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August 5, 2025

Town of Shandaken Zoning Board of Appeals
Mr. Mark Loete, Chairman
Town Hall
7209 NYS Route 28
Shandaken, New York 12480

RE: Leeway Hotel Accessory Use Analysis for Events Tent
and Associated Improvements: Appeal From the Town of
Shandaken Planning Board Determination to Suspend
Administrative Review

[VIA E-MAIL]

Dear Chairman Loete and Zoning Board of Appeals Members:

This Appeal is being made pursuant to the directives of the Town of Shandaken Planning Board [hereinafter "Planning Board"] at its June 18, 2025 meeting, same in connection with the above referenced matter.

I. Jurisdiction

Presumably, the Planning Board is attempting to utilize Sections 274-a and 274-b of the Town Law of New York State, as well as Article XI of the Town of Shandaken Zoning Law [hereinafter "Zoning Law"], in order to force my client to Appeal the question presented below directly to the Shandaken Zoning Board of Appeals [hereinafter "ZBA"].

Question Presented: Is the Leeway Hotel events tent and related improvements an accessory use/structure to the existing hotel use within the R-1.5 and FFO Zoning Districts under the Town of Shandaken Zoning Law?

Answer: It is submitted that the question presented is to be determined in the affirmative based upon the following analysis.

Initially, I note my client's jurisdictional objective at the outset of this Memorandum as follows:

- a.) The ZBA only possesses appellate jurisdiction to hear appeals, Brenner v. Sniado, 156 AD2d 559 (1989), unless otherwise appealed directly by the Applicant in voluntary fashion. This is not occurring in the instant matter; and,
- b.) The Planning Board does not possess the power to interpret the Town of Shandaken Zoning Law. Moriarty v. Planning Board of the Village of East Sloatsburg, 119 AD2d 188 (1986); Catskill heritage Alliance v. Crossroads Ventures, LLC, 161 AD3d 1413 (3rd Dep't, 2018). Therefore, the Planning Board directive to Appeal to the ZBA is of no effect.

Accordingly, owing to the fact that the Town of Shandaken Code Enforcement Officer has not made a determination as to the question presented and based upon the foregoing legal prerequisites, the ZBA is without power to consider any Appeal in the absence of my client's consent upon the current state of facts. Therefore, any assertion that the project may be at variance with local zoning cannot serve as the basis for the Planning Board abdicating its responsibility to consider the Leeway Hotel Application under SEQRA. Town of Poughkeepsie v. Flacke, 84 AD2d 1 (1981).

Further, the Planning Board does not possess the authority to adjudicate legal issues concerning compliance with the Zoning Law. In re Dutchess Sanitation, Inc., NYSDEC Comm. Decision (April 11, 1996) at 1.

In order to protect against the sixty (60) day statutorily directed time period within which to effectuate an Appeal to the ZBA, under Section 267-b of the Town Law of New York State, this Appeal is being made on an involuntary basis and with reservation of all procedural/substantive objections.

II. Facts

The Leeway Accessory Structures/Accessory Use Application for a temporary events tent has been before the Planning Board for administrative review for the past ten (10) months. In connection therewith, detailed plans, noise mitigation measures and project related enhancements have been forwarded by the Applicant. A listing of certain Application documentation/information is as follows:

- a.) Full set of reduced size plans [annexed as Exhibit "A"].
- b.) Hours of operation [yet to be determined].

- c.) Noise limiters at the property line in order to fully comply with the specifically stated Zoning Law noise limitations. [Zoning Law Section 116-23; copy annexed as Exhibit "B"].
- d.) Amplified sound attenuation.
- e.) Number of events per year limited to a total of 13.
- f.) Largest gathering of people limited to 75 in total.
- g.) Size of the tent: 40' x 60'.
- h.) Ability to take down the tent, if necessary.
- i.) Emergency evacuation plan and management in case of a flood threat.

At the June 18, 2025 public hearing, several neighboring property owners expressed their opposition to the project. In this regard, the opponents have also retained an attorney, Eamon F. Millar, Esq., Oliver Law Office.

The project opponents submitted a May 9, 2025 correspondence by Eamon F. Millar, Esq. to the Planning Board and despite the Planning Board's request that the two sides meet to discuss reasonable relations, the opponents have refused to meet and their attorney has not returned my calls. [A copy of the May 9, 2025 attorney correspondence is annexed hereto as Exhibit "C"].

The attorney correspondence posits that the Leeway Project is an unlawful expansion of a non-conforming use. This opinion is patently incorrect under both controlling New York State Case Law [cited below] and the Zoning Law aforesaid.

In this regard, I note that the Town of Shandaken Zoning Enforcement Officer opined at a public meeting that the use is not non-conforming, as the hotel predated the Zoning Law and said use is permitted within the Zoning Districts involved. I further note that the Planning Board Attorney, Ben Gailey, Esq., has not recognized this purported issue in his Memorandum to the Planning Board. [The Applicant does not possess a copy of the Gailey Memorandum, as the Planning Board did not wish to share an attorney/client work product with anyone beyond the Planning Board].

The project is located within the R-1.5 and FFO Districts, wherein hotel uses and accessory structures related therewith are expressly permitted under the Zoning Law. This issue is addressed in detail within the December 3, 2024 Application Addendum submitted by myself to the Planning Board. [A copy of said Addendum is annexed as Exhibit "D"].

In any event, my client is not going to pursue any type of use variance, as suggested by at least one member of the Planning Board as a condition of further review. The hotel use is expressly permitted under the Zoning Law and the hotel use merely pre-dates the adoption of said Zoning Law. The use is in no way non-conforming thereunder. St. Onge v. Donovan, 71 NY2d 507 (1988).

The Leeway Project is undergoing a comprehensive SEQRA Site Plan and Special Use Permit Application before the Planning Board and it is not within the administrative powers of the Planning Board to arbitrarily refuse to conduct further administrative review. Bonded Concrete, Inc. v. Town of Saugerties, 282 AD2d 900 (3rd Dep't, 2001). See also, Section 267-a(6) of the Town Law of New York State.

III. Legal Address of the Accessory Use/Accessory Structure Issue

In consideration of the statutory wording set forth within the Zoning Law, I note the following definitions pursuant to Section 116-4(B) thereof.

a.) "Accessory Structure

A structure, the use of which is customarily incidental and subordinate to that of the principal building and which is attached thereto or is located on the same lot of premises. Except for a guest cottage which may be provided in accordance with Article VII of this chapter, "accessory structures" are not for the purpose of human habitation and include tennis courts, such buildings as garages, swimming pools, garden or tool shed, barns, greenhouses and playhouses and such elements as satellite dish antennas, windmills and solar collectors. The class of structure commonly referred to as a mobile home shall not be utilized as an "accessory structure."

b.) "Accessory Use

A use, occupancy or tenancy which is customarily incidental and subordinate to the principal use, occupancy or tenancy and located on the same lot or premises. An accessory use of a telecommunications facility serves the principal use, is subordinate in area, extent or purpose to the principal use, and is located on the same lot as the principal use. Examples of such uses include transmission equipment and storage sheds."

c.) "Hotel

A multiple dwelling or any part thereof which contains living and sleeping accommodations for transient occupancy, has a common exterior entrance or entrances and which may contain one or more dining rooms."

d.) "Special Permit Use

A use which is deemed desirable for the public welfare within a given zoning district or districts but which may be potentially incompatible with other uses provided therein. The special use shall, therefore, be subject to approval by the Planning Board in accordance with specific conditions set forth for such use as well as other applicable general provisions of this chapter."

In addition, Section 116-40(O) of the Zoning Law, "Additional Specific Standards for Certain Uses," reads in relevant part as follows with respect to the R-1.5 Zoning District.

i) 116-40(O)(4)

"All uses integral to the hotel or motel development shall either be clearly accessory to the hotel, motel or lodge development, as defined within §116-4, or be permitted uses or special permit uses within the zoning district in which the hotel or motel development is proposed."

ii) 116-40(O)(5)

"Integral accessory uses shall generally be limited to the following: meeting rooms; restaurant and dining facilities; recreational facilities, such as swimming pools and tennis courts; and small personal service/retail shops fully within the hotel, motel or lodge facility and selling newspapers, magazines, tobacco, small gifts and similar items."

At the outset of legal analysis, I note that, currently, there are various hotel uses which are conducting events [including weddings] within tents and supporting improvements as accessory uses to their hotel use.

To your writer's knowledge, few, if any, of these accessory uses have been vetted under SEQRA/Zoning by the Planning Board in order to be approved under Site Plan and/or Special Use

Permit requirements. At the present time, the known hotel events venues ascertained by my client are listed as follows:

- 1.) Full Moon
- 2.) The Emerson
- 3.) Foxfire
- 4.) Urban Cowboy

Based upon the foregoing, an administrative agency is bound by prior precedent upon essentially the same facts. Field Delivery Servies, Inc. v. Roberts, 66 NY2d 516 (1985); Knight v. Amelkin, 68 NY2d 975 (1986).

Accordingly, unless the Code Enforcement Officer is prepared to issue zoning violations to all of the foregoing establishments, it is manifestly improper to treat my client differently from the other hotels, especially when my client is, likely, the only entity observing the Zoning Law. See Adler v. Planning Board of the Town of Gardiner, Index No. 19-579, Sup. Ct., Ulster Co. (2020) Gilpatrick, J.

With further respect to statutory interpretation, the Zoning Law passages above clearly fit within the definitional predicates under the specific standards cited and the New York State Court of Appeals test for accessory uses.

In New York Botanical Garden v. Board of Standards and Appeals of the City of New York, 91 NY2d 413 (1998), the New York State Court of Appeals articulates a three prong test for whether a use qualifies as an accessory use under a Zoning Law; to wit:

- A.) The use must be conducted on the same zoning lot as the principal use. [S/B/L #25.3-1-11].
- B.) The use must be clearly incidental to and customarily found in connection with the principal use.
- C.) There must be unity of ownership, either legal or beneficial, between the principal and accessory uses. [A copy of the Deed to the subject premises is annexed hereto as Exhibit "E"].

All three prongs of the test are met in this matter. As to the second prong analysis which this Appeal centers on, I offer the following address.

Clearly, the history of events tent related accessory uses within the Town of Shandaken reveals that this type of accessory

use is widespread with respect to hotel principal uses. No violations have been issued and the uses continue, unabated, throughout the Town of Shandaken.

It is further submitted that the question presented herein is one of pure legal interpretation. Therefore, it is unnecessary to base the answer to the question presented upon a facts-based analysis. Parenthetically, facts-based analysis in the instant matter results in the same affirmative accessory use determination, as analyzed herein.

The dispositive recital under the "Accessory Structure" definition in the Zoning Law reads in pertinent part as follows "...accessory structures are not for the purpose of human habitation..."

The term "human habitation" is not defined within the Zoning Law. In the absence of a specific Zoning Law definition, a term is to be given its customary dictionary definition. Avella v. City of New York, 58 NYS 3rd 236 (2017).

Merriam-Webster Dictionary defines the term "habitation" as, 1) "the state or process of living in a particular place"; 2) "a dwelling." Said dictionary further defines the term "human" as, "a human being, especially a person as distinguished from an animal or (in science fiction) an alien."

The Zoning Law definition examples of the term "accessory use" include, "transmission equipment and storage sheds" for a "telecommunications facility." This is the only specific reference provided under the Zoning Law. However, it is definitionally adjacent to the "not for human habitation" [living and dwelling permanence], inasmuch as the example provides the opportunity to consider a purely legal interpretation. Namely, does an events tent and related appurtenances fall within the coverage of the statute? [i.e., a structure "not used for human habitation"] Toys "R" Us v. Silva, 89 NY2d 411 (1998).

In this regard, the accessory use and accessor structure definitions are clearly based upon functional rather than structural specifics. Meaning that the size of the tent and appurtenances are dependent upon site specific factors such as Zoning Law setbacks, density and associated proximate properties. Therefore, events will vary by and between different venues within the Town of Shandaken. However, this fact does not render the customary and incidental accessory use unlawful in connection with a hotel. New York Botanical Garden, *Supra*.

Under the maxim of "expression univs est exclusion alterius," the omission of the foregoing terms from the definitions contained in the Section 116-4(B) of the Zoning Law demonstrates that such inference was intentional and that plain meaning under common dictionary definition is applicable so that discretionary review is not associated with the "incidental and customary" prong of the previously addressed three part accessory use test.

In the Town of Shandaken, there can be no dispute that events tents and related improvements are customarily found at hotels throughout the town. Therefore, there is nothing inherently different in the Leeway Hotel events tent which would justify treating it differently.

Therefore, the foregoing Zoning Law passages which relate to the accessory use issue are statutory provisions which confer no discretionary review authority upon the Zoning Enforcement Officer for the ministerial act of accessory use classification under the Zoning Law. Incorporated Village of Atlantic Beach v. Garalas, 81 NY2d 322 (1993); Pius v. Bletsch, 70 NY2d 920 (1987).

Absent ambiguity, a Zoning Board of Appeals may not resort to rules of construction which alter the scope and application of a statute, because no such rule gives a court the discretion to declare the intent of the law when the words are unequivocal. Bender v. Jamaica Hospital, 40 NY2d 560 (1976).

A Zoning Law is in derogation of common law, as such, the meaning of terms within any zoning law, are to be construed in a light most favorable to the applicant or landowner. Notably, zoning restrictions are not to be extended by implication to prohibit a use and will be limited to what is clearly proscribed. Offshore Restaurant Corp. v. Linden, 30 NY2d 160 (1972); Matter of Waterways Development Corp. v. Town of Brookhaven Zoning Board of Appeals, 126 AD3d 708 (2015).

Accordingly, the fact that the tent can be taken down and is only to be utilized seasonally for proscribed periods of time must be considered within the context of the definitional language, as well as Sections 116-40(O)(4) and 116-40(O)(5) "integral accessory uses" language.

The relevant statutory recital states that "integral accessory uses shall generally be limited to the following... restaurant and dining facilities, recreational facilities" is wording which further buttresses the pure statutory interpretation that the events tent and appurtenances is an

accessory use to the hotel. This is exactly what occurs as part of an event tent and related improvements. Allan v. Adams, 36 NY2d 275 (1975). [See also, Zoning Law Sections 116-40(O)(4) and 116-40(O)(5)].

Moreover, the fact that the hotel use and accessory uses thereto are regulated as special uses under the Zoning Law constitutes statutory directives by the Town of Shandaken Town Board. Under controlling New York State case law, the classification of a special use permit under a Zoning Law is tantamount to a legislative determination that the use is in harmony with the character of the neighborhood. WEOK Broadcasting Corp. v. Planning Board of the Town of Lloyd, 79 NY2d 373 (1992); DeNicolo v. Village of Saugerties Planning Board, Index No. 16-2155, Sup. Ct., Ulster Co. (2016) Mott, J.; P.Z.R. Construction, Inc. v. Town of Esopus Planning Board, Index No. EF2024-3280, Sup. Ct., Ulster Co. (2025), Mott, J.

In addition to all of the foregoing, any ambiguity within a Zoning Law must be construed against the municipality interpreting it and in favor of the landowner. Nicklin-McKay v. Town of Marlborough Planning Board, 14 AD3d 858 (3rd Dep't, 2005); Brancato v. Zoning Board of Appeals of the City of Yonkers, 30 AD3d 515 (2006); Hess Realty Corp. v. Planning Commission, 198 AD2d 588 (3rd Dept, 1993); Catholic Charities v. Zoning Board of Appeals of the City of Norwich, 187 AD2d 903 (3rd Dept, 1972); Freihofer v. Lake George Town Board et al., 147 AD2d 865 (3rd Dept, 1989); VanNostrand v. Dalmata, 43 AD2d 752 (3rd Dept, 1973).

Even assuming the application of a fact-based analysis in this matter, the issue presented turns upon an analysis of the nature and character of the principal use of the land, in relation to the accessory use, taking into consideration the overall character of the particular area in question. New York Botanical Garden, Supra.

In this regard, the following is set forth in order to articulate the factual address:

- a.) Hotel use is permitted within the R-1.5 Zoning District.
- b.) The hotel use is a special use under the Zoning Law and as such is tantamount to a legislative finding of neighborhood character consistency, as discussed above.

- c.) Additional hotel venues are conducting weddings and other events within residential zoning districts [some at a large scale], throughout the Town of Shandaken.
- d.) The use of various hotel parcels for weddings and gatherings is a common occurrence and said events are, in almost all instances, greater in frequency, size and intensity than those of my client. [See the SEQRA mitigation measures referenced previously herein].
- e.) The client's continuing willingness to act reasonably with its neighbors during the administrative review process.
- f.) The patent fact that events tents and related improvements are customarily employed by hotel venues throughout the Town of Shandaken and Ulster County at large.
- g.) The historical lack of enforcement in citation of violations by the Town of Shandaken for other venues currently holding "events".
- h.) The clearly unconstitutional selective enforcement as against my client, should this matter be compelled to proceed before the ZBA, as a result of the Planning Board's refusal to permit my client's Application to proceed with Planning Board review.
- i.) The Special Use Permit related accessory use is capable of being renewed under the Zoning Law, thereby allowing for a reasonable Planning Board assessment in the future. [See Zoning Law Section 116-44(D); copy annexed as Exhibit "F"].

See Lavender v. Zoning Board of Appeals of the Town of Bolton, 141 AD3d 970 (3rd Dept, 2016). This is an "events" space which was improperly situate as part of a residential premises. The Appellate Division, 3rd Judicial Department, Decision relates a detailed analysis of hypothetical examples which would make for accessory use compliance which is strikingly similar to the instant matter.

IV. Forwarding Review

This submittal is further offered in order to request that this matter be placed upon the ZBA August 20, 2025 Agenda for consideration of the issues set forth herein.

In connection therewith, my client hereby pre-emptively objects to the payment of any escrow for review by a ZBA attorney, as this matter has been improperly forwarded to the ZBA by the Planning Board. Presumably, the ZBA will be retaining its own separate attorney for this matter.

My client has further retained the services of Charles Gottlieb, Esq., Whiteman Osterman & Hanna LLP, for Planning Board review purposes and Charlie will be proceeding with additional submittals to the Planning Board in association therewith.

This matter does not belong in front of the ZBA. The customary Planning Board review process should be followed for continuing SEQRA Site Plan and Special Use Permit purposes. Notwithstanding this position, the Appeal is being submitted with reservation of all procedural and substantive objections at law.

Should you have any questions, I will make myself available to speak with the ZBA attorney.

Thanking you in advance for your consideration, this Memorandum is,

Respectfully Submitted,



Michael A. Moriello

MAM:mrh

Enclosures

cc: Noah Nierenberg
Allan Dumas, PE
Josh Pulver, RA
Diego Celaya
[all via e-mail]

Grace Grant
Charles Gottlieb, Esq.
Ben Gailey, Esq.
Cliff Rabuffo



S-100

Leeway Hotel Events
Site Plan

CLIENT
Papezian Space LLC
5191 NY-28
MA Tupper, NY 12457

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ARCHITECTURE + CONSTRUCTION, PLLC
501 Broadway, Suite 1000
New York, NY 10012
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ENGINEER
BRINER AND LAROS, P.C.
200 West 10th Street, 10th Floor
New York, NY 10011
845 538 7522

1
PG Comments
No. Description Date
4/29/2025

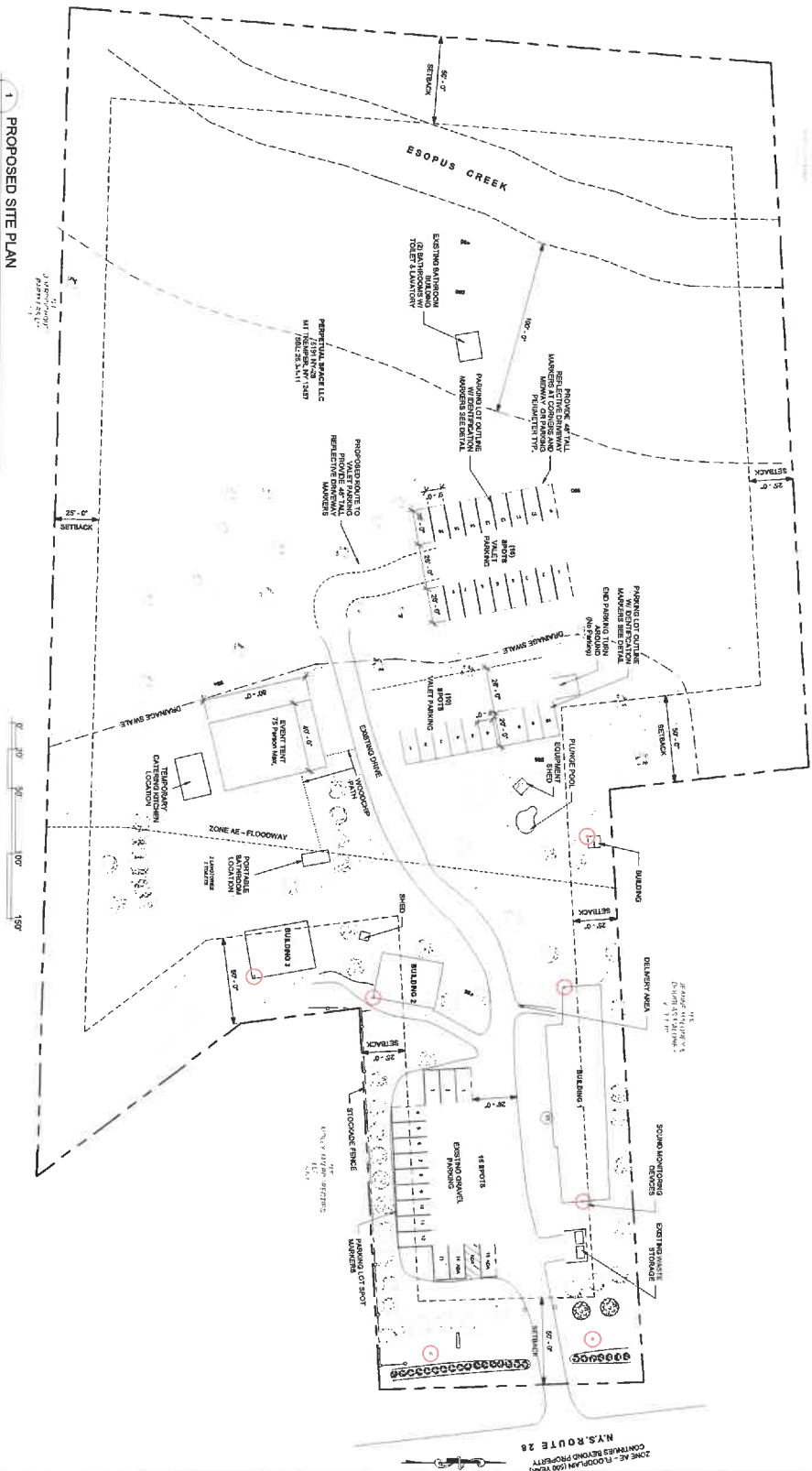
PROJECT:
Leeway Hotel Events Site Plan

PROPOSED SITE PLAN

Date: 12/4/2024
Project No: 2404
Drawn By: DC
Checked By: JP

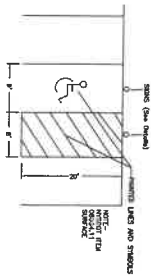
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S-101
1" = 30'-0"

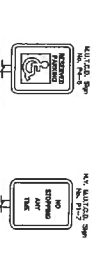


PARKING TABLE	
TYPE OF USE	NUMBER OF SPACES REQUIRED
HOTEL	1 SPACE PER GUEST ROOM
MEETING	1 SPACE PER 100 SQ. FT.
RESTAURANT	1 SPACE PER 100 SQ. FT.
CLIENT EMPLOYEES	1 SPACE PER EMPLOYEE
TOTAL PARKING SPACES REQUIRED	150
TOTAL PARKING SPACES PROVIDED	150

ZONING TABLE, E. 114.5 DISTRICT	
MAXIMUM LOT FRONTAGE (FEET)	MAXIMUM LOT AREA (SQ. FEET)
100	6.1 ACRES
150	10.1 ACRES
200	13.1 ACRES
250	16.1 ACRES
300	19.1 ACRES
350	22.1 ACRES
400	25.1 ACRES
450	28.1 ACRES
500	31.1 ACRES
550	34.1 ACRES
600	37.1 ACRES
650	40.1 ACRES
700	43.1 ACRES
750	46.1 ACRES
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900	55.1 ACRES
950	58.1 ACRES
1000	61.1 ACRES

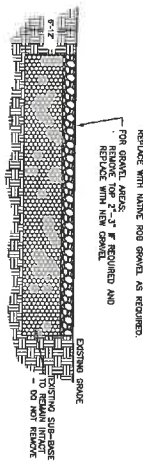


TYPICAL ADA PARKING DETAIL
NOT TO SCALE

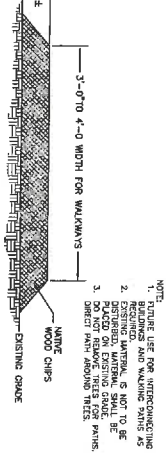


TYPICAL ADA SIGN DETAIL
NOT TO SCALE

1 TYPICAL ADA PARKING DETAIL
S-102 N.T.S.

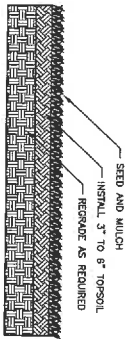


2 GRAVEL ROAD, GRAVEL RESURFACING DETAIL
S-102 N.T.S.

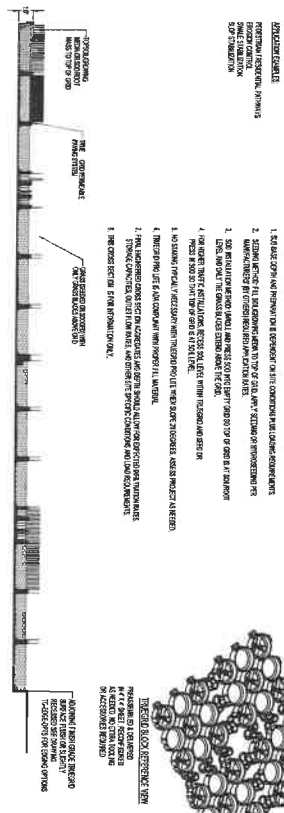


3 WOOD CHIP PATH DETAIL
S-102 N.T.S.

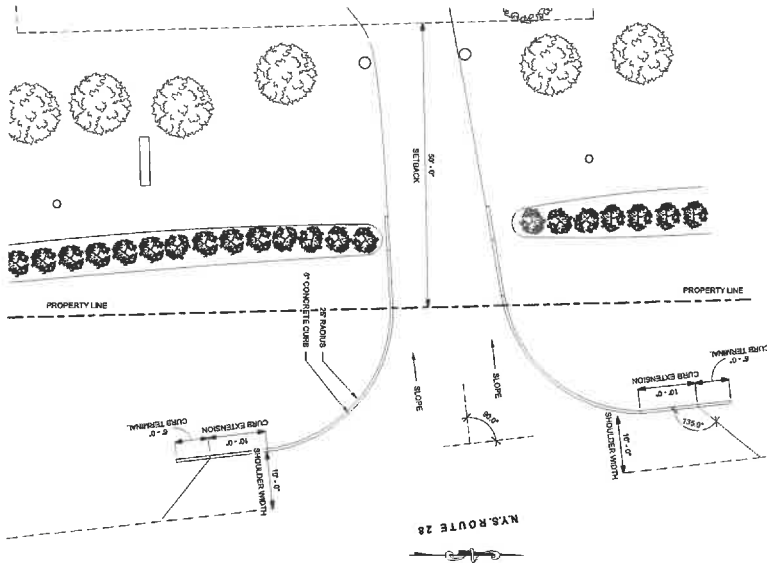
NOTE: USE AS REQUIRED.



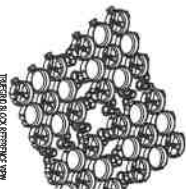
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S-102 N.T.S.



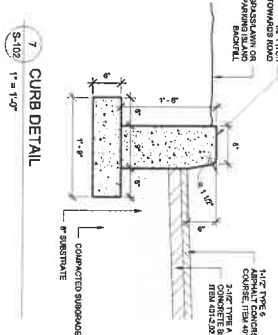
5 PARKING SPOT DEMARCATION DETAIL
S-102 N.T.S.



8 DRIVEWAY ENTRY
S-102 1" = 10'-0"



PROPOSED TENT
S-102 1/4" = 1'-0"



7 CURB DETAIL
S-102 1" = 1'-0"



National Flood Hazard Layer Firmette

Legend

Blue	Water
Green	Forest
Yellow	Barren
Orange	Developed
Pink	Wetlands
Light Blue	Shallow Water
Dark Blue	Deep Water
Light Green	Forest
Dark Green	Forest
Light Yellow	Barren
Dark Yellow	Barren
Light Orange	Developed
Dark Orange	Developed
Light Pink	Wetlands
Dark Pink	Wetlands

Leeway Hotel Events
Site Plan

CLIENT
Perennial Stone LLC
Mt Tremper, NY 12467

ARCHITECT
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ENGINEER
BRUNIER AND LABROS, P.C.
67 Madison Lane, Kingston, NY 12401
845 339 7822

1 PG Comments
No. Description Date
PROJECT
Leeway Hotel Events Site Plan

SITE DETAILS

DATE: 11/21/2024
PROJECT NO: 2604
DRAWN BY: DC
CHECKED BY: JP

DWG NO: S-102

Chapter 116. Zoning

Article VI. Supplementary Regulations

§ 116-23. Performance standards for nonresidential and nonagricultural uses.

No nonresidential or nonagricultural use shall be permitted that does not conform to the following standards of use, occupancy and operation in addition to all relevant provisions of other local, state and federal laws, rules or regulations:

A. Noise.

- (1) No person shall operate or cause to be operated any source of sound in such a manner as to create a sound level which exceeds the limits set forth for the receiving land use category stated below when measured at or within the property boundary of the receiving land use:
[Amended 12-28-1992 by L.L. No. 3-1992]

Receiving Land Use Category	Time	Sound Level Limit
Residential zones	7:00 a.m. - 7:00 p.m.	57 dBa
(R5, R3, R1.5, HR)	7:00 p.m. - 7:00 a.m.	53 dBa
Commercial zones	7:00 a.m. - 9:00 p.m.	64 dBa
(HC, HB and CLI)	9:00 p.m. - 7:00 a.m.	60 dBa

- (2) For any source of sound which emits a pure tone, a discrete tone or impulsive sound, the maximum sound limits set forth above shall be reduced by five dBa.

- B. Atmospheric effluence.** No dust, dirt, smoke, odor or noxious gases that would not normally be associated with a residential or agricultural premises shall be disseminated beyond the boundaries of the lot where such use is located.
- C. Glare and heat.** No unreasonable glare or heat shall be produced that is perceptible beyond the boundaries of the lot on which such use is situated. Special efforts shall be required, such as the planting of vegetation and the installation of light shields, to alleviate the impact of objectionable or offensive light and glare produced by exterior sources on neighboring residential properties or public thoroughfares.
- D. Industrial wastes.** No solid or liquid wastes shall be discharged into any public sewer, common or private sewage disposal system or stream or into the ground except in strict conformance with the standards approved by the Ulster County Department of Health or other duly empowered agency.
- E. Radioactivity or electromagnetic disturbance.** No activities shall be permitted which emit dangerous radioactivity beyond the building in which such activity is located or electrical disturbance adversely affecting the operation of any equipment other than that of the creator of such disturbance.
- F. Fire and explosion hazards.** All activities involving and all storage of flammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion

and with adequate fire-fighting and fire suppression equipment and devices standard in the industry. All applicable requirements of the New York State Uniform Prevention and Building Code, [1] as well as the provisions of the National Fire Protection Association (NFPA) Code, shall be fully observed. All burning of such waste materials in open fires is prohibited.

[1] *Editor's Note: See Ch. 74, Fire Prevention and Building Code Administration.*

- G. Maintenance of developed lots. All open portions of any developed lot shall have adequate grading and drainage and shall be continuously maintained in a dust-free and erosion-resistant condition by suitable landscaping with trees, shrubs, grasses or other planted ground cover or by paving with asphalt, concrete, crushed rock or by other material. Required yard areas shall be planned and maintained in such a manner as to provide an inoffensive setting which is consistent with the general use of the area.

~~R1.5, HR or HC Districts be required to be greater than the average front yard of all structures on the same side of the street within 200 feet in either direction.~~

§ 116-19. Minimum lot frontage.

All lots proposed for building purposes in the Town of Shandaken shall have a minimum lot frontage of 50 feet or 50% of the minimum lot width established by the District Schedule of Area and Bulk Regulations^[1] for the zoning district in which the lot is situated. Said lot frontage shall be measured along the right-of-way of any dedicated town, county or New York State highway or along a line 24.75 feet from the center line of any user highway. The width of any lot shall not be less than its frontage throughout its entire depth leading to the buildable portion of the lot, i.e., that portion of the lot with at least the minimum prescribed lot width.

[1] *Editor's Note: The District Schedule of Area and Bulk Regulations is included at the end of this chapter.*

§ 116-20. Transition requirements between zoning districts.

Where the side or rear yards of a lot abut a side or rear yard of a lot in a more restricted zoning district, there shall be provided along both sides of such abutting lot line or lines side or rear yards equal to those required in the more restricted zoning district.

§ 116-21. Lands designated as freshwater wetlands, under water or subject to periodic flooding.

[Amended 12-28-1992 by L.L. No. 3-1992]

No more than 25% of the required minimum lot area for any lot in any district may be fulfilled by land which is included within a designated wetland, as delineated by the New York State Department of Environmental Conservation, which lies under water or which is subject to periodic flooding under conditions of a one-hundred-year flood, as delineated by the FF-O District. All minimum front, side and rear yard requirements must be satisfied by measurement wholly on dry land, except that, for purposes of this section, land which is covered by a stream less than five feet in average width at mean water level, or land covered by a pond not exceeding 150 square feet in surface area at normal high water level, shall not be considered as being under water.

Article VI. Supplementary Regulations

§ 116-22. Applicability.

The following supplementary regulations are applicable to all zoning districts within the Town of Shandaken unless otherwise provided herein.

§ 116-23. Performance standards for nonresidential and nonagricultural uses.

No nonresidential or nonagricultural use shall be permitted that does not conform to the following standards of use, occupancy and operation in addition to all relevant provisions of other local, state and federal laws, rules or regulations:

A. Noise.

- (1) No person shall operate or cause to be operated any source of sound in such a manner as to create a sound level which exceeds the limits set forth for the receiving land use category stated below when measured at or within the property boundary of the receiving land use:
[Amended 12-28-1992 by L.L. No. 3-1992]

Receiving Land Use Category	Time	Sound Level Limit
Residential zones	7:00 a.m. - 7:00 p.m.	57 dBa
(R5, R3, R1.5, HR)	7:00 p.m. - 7:00 a.m.	53 dBa
Commercial zones	7:00 a.m. - 9:00 p.m.	64 dBa
(HC, HB and CLI)	9:00 p.m. - 7:00 a.m.	60 dBa

- (2) For any source of sound which emits a pure tone, a discrete tone or impulsive sound, the maximum sound limits set forth above shall be reduced by five dBa.
- B. Atmospheric effluence. No dust, dirt, smoke, odor or noxious gases that would not normally be associated with a residential or agricultural premises shall be disseminated beyond the boundaries of the lot where such use is located.
- C. Glare and heat. No unreasonable glare or heat shall be produced that is perceptible beyond the boundaries of the lot on which such use is situated. Special efforts shall be required, such as the planting of vegetation and the installation of light shields, to alleviate the impact of objectionable or offensive light and glare produced by exterior sources on neighboring residential properties or public thoroughfares.
- D. Industrial wastes. No solid or liquid wastes shall be discharged into any public sewer, common or private sewage disposal system or stream or into the ground except in strict conformance with the standards approved by the Ulster County Department of Health or other duly empowered agency.
- E. Radioactivity or electromagnetic disturbance. No activities shall be permitted which emit dangerous radioactivity beyond the building in which such activity is located or electrical disturbance adversely affecting the operation of any equipment other than that of the creator of such disturbance.
- F. Fire and explosion hazards. All activities involving and all storage of flammable and explosive materials shall be provided with adequate safety devices against the hazard of fire and explosion and with adequate fire-fighting and fire suppression equipment and devices standard in the industry. All applicable requirements of the New York State Uniform Prevention and Building Code, ^[1] as well as the provisions of the National Fire Protection Association (NFPA) Code, shall be fully observed. All burning of such waste materials in open fires is prohibited.
[1] Editor's Note: See Ch. 74, Fire Prevention and Building Code Administration.
- G. Maintenance of developed lots. All open portions of any developed lot shall have adequate grading and drainage and shall be continuously maintained in a dust-free and erosion-resistant condition by suitable landscaping with trees, shrubs, grasses or other planted ground cover or by paving with asphalt, concrete, crushed rock or by other material. Required yard areas shall be planned and maintained in such a manner as to provide an inoffensive setting which is consistent with the general use of the area.

§ 116-24. Parking and loading standards.

In all districts, at the time any new building or structure is erected, any existing building or structure is enlarged or any new or changed use of either land or structure is established, off-street parking and loading space shall be provided in accordance with the minimum standards set forth below:

A. Required number of off-street parking spaces.

- (1) The minimum number of parking spaces stated below shall be required in addition to one ~~parking space for each company vehicle associated with commercial, business or light~~

EXHIBIT "C"

OLIVER LAW OFFICE
ATTORNEYS AT LAW

Lewis B. Oliver Jr., Esq.
Eamon F. Millar, Esq.
156 Madison Avenue
Albany, New York 12202
(518) 463-7962

May 9, 2025

Mr. Cliff Rubuffo
Planning Board Chair
Town of Shandaken
7209 NY Route 28
Shandaken, New York 12480

Ms. Grace Grant
Town of Shandaken Zoning
Enforcement Officer
Town of Shandaken
7209 NY Route 28
Shandaken, New York 12480

Ms. Donna Lemoine
Town of Shandaken
Code Enforcement Officer
Town of Shandaken
7209 NY Route 28
Shandaken, New York 12480

Oliva Amantia, Secretary
Town of Shandaken Zoning
Board of Appeals
Town of Shandaken
7209 NY Route 28
Shandaken, New York 12480

RE: The Leeway Boutique Riverside Retreat
5191 Route 28, Mt. Tremper, New York 12457
Unpermitted Expansion of Prior Non-Conforming Use

Dear Mr. Rubuffo, Ms. Lemoine, Ms. Grant, and Ms. Amantia:

Please be advised that I represent neighboring landowners who are directly and adversely aggrieved by the proposed expansion of the Leeway Hotel located at 5191 Route 28, Mt. Tremper, New York 12457 which is currently operating as a prior non-conforming use within a residential R-1.5 zoning district in the Town of Shandaken.

The landowners whose interests I represent include, but are not limited to, the following:

1. Jeanne M. Maloney, 5195 Route 28, Mt. Tremper, New York 12457
2. Wayne and Nola Gutmann, 5201 Route 28, Mt. Tremper, New York 12457
3. Daniel and Alice Schouten, 5201 Route 28, Mt. Tremper, New York 12457
4. Scott Kent, 28 Lavendar Lane, Mt. Tremper, New York 12457

It has come to our attention that the Leeway Hotel, through, by, or in cooperation with Perpetual Space, LLC, seeks to expand its operations to include a commercial event and wedding venue at the Leeway Hotel. While we appreciate and understand that non-conforming uses may continue under certain conditions, any expansion or intensification of such use, particularly a use that introduces a completely new category of commercial activity with a higher level of impact on the community, requires review under Shandaken zoning laws. Given the scope and impact of this project, the aggrieved landowners request that the Leeway Hotel be required to obtain a special use permit and/or an area variance to commence this commercial venue project.

Prior to the acquisition of this property by the current owners, it was formerly known as Kate's Lazy Meadow Motel. This prior non-conforming use hotel operated from early 2004 until the sale to the current owners, and it never offered commercial venue hosting. The Leeway Hotel currently offers only nine (9) rooms for guest accommodation, and the impact on the community and neighbors is relatively small given the limited number of guests that can stay at the Hotel. The Leeway's plans to expand their business to offer commercial venue services is a significant enlargement of the use of the property that is completely outside the scope of their non-conforming status. A commercial venue space has never been operated on this property prior to the new ownership by the Leeway Hotel, and this expansion of the non-conforming use would be a major source of nuisance noise pollution that will impact any adjacent landowner and any landowner as far away as a mile from an amplified speaker. As the late Mr. Ted Denman famously said in protest of this project, "some of us just want to sit on the porch and listen to the crickets." No one in the immediate vicinity of this project will be able to enjoy the peaceful atmosphere of the Esopus Valley if this project is allowed to proceed.

The Leeway Hotel's planning documents indicate that Perpetual Space, LLC, intends to construct facilities to hold fall weddings and events for up to 75 guests (originally, the application anticipated having support for 90 guests, but this was reduced without explanation). The plans discuss the installation of the following: a 40x60 (2,400 square feet) roofed and walled tent which would require a permanent or semi-permanent tent pad to provide a surface for guests, tables, chairs, catering equipment, music equipment, and the like; temporary bathroom facilities consisting of two lavatories and two toilets; permanent electricity equipment; two separate permanent gravel parking lots with parking for 26 vehicles (one parking lot is 72' x 66' or 4,752 square feet with parking for 16 vehicles; the second parking lot is approximately 99' x 26' or 2,574 square feet with parking for 10 vehicles, with a project total of 7,326 square feet of newly created gravel parking surfaces); the expansion of a driveway to connect to one of the newly created parking lots; and the creation of a "temporary catering kitchen" to be placed adjacent to the wedding venue tent (the size and facilities within the temporary catering kitchen are not quantified on any plans). This expansion of the non-conforming use will be partially located within a FEMA Flood Zone and within the Town of Shandaken Floodway Zoning District because the larger 72' x 66' parking lot is located within or less than 50' from the floodway.

We are concerned that an expansion of this kind, if permitted without proper review and public process, will have a significant negative impact on both the neighboring properties and character of the surrounding area. Joshua Pulver, an architect on this project, told the Board that there is no "new ... excavation" which is an impossibility given the thousands of square feet of parking lots that will have to be graded and paved over with gravel and the creation of a new

driveway linking said parking lots. Similarly, he states that there would be “no site disturbance” so a Stormwater Pollution Prevention Plan would be unnecessary. Again, this is a dubious claim, given the requirement of mitigating water runoff from the newly created driveway, parking lots, and the 26 cars that will be parked within or adjacent to the FEMA Flood Zone and Floodway Zoning District.

As to the impact of holding weddings and other events, Mr. Pulver was unable to actually quantify the number of events that would be held at the Leeway, stating he could not “give a definite answer, but there will be one event per weekend” and that the events “will only happen in the fall ... not during the spring/summer.” This is insufficient detail to allow proper permitting, and a more definite statement on the actual number of events the Leeway Hotel anticipates holding is necessary. Similarly, the statement that events will only be held during the Fall season is too nebulous to have meaning – does Mr. Pulver mean that events will only be held after the autumnal equinox (September 22)? Or does Mr. Pulver mean the “fall season” which might commence with the end of August or the beginning of the school session? We appreciate that Chair Rubuffo has requested that the plan should be tabled to obtain more information, and we hope that this information is transparently shared with the community.

As you are surely aware, New York law takes a restrictive view of non-conforming uses and the expansion of those uses. See Garcia v. Holze, 94 AD2d 759 (1983); Traveler Real Estate Inc. v. Cain, 160 AD2d 1214 (3d Dept 1990); Brock v. Zoning Board of Appeals of the Town of Queensbury, 237 AD2d 670 (3d Dept. 1997). Any proposed expansion or material intensification of a non-conforming use is subject to zoning review, including potential variance or special use permit procedures. Allowing such a dramatic change and increase of use without public notice, hearing, or formal approval by the appropriate board would undermine the rights of neighboring property owners and the integrity of the Town's zoning framework. The decision to allow this substantial change without special use permit procedures and/or use variances violates established land use procedures and the due process protections afforded to neighboring property owners. These neighboring property owners will face decreased property values as a result of the expansion of this new non-conforming use and have a due process right to be heard during public comment and public hearings.

Further, the proposed project is plainly violative of the Shandaken Town Code, specifically §116-58(A)(1), which prohibits a non-conforming use from being "enlarged or extended by more than 50%, altered, extended, reconstructed or restored," and further states that "external evidence of such use [shall not be] substantially increased by any means whatsoever." The construction of even a temporary venue, particularly one that would introduce new infrastructure, increased occupancy, noise, lighting, and traffic, is a substantial intensification of the existing non-conforming use.

The installation of the temporary venue is further violative of §116-58(A)(1) because the construction and operation of the venue constitutes a substantial increase of the “external evidence of such” non-conforming use – and in this case, a new non-conforming use. This “external evidence” includes the 7,326 square feet of newly created gravel parking lots, any “temporary” structures installed to support the commercial venue, the presence of large gatherings of people, amplified music, and increased vehicle traffic.

In addition, §116-58(A)(3) prohibits a non-conforming use from being changed to another non-conforming use without prior approval by the Board of Appeals. Even if wedding events are viewed as a commercial extension of the hotel business, they are a distinct land use category with separate impacts and regulatory considerations that are being ignored here.

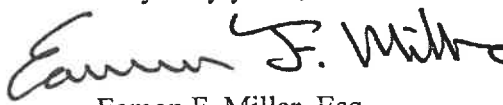
Nor is the exception to an expansion of a prior non-conforming use that is implied in §116-58(B) applicable here. Section 116-58(B) relates to a current nonconforming use being permitted to extend use to other buildings or structures that previously existed, even if at the time they were not used in a nonconforming way. Constructing or installing tents, bathrooms, and creating 7,326 square feet of new gravel parking lots is not a modification of a non-complying building or structure in existence prior to the creation of the non-conforming use code. These are all entirely new impacts.

My clients and I respectfully request confirmation as to what, if any, determination has been made by the Town of Shandaken regarding the need for zoning relief on the Leeway Hotel project. I would expect that any such application will be reviewed pursuant to the procedures and standards set forth in the Town Code and pursuant to the clear guidance of New York State law on this issue. We trust that the Town will handle this matter with the appropriate level of transparency and care.

Please be advised that my clients are prepared to take all steps necessary to protect their interest in the peace, character, and lawful enjoyment of their property. This includes pursuing all available administrative and legal remedies should any further action be taken to authorize or permit the proposed expansion outside the bounds of the Town's zoning laws. We hope that will not be necessary and trust that the Town will act in accordance with both the letter and the spirit of §116-58.

Thank you for your attention to this matter. My clients and I would appreciate your response at your earliest convenience.

Very truly yours,



Eamon F. Millar, Esq.

EFM/lm

EXHIBIT "D"

RISELEY & MORIELLO
ATTORNEYS AT LAW
111 Green Street
Post Office Box 4465
Kingston, New York 12402
E-Mail: mike@moriellolaw.com

Richard F. Riseley
Michael A. Moriello

Tel: (845) 338-6603
Fax: (845) 340-1614

SEQRA ADDENDUM

This SEQRA Addendum is hereby made part of the Short EAF, Part 1 for the Noah Nierenberg/Perpetual Space, LLC Application known as "The Leeway Hotel Temporary Events Project", same in consideration of the environmental criteria associated with coordinated review of an Unlisted Action [6 NYCRR Part 617.4].

I. PROJECT DESCRIPTION: In consideration of the environmental review of the proposed Action, the Applicant is requesting that all SEQRA Coordinated Review procedures be followed by the Town of Shandaken Planning Board, as Lead Agency, during the pendency of SEQRA review [6NYCRR Part 617.6(b)(3)(i)].

The Application proposes an accessory use seventy-five (75) person and five (5) staff temporary event project associated with the Leeway Hotel, together with an event tent, ancillary, on premises food prep tent, parking areas and associated appurtenances by way of Application for Site Plan/Special Use Permit Application under the Town of Shandaken Zoning Law. [See Maps provided by Allan M. Dumas, PE].

The project is required to undergo several reviews by involved and interested agencies in order to ultimately obtain

Site Plan and Special Use Permit Approvals from the Town of Shandaken Planning Board, as well as various administrative Permits/Approvals from other Involved Agencies, as addressed within this Addendum.

The Application has been supplemented by the Applicant with a Project Narrative, detailed Plans and the SEQRA Short EAF Part 1 has been included as an Exhibit therein for consideration by the Planning Board for administrative review purposes.

The Applicant is currently preparing an Emergency Action Plan which will address weather tracking event cancellation, tent removal and emergency evacuation in the event of flash floods and/or other Floodway related emergencies.

It is expected that the Planning Board will undertake Lead Agency responsibilities for this Action pursuant to SEQRA and in consideration of the Town of Shandaken Zoning Law, as well as the Town of Shandaken Flood Damage Prevention Law [Local Law #1 of 2016]. It is the desire of the Applicant to analyze the potential environmental impacts posed by the project in order to ultimately obtain a Negative Declaration of Environmental Significance from the Lead Agency.

With further respect to Lead Agency, the Applicant is prepared to provide the Planning Board with a Draft Notice of Intent to Serve as Lead Agency for circulation to all involved/interested agencies as part of a coordinated SEQRA review following the Planning Board's review of Part 1 of the

Short EAF to which this Addendum is referenced. [A copy of said draft Notice is being provided for Planning Board consideration and in the event the same is acceptable.]

It is noted that, pursuant to 6NYCRR Part 617.5(c)(21), this Action could be classified as Type II; thereby being precluded from SEQRA review. ["Minor or temporary uses of land having negligible or no permanent impact on the environment"]. However, the Applicant will be satisfied with an Unlisted Action designation in the event that the Planning Board so determines.

II. ZONING AND LAND USE REGULATIONS: The project site is currently zoned R 1.5 and FFO, wherein the continuing hotel, lodging and related accessory uses are permitted under the Town of Shandaken Zoning Law pursuant to Site Plan and Special Use Permit Reviews. The project is further partially located within the FEMA Flood Zone and the Town of Shandaken Floodway (FW) Zoning District.

As a portion of the currently developed site is located within the Floodway (FW) District, this area is regulated as a non-conforming use under current zoning. However, accessory use projects for commercial uses within the FW District are permitted pursuant to Section 116-58 of the Town of Shandaken Zoning Law and in accordance with Local Law #1 of 2016.

Owing to the temporary and intermittent use of a portion of the Leeway Hotel premises for events, the existing degree of nonconformity is not being permanently increased. Accordingly,

an area variance is not being sought from the Town of Shandaken Zoning Board of Appeals.

Coordinated SEQRA review and permit requirements will also necessitate review by other administrative authorities for land use approvals. A listing of the agencies ascertained by the Applicant for SEQRA review and the applicable statutory authority governing said review and relevant permitting is as follows:

I. Involved Agencies [Note: Discretionary Permits and reviews]

1. Town of Shandaken Planning Board

- a.) Site Plan Approval
- b.) Special Use Permit Approval
- c.) SEQRA [6 NYCRR Part 617 et. seq.]

A.) Statutory Authority

- i.) Sections 274-a and 274-b of the New York State Town Law
- ii.) Chapter 116 of the Town of Shandaken Code [Zoning Law]
- iii.) 6 NYCRR Part 617 et. seq. [SEQRA]

2. New York City Department of Environmental Protection

- a.) Existing Septic Repurposing [Note, in conjunction with the NYSDEC, to the extent deemed applicable]

A.) Statutory Authority

- i.) Articles 17, Titles 7 and 8 and Article 70 of the New York State Environmental Conservation Law
- ii.) NYSDEC Wastewater Treatment Commercial Design Standards Permits for Subsurface Discharge

3. Ulster County Department of Health

- a.) Existing Septic Repurposing

b.) Existing Non-Community Public Water Supply

- i.) Article II of the Public Health Law of New York State
- ii.) 10 NYCRR Subpart 5-1 [Public Water Systems]
- iii.) 10 NYCRR Subpart 14-7-1 [Temporary Residence]
- iv.) 10 NYCRR Subpart 14-1 [Food Service Establishment]

[See also, Article II, Ulster County Sanitary Code].

With further respect to numbers 2 and 3 above, a Temporary Residence Permit and Public Water Supply Permit and Food Service Permits already exist for the Leeway Hotel and these permits will not be changed. [See 10 NYCRR Parts 5.1, 14.1 and 7.3].

4. Town of Shandaken Flood Administrator

- a.) Flood Plain Development Permit.

A.) Statutory Authority

- i.) Town of Shandaken Zoning Law
- ii.) Local Law #1 of 2016

5. New York State Department of Environmental Conservation [Coordination with NYCDEP for Septic Permit purposes: See above].

II. Interested Agencies [Note: Permits/Approvals listed within the Interested Agencies Listing are Ministerial and classified as Type II under SEQRA; thereby conferring no exercise of discretion on the Agency listed]

1. Town of Shandaken Building Inspector

- a.) Building Permit
- b.) Certificate of Occupancy

A.) Statutory Authority

- i.) Town of Shandaken Code
- ii.) Town of Shandaken Zoning Law
- iii.) Uniform Fire Prevention and Building Control Act [Sections 377-383 of the New York State Executive Law]

2. Town of Shandaken Zoning Board of Appeals

3. Ulster County Planning Board
 - a.) Referral and Recommendation
 - A.) Statutory Authority
 - i.) Section 239-m of the General Municipal Law of New York State
4. New York State Office of Parks, Recreation and Historic Preservation
5. United States Department of the Interior Fish and Wildlife Service
6. United States Department of the Army Corps of Engineers
7. Town of Shandaken Police Department
8. Onteora Hose Company 3 Mount Tremper District
9. Town of Shandaken Ambulance Service
10. New York State Department of Transportation
11. Town of Shandaken Town Board
12. Perpetual Space, LLC
13. Noah Nierenberg
14. Other Agencies which the Town of Shandaken Planning Board may deem interested for circulation during the pendency of the Application under coordinated review.

III.) PROJECT CONSULTANTS:

- 1.) Riseley and Moriello, PLLC - Legal
Michael A. Moriello, Esq.
Post Office Box 4465
Kingston, New York 12402
- 2.) Brinnier & Larios PC
Allan Dumas, PE
67 Maiden Lane
Kingston, New York 12401

- 3.) Architecture & Construction, LLC - Architecture
Joshua Pulver, RA
Diego Celaya
611 Broadway, Suite 424
New York, New York 10012
- 4.) Ecological Solutions, LLC - Endangered/Threatened
Species
Michael Nowicki
1248 Southford Road
Southbury, Connecticut 06488

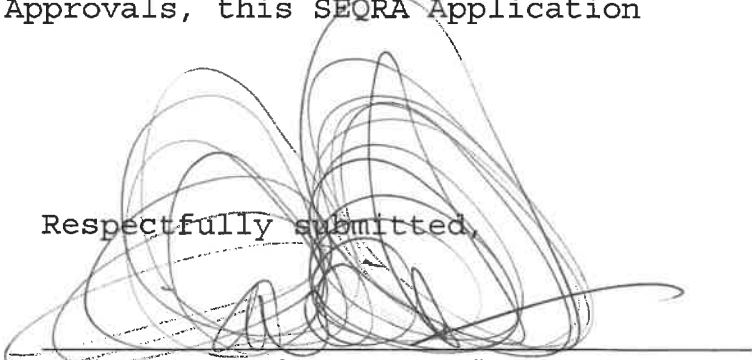
IV.) CONCLUSION:

The Applicant will work with the Planning Board, the public and all involved/interested agencies so that the Leeway Hotel Temporary Event Project will undergo a detailed environmental review, culminating in what is hoped will be a Negative Declaration of Environmental Significance under SEQRA, pursuant to the criteria set forth within 6 NYCRR Part 617.7.

WHEREFORE, in consideration of the Application for Site Plan and Special Use Permit Approvals, this SEQRA Application Addendum is,

Dated: December 3, 2024

Respectfully submitted,



MICHAEL A. MORIELLO, ESQ.
RISELEY AND MORIELLO, PLLC
Attorneys for Perpetual Space, LLC
111 Green Street, PO Box 4465
Kingston, New York 12402



ULSTER COUNTY – STATE OF NEW YORK
NINA POSTUPACK, COUNTY CLERK
244 FAIR STREET, KINGSTON, NEW YORK 12401

EXHIBIT "E"

COUNTY CLERK'S RECORDING PAGE

THIS PAGE IS PART OF THE DOCUMENT – DO NOT DETACH



BOOK/PAGE: 6891 / 302
INSTRUMENT #: 2021-16054

Receipt#: 2021065121
Clerk: SM
Rec Date: 08/16/2021 12:23:13 PM
Doc Grp: D
Descrip: DEED
Num Pgs: 6
Rec'd Frm: TITLE SERVICE CO

Party1: HUMMING BIRDLAND LLC
Party2: PERPETUAL SPACE LLC
Town: SHANDAKEN

Recording:

Cover Page	5.00
Recording Fee	40.00
Cultural Ed	14.25
Records Management - Coun	1.00
Records Management - Stat	4.75
TP584	5.00
RP5217 - County	9.00
RP5217 All others - State	241.00

Sub Total: 320.00

Transfer Tax
Transfer Tax - State 9000.00

Sub Total: 9000.00

Total: 9320.00

**** NOTICE: THIS IS NOT A BILL ****

***** Transfer Tax *****
Transfer Tax #: 329
Commercial Transfer Tax
Consideration: 2250000.00

Transfer Tax - State 9000.00

Total: 9000.00

Record and Return To:

ROBERT JACOBSEN ESQ
185 FAIR ST
KINGSTON NY 12401

WARNING***

*** Information may be amended during the verification process, and may not be reflected on this cover page.

THIS PAGE CONSTITUTES THE CLERK'S
ENDORSEMENT, REQUIRED BY SECTION 316-a (5)
& 319 OF THE REAL PROPERTY LAW OF THE
STATE OF NEW YORK.

Nina Postupack
Nina Postupack
Ulster County Clerk

525
5305

THIS INDENTURE, made the 2nd day of August, 2021,

BETWEEN **HUMMING BIRDLAND LLC**, a New York Limited Liability Company with an address of P.O. Box 3337, Kingston, New York 12401, party of the first part, and

PERPETUAL SPACE LLC, a New York Limited Liability Company with an address of c/o Lawrence Speiiman, 1675 Broadway, 20th Floor, New York, New York 10019, parties of the second part,

WITNESSETH, that the party of the first part, in consideration of One Dollar (\$1.00), lawful money of the United States, and other good and valuable consideration, paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL THAT CERTAIN plot, piece or parcel of land, lying and being in the Town of Shandaken, County of Ulster and State of New York, lying on the westerly side of State Highway #28, near the hamlet of Mount Tremper, and being more particularly bounded and described as follows:

BEGINNING at a point in the westerly bounds of the State Highway, said point being the northeasterly corner of the lands of Josephine Hudler and being 598 feet from the northeasterly corner of the Hudler cemetery lot and from thence running along the northerly bounds of the said Josephine Hudler on a course of South 84° 30' West 210 feet, more or less to the northwesterly corner of the Joseph Hudler property; thence on a course of South 10° 21' East 69.3 feet along the westerly bounds of said Josephine Hudler property, thence on a course of South 39° 25' East, and still along the westerly bounds of Josephine Hudler property 152.9 feet to the northerly bounds of Linder and Richman property, known as the boarding house property; thence in a general westerly direction along the northerly bounds of the Linder and Richman property to the bank of the Esopus Creek, thence in a general northerly direction along the easterly bank of the said creek to a point, the intersection of the prolongation of the northerly bounds of the land of Reginald Every with the easterly bank of the said creek; thence in a general easterly direction and along the said extended line to the northwest corner of the land of the said Reginald Every, thence southerly along the westerly bounds of the land of the said Every 118 feet to a point, thence easterly along the bounds of said Every 309.5 feet to the westerly edge of the said State Highway, thence southerly along the westerly edge of the said State Highway 157 feet, more or less to the point and place of beginning.

BEING THE SAME PREMISES conveyed by Lazy Meadow LLC to Humming Birdland LLC by deed dated June 1, 2004 and recorded in the Ulster County Clerk's Office on June 17, 2004 in Instrument Number 2004-17981.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof,

TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

✓ TSC 29986

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

HUMMING BIRDLAND, LLC


BY: CATHERINE PIERSON, MEMBER


BY: MONICA COLEMAN, MEMBER

STATE OF NEW YORK)
COUNTY OF ULSTER) ss:

On August 2nd, 2021, before me, the undersigned, a notary public in and for said State, personally appeared CATHERINE PIERSON, known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

PAUL T. KELLAR
Notary Public, State of New York
Qualified in Ulster County
Commission Expires January 31, 2022

STATE OF NEW YORK)
COUNTY OF ULSTER) ss:

On August 2nd, 2021, before me, the undersigned, a notary public in and for said State, personally appeared MONICA COLEMAN, known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

PAUL T. KELLAR
Notary Public, State of New York
Qualified in Ulster County
Commission Expires January 31, 2022

RECORD AND RETURN: ROBERT JACOBSEN, ESQ.
185 FAIR STREET
KINGSTON, NEW YORK 12401

for such reimbursable costs by project type and size shall be in accordance with the fee schedule established and annually reviewed by the Town Board.

§ 116-44. Effect of special use permit approval.

- A. No building permit shall be issued for any structure regulated by this article until such special use permit has received Planning Board approval and a copy of a resolution to that effect has been presented to the Building Inspector.
- B. No certificate of occupancy or use shall be issued for any structure or use of land covered by this article until the structure is completed or the land developed in strict accordance with the Planning Board resolution of special permit approval and applicable requirements of this chapter.
- C. Any use for which a special permit may be granted shall be deemed a conforming use in the district in which it is located, provided that such permit shall be deemed to affect only the lot or portion thereof for which such permit has been granted.
- D. The Planning Board may require in its resolution of approval that a special use permit be renewed periodically. Such renewal may be withheld only after public hearing and upon specific determination by the Planning Board that such conditions as may have been prescribed in conjunction with the issuance of the original permit have not been or are no longer being complied with. In such cases, a period of 60 days shall be granted for full compliance by the applicant prior to revocation of the special use permit.
- E. The granting of a special use permit in the FF-O Flood-Fringe Overlay District shall not be held to constitute a representation, guaranty or warranty of any kind by the Town of Shandaken or by any official or employee thereof regarding the practicability or safety of any structure or use or the proper functioning of the proposed facilities and plans and shall not be held to create a liability upon or cause of action against such public body, official or employee for any damage that may result pursuant to such development or use.

§ 116-45. Expiration of special use permit.

[Amended 4-14-1999 by L.L. No. 1-1999]

A special use permit shall be deemed to authorize only one particular special use and shall expire if a building permit for the special use permit activity is not issued within one year of the date of issuance of the special use permit.

§ 116-46. Relief from decision of Planning Board.

Any person or persons jointly or severally aggrieved by any decision of the Planning Board on a special use permit application may apply to the Supreme Court of the State of New York for relief through a proceeding under Article 78 of the Civil Practice Law and Rules of the State of New York. Such proceeding shall be governed by the specific provisions of Article 78, except that the action must be initiated as therein provided within 30 days after the filing of the Board's decision in the office of the Town Clerk.

Article VIII. Site Plan Review and Approval

§ 116-47. When required.

[Amended 6-11-1997 by L.L. No. 2-1997]