's Environmental Protection laws including laws protecting local, State and Federal Wetlands. She noted that the process has also been deeply flawed and promoted by a person with an undisclosed financial conflict of interest. She also commented how the applicant refers

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to their project as a camp in their appearance to the Town of Hyde Park Zoning Board of Appeals. She commented that they want to be called a camp in the town of Hyde Park since there is no conference center in Hyde Park zoning law. She remarked, "If they want to be a camp in Hyde Park then maybe they should be categorized as a camp in the Town of Clinton too." She thinks that the reason why the applicant does not want to be a camp in the Town of Clinton is due to the camp's seasonal use. It is not an all year round use. They are picking and choosing and whatever they think will allow them to get their permit in Hyde Park. She believed that there was an application filed recently to the town of Hyde Park to give them a variance to operate as a hotel and lodging facility. She thanked the board and hopes that the public hearing remains open so that they can resubmit the letter showing the additional signatures since people are just finding out about this matter.

Michael Fasman from Lake Drive spoke and expressed his strong opposition to the proposal. He understands that the law has to be adhered to but feels that the board also needs to consider the feelings and intent of the community. If the entire community is opposed to the project then that should be given consideration.

Adam Deixel of Camp Drive took the floor and commented about the issue that this is a conference center. He asked, "If you had gotten this application 3 years ago, before the Conference Center Local Law was amended (2021) and you see that the proposal is for a group of buildings that offer rental sleeping rooms that also include dining rooms, bars kitchens serving rooms, ballrooms and other facilities, and services intended primarily for the accommodation of its patrons, those exact words are the definition of "Hotel" in the Town of Clinton zoning ordinance. He underscored that this is what a hotel is. They said that they are not a hotel and they are a conference center based on amended Conference Center Local Law. Mr. Deixel said that the board has to make this interpretation of whether they are a hotel according to that definition. That's in our law whether they are a conference center according to the new definition. Based on watching the Town Board public hearing video when the town was amending the law in 2021, it was very clear that the intent of the board was to accommodate the needs of the small local business that was represented by Mr. Newman, who was at the time of this public hearing, was a property manager of this enterprise, who was operating illegally as a hotel and promoting itself with the word "hotel" in their advertising at that time. The other employee of the Dutchess LLC who participated as well during the public hearing, was clear that they are not conceiving the conference center that involves the construction of buildings and multiple pools and 40,000 foot square foot spas and sewage treatment plants. They were trying to accommodate a small business with maybe a dozen rooms in an old farmhouse and a barn that held events. The only events that were mentioned at that time were weddings, family reunions and agricultural seminars. That was it! The intent of the board in passing the law was very obvious which is to not allow this.

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Mr. Deixel commented that the board needs to think about the intent of the Town when the law was crafted. The intent is clear to ban "Hotels". It was also pretty clear in allowing a certain type of conference center that is not this type. He cited a scenario if the town allows this project to move forward. They're going to build the 64 buildings, multiple pools, spa and all the rest of it, and for the first weeks, months or so, they will restrict every person making a reservation to participating in certain programs. This company has a hotel in its name and has five billion dollars of annual revenue. The board has to assess whether they are in good faith committing to always maintain that restriction which they have none. He commented about their other properties that they built around the world and remarked that once they build it and once they open, we cannot stop them from taking those restrictions away. Nobody in the town ever wants this big white elephant with 64 buildings and the rest of it sitting there, abandoned because we shut them down. He underscored that they are a five billion dollar company with endless resources. This is the time to stop it from happening. He urges the board to interpret the law correctly.

Andy Novick from Ackert Hook Rd, Rhinebeck said that he can hear everything that's coming from this property. He found it disturbing that this is a hotel chain. It is not just about the definition of the hotel or conference center. It's also about the intention of the regulations in prohibiting hotels in prohibiting large scale industry in residential areas given the impact to the rural quiet residential area. He cited a similar case back in 2015 when a developer proposed a restaurant, bar, spa and have weddings on a large land a couple of miles away from the residential area and when the neighboring properties objected, the developer came back with a new plan of having a not-for profit club since the nonprofit club was allowed in that zoning district. He commented that this hotel chain is doing the same thing by just coming up with another name or category. If a drunk driver hits a child, it doesn't matter if that driver is coming out of a not for-profit club, restaurant, hotel or a conference center or a camp. There is a reason why we have these regulations, to protect the community, our children and the character of the town. A rose by any other name is still a rose and a hotel whether you call it a conference center or a camp still has all of the uses that we want to prohibit in quiet residential areas. He added that calling it a conference center doesn't change the violative ways it's going to be used. It's insulting and it's disingenuous! The town of Hyde Park and the town of Rhinebeck weren't fooled by it, he hopes that this town isn't going to be fooled by it either. He thanked the board.

Rob Abott whose daughter lives on Lake Pleasant Drive said that he is a frequent visitor in the area. He proposed a thought experiment predicated on the expectation that this matter will essentially and eventually be decided in a court of law. If the board agrees with the neighbors' appeal, then the court case will be IHG versus Town of Clinton. On the other hand, if you were to decide that this is in fact permitted under the definition in the town code then the lawsuit will be "Stop Six or Common Sense versus the Town of Clinton." The town will be in a position to hire a lawyer through bake sales and other methods to get these issues decided by the court. It is appropriate that the court makes

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this decision since the Zoning Board of Appeals are not privy to the same level of legal expertise that the court has. Whatever decision that the board makes will wind up in court. He commented that the board has the opportunity to put the burden on the International Hotel Group to prove before the court that they comply with the existing statute rather than leave it to a group of residents whose standing will certainly be called into question because the International Hotel Group will not be on the sideline if it's the residents who have to pursue this in court. He opined that they will be there every step of the way trying to influence the judgment of the court. The board can reasonably decide on either direction but by siding with the residents, the board is making a fair game when it finally lands in court.

Dan Burns said that he's been a full time resident in the Town of Clinton for 3 years now. The idea of a high-end resort hotel didn't sound so terrible. It's not bordering his property nor he doesn't have any standing but he learned the predicament of the nearby neighbors and the whole town who finds that a multinational corporation with deep pockets is making threats and effectively strong arming the Town of Clinton and Hyde Park to shoehorn a sizable luxury resort hotel when it is by law not allowed and not wanted. He commented about the developer's legal counsel that the neighbors have no standing. He couldn't help but burst out laughing when he learned that the project was described as a camp at the Town of Hyde Park Zoning Board of Appeals meeting. He commented that while the Town of Hyde Park's laws had been consistently applied in their two previous rejections, IHG's legal representation claims they must subvert the law because decades ago Hyde Park had chosen not to review minor changes to a driveway entry to a tiny quiet Old Stone's Farm driveway bridge. He remarked, "How dare they compare that as equal to multiple access bridges to a major resort and claim that the Town of Hyde Park must subvert their own laws to find in IHG's favor!" In regard to the Clinton's Comprehensive Plan and land use policies, Mr. Burns said that it becomes obvious that the exception that was created for the small Old Stone Farm as a conference center simply do not apply here. He remarked, "If you supported this charade, you've thrown the town under the bus whether for a short term consultant gig commission or whatever! Shame on you!" The town voters previously 95% did not want hotels in such areas but if the current voters express a majority desire for more local jobs and more hotels as a priority, Mr. Burns suggested to draw up a new Comprehensive Plan, a new land use policy saying we welcome hotel/resorts to our rural low density residential or agricultural areas in Clinton. Screw the rural character, endangered species, the Greenway and just eliminate the "No Hotels" restriction outside the hamlet completely. He heard that the IHG made a \$2 billion dollar revenue last year and took \$1 billion of that profit through smart gambles and risk management. They also understand reputational risk. Their whole business is based on their reputation. He said, "Picture a drawn out legal fight over Conference Center versus Hotels pitting International corporate giant against smalltown!" IHG understands the high price they pay in loss of reputation, loss of clients and loss of investors. He suspects that their Senior Management and risk officer are completely in the dark, unaware of

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the peril they and their stockholders face. He noted that he, as an IHG stockholder, intends to change that. He will be sending a letter to IHG board of directors, stockholders and their risk officer and share with them the various documentation on the town's portal his perception on what's going on at these meetings including his concerns of the incredible reputational damage that might jeopardize IHG's stock value. He suggested that other people consider doing the same. He thanked the board for their selfless contribution of time and energy through this charade (quote). He added, "A special shout for Arlene, you have your work cut out for you!"

Wendy Maitland took the floor and read the letter that she wrote. Born and raised in the area, her mother was on the board for many organizations like Winnakee Land Trust and others. She is a real estate broker and currently resides in Rhinebeck. She first became familiar with the property when she was asked to tour the property and invest in it in 2016. She wasn't able to do that at that time since Ramit Chawla got control of the property. She agreed to sell the property when Ramit reached out to her in 2019 since she wanted to help her friends (other property owners/co-investors Chad Liberty and Annie Friedman), not to have him in the area anymore. She noted that she also knew that she wasn't following the law. She was introduced to Jeff Newman who was the person who toured her over the farm. She found that Jeff was highly ethical and honest in his representations. Anyone who had the means to purchase the farm couldn't do it because they wanted to actually do a full-fledged hotel or subdivide it for development. She noted that Jeff was very helpful in fleshing out prohibitions of usage even though those facts discouraged most buyers. An offer to purchase came in November 2020 from a nonprofit that worked with veterans to heal PTSD. Ramit pulled out of a deal before the contract signing and made a side deal to shop an offer to one of his investors. She pointed out that it is important to recognize that just because the previous owner's unethical behavior did occur, does not necessarily or at all indicate the people who are before the board at this meeting with the application being appealed. On January 20, 2022, after the new rules were in place, Ms. Maitland said that she received a call from IHG who she never communicated with. It was after that time that she made the introduction to Jeff Newman after he was no longer associated with the property and after the conference center definitions were made. She commented that he had no conflict of interest in working with IHG at the time. However, at the point when Mr. Newman was approached to become a part of the Town of Clinton zoning office, Ms. Maitland noted that Mr. Newman immediately spoke with IHG and they mutually agreed to terminate their relationship. She noted that she was present for that entire transaction and provided this documentation to the board. During the process of the sale, IHG asked for rules and regulations and any special permits required in regard to zoning. The company relied on the documentation from the Town of Clinton and expert guidance from local zoning attorneys to gauge the feasibility of their usage when they bought the property. She can't imagine a billion dollar company who did their due diligence and relied on the documentation approved by the town to make a purchase and then was told that "Oh no, this doesn't apply to you since you're the wrong type of person for this."

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Ms. Maitland spoke of relevant bullet points that she thinks need to be expressed. She wants the public to be aware of the documentation that she provided the board addressing the many statements about the unethical nature of Jeff Newman's involvement with this company. She reiterated and punctuated that Mr. Newman was in no way associated with IHG or Six Senses when he worked with the Town of Clinton. IHG was not even aware of this property at that time. Jeff Newman had never met nor spoken to them at any time during the time that he worked for any of the previous owners or any time prior to February 10, 2022. Mr. Newman was in no way a part of the Town of Clinton zoning when he accepted a consultancy role with IHG. She commented that IHG should not be punished by way of a reversal of the approval of their application for the duly permitted Conference Center and Retreat usage because Jeff Newman later accepted a position with the town of Clinton. IHG and Six Senses relied on the permitted usage stated in the special permit to validate the feasibility of their purchase. She also indicated the full programming that the Six Senses have. There is no way to sign up and make a hotel reservation and go and say "Well I'm not going to do anything that's in the program." She commented that this is not allowed. It's not what the Six Senses brand is about even though it's owned by a hotel company. Ms. Maitland commented about the statements going around in regards to the unethical nature of Mr. Newman's involvement with this company. She reiterated and underscored that Mr. Newman was in no way associated with IHG or Six Senses when he worked with the Town of Clinton. Mr. Newman had never met nor spoken to IHG at any time during the time that he worked for any of the previous owners or any time prior to February 10, 2022. Mr. Newman was in no way part of the Town of Clinton when he accepted the consultancy role with IHG. She commented that IHG should not be punished by way of a reversal of the approval of their application for the duly permitted conference center just because Mr. Newman accepted a position in the Town of Clinton. She noted that the consultancy agreement with IHG was terminated as soon as the town position became a reality. IHG and Six Senses relied on the permit usage as stated on the special permit approval to validate the feasibility of their purchase. She also vouched about the programming being offered at the Six Sense. There is no way to sign up and have a hotel reservation without signing up for any program. It's not allowed! It's not what the Six Sense's brand is. She indicated all the documents that she submitted as proof of evidence. She underscored the company's commitment to work within the permitted usage otherwise IHG would have not moved forward with this highly significant multi million dollar purchase. She expressed understanding about the fear and concerns from the residents. She noted that she loves this area and is involved with many organizations like Winnakee Land Trust, Historical Society and Rotary Club. She said, "We all wanted to maintain the rural character of this area!" She commented about the baseless rumors about the involvement of Mr. Newman who she found to have the highest degree of ethics throughout the four years that she'd known him. It's not fair that Mr. Newman and IHG are being defamed in widely circulated written comments that contain misinformation. She also made a comment about the allegation that the conference center is void since there was no conference or events held in 2022.

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She said that this is inaccurate as several conferences and retreats were held throughout 2022. She indicated the documentation that she provided for those events. IHG relied on the special permit approval. It is not fair to deny them just because we don't like them or they are billion dollar companies. She hopes that the board gives this consideration.

Melissa McNeese from Red Hook spoke and said that she learned about this event from her friends. This company has many brands. If you go to a Hilton Express, eggs will be much different than if you're going to a five star hotel. She asked if this is going to be a brand extension or is this just a way to fit this in. If this is the case, Hyatt wants to come in and have a convention center. She asked, "Is this okay?" Are you opening yourselves to all other companies? She thanked the board.

Tess Lampert stated that she wants to briefly express her significant and reasonable concerns based on local laws that are intended to protect and preserve the character of the town. The developer seeks to invalidate and dismiss the neighbor and town people by focusing on semantics technicalities ignoring the human element. She commented that it insults the critical thinking abilities of the board. She understands why they are relying on semantics, i.e because there's no other option for them. She doesn't think that any of us are fooled. She commented that this developer is clearly a luxury hotel and resort developer. It's not the International Conference Center or Camp Group. It is an International Hotel Group! Ms. Lampert responded to some of the issues that were raised about the traffic and water implications. She said that two of the many major concerns of the neighbors and townspeople were based on "Hotel" estimates based on what they heard on planning board meetings. It wasn't just once that they used the word "hotels" and then self-corrected themselves multiple times. The developer representatives and the board members actually used the word check in and checkout in some of the meetings. She commented that these are terms that are used for hotels. Regardless of the legally allowed terms and whatever the determination is, Ms. Lampert said that this is being considered as a hotel and we need to think of it as a hotel for planning purposes. She opined that this should hold some weight to the board. The board has repeatedly asked for more information to make an informed determination in its meetings. This is not something that the Common Sense group is imposing. This is coming directly from the board and they said it multiple times in the meetings. Ms. Lampert criticized the developer when they listed all the materials that they submitted. This is a distraction from the fact that they are not providing the details that would allow the board to make an informed decision. It is in their interest to hide the intended use of the property.

Ms. Lampert stated that it is a fact that in September 2022, at the time of the initial confirmation/determination, the Municipal Code Enforcement Inspector (Newman) had been working with the current owners just months before. He should have been rescued at that time! She mocked the comment earlier that the developer relied on due diligence. She said, "That was done by a former employee of IHG!" This is clearly a

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conflict of interest as evident by the fact of his eventual recusal. This is an issue that is well documented and was submitted to the board. The board has all the information and timeline to review. She said, "Calling a restaurant a Tavern doesn't make it less of a restaurant. Calling a hotel a conference center even if that is the legally allowable term does not make it less of a hotel. She thanked the board for working for the town and working diligently on this matter.

Tim, a resident from Kingston wants to give his view as a Planning and Development consultant and most recently as director of Economic Development over Ulster County. He encouraged the board along with the Planning Board and Town of Hyde Park boards to recognize the significance of Six Sense project from a regional perspective as well as local one. Tourism is our region's primary industry in terms of both economic output and jobs to remain competitive. Our region must embrace new and innovative projects like the one that Six Sense is proposing. He said that no projects should be allowed to bypass applicable rules and regulations but at the same time we must recognize that changing the rules and adding unnecessary complications, delay and cost to projects like this is unfair. He opined that our Region's economy, our families, friends and neighbors rely on it. He thanked the board for their service to the community and for giving him an opportunity to share his perspective.

Dal Lamagna said that he shared a mile border with this property. He noted that he is not trying to close this facility down and certainly doesn't wish to end this up to court. This company is brilliant and he respects them. This is a big corporation who acquired Six Sense. He wonders if they think that this is really going to work. Mr. Lamagna doesn't think that this is really going to work. How many people do they think will be coming up here to spend that much money next to the busy road? Soho across the river will not be proceeding, maybe, because they have their own problems. He just doesn't see how this is going to work. Assuming this is a conference center, Mr. Lamagna commented that Omega is a conference center with hundreds of activities. All the top people who attract audiences are coming to Omega. He stated that Omega is a successful nonprofit organization that relies on donations to succeed. He'd like to see the board, the town and the developer figure out a way to make this work. Maybe it isn't a conference center. Maybe it's a development of a different kind where people can live together or something. Something else that works.

Justin Seelaus said that he was privileged to be considered as part of the 1% of the people of the United States to consider themselves as a farmer. He is representing a few farmers and previous staff of the Dutchess. He indicated his strong opposition to the Six Sense project mainly due to the agricultural importance of the property. It consists of prime farmland that is diminishing in the United States especially in New York. We've lost about 2,000 acres of prime farmland over the last four years and 400 farms within that time as well. He asked the board from the farmer's perspective to take into consideration as the development of Six Sense project will result in a 22 acre diminish of prime farmland. He commented that once it's developed, we will never get it backed.

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We need to be able to preserve open space for future generations and for continued production whether it's vegetable, livestock or timber. He thanked the board.

Andrea Nussinow spoke and said that she is also a farmer who opposed this project. She echoed the comments from Justin earlier and doesn't think that this is a good idea. We do not need to lose farmland and do not need the traffic and the detriment to the environmental impact. She indicated the email that she submitted and also indicated that there were other people who had just found out about this project. She thanked the board for listening to the citizens who opposed this project.

Geoff Rodkey, director of Land Advocacy that was founded in 1963 to save Storm King Mountain, from the destructive industrial project, was credited with launching the modern Grassroots environmental movement today. They are proud to be the largest environmental organization. He noted that when they saved Storm King Mountain, they also preserved the citizens' right to standing to be able to comment or raise concerns about potential destructive projects that would impact their lives. He expressed disappointment to hear that the applicant has taken great length to try to stifle the voices of the residents who live near this property. He underscored that their organization stands strongly for the right of the citizens to participate in this public process. They were just made aware of this massive project on environmentally sensitive lands. He stated that they began to review many documents from both the town planning board and zoning board of appeals and the town of Hyde Park where this is actually not permitted.

Mr. Rodkey hopes that the ZBA will keep the public hearing open for another month. He wants to do an additional review with his staff particularly the definition of the hotel and conference center. Based on all the comments made and his reading of all the documents, his understanding is there were no hotels allowed anywhere except in the hamlet then the zoning was changed to allow basically a hotel that gives programming anywhere in town with very little oversight over the size, location and environmental sensitivity of the land. If the board rejects the Stop Six Sense Appeal, then they are basically opening the door for all types of uses like this anywhere in the town. This is a very bad precedent. He thanked the board for their service.

Mike Oats, President and CEO of the Hudson Valley Economic Development Corporation took the floor in full support of the Six Sense's project. He believes that the project clearly fits the zoning and uses in the Town of Clinton. The plans and actions of the previous owners have nothing to do with the current owners and their current plans. He thanked the opposition attorney who, he said, agrees with them that there is a current law in the book that allows this use. That's why he wants the law changed. Mr. Oats commented that the board's job is to look at the current laws and not the laws from five years ago or potentially five years from now. He also indicated that he worked with Mr. Newman on a lot of projects up and down the Hudson Valley. He also commented about the public hearing that allows people to come up and talk. No one's stopping the

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public from voicing out their opinions. He believes that the people who signed the petition do not know the full scope of what's in front of them. He pointed out that this is a retreat. It's a center for conferences. He underscored that it is program based. It is not a hotel, not a resort, not a residence, not a massive complex and is not ruining the environment. He thanked everybody for coming out and speaking and the board for their time and long nights of work. This is not easy to get through but the board has to deal with the law.

Ms. Polidoro addressed the comments made earlier. She disagreed about the statement that it's not just about the definition of hotels and conference centers. She said, "It actually is!" This is why we're here tonight! She also objected to the characterization of CECNY as threatening the town, that the determination here is in favor of the CECNY. It's actually the neighbors that have waged this pressure campaign against the town and public officials and have been making calls to the people who have no part in the decision making process. They wanted to make it clear that there's no threatening activity going on. They do value the public input and are looking forward to hearing it during the site plan review process. She objects to the suggestion that the Zoning Board of Appeals and its consultants are incapable of making this determination. The board is a quasi judicial body and has the authority and the obligation to make this determination. She commented about Mr. Abbotts comment about the burden of proof, that it was a good reminder that they carry the burden of proof, that the town has already decided in CECNY's favor. Ms. Polidoro stated that they must prove to the board that the conference center definition is wrong. She commented that the use of the term that night clearly must be "Walk like a duck!" She also commented that none of them is sufficient to carry that burden. She added that Mr. Replansky and her also had the opportunity to review both the 2020 and 1991 zoning law which did have the definition of the conference center. She asked Ms. Campbell to enter into the record the definition of conference center from the zoning regulations from both 2020 and 1991 law. She read the definition 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.

Ms. Polidoro stated that it is important to get this definition into the record. Although the definition was changed, it was changed to use and to add the term "as a location for Events". This shows that the town was thinking about events that include health and recreational activities. Conference Centers have always been allowed here since 1991 so the law was not changed in the way that the neighbors think it was. In regards to the comment about setting precedence that a lot of folks are concerned about Hyatt or Ramada coming in the town, Ms. Polidoro reminded the board that this determination was made on this project with this particular set of facts. It doesn't apply to other projects unless they are on all fours of this one. Other projects would be subject to their

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own review and determination. This is a 236 acre parcel offering meeting rooms, health and wellness programming. Ms. Polidoro noted that 96% of the property is preserved as undeveloped open space which can be used for recreational, health and wellness opportunities. She commented that anyone else would have to come up with their own programming in their own proposal. Ms. Polidoro disagreed about the precedence concern. It is not valid. Ms. Polidoro also addressed the public comment about the “check in and check out times”. She remarked, “You also check in and check out of a bed and breakfast or short term rentals!” You can also check in and check out of prison! She asked the board to close the public hearing and thanked the board for their time and consideration.

Mr. Replansky expressed his rebuttal. He doesn’t agree that this use is permitted under the current zoning law. He remarked, “That is a total mischaracterization of our position!” He noted that their position is – “This is not a “conference center” but rather a “hotel” that is not permitted in the Town of Clinton zoning law. This is going to be a regulatory nightmare for the town if this gets approved. He doesn’t know how the town is going to control events when the event law says that they have to sign up for these events and get special permits beforehand. He indicated the comment made by the Planning Board member at the last Planning Board meeting in regards to the hours of operation that is limited from 10 am to 10 pm. He asked the board, “How can you allow this type of facility in the town under this type of regulations?” He commented that there was nothing in that meeting which defined exactly how this conference center is going to work, how it’s going to be regulated and how it’s going to actually fit the town law. He urged the board to read these comments from the last Planning Board meeting.

Mr. Replansky commented that what is certain is that people haven't had a clue what they want to do with this property. They kept changing their proposition to fit with something that they think the town will go along with. This was clearly evident from the last Planning Board meeting. They were asked repeatedly to provide more detail about how this operation is going to function. Mr. Replansky commented that whether this is a conference center or hotel, they refused to supply that information. What Ms. Polidoro has argued with the board is —the board should simply depend on the definition of a conference center or hotel in the Town of Clinton Zoning code to make a decision. He said that what they're proposing fits under the definition of a hotel. He asked the board, “How do you decide whether it is a hotel or a conference center based on these definitions? He commented that this is what the town MCEI did. He did not go into the details of what this facility is actually going to be. He also commented about Ms. Polidoro’s comment during the Town of Hyde Park ZBA meeting when Ms. Polidoro said, “Wait, wait! This is a commercial recreation outdoor use then she said, “Oh, it’s a camp!”

Mr. Replansky said that it’s the definition of “What this is?” keeps changing and switching depending on who’s listening to it. They will sell you anything! Mr. Replansky opined that this is a hotel. It’s a resort regardless of what you call it! That’s what it is!

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Mr. Replansky indicated a premature argument at the last Planning Board's meeting. He said that the planning board had the common sense to realize that there were tremendous problems and unanswered questions about this facility. In order for the Zoning Board of Appeals to make a determination that this is a permitted use under the town code, Mr. Replansky suggested simply based upon what they choose to call it. He said, "It is a wrong decision!"

Ms. Polidoro took the floor back for her rebuttal. The Town of Hyde Park has a use called "Camp". They also have a use called outdoor recreation. That's Hyde Park zoning law. In Hyde Park, Omega would probably be a camp just as in Clinton, Omega is a conference center. She said that the appellant is trying to show that they are like Forum Shopping or misusing words. Ms. Polidoro disagreed and said that they are speaking with the words of each community.

Mr. Replansky took the floor again and had the last words. He indicated that he actually represented the sellers of Omega when Omega came into the town so he was slightly familiar with the operation. Omega is not a conference center under the town definition. He commented that it probably would not be permitted under today's zoning laws. It's a non-conforming use and it was permitted as a recreation use of a quasi educational use when it was approved. He remarked that to equate this project with Omega is nonsense. All you have to do is read the brochure about Omega. He commented about the comparison. Even at the incipient stages of the application process, Mr. Replansky said, "There is no comparison!" He added that if Omega came in for approval today, they would have difficulty finding a niche under the zoning law. He also indicated his experience with Omega. They are fabulous and terrific. He underscored that he wasn't casting aspersion on Omega but to equate this facility to Omega is complete nonsense!

Chairman Malcarne passed the floor to Mr. Canham.

Mr. Canham indicated the procedural process. The board has heard a great deal of public comments and appreciated it. They have a lot to read. He proposed closing the public hearing but allowing two weeks for additional written comments from all parties. He commented that written comments are easier for the board. He complimented Ms. Campbell for doing a spectacular job in making all these comments available for everyone to see. It's easier for the board to find them. They're all in one place and they can get into it anytime.

The board agreed to close the public hearing. Mr. Canham motioned to close the public hearing but allow a two week period to receive additional comments from all the parties. seconded by Mr. Calogero,

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Discussion. Chairman Malcarne stated that 62 days will start from April 11, 2024 which is the official date when the public hearing is closed. Both legal counsels indicated no objection for the two week deadline submission of comments.

Mr. Canham said that the deadline for submission of comments is at 5 pm of April 11, 2024. The board has to make a decision before June 12, 2024.

All aye, Motion carried, 7-0.

The board exchanged opinions on the matter. Mr. Canham said that the board has an enormous amount of materials and documents to review. This matter will be on the April meeting agenda for board discussion. The meeting is open to the public given the Open Meetings Law though public hearing is closed. The board will discuss everything that they've heard from the public hearing. He also indicated the crafting of the Facts of Findings and Decision which is going to be lengthy and detailed. Hopefully, the board will be ready to make a decision at the May meeting.

Mr. Canham expressed his views apropos the revision of the Town Zoning Law in regards to the conference center. He indicated the value of outdoor events during COVID where weddings are held on properties around town. There was an obvious reason for doing them outside and farmers find this as a potential additional source of income. Neighbors were complaining given the music, noise, traffic, etc. After reviewing the video of the public hearing for the revision of conference center law in 2021 and the succinct minutes of the Town Clerk, Mr. Canham commented that the real concern was about the impact of the outdoor events to the neighboring properties. He indicated the definition of Dude Ranch under the previous zoning law that was repealed in 2021. He had a hard time imagining Six Senses as a Dude Ranch though they could have fit pretty much as Dude Ranch. It is basically a hotel. It didn't say it had to be for conferences or anything else.

Mr. Canham said that the revision of the law brought all sorts of regulations designed to protect the quality of the environment, the character of the neighborhood, noise and parking issues, outdoor event areas with a very extensive setback of 500 feet to try to minimize impact on neighbors. The original law allowed for a conference center to use 25% of its housing just for overnight guests was eliminated in the new law. Lodging under the new law cannot contain kitchen facilities. There's also an annual review in place in which the Planning Board and the MCEI annually review the operation of any Conference Center. There are seven words that were added to the first sentence of the Conference Center definition. The second sentence that talks about health and recreation has been in there for 35 years or longer. He commented that the definition is still fundamentally the issue here. Someone talked about semantics but unfortunately semantics spoke about what we are all about. The board is not a legislative body. They have to interpret the language and this is a real challenge for the board because the definition is just two sentences long. He made a comment about one

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of the public comments that the board does not have the legal expertise of a judge. He said that he is not offended by this. The board has Shane Egan as the town Attorney. None of the board are lawyers but it doesn't mean that the board gets to punt nor does it mean that they get to make a decision designed to try to avoid the legal costs that the town incurs when there is an Article 78. He cited the case of Cornerstone where the board struggled with that decision but concluded that Cornerstone could not expand. He also added that he sees absolutely no inappropriate behavior by Jeff Newman in his involvement in those public hearings when the law was amended. He complimented Mr. Newman and considered his ethics to be above approach. He was also intrigued about Mr. Replansky's comment about Omega. It's not clear to him what Omega operates on. He understands that they can also operate under educational organization which is allowed in AR3 or AR5 Zoning District. Looking at their website, they are offering 293 discrete events in the next six months. He noted that these are very clearly defined events. At one extreme, he thought about Six Senses as Omega. They fit within the Conference Center and Educational organization definition quite easily. On the other extreme, if you've been to Mohonk, a Gothic hotel in a spectacular setting, there are all sorts of programs. He opined that for him, Mohonk is a resort/hotel while Omega is an educational organization or a conference center that is clearly allowed under our zoning regulation.

Mr. Canham indicated the mountains of engineering reports and documents that the Planning Board have. There's only a couple of paragraphs that describe the anticipated program. He indicated his struggle in understanding exactly how this program works. It's not the engineering documents or the traffic study that concerns him. The planning board has its hands full. It is how this program is going to function. He asked the applicant, "How close are you to Omega versus how close are you to Mohonk? It is also a question of how to convince him that this is a center with events.

Ms. Polidoro responded that it is like Omega, you would need to be enrolled in a program to come to this facility. The programs could change daily or seasonally. There can be daylong foraging, week-long programs with yoga and meditation so you can't just show up to the facility unlike in Mohonk where you can just make a reservation and then you get to see a magic show. It's a program based. You enroll in your particular program in order to get to the facility. Its scale is more like Omega.

Mr. Canham said that the more detailed the program they provided, the better for him.

Mr. Vonderbrink asked Ms. Polidoro if they are also having programs like Omega where certain instructors may come in to teach classes.

Ms. Polidoro responded, "Yes, There were certain experts there for designated programs. She indicated the sample program that was submitted to the board that basically shows how they run the resort.

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Mr. Vonderbrink asked, "Is that made known prior to scheduling and education?" Ms. Polidoro responded, "Yes." The concept would be that there would be particular programs that you could enroll in and once enrolled you would have the opportunity to show up at the facility and have a stay. You would only stay overnight if your program warranted an overnight stay so if you were there for some daylong foraging event then you might not have or warrant an overnight stay whereas a longer event might.

Chair Malcarne asked, "What if someone wanted to just come spend night, is that permitted? Would they be able to do that?"

Ms. Libolt responded that it would not be permitted. You must be enrolled in one of the events programs just like Omega in order to have access to the facility.

Mr. Tompkins indicated the recent town board meeting where Mr. Newman gave very long comments and addressed the allegations. He encouraged everybody to watch the meeting.

Ms. Polidoro stated that she included a transcript of that Town Board meeting in her submission to the board.

Mr. Calogero commented that he got the impression that the programs are not the same in all the facilities. The applicant agreed.

Mr. Calogero asked Ms. Polidoro, "Would you say that that some of your facilities are more appropriately looked at as a resort or a hotel?" Ms. Polidoro responded that unlike some of the members of the public, she is not an expert of an IHG other facilities.

Ms. Libolt responded that they can only speak about this particular facility. They can't speak about the other facilities.

Mr. Calogero asked if they could gather information and provide it to the board. Ms. Polidoro responded that they will provide the answers in writing if the board gives them the questions.

Mr. Calogero indicated his questions (1) How the programs differ from one place to another? He said that if there are fewer programs available in one place or another the other thing might be more difficult to ascertain but at least a suggestion or feeling about it. (2) Are any of them subject to Hotel taxes?

Ms. Polidoro responded that it is an unfair question since regulatory taxing applies to short-term rentals, bed and breakfast, and all sorts of overnight accommodations. They call it a hotel tax but it's actually a tax on overnight accommodation.

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Mr. Calogero asked, "Will the Conference Center be subject to Hotel Taxes?" Ms. Polidoro responded that she will look at the County definition on how they collect their Occupancy Tax. She will put the response in writing.

Mr. Replansky rebutted that all this information was not submitted to the board. This is not fair to the public. These are conclusory statements by the consultants. He added that they should have an opportunity to see what is being presented to the board, what is being represented and the function and operation of this facility. He remarked that they are in the dark. It is not fair to the public to close the public hearing and allow the applicant to submit more documents after the public hearing was closed. You cannot accept comments once the public hearing is closed, That is a violation of Open Meetings Law.

Ms. Polidoro stated that they will provide the requested comments timely so that there's adequate time for everyone to respond.

After all the discussions were made, the board agreed to allow comments submission until April 11 as per the motion earlier. Ms. Polidoro to give all her submission/responses to the board's question by April 4, and copy Mr. Replansky on the electronic submission. Mr. Replansky will have a week to review the materials submitted. The public hearing is still open until April 11. The public can submit comments until 5 pm of April 11, 2024.

Chair Malcarne noted that the board only wants new information from the public.


APPROVAL OF MINUTES:

No minutes were approved.

ADJOURNMENT:

Chairman Malcarne motioned to adjourn the meeting at 10:15 pm, seconded by Mr. Canham, All Aye, Motion carried, 7-0

Respectfully Submitted By:



Arlene A. Campbell
Zoning Board of Appeals Secretary

Cc: Carol Mackin, Town Clerk