

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
June 4, 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 7:00 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.

**AREA VARIANCE:**

None

**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 Stop Six Sense was also present. Victoria Polidoro, CECNY attorney, was also in attendance.

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
June 4, 2024**

The board returns to session for the conclusion of the above matter. Public hearings were held at the February and March, 2024 meetings. The board has 62 days to render a decision from the time the public hearing was closed on March 25, 2024.

Chairman Malcarne explained the role of the Zoning Board of Appeals in regards to an area variance, administrative and interpretation application. The board is a quasi-judicial body. He explained the factors and criteria in granting an area variance. In this case, the board is being asked whether this matter does or doesn't comply with the code. It doesn't matter that they are in favor or do not favor this matter. The board reviews all the applications and documents received and makes a decision based upon all the information received. He explained the difference of the role between the Municipal Code Enforcement Inspector (MCEI) and the Zoning Board of Appeals in regards to making a determination. He indicated the advantages that the Zoning Board of Appeals have over the MCEI when the MCEI made his initial determination. The ZBA gets to hear a tremendous amount of information from the public during the public hearing that is helpful to the Zoning Board of Appeals and to the Planning Board in case the matter goes to the Planning Board for special permit approval. He also indicated the role and responsibility of the members of the board in making their votes.

Mr. Canham explained the draft resolution that he crafted that includes 18 pages of Findings of Facts and Conclusion that backs up the four-page resolution. This resolution will be posted on the town website so that everyone can access it.

After all the deliberations were made, the board made a determination.

Mr. Canham motion that the Town of Clinton Zoning Board of Appeals approves the following resolution, to wit:

**RESOLUTION APPROVING FINDINGS AND DECISION DATED June 4, 2024.**

**WHEREAS**, On September 27, 2023, CECNY Land Holdings, LLC ("CECNY") submitted an amended application to the Town of Clinton Planning Board for Site Plan and Special Use Permit approval (the "Amended Application");

**WHEREAS**, by the Amended Application, CECNY, through its Six Senses brand, seeks to operate a Conference Center at their property located at 6268-00-591367-0000 (68 Naylor Road – Town of Clinton) & 6268-03-461408-0000 (2450 Route 9G – Town of Hyde Park) (together the "Property") under the requirements of Section 250-45 of the Town of Clinton Town Code (the "Town Code");

**WHEREAS**, on December 12, 2023, Michael Cosenza, the Municipal Code Enforcement Inspector ("MCEI"), issued a letter of determination (the "Letter of Determination") finding that an Amended Application was compatible with the Town

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
June 4, 2024**

Code and could be reviewed by the Planning Board;

**WHEREAS**, the Letter of Determination addressed a number of issues related to the proposed use of the Property, and among other findings concluded that the proposed use did fit within the definition of a Conference Center under Section 250-105 of Town Code and did meet the road frontage requirement under Section 250-24 of the Town Code;

**WHEREAS**, on January 12, 2024, neighboring property owners represented by Warren Replansky, P.C ("Attorney Replansky") submitted an administrative appeal and application for interpretation which sought to reverse portions of the Letter of Determination (the "Appeal");

**WHEREAS**, the neighboring property owners who commenced the Appeal later formed an unincorporated association known as "Common Sense HV" to oppose the Amended Application, said unincorporated association also being represented by Attorney Replansky;

**WHEREAS**, the Board conducted a public hearing in regard to the Appeal on February 22, 2024 which was continued to March 28, 2024, during which members of the public spoke and submitted written materials both in support of and in opposition to the Amended Application;

**WHEREAS**, the Board, upon stipulation of both Attorney Replansky and Victoria Polidoro, Esq. ("Attorney Polidoro") on behalf of CECNY, permitted further written submissions until April 11, 2024 and agreed that the Board's sixty-two (62) day deadline to render a decision on the Appeal commenced from April 11, 2024;

**WHEREAS**, the Board has reviewed and considered all statements and submissions by members of the public as well as from Attorneys Replansky and Polidoro;

**WHEREAS**, all written submissions and correspondence related to the Appeal were posted on the Town of Clinton's website; and

**WHEREAS**, in consideration of the foregoing the Board now desires to render a determination on the Appeal.

**NOW THEREFORE BE IT RESOLVED** as follows:

1. The Board determines that the Letter of Determination was issued at the appropriate time.
2. The Board determines that the neighboring property owners, including members

**TOWN OF CLINTON**  
**ZONING BOARD OF APPEALS MEETING**  
**FINAL MINUTES**  
**June 4, 2024**

of Common Sense HV, who commenced the Appeal have legal standing.

3. The Board upholds the Letter of Determination to the extent that the Amended Application constitutes a Conference Center under the Town Code.

4. The Board upholds the Letter of Determination to the extent that there are no outstanding Town Code violations of record encumbering the Property.

5. The Board upholds the Letter of Determination to the extent that the 2017 SUP has not lapsed or expired due to a cessation of use.

6. The Board upholds the Letter of Determination to the extent that the 2017 SUP does not conform with the current Section 250-45 of the Town Code. The Board finds that the Amended Application is an expansion or intensification of the 2017 SUP. The Board finds that Conference Centers are a permitted use in the Zoning Districts in which the Project Site is located.

7. The Board upholds the Letter of Determination to the extent that the Amended Application is correctly classified as an application to amend an existing Special Use Permit. The Board determines that the Amended Application must be reviewed under the existing Section 250-45 of the Town Code.

8. The Board reverses the Letter of Determination to the extent that the Amended Application does not meet the road frontage requirement contained in Section 250-24 of the Town Code because the Property currently lacks access to a public highway.

9. The Board upholds the Letter of Determination to the extent that Outdoor Event Areas must be properly designated on the Site Plan and outdoor events should only occur upon these designated locations.

10. The Board holds that until such time as the denials issued by the Town of Hyde Park Zoning Administrator which prevent the Property from having access to a public highway are reversed pursuant to a final non-appealable decision, the Amended Application is not in conformity with the Town Code and cannot proceed to the Planning Board for review.

11. The Board hereby adopts the "Findings and Decision" dated June 4, 2024, which is attached hereto and made a part hereof. The "Findings and Decision" details and explains the rationale for the conclusions reached in this Resolution;

12. The Board authorizes, directs and empowers Chairman Malcarne to sign the "Findings and Decision" dated June 4, 2024; and

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
June 4, 2024**

13. The Board authorizes, directs and empowers the Zoning Board Clerk to file this Resolution along with the "Findings and Decision" dated June 4, 2024 in the office of the Town Clerk within five business days of the date of this Resolution as well as mail copies to Attorneys Replansky and Polidoro, counsel for the Appellants and CECNY, respectively.

Seconded by Mr. Tompkins,

**Discussion.**

Mr. Canham commented that it took him a long time to come around on this. He doesn't believe that the Town Board ever expected a proposal this scope would be proposed when the conference center regulation was amended in 2021. He doesn't think that the conference center definition and the new law was as strict as it was contemplated to something of this scope. He feels that the proposal before the board resembles what he thinks of as a conference center. The fact remains that there is a definition in our town code. He had also come around to the point that guests are only onsite when they are registered for an event. He underscored that this is the threshold that our town code requires and hopefully with sufficient guard rails from the Planning Board.

Mr. Calogero said that he had written his comments down but most of these comments had been covered by the chair and Mr. Canham. He added that even a quick reading of our town's Comprehensive Plan would demonstrate that this level of use had probably never been envisioned by the people who wrote the comprehensive plan. He seriously doubts whether the board or committee who crafted the revised regulation envision this project of a much greater magnitude. Unfortunately, the board was left with the general wording of this definition and the code itself to focus on whether this definition is correct or not.

Mr. Tompkins expressed his view on this matter. So many things were brought up by the public that are not under the purview of the Zoning Board of Appeals. You can't anticipate what could happen. He opined that the definition is somewhat vague. He believes that what was presented to the board by the Six Sense developer meets the definition. We cannot anticipate that they are not going to go by it. He expressed his hope that the Planning Board puts sufficient limitations which will hold them to comply with the conference center regulation.

Mr. McMahon offered no comments. Everything was touched on. He echoed these comments.

Mr. Canham commented that the issue about the access driveway is still baffling. Although this is a Town of Hyde Park issue and not the Town of Clinton, Mr. Canham

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
June 4, 2024**

said that our town code is very clear that any lot upon which development occurs particularly with the issuance of building permits has to have both a certain amount of road frontage and public access to a public highway. This is in the town code as stated below.

**§ 250-24 Road frontage requirement.**

No lot shall be created, nor any driveway permit issued, nor any building permit issued for any structure, unless the lot upon which such application is made has not less than 40 feet of frontage on and access to a public street or highway, as defined by § 280-a of the Town Law, which street or highway shall have been suitably improved or a bond posted therefor to the satisfaction of the Town Board as provided in said law.

**Sec. 250-105 Access** states that the abutment of a lot directly on a Town, county, or state road, street, or highway which has the required frontage thereon to allow the ingress and egress of fire trucks, ambulances, police cars and other emergency vehicles, as prescribed by this chapter and § 280-a of the Town Law.

Mr. Canham stated that it is also clear that since the access is a Town of Hyde Park parcel, then the Town of Hyde Park zoning regulation is also relevant to this case. Until the access issue in the Town of Hyde Park is resolved, Mr. Canham stated that our town code is very clear as to the requirement of legal access. He added that our town code is also clear that the Planning Board cannot proceed until the issue is resolved. He acknowledged all the work done by the Planning Board up to this point. All the Planning Board work and process is halted until there is a legal access to a public highway from this property.

Mr. Mustello asked if they can continue to use the facility as a conference center.

Mr. Egan responded that this facility can still continue to operate as a conference center based on their current special permit. The 2017 Special Permit is still in effect.

Mr. Canham commented that the 2017 Special Permit became nonconforming use given the 2021 Conference Center law. He cited that they never allowed expansion of nonconforming use in the past. He feels that there is a bit of a loophole here. He agreed that the 2017 special permit is still in effect.

Mr. Tompkins stated that the original approval for the dude ranch was made in 2005 and an amendment approval was granted in 2017. The question is about the Town of Hyde Park parcel that allowed the access use all those years. He doesn't know why the Town of Hyde Park is now saying the access is not an allowed use per their zoning.

The vote having been taken upon such Resolution the result was as follows:

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
June 4, 2024**

Joseph Malcarne	VOTING
John Calogero	VOTING
Charles Canham	VOTING
Ronald Mustello	VOTING
Russell Tompkins	VOTING
Frank McMahon	VOTING
Daniel VonderBrink	VOTING

There being a majority of the Board voting to approve the Resolution, the Resolution was declared by the Chairman to have been adopted.

All Aye, Motion carried, 7-0.

**FINDINGS AND DECISION  
OF THE  
TOWN OF CLINTON  
ZONING BOARD OF APPEALS**

-----X

**In the Matter of CECNY Landholdings, LLC**

**Application Received January 12, 2024.**

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**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. By Letter of Determination dated December 12, 2023 and filed in the office of the Town Clerk on December 14, 2023 (the “Letter of Determination”) Municipal Code Enforcement Inspector Michael Cosenza (“MCEI”) determined that CECNY Land Holdings, LLC’s

**TOWN OF CLINTON**  
**ZONING BOARD OF APPEALS MEETING**  
**FINAL MINUTES**  
**June 4, 2024**

(“CECNY”)<sup>1</sup> amended application for Site Plan and Special Use Permit approval dated September 27, 2024 (the “Amended Application”) complied with the requirements of the Town of Clinton Town Code (the “Town Code”) and that the Amended Application could proceed to the Town of Clinton Planning Board (the “Planning Board”) for review.

2. Subsequent to the issuance of the Letter of Determination, on December 21, 2023, Kathleen Moss, the Zoning Administrator of the Town of Hyde Park issued a determination denying CECNY’s application for site plan approval in the Town of Hyde Park .

3. In response to the December 21, 2023 determination of the Town of Hyde Park Zoning Administrator, CECNY submitted a “Site Plan Application Alternate” application. In a determination letter dated February 9, 2024 the Hyde Park Zoning Administrator determined that CECNY’s revised application does not identify a use that is permitted in the Hyde Park’s Green Belt Zoning District and that a use variance through the Hyde Park Zoning Board of Appeal was required to proceed with their application (collectively the December 21, 2023 and February 9, 2024 determinations of the Town of Hyde Park Zoning Administrator - the “Hyde Park Denials”).

4. By application and letter dated January 12, 2024 (the “ZBA Appeal”), a group of adjacent property owners, who subsequently formed an unincorporated association known as StopSixSensesNY k/n/a Common Sense HV (“Common Sense HV”), by their attorney Waren Replansky, Esq. submitted an administrative appeal / interpretation application to this board (the “ZBA”) challenging the Letter of Interpretation.

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<sup>1</sup> CECNY has been commonly referred to as Sixth Senses. Sixth Senses is an affiliate of the Intercontinental Hotels Group Operating Corporation (IHG).



**TOWN OF CLINTON**  
**ZONING BOARD OF APPEALS MEETING**  
**FINAL MINUTES**  
**June 4, 2024**

5. The ZBA Appeal was commenced by Attorney Replansky on behalf of “neighboring property owners” who reside in close proximity to the proposed project site at 68 Naylor Road (Tax Grid Id. No. 132400-6268-00-591367-0000) (the “Clinton Parcel”) and 2450 Route 9G (Tax Grid Id. No. 133200-6268-03-461408-0000) (the “Hyde Park Parcel”) (collectively the Clinton Parcel and the Hyde Park Parcel - the “Project Site”).
6. CECNY purchased the Project Site in November 2022. The Project Site was issued a Special Use Permit by the Planning Board in 2005 to operate a “Dude Ranch / Conference Center” (the “2005 SUP”). The 2005 SUP was amended on August 7, 2017 (the “2017 SUP”).
7. The Clinton Parcel is located in the AR3 (Low Density Agricultural Residential) and AR5 (Very Low Density Agricultural Residential) Zoning Districts. The Town’s zoning regulations, as codified in Chapter 250 of the Town Code, provide that a “Conference Center” is a permitted use in both Zoning Districts.
8. The ZBA duly noticed and held a public hearing with regard to the ZBA Appeal on February 22, 2024, which was continued on March 28, 2024 with written comments being accepted through April 11, 2024. The public hearing was lengthy and well attended with many speakers, some in favor and the majority in opposition, to the Amended Application.
9. More than eighty (80) written comments were received and reviewed by the ZBA, again with some in favor of the Amended Application but the majority in opposition. All of the written submissions were posted and made publicly available on the Town’s website.
10. In summary the comments received in opposition to the Amended Application, both written and at the public hearing provide: (a) that the Amended Application constitutes a “Hotel” rather than a “Conference Center”; (b) the development of the Project Site according to the

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
June 4, 2024**

Amended Application would have a significant adverse impact on the environment and; (c) the Amended Application was inconsistent with the Town's Comprehensive Plan.

**11.** The ZBA considered all public comments and written submissions when rendering its decision.

**12.** The ZBA Appeal and submissions by Common Sense HV advance several arguments in support of the proposition that the Amended Application is not compatible with the Town Code and cannot proceed to the Planning Board for review. These arguments include that the Amended Application truly constitutes a "Hotel" as that term is defined in the Town Code and not a "Conference Center" as claimed by CECNY.

**13.** Another argument advanced in the ZBA Appeal and subsequent submissions by Common Sense HV is that the project does not comply with the Town Code's road frontage requirement because it lacks "access" given the Hyde Park Denials. The Hyde Park Denials are currently being appealed to the Hyde Park Zoning Board of Appeals but remain in full force and effect.

**14.** Each of these arguments is rebutted by CECNY in submissions made by their Attorney, Victoria Polidoro, Esq..

**15.** The ZBA will now address certain threshold issues before examining the conclusions reached by the MCEI in his Letter of Determination.

**A. Timing of Letter of Determination.**

**16.** The MCEI is tasked with initially reviewing all Special Use Permits and Site Plan applications.

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
June 4, 2024**

17. Regarding Special Use Permits, Town Code Section 250-97(3) provides that the MCEI must review the application for completeness and compliance with all regulations, including the zoning requirements contained in the Town Code.
18. Regarding Site Plans, Town Code 250-96 (B) provides that the MCEI initially reviews an application and refers it to the Planning Board.
19. It is our interpretation of that Town Code that the MCEI must make this determination at the time an application is submitted based on the content of an application, the facts which exist at the time an application is submitted and his reading of the Town Code. Based on these factors the MCEI must determine whether an application is compatible with the Town Code and can continue to the Planning Board for review.
20. In his letter dated January 12, 2024, which is included with the ZBA Appeal, Attorney Replansky calls for a full evidentiary hearing or for the ZBA to delay their determination until after SEQRA.
21. Attorney Replansky also claims that the Letter of Determination was issued prior to a complete application being submitted.
22. There is no indication in the record before us that the Amended Application was an incomplete submission. Certainly, additional facts and material have been submitted during the public hearing process, but this is a normal part of the ZBA's review.
23. Nothing in the Town Code mandates such a delayed decision by the MCEI. The MCEI certainly should investigate the factual background and substance of an application before rendering a decision on the application's compatibility with the Town Code. Based on the content of the Letter of Determination it appears that this occurred.

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
June 4, 2024**

24. Likewise, nothing in the Town Code requires the ZBA to reserve judgment until the SEQRA process is complete. The SEQRA process occurs at the Planning Board after the threshold zoning classification and compatibility determination is made by the MCEI. It is not the MCEI or ZBA's obligation to assess and mitigate any potential environmental impacts that the Amended Application may or may not have.

25. The ZBA did conduct a public hearing at which testimony and documentation both in favor and in opposition to the Amended Application was submitted.

26. We find that the MCEI rendered his Letter of Determination at the appropriate time. We also find that this is the appropriate time for the ZBA to render an opinion on the Amended Application's compatibility with the requirements of the Town Code.

B. Standing of Common Sense HV

27. Attorney Polidoro on behalf of CECNY has asserted that Common Sense HV lacks standing to bring the ZBA Appeal. Attorney Replansky on behalf of Common Sense HV has rebutted this proposition.

28. The record before the ZBA indicates that Common Sense HV is comprised of many Town residents, some of whom live in close proximity to the Project Site. In his January 12, 2024 letter Attorney Replansky provides the names of specific members of Common Sense HV.<sup>2</sup> Several of these members of Common Sense HV received the mandatory notices required by the Town Code for both the ZBA Appeal and the Amended Application because their homes are located within two-hundred (200) feet of the Project Site.

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<sup>2</sup> These individuals include, amongst others, Dal LaMagna, Denise Bolte and Rita and Richard Perkins whose properties adjoin the Clinton Parcel.

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
June 4, 2024**

**29.** Attorney Replansky alleges in his April 11, 2024 submission that these individuals will suffer specific harms if the Amended Application is approved. Attorney Replansky specifically cites adverse impacts to these individuals as far as property values, the quiet enjoyment of their home as well as impacts such as traffic and noise.

**30.** Adjoining landowners who receive mandatory notice of an application are presumed to have sustained an injury-in-fact. In this instance Attorney Replansky has alleged that his clients will sustain direct harms, beyond those that the general public will sustain, if the Amended Application is approved.

**31.** The ZBA has consistently taken a broad view of standing and allowed nearby property owners to appeal MCEI determinations.

**32.** We find that Common Sense HV had the legal standing to commence the instant ZBA Appeal.

**33.** Now that these threshold issues have been addressed, we review each determination that the MCEI reached in the Letter of Determination.

**I. Qualification as a “Conference Center”?**

**34.** In his Letter of Determination the MCEI found that the Amended Application constituted a “Conference Center” as that term is defined in Section 250-105 of the Town Code. Section 250-105 defines a Conference Center as:

**CONFERENCE CENTER:** An establishment for hire as a location of 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.

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
June 4, 2024**

**35.** Common Sense HV and members of the public advocated at length against classifying the Amended Application as a Conference Center and in favor of classifying it as a “Hotel” which is defined in Section 205-105 of the Town Code as:

**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.

**36.** A Conference Center is a permitted use in the subject Zoning Districts while a Hotel is not.

**37.** The 2005 SUP permitted a “Dude Ranch / Conference” on the Project Site with certain conditions. The maximum number of patrons allowed on site at any time was capped at twenty-eight (28). A site plan prepared entitled, “Dude Ranch Proposal 2434 Route 9G, Staatsburg, N.Y. 12580” dated August 2005 was approved.

**38.** Thereafter the 2017 SUP was issued to another prior owner of the Project Site. The 2017 SUP increased the number of permitted guests to forty-four (44) by allowing the construction of five (5) yurts. An amended site plan entitled, “Site Plan Amendments For The Dutchess LLC Formerly Old Stone Farm, 2434 Route 9G, Staatsburg, NY 12580; 06/29/2017 Revision To Show Additional Yurts” was approved.

**39.** The Amended Application seeks to continue the site’s use as a Conference Center under Section 250-45 of the Town Code.

**40.** A significant amendment to Section 250-45 was adopted in 2021. The definition of Conference Center and Hotel however remained largely unchanged. Overall, the 2021 Conference Center Local Law enhanced the regulator powers of the Planning Board to place restrictions on the number of events permitted per day, notification requirements for events over

**TOWN OF CLINTON**  
**ZONING BOARD OF APPEALS MEETING**  
**FINAL MINUTES**  
**June 4, 2024**

a certain size and restrictions on hours of operation the frequency, size and duration of “Event”

held at Conference Centers. Section 250-105 of the Town Code defines an “Event” as:

**EVENT:** Organized gatherings for profit, such as business or professional conferences, meetings, retreats or seminars, and/or recreational or health activities, and/or parties, including but not limited to weddings and family reunions.

**41.** Concerns were voiced during the public hearing and in particular in Attorney Replansky’s submission of April 11, 2024 that the Project Site would in fact operate as a Hotel. The argument being that the use proposed could never actually function as a Conference Center because the Amended Application proposes continuous year-round Events at the Project Site which could never adhere to the strict requirements of Section 250-45.

**42.** In order to reach a determination the ZBA must review the terms of the Town Code itself as well as all the information gathered during the public hearing process.

**43.** It is our determination that the proposed use is in fact a Conference Center as defined in Section 250-105 of the Town Code, which we find to be broad. We agree with the MCEI that the proposed use fits within the definition’s second sentence.

**44.** The Amended Application is for an establishment which would attract clients principally for recreational or health programs. It is clear to us based on the information we gathered at the public hearing that the principal attraction for those visiting will be the health and wellness programs that are offered at the Project Site.

**45.** We find these proposed health and wellness “programs” to be Events as that term is defined in the Town Code. Lodging, while offered at the Project Site as part of the Amended Application, is not the principal reason people will visit.

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
June 4, 2024**

**46.** A Conference Center is permitted to offer rooms for lodging only to clients who participate in its Events which is what is being proposed under the Amended Application. There is no requirement that a participant actually spend the night at the Conference Center.

**47.** A Hotel is not permitted to offer Events like the ones proposed in the Amended Application. Overnight lodging in a Conference Center is limited to seminar and activity participants while a Hotel use contains no such limitation. This distinction is important in that lodging at a Hotel is open to the public generally, while lodging at the Project Site would be limited only to those registered for Events.

**48.** We agree with Attorney Replansky that it is important to look beyond just what has been proposed and determine if the Project Site can actually operate as a Conference Center. Given all the information gathered during the public hearing process we find that it can.

**49.** By submission to the ZBA dated April 4, 2024 Attorney Polidoro included a letter from CECNY representative Michael Palumbo stating that the Project Site would be “a program-based facility, meaning only clients registered in a program may enter the [Project Site]”. Mr. Palumbo’s letter includes a chart of potential Events which would require advanced registration and distinguishes these from activities that would not.

**50.** It is important to point out that the ZBA places great weight on the continuation of the Event based framework that was mentioned by CECNY representatives throughout the public hearing process and embodied in Mr. Palumbo’s April 4, 2024 letter.

**51.** The ZBA shares Attorney Replansky’s concern that without proper oversight the use could easily transform from a permitted Conference Center into that of an unpermitted Hotel. The Planning Board can and should impose restrictions on the use of the Project Site to ensure it



**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
June 4, 2024**

remains a Conference Center. Patrons should be required to register for Events. The general public must not be permitted to utilize the Project Site without registering for Events. This is the role of the Planning Board in crafting a Special Use Permit and we hope that the Planning Board uses this authority to carefully craft restrictions which ensure the Project Site is not used as a Hotel.

**52.** Members of the public have called the Amended Application a “resort hotel” and point to CECNY’s marketing as evidence that the Project Site will be used for that purpose. The Town Code does not contain a definition of resort hotel. Again, our conclusion is based on what we find to be an expansive definition of Conference Center. This definition is sufficiently broad in our view to encapsulate the use proposed by CECNY. CECNY’s marketing is irrelevant to its zoning classification under the Town Code.

**II. Existing Violations**

**53.** For the reasons stated in the Letter of Determination we agree that there are no existing violations of record.

**54.** We therefore affirm the conclusion reached by the MCEI that every previous violation of record has been resolved and there are no outstanding violations of record.

**III. Has the 2017 Special Use Permit Lapsed?**

**55.** Whether the 2017 SUP remains in effect depends on whether the use of the site as a Conference Center has ceased under the terms of the Town Code.

**56.** Section 250-97 (A) (9) of the Town Code Provides as follows:

Expiration of special use permits. A special use permit shall be deemed to authorize only the particular use or uses specified in the permit and shall expire if said use or uses shall cease for any twelve-month period after the date of special use permit approval or if the use is not commenced within twelve-months of approval.

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
June 4, 2024**

**57.** In his Letter of Determination, the MCEI provides a timeline of the use of the site, since the transfer of title to CECNY and concludes that the 2017 SUP has not lapsed and remains in effect.

**58.** The burden of proof is on the party, here Common Sense HV, who asserts that the use had ceased or lapsed. This party must submit evidence showing that the use has clearly lapsed.

**59.** Other than conclusory statements offered by members of the public during the multiple night public hearing, no specific testimony or evidence was presented to the ZBA that proved that use ceased for a period of twelve-months.

**60.** Information was presented at the public hearing by local resident and realtor Wendy Maitland regarding events held at the site in 2022. Emails included in Attorney Polidoro's March 28, 2024, submission further confirm that Events did occur at the Project Site during 2022.

**61.** Attorney Replansky points to the significance of violation notices issued to the Project Site's former owner to demonstrate that the use ceased prior to CECNY's October 2022 purchase.

**62.** The Project Site's former owner received Notices of Violation for operating as a hotel and restaurant in 2019 and 2021. Attorney Replansky claims that this shows the site was not being used as a Conference Center for a period in excess of one year (June 11, 2019 – February 25, 2021).

**63.** This is a novel argument, but these Notices of Violation alone are insufficient to prove a cessation of use. The Notices of Violation that were issued to the former owner do not threaten to revoke the 2017 SUP because the Project Site was no longer operating as a Conference Center.

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
June 4, 2024**

There is no evidence that the unpermitted use of the Project Site as a Hotel/Restaurant resulted in the Project Site ceasing to be used as a Conference Center. In other words the unpermitted use of the Project Site as a restaurant/hotel does not preclude the possibility that that Project Site was still being used as a Conference Center. We do not view these two possibilities to be mutually exclusive. The Project Site could have still continued to operate as a Conference Center during this period of time. Indeed, the fact that the Notices of Violation do not revoke or threatened to revoke the 2017 SUP leads us to conclude that the use of the Project Site as a Conference Center did not cease during the time period specified by Attorney Replansky.

**64.** For these reasons it is our determination that the MCEI correctly determined that the 2017 SUP has not lapsed.

**IV. Non-Conforming Use & Amended Special Use Permit**

**65.** The Letter of Determination finds that the Amended Application is properly classified as an amendment to an existing Special Use Permit rather than an entirely new Special Use Permit. For the reasons set forth above we agree that the Amended Application is properly classified as an amendment to an existing Special Use Permit because the use of the Project Site as a Conference Center has not lapsed.

**66.** We agree with the MCEI that just as the 2017 SUP was characterized by the Planning Board as an amendment to the 2005 SUP, the current application is also an amendment.

**67.** The Letter of Determination's finding that the Amended Application's proposal to among other items increase the number of structures at the Project Site as well as the maximum number of clients/lodgers is an impermissible expansion and intensification of a Nonconforming Use has

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
June 4, 2024**

created confusion. Conference Centers are permitted uses in the AR3 and AR5 Zoning Districts.

The use of the Project Site as a Conference Center is therefore not a Nonconforming Use.

**68.** Our interpretation of the Letter of Determination is that the 2017 SUP itself is Nonconforming because Town Code Section 250-45 was significantly amended in 2021. This means that so long as there is no cessation in use as a Conference Center, the use of the Project Site as a Conference Center can continue under the terms of the 2017 SUP that was approved pursuant to the pre-2021 version of Section 250-45. As stated above our determination is that no lapse in use has occurred.

**69.** However, an application to expand or intensify the Conference Center, including the Amended Application, must comply with the current version of Section 250-45 of the Town Code.

**70.** For these reasons we conclude that the Letter of Determination currently classified the Amended Application as an amendment to an existing Special Use Permit.

**71.** Further, we find that the Amended Application would constitute an impermissible expansion or intensification of the 2017 SUP. We agree with the MCEI that any application to expand or intensify the Conference Center use must be governed by the current version of Section 250-45.

**V. Road Frontage and Access**

**72.** The Letter of Determination held that the Project Site complied with Town Code Section 250-24. Section 250-24 requires that the Project Site have a minimum road frontage and access to a public street or highway:

**ROAD FRONTAGE REQUIREMENT.** No lot shall be created, nor any driveway permit issued, nor any building permit issued for any structure, unless the lot upon which such

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
June 4, 2024**

application is made has not less than 40 feet of frontage on and access to a public street or highway, as defined by § 280-a of the Town Law, which street or highway shall have been suitably improved or a bond posted therefor to the satisfaction of the Town Board as provided in said law.

**73.** The Clinton Parcel does not abut a public highway and as such does not meet the Section 250-24 requirement. The Project Site as put forth in the Amended Application includes the Hyde Park Parcel. The Hyde Park Parcel abuts Route 9G, a public highway and has more than forty (40) feet of frontage to this road.

**74.** We agree with the Letter of Determination to the extent that the Town Code does not require the minimum road frontage actually be located in the Town.

**75.** According to documents submitted to the ZBA the Hyde Park Parcel is located in the Town of Hyde Park's Greenbelt zoning district. It is our understanding that conference centers and hotels, as those terms are defined in Town of Hyde Park's town code, are prohibited uses in the Greenbelt zoning district.

**76.** Since the 2005 SUP was issued, ingress and egress onto the Clinton Parcel to the Conference Center had been through the Hyde Park Parcel.

**77.** The first of the Hyde Park Denials was on December 14, 2023, one week after the Letter of Determination.

**78.** The Hyde Park Denials have been appealed to the Town of Hyde Park Zoning Board of Appeal by CECNY.

**79.** Attorney Replansky has advanced the position that if the Clinton Parcel is being used as a Conference Center, that same use must be permitted on the Hyde Park Parcel or the use is not permitted on either.

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
June 4, 2024**

**80.** Attorney Polidoro's position is that the Town of Hyde Park zoning law is beyond the scope of the MCEI and the ZBA.

**81.** It is not the role of the ZBA to interpret the Town of Hyde Park's zoning regulations. However, our Town Code requires that CECNY have the required road frontage, which includes access to a public street or highway. The Town Code defines access as follows:

**ACCESS:** The abutment of a lot directly on a Town, county, or state road, street, or highway which has the required frontage thereon to allow the ingress and egress of fire trucks, ambulances, police cars and other emergency vehicles, as prescribed by this chapter and § 280-a of the Town Law.

**82.** Pursuant to the Amended Application CECNY is seeking to construct a significant number of new structures on the Clinton Parcel which will require Building Permits.

**83.** Attorney Polidoro, on March 28, 2024, during the second night of the public hearing, conceded that that while CECNY physically has forty (40) feet of road frontage, due to the Hyde Park Parcel it lacks the ability to use the existing driveway onto the Hyde Park Parcel because of the Hyde Park Denials.

**84.** Our interpretation of Section 250-24 of the Town Code is that legal access to a public highway is required for Building Permits to be issued. Section 250-24 requires road frontage to allow this legal access for the ingress and egress so that fire trucks, police cars and other emergency vehicles can access the Project Site.

**85.** The Hyde Park Denials prevent CECNY from legally using the existing driveway on the Hyde Park Parcel to connect to Route 9G. This results in a lack of access for all vehicles, including emergency vehicles, to the Project Site.

**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
June 4, 2024**

**86.** We understand the Hyde Park Zoning Board of Appeals is in the process of reviewing CECNY's appeal, however as of the date of our decision the Hyde Park Denials remain in full force and effect.

**87.** Under these circumstances, our interpretation of the Town Code is that until legal access to the Project Site has been restored by the Town of Hyde Park pursuant to either the Town of Hyde Park Zoning Board of Appeals reversing the Hyde Park Denials or the Town of Hyde Park Zoning Administrator rescinding the Hyde Park Denials and thereby permitting access over the Hyde Park Parcel, the Amended Application is not in compliance with Section 250-24 of the Town Code.

**88.** We therefore reverse the Letter of Determination on this point and hold that the Amended Application fails to satisfy the road frontage requirement codified in Section 250-24 because the Hyde Park Denials prevent access to the Project Site.

**VI. Outdoor Events Area**

**89.** For the reasons stated in the Letter of Determination we agree that any outdoor events held at a Conference Center occur only upon specifically designated areas.

**90.** We therefore affirm the conclusion reached by the MCEI on this point.

**DETERMINATIONS**

**91.** The ZBA determines that the Letter of Determination was issued at the appropriate time.

**92.** The ZBA determines that the neighboring property owners, including members of Common Sense HV, who commenced the ZBA Appeal have legal standing.

**TOWN OF CLINTON**  
**ZONING BOARD OF APPEALS MEETING**  
**FINAL MINUTES**  
**June 4, 2024**

- 93.** The ZBA upholds the Letter of Determination to the extent that the Amended Application constitutes a Conference Center under the Town Code.
- 94.** The ZBA upholds the Letter of Determination to the extent that there are no outstanding Town Code violations of record encumbering the Project Site.
- 95.** The ZBA upholds the Letter of Determination to the extent that the 2017 SUP has not lapsed or expired due to a cessation of use.
- 96.** The ZBA upholds the Letter of Determination to the extent that the 2017 SUP does not conform with the current Section 250-45 of the Town Code. We find that the Amended Application is an expansion or intensification of the 2017 SUP. We find that Conference Centers are a permitted use in the Zoning Districts in which the Project Site is located.
- 97.** The ZBA upholds the Letter of Determination to the extent that the Amended Application is correctly classified as an application to amend an existing Special Use Permit. We determine that the Amended Application must be reviewed under the existing Section 250-45 of the Town Code.
- 98.** The ZBA reverses the Letter of Determination to the extent that the Amended Application does not meet the road frontage requirement contained in Section 250-24 of the Town Code because the Project Site lacks access to a public highway due to the Hyde Park Denials.
- 99.** The ZBA upholds the Letter of Determination to the extent that Outdoor Event Areas must be properly designated on the Site Plan and outdoor events should only occur upon these designated locations.



**TOWN OF CLINTON  
ZONING BOARD OF APPEALS MEETING  
FINAL MINUTES  
June 4, 2024**

**100.** We hold that until such time as the Hyde Park Denials are reversed pursuant to a final non-appealable decision, the Amended Application is not in conformity with the Town Code and cannot proceed to the Planning Board for review.

**101.** For the foregoing reasons, the ZBA Appeal is hereby granted in part and denied in part as described above.

**APPROVAL OF MINUTES:**

No minutes were approved.

**ADJOURNMENT:**

Chairman Malcarne motioned to adjourn the meeting at 7:28 pm, seconded by Mr. Calogero, All Aye Motion carried, 7-0.

Respectfully Submitted By:



Arlene A. Campbell  
Zoning Board of Appeals Secretary