

DRAFT

At a Regular Meeting of the
Planning Board of the
Town of Gardiner held on
January 15, 2019 at 7:00 p.m.
At the Town Offices

**RESOLUTION OF THE
PLANNING BOARD OF THE
TOWN OF GARDINER**

In the Matter of the
Application of Shinrin Yoku LLC
For a Lot Line Revision,
Special Permit and Site Plan Review

WHEREAS, the Planning Board of the Town of Gardiner has received an application dated 2/20/2017 and 27 site plan sheets under various dates from Shinrin Yoku LLC, for a proposed project consisting of a new lodging facility comprised of 28 eco-cabins and 42 cabins, as well as a separate lobby structure and accessory buildings. All cabins will be situated on permanent wooden platforms. Accessory to the cabins and eco-cabins will be a main lobby structure, food and beverage facility (open to the public), an event barn for various uses such as yoga and meditation classes, company retreats, workshops and weddings. The site will also feature a vegetable farm, a pool, and potential amenities such as bocce courts, tennis courts and spa facilities. Vehicular access to the site is off of NY State Route 44/55, with on-site parking disbursed among main buildings. All parking lots are to be screened with natural landscape comprised of trees relocated from the existing site and new, native species introduced to supplement the screening; and

WHEREAS, the project is comprised of two parcels, tax map numbers 93.4-1-42.100 and 93.4-1-41.120. The application contemplates a lot line revision to adjust the location of the common boundary line between the two parcels which collectively contain 141.3 acres in the RA District; and

WHEREAS, the parcel to the northwest is proposed to contain an agricultural operation and will be subject to a conservation easement. The parcel to the southeast will contain the reception facility; events building; restaurant, cabins, pool and other amenities; and

WHEREAS, the proposed development will be primarily in a previously cleared area formerly used as agricultural lands/nursery with a number of the

cabins clustered at the top of the slope, up from the riverbank. Slopes running down to the Shawangunk Kill will be preserved and maintained, with the exception of minimal disturbance for a footpath to allow guests to access the Shawangunk Kill (“the Kill”) which is designated for recreational use under the NYSDEC Wild, Scenic and Recreational Rivers Act; and

WHEREAS, in addition to the lot line revision approval, the project requires issuance of a special permit and site plan review; and

WHEREAS, a pre-application meeting was held on October 10, 2016; and

WHEREAS, the Applicant appeared at the January 17, 2017 Planning Board meeting for a preliminary sketch plan review and presentation of the project; and

WHEREAS, the project is located in the RA zoning District of the Town of Gardiner. Lodging Facilities are allowed uses subject to approval of a special permit and site plan review. The Town Zoning Enforcement Officer (“ZEO”) reviewed the application and issued an opinion dated February 3, 2017 confirming that the use was allowed in the zone. In subsequent correspondence dated March 10, 2017 the structure foot prints were determined to not exceed the 6000 s.f. limits in the RA Zone. Thereafter, neighborhood residents appealed the ZEO’s determination to the Zoning Board of Appeals (“ZBA”). At the August 2017 meeting of the ZBA, the ZBA did not sustain the appeal of the residents, deadlocking in a 2-2 vote. No appeal of that vote was taken by the residents.

WHEREAS, The Planning Board, at its meeting of March 21, 2017, determined that the project was a Type I action under the State Environmental Quality Review Act (“SEQRA”) pursuant to 6 NYCRR Parts 617.4(b)(6)(i), 617.4(b)(8) and 617.4(b)(9); and

WHEREAS, the Planning Board, at its March 21, 2017 meeting, passed a motion declaring its intent to act as Lead Agency under SEQRA and circulated a notice to the other involved and interested agencies, including the Ulster County Health Department, the New York State Department of Environmental Conservation, the New York State Department of Transportation; and

WHEREAS, the Project requires, among others, the following permits and approvals:

- 6 NYCRR Part 666 permit for projects under the Wild, Scenic and Recreational Rivers Act;
- Approval of the water supply source and method by the Ulster County Department of Health;
- Approval of the wastewater treatment system by the NYS Department of Environmental Conservation; and
- Referral to the Ulster County Planning Board.

WHEREAS, the matter was heard at the April 18, 2017 meeting at which time it was referred to the ECC for report; and

WHEREAS, after the requisite circulation and waiting period, the Town of Gardiner Planning Board declared itself Lead Agency under SEQRA and began the environmental review process on May 16, 2017; and

WHEREAS, the matter was heard at the June 20, 2017 Planning Board meeting; and

WHEREAS, the matter was heard at the July 18, 2017 Planning Board meeting and a motion scheduling a public hearing for the August meeting was adopted; and

WHEREAS, at the August 15, 2017 Planning Board meeting, a public hearing was opened. The Planning Board received public comment and determined to hold the public hearing open. The Planning Board also voted to hire an engineering firm, Sterling Environmental, to assist with the review process; and

WHEREAS, the Planning Board additional public comment at the September 19, 2017 meeting and voted to keep the public hearing open; and

WHEREAS, at the October 17, 2017 meeting, the Planning Board continued to receive public comment. The Planning Board voted to close the public hearing but allowed an additional 10 days for the submission of written comments. The Planning Board determined that with significant public comment received, it would start the SEQRA review at a workshop meeting; and

WHEREAS, the Planning Board met on November 15, 2017 and reviewed the comments received to date and started the SEQRA review process, initially focusing on the areas where no impact had been identified. The Planning Board then went through the SEQRA Full EAF Part 2 and discussed the remaining areas

of the form. At the completion of the review, the Planning Board directed their attorney to draft a SEQRA Part 3 providing a reasoned elaboration for their review and adoption; and

WHEREAS, the matter was briefly discussed at the December 19, 2017 Planning Board meeting and it was reported that the Planning Board's attorney was continuing to draft the Negative Declaration; and

WHEREAS, at the January 16, 2018 Planning Board meeting the attorney for the Planning Board identified that he was looking for additional information from the applicant on certain topics; and

WHEREAS, at the February 20, 2018 Planning Board meeting the Planning Board reviewed memos from the planner and attorney with respect to the status of the review; and

WHEREAS, at the March 20, 2018 meeting the Planning Board reviewed the Applicant's additional materials; and

WHEREAS, at the April 17, 2018 meeting the Planning Board continued to review the additional materials submitted by the Applicant with a focus on noise and noise mitigation; and

WHEREAS, in or about May 15, 2018, the Planning Board acting as Lead Agency under SEQRA approved a Negative Declaration completing the environmental review process and satisfying the requirements of SEQRA; and

WHEREAS, at the June 19, 2018 Planning Board meeting, the board determined that the matter was not ready for a public hearing as certain of the materials were being revised; and

WHEREAS, at the July 17, 2018 Planning Board meeting, the application was referred to the Ulster County Planning Board. The Gardiner Planning Board reviewed and discussed materials that had been received. The Planning Board scheduled a new public hearing on the site plan and special permit for the August meeting; and

WHEREAS, a public hearing was held at the August 21, 2018 Planning Board meeting at which time all members of the public wishing to speak were heard. The Planning Board discussed materials that had been submitted and voted

to hold the public hearing open through the September meeting; and

WHEREAS, the public hearing was held open at the September 18, 2018 Planning Board meeting for the receipt of additional oral and written comments at which time the public hearing was closed; and

WHEREAS, at the October 16, 2018 Planning Board meeting, the board discussed the public comments and technical reviews. There was an extended discussion of the conservation easement and agricultural use; and

WHEREAS, at the November 20, 2018 meeting, the Planning Board reviewed in detail the “Heartwood 7” comments from neighboring residents. The Planning Board discussed and deliberated on the project and ultimately requested that the Planning Board attorney prepare a draft resolution approving the Project; and

WHEREAS, at the December 18, 2018 Planning Board meeting, the Planning Board deliberated further on the Project and reviewed a portion of the draft approval resolution. The Planning Board directed the attorney to finalize the draft and the Planning Board scheduled a workshop meeting at which to review and discuss the resolution; and

WHEREAS, the project is located in the Rural Agricultural (RA) Zoning District. The stated purpose of the RA district is to promote agriculture, forestry, recreation, and land conservation, as well as compatible open space and rural uses by encouraging such activities and siting development in a manner that preserves large tracts of contiguous open space and agricultural land.

WHEREAS, the project requires a referral to the Ulster County Planning Board under General Municipal Law 239-m. Referral was made to County Planning and a Referral response was issued. The County Planning Board endorsed the project with recommendations; and

WHEREAS, the Planning Board has duly considered all of the materials before it, including the detailed comments of the Planning Board’s consultants; the Department of Environmental Conservation; the Ulster County Health Department; the NYS Department of Transportation, the report of the ECC and the comments received from the public and individual members of the Planning Board.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS BY THE

**PLANNING BOARD OF THE TOWN OF GARDINER, ULSTER COUNTY,
NEW YORK:**

The Planning Board hereby grants Conditional Approval of the lot line revision, site plan and issues a special permit pursuant to Chapters 188 and 220 of the Gardiner Code as follows:

FINDINGS AND GENERAL CONDITIONS

The Project requires approval by the Planning Board of a Lot Line Revision, issuance of a Special Permit and Site Plan Review. The Town Code provides standards for each of these approvals. For ease of reference the applicable standard and/or criteria are restated below (in italics) with a discussion that follows as to how there is compliance with the Code provisions or how compliance is achieved with the imposition of a condition of approval.

LOT LINE REVISION

A Lot Line Revision is defined in Town of Gardiner Code Chapter 188 (Subdivision of Land) as *“the adjustment of the property line between two adjoining parcels which does not result in the creation of a new buildable lot, but is intended to be used in conjunction with and as a part of an existing lot. A lot line revision is not a subdivision, and the amending map may be signed after sketch review and lot line revision approval and upon submission of the map in final form for filing. All property owners must sign the consent to file note.”*

While a lot line revision is not a subdivision under the Town Code, the Planning Board still has the discretion to review the location of the revised lot line and determine if the lot line is appropriate with respect to the provisions of the Zoning Law and to give consideration to the nature of the lots after the revision, the relationship of the lots to the geography, topography and other features of the land and whether the revision is logical from a planning perspective.

Findings: The Planning Board finds that the proposed lot line revision is appropriate under the circumstances and meets the requirements of Chapter 188. At present the project site consist of two lots. After the lot line revision, two lots will remain. The two existing lots are awkwardly configured, with the smaller lot (93.4-1-41.120) being generally in the shape of an “L” and wrapping around the larger square shaped lot (93.4-1-42.100) on two sides.

The lot that will contain the lodging facility (93.4-1-41.120) presently consists of 44.2 acres and is shaped like an “L”. After the lot line revision, it will consist of 108.2 acres. The proposed layout and arrangement of this lot provides for ample space for the lodging facility and related improvements. There is a 1,000 foot setback to the neighboring residential properties that front on State Route 44/55. There is a 150 foot setback to the side and rear property lines. The setback to the Shawangunk Kill is a minimum of 150 feet and in most places significantly exceeds that minimum setback. As proposed, the lot maintains significant frontage on both NY Route 44/55 and Tuthilltown Road. Access to and from the site will be from a curb cut onto NYS Route 44/55 which has been reviewed and deemed acceptable by the NYS Department of Transportation.

The lot reserved for agricultural operation (93.4-1-42.100) presently consists of 97.1 acres and is generally square in shape. After the lot line revision it will consist of 33.1 acres. The proposed lot is generally rectangular in shape except for two existing frontage lots (not part of the project) that have residential homes. The revised parcel maintains significant frontage on NY Route 44/55 for its own access point if needed in the future. In addition, there is ample room for the proposed agricultural operation and the lot identifies an area of 12.75 acres within which the agricultural structures and any single family home will be located. The location of these structures maximizes their distance from existing off-site residences. The proposal at this time is to provide access to the agricultural lot from the proposed lodging site’s internal access road thereby eliminating the need for an additional curb cut.

The layout of the lots is appropriate to the topography and features of the land and the lot lines do not create an unusual or inappropriate configuration, or an unusual parcel shape. The two lots work well with the topography of the land and neither parcel is landlocked after the lot line revision. The proposed lots provide for significant setbacks to existing residences. For the foregoing reasons, the Planning Board finds the Lot Line Revision appropriate and approves it.

SPECIAL PERMIT

The Town of Gardiner Code sets forth specific findings that are required to be made in granting or denying special permits. See Zoning Law §220-63.

In addition to the below listed Zoning Law sections (Zoning Law §220-63B), the Zoning Law has general considerations to be taken into account. Those criteria, which are listed in the introductory language of Zoning Law §220-63 (and restated

below in italics) include that the Planning Board shall take into consideration:

- *the scale of the proposed project*

Planning Board Finding: The Planning Board determines that the scale of the proposed project is appropriate to the surrounding area and the site. The project consists entirely of one story buildings. The buildings are clustered together in a location that maximizes the distance from nearby existing residences.

- *the possible impact of the proposed project on the functioning of nearby farm operations, and, in rural areas, the tradition of freedom of land use where such use does not interfere with or diminish the value of adjoining property.*

Planning Board Finding: The Planning Board determines that the proposed project will have a positive impact on farm operations. The project will restore a significantly large lot to agricultural use. In addition the project will draw visitors to the area, some of whom may choose to patronize established farm operations. There are no existing farm operations in close proximity to the site. In this matter the project, with conditions imposed will not interfere with or diminish the value of adjoining property. The site is large (141.3 acres). The project consists of a modest number of cabins that are sited in a way to minimize visibility and maximize distance from surrounding properties. The Applicant has committed to quiet hours and outdoor music at special events will be monitored and shut down if too loud through the use of noise limiters. The Planning Board notes that the applicant has proposed a detailed landscaping plan consisting of 36 pages. The landscaping plan supplements and augments the significant proposed setbacks from all property lines and results in a project that is appropriately screened and buffered from off-site locations.

- *The Planning Board shall also take account of any proposed conservation easements, architectural restrictions or other measures that would tend to mitigate potential adverse impacts and preserve or enhance the scenic and historic character of the Town.*

Planning Board Finding: The Planning Board notes that the project will have three large voluntary conservation easements. One conservation easement will cover the entire agricultural parcel and measures 33 acres in size. The lodging facility site also has two conservation easements covering 54 acres of land. The Planning Board has imposed conditions which are listed below. In brief, over the course of the review the Planning Board has required an increase in setback between the Kill

and the lodging units. The Planning Board has also required that the project area be concentrated and the number of units be modified. The Planning Board has required that the facility maximize the distance from the existing neighbors to the extent possible. The proposed cabins and site features are of an appropriate architectural style and are complimentary to the purpose of the project as set forth in drawings A0 to a 4.00, renderings dated July 1, 2017. As stated above, there is a detailed and extensive landscaping plan what will mitigate adverse impacts and preserve the historic character of the Town.

- *No special permit shall be granted for any property on which there exists a violation of this chapter, including a violation of any condition of a previous municipal approval, unless the Planning Board finds that the applicant has no legal right or ability to remedy the violation or that the grant of a special permit is necessary to remedy a condition that poses a risk to public health or safety.*

Planning Board Finding: The Planning Board is not aware of any open zoning violations on the site. No existing violations were noted in the February 3, 2017 review by the building inspector. As a result, this criterion is inapplicable.

The Zoning Law at §220-63(B) requires that before granting or denying a major project special permit, the Planning Board shall make specific written findings. Each required consideration is restated in italics below. In reviewing these considerations, the Planning Board must establish whether or not the proposed major project:

- (1) Will comply with all applicable land use district, overlay district, floating district, and other specific requirements of this and other chapters and regulations, and will be consistent with the purposes of this chapter and of the land use district in which it is located.*

Planning Board Finding: As set forth in the determinations of the Building Inspector as previously discussed, the Planning Board finds the proposed site plan meets the requirements for a special permit for a lodging facility. The Planning Board has previously noted that the project is in the RA Zoning District which has as its stated purpose the promotion of agriculture, forestry, recreation, and land conservation, as well as compatible open space and rural uses by encouraging such activities and siting development in a manner that preserves large tracts of contiguous open space and agricultural land.

The Planning Board finds that the project will maintain a large tract of agricultural

land and maintain a large portion of the lot as open space. The project has an agricultural component and operation which the Planning Board considers to further the goal of promoting agriculture. In fact, the project is, in part, putting a fallow agricultural lot back into agricultural production. In addition, the purpose of the lodging facility is to bring people into the community to enjoy the outdoors and open space. The Planning Board considers this to be an appropriate form of recreation which is consistent with the District's purposes and ECL Part 666 Recreational River designation. As is noted throughout this decision, the Planning Board considers the project, with the conditions imposed, to be compatible with the existing community. In the following sections this Decision discusses the various applicable sections of the Zoning Law as well as the purposes of the Zoning Law and finds that the project is consistent with them.

(2) Will not result in excessive off-premises noise, dust, odors, solid waste, or glare, or create any public or private nuisances.

Planning Board Finding: As noted in the filed Negative Declaration, there may be some minor amount of dust generated during construction as is typical with any construction project. The project, though, will take appropriate measures to limit and mitigate dust by having and implementing an erosion control plan. The project will construct and utilize a stabilized construction entrance to minimize the tracking of mud onto local roadways during construction.

The Planning Board has reviewed the visibility of the project from off-site locations including the Shawangunk Ridge. The information provided indicates that there is minor visibility from off-site but that the Applicant has mitigated it to the maximum extent practicable by maximizing the distance of the buildings from the main road and by proposing an extensive landscaping plan. In addition, the Planning Board has reviewed the architectural style and building materials for the proposed buildings and determined that none of the materials will create any glare that is different or distinct from the materials of a traditional single family home.

With respect to odors, the Planning Board has confirmed that there will be only a limited number of community outdoor fire pits. Each lodging facility will not have its own fire pit. As a result, the project has significantly limited the potential for off-site odors from camp fires. It is anticipated that the restaurant will emit typical cooking odors. The restaurant is well removed from nearby residences such that any cooking odors would be occasional, attenuated and minimal at the property line.

The project will create solid waste that will have to be disposed of off-site. The solid waste will be collected in dumpsters and properly disposed of at an off-site location. The Planning Board determines that there is no issue created with respect to solid waste.

There has been an extended discussion and debate about potential noise from the Project. The facility is intended to be a lodging facility where people can stay to enjoy nature and will serve as a jumping off point for visitors to enjoy other attractions in the Town and region. The issue of noise has been more focused on the potential for significant off-site noise related to weddings or other special events to be held at the event barn area of the site. To assess and address this concern the applicant commissioned a noise study which was reviewed by the Town's consultants. The noise study determined that existing baseline noise levels could be maintained at property lines with no appreciable increase. To confirm that the noise levels would be maintained and limited to an amount that would not increase existing noise levels at the property line, quiet hours have been imposed starting at 10:00 p.m. and the project will employ noise limiting devices which cut power to the sound system if the established decibel limits are exceeded.

The Planning Board determines that the Project, with the stated conditions imposed and implemented, will not cause a public or private nuisance. The discussion on noise is addressed above and is not restated. Water supply is discussed below.

(3) Will not cause significant traffic congestion, impair pedestrian safety, or overload existing roads, considering their current width, surfacing, and condition, and any improvements proposed to be made to them by the applicant.

Planning Board Finding: The size of the Project and its anticipated traffic generation have been assessed and reviewed by the NYSDOT and the Town's engineer. The NYSDOT has approved the location and geometry of the main entrance. The Project is located on NYS Route 44/55 which has adequate capacity to handle the number of trips that will be generated by the Project.

(4) Will be accessible to fire, police, and other emergency vehicles.

Planning Board Finding: The layout and orientation of the site driveway and internal roads have been reviewed by the Town's engineer and the Gardiner Fire Department. All comments from the Fire Department have been addressed. To provide additional ease of access in emergency situations, the Project will maintain at the site two Utility Terrain Vehicles (UTVs) for Fire Department use.

(5) Will not overload any public water, drainage, or sewer system, or any other municipal facility.

Planning Board Finding: The Planning Board notes that this area of the Town is not served by public water or sewer. The Project is consistent with the Stormwater regulations and will be constructed with systems to treat and detain stormwater so as to maintain pre-development flows. There are no identified municipal facilities to be overloaded. The project will not generate school children. Police protection is provided by the New York State Police and Ulster County Sheriff's Office. There is no information that suggests that there will be any need for significant or routine police presence. The Gardiner Fire Department has reviewed the project and voiced no concerns relative to providing fire protection and emergency services. It is anticipated that there will be occasional calls for ambulance service consistent with a location where a number of people are located. There is nothing unique or unusual about the lodging facility that would suggest that there would be a significant number of medical calls generated beyond those generated by the general public.

(6) Will not materially degrade any watercourse or other natural resource or ecosystem, or endanger the water quality of an aquifer.

Planning Board Finding: There are no potential impacts to the Shawangunk Kill, use of groundwater or impacts on plants and animals. The project was extensively studied with respect to plants and animals, including endangered and threatened species. After significant study and review, no significant habitats or threatened or endangered species were identified. The property is presently fenced from when the property served as a nursery and the fence will remain. The fence serves as a form of barrier to larger animals.

Extensive efforts were taken to protect the Kill. These efforts include a Stormwater Management Plan to detain, treat and regulate stormwater to the Kill. In addition, the buildings were relocated during the design phase to move them further from the top of the slope above the Kill. However, the Planning Board is mindful that the Kill is designated by the NYSDEC as a recreational river and as such the proposed recreational uses of the river are appropriate.

The other significant topic and concern raised by residents is the use of groundwater to provide water supply to the Project. There were anecdotal concerns raised regarding impact to wells and groundwater supply. The

Applicants performed a pump test to determine and demonstrate that there is an appropriate supply of water for the Project. The pump test data was reviewed by the Town's consultant and found to be satisfactory. In addition, the Project will need to apply to the Ulster County Department of Health to obtain a permit to supply water to the Project. Accordingly, the Project must meet the requirements of the Health Department to use the groundwater supply

(7) Will be suitable for the property on which it is proposed, considering the property's size, location, topography, vegetation, soils, natural habitat, and hydrology, and, if appropriate, its ability to be buffered or screened from neighboring properties and public roads.

Planning Board Finding: As noted above, the Planning Board determines that the size of the parcel is significantly large in comparison to the amount of development proposed. The development is sensitively sited and is located to maximize its distance from neighboring residences. The Planning Board also references the and again notes the significant, detailed landscaping plan which will further serve to buffer and screen the project from neighboring properties.

(8) Will be subject to such conditions on operation, design and layout of structures, and provision of buffer areas or screening as may be necessary to ensure compatibility with surrounding uses and to protect the natural, historic, and scenic resources of the Town.

Planning Board Finding: The Planning Board required that the buildings be sited to minimize their visibility from NYS Route 44/55. At the same time, the siting in this way maximizes the distance from nearby residences. The project contains three large conservation easements that will further protect the natural resources of the area. The Applicant provided photographic simulations to document the efficacy of these measures. In addition, the Applicant provided photographic documentation that the Project would not be significantly visible from the nearby Shawangunk Ridge. The application was referred to the NYS Office of Parks, Recreation and Historic Preservation ("OPRHP"). OPRHP, in a letter dated January 5, 2018 stated that: "Based upon this review, it is the New York State Office of Parks, Recreation and Historic Preservation's opinion that your project will have no impact on archaeological and/or historic resources listed in or eligible for the New York State and National Registers of Historic Places."

(9) Will be consistent with the goal of concentrating retail uses in hamlets, avoiding strip commercial development, and buffering nonresidential uses that are

incompatible with residential use.

Planning Board Finding: The project does not involve retail uses or strip commercial development. The Planning Board considers the lodging use to be compatible with residential uses pursuant to a special permit. At the same time, as noted throughout this document, the Planning Board has made significant efforts to buffer residential uses from this Project, by implementing significant setbacks and considerable landscaping.

(10) Will not adversely affect the availability of affordable housing in the Town.

Planning Board Finding: The Planning Board finds that the creation of a lodging facility with restaurant and an agricultural operation will not have an impact on affordable housing options in the Town. The project is not removing any housing stock or eliminating affordable housing. The Planning Board does not consider the project to be of a nature that it will impair or inflate housing values either in the vicinity of the project or at a distance from the project.

(11) Will comply with applicable site plan criteria in § 220-65D.

Planning Board Finding: The Planning Board notes that the Project will comply with the site plan criteria. For that reason, an extended discussion of the site plan criteria follows and is not set forth here.

(12) If the property is in the SP, RA, or HR District, will have no greater overall off-site impact than would full development of the property with uses permitted by right, considering relevant environmental, social, and economic impacts.

Planning Board Finding: The Planning Board notes that the Project is in the RA Zoning District. According to the Use Table, in the RA district the following uses are allowed by right: single family dwellings. The Planning Board finds that by concentrating the building on the site and with the imposition of three large conservation easements, the operational conditions that are imposed, along with significant landscaping, that the Project will have no more offsite impact than a permitted use on the property. The Planning Board is mindful that single family residential development is not without impacts with respect to noise, water use, runoff and the like. The Planning Board is comparing the impacts to a large scale residential subdivision and not just family residence on the 141.3 acres.

SITE PLAN REVIEW

The Zoning Law at §220-65(D) identifies the criteria and standards to be followed in considering site plans. The Code notes that, in reviewing site plans, the Planning Board shall consider the criteria set forth below. The Planning Board shall also refer for nonbinding guidance to the three-volume set of illustrated design guidelines published by the New York Planning Federation in 1994, entitled Hamlet Design Guidelines (These guidelines are not applicable as they are for developments within a hamlet), Building Form Guidelines (These guidelines are not applicable as they are for buildings within a developed hamlet), and Rural Design Guidelines (These guidelines are not applicable as they are for residential subdivisions).

(1) Layout and design.

(a) To the maximum extent practicable, development shall be located to preserve the natural features of the site and to avoid wetland areas, steep slopes, significant wildlife habitats and other areas of environmental sensitivity. The placement and design of buildings and parking facilities shall take advantage of the site's topography, existing vegetation and other pertinent natural features. The Planning Board may require that an applicant prepare a conservation analysis as described in § 220-20A of this chapter.

Planning Board Finding: The Planning Board has ensured that the facilities are appropriately placed on the site. As noted, the site is a former nursery so there are limited large tree except at the top of the slope from the Kill. No development is permitted on the steep slopes of the site. The buildings are located at a significant distance from NYS 44/55 to decrease visibility. There are no significant wetlands or wildlife habitats on the site that will be adversely impacted.

(b) All structures in the plan shall be integrated with each other and with adjacent structures and shall have convenient access between adjacent uses. Structures shall, where practical, be laid out in the pattern of a traditional hamlet.

Planning Board Finding: The Planning Board notes that the project includes a walking trail to the Kill and a separate walking trail to the adjacent Tuthilltown Grist Mill attraction. The Planning Board is finds that the site is laid out appropriately and the Fire Department was consulted with respect to the layout to address emergency service concerns. The applicants propose to connect the agricultural parcel to the driveway to the lodging facility eliminating the need for

an additional curb cut.

(c) Structures that are visible from public roads shall be compatible with each other and with traditional structures in the surrounding area in architecture, design, massing, materials, proportion, texture, color and placement, and shall harmonize with traditional elements in the architectural fabric of the area. Building components such as windows, roof lines and pitch, doors, eaves and parapets shall be compatible with historic structures in the Town. Vertical, double-hung windows and steeply pitched roofs are encouraged. Designs shall avoid flat roofs, large expanses of undifferentiated facades, and long, plain wall sections. Rooftop and ground-level mechanical equipment shall be screened from public view using materials harmonious with the building, or shall be located where they are not visible from any public ways.

Planning Board Finding: The Planning Board determines that the buildings are not significantly visible from the public roads. Care has been taken to place the buildings a significant distance from the public roads. Notwithstanding this determination, the Planning Board is satisfied that the buildings are small in mass and scale as compared to the overall site and the materials, colors, design and related elements are architecturally appropriate for a lodging facility of this nature as shown in the July 2017 renderings. As noted above, the OPRHP has determined that the project will have no impact on archeological and/or historic resources.

(d) Where appropriate, setbacks shall maintain and continue the existing setback pattern of surrounding properties.

Planning Board Finding: The Planning Board notes that the project is sited with setbacks far in excess of the minimum required in the Zoning Law. The Planning Board finds that there are differing setback patterns in the area. For example, much of the single family development is located closer to the main road frontage, although in some cases the homes are constructed on large lots and sit back from the road a significant distance. The Planning Board finds that the minimum setback of 150 feet from the Kill is significantly greater than the existing nearby Tuthilltown Distillery. The Planning Board finds that the setbacks utilized strike an appropriate balance between maximizing the distance of the buildings from the main road and existing residences while also maintaining an appropriate distance from the Kill.

(e) The Planning Board shall encourage the creation of landscaped parks or squares easily accessible by pedestrians.

Planning Board Finding: The Planning Board notes that this requirement is inapplicable to this site plan due to its nature and location.

(f) Trademarked architecture which identifies a specific company by building design features shall be prohibited, unless the applicant can demonstrate that the design is compatible with the historic architecture of Gardiner or the Building Form Guidelines.

Planning Board Finding: The Planning Board notes that trademark architecture is not proposed.

(g) Impacts on historic and cultural resources shall be minimized.

Planning Board Finding: The Planning Board has identified that the location of the structures will eliminate and substantially mitigate any potential impact to historic and cultural resources. The main nearby historic resource is the Tuthilltown Gristmill. The Project is a significant distance away from the Gristmill. It is not anticipated that there will be any direct views of the Project from the Gristmill. The Planning Board notes that the Project proposes a connector trail between the Project and Gristmill which will allow guests at the Project easy walkable access to the Gristmill property. From the Planning Board's perspective, this is a significant benefit to the Gristmill in that it provides a ready stream of potential visitors/customers which will assist in keeping the Gristmill as a viable business. As noted above, the OPRHP has determined that the project will have no impact on archeological and/or historic resources.

The Planning Board considers the nearby Shawangunk Ridge to be a natural resource. The Applicant has provided a viewshed study of the Project from the Ridge. The viewshed study confirmed that the Project is located a significant distance from the Ridge and any views of the Project from the Ridge are minimal in scope and nature due to the intervening distance. Related to this topic, the Planning Board is also sensitive to the viewshed from NYS 44/55. That is, travelers along Route 44/55 are treated to significant scenic views of the Ridge and the otherwise scenic, rural backdrop of the Town of Gardiner. Cognizant of these important features, the Planning Board has required that the distance of the buildings from Route 44/55 be adjusted to reduce and mitigate their visibility to the maximum extent. In addition, the Planning Board has reviewed the detailed landscaping plan submitted for the project and has determined that it to provide significant buffering.

(h) Newly installed utility service systems, and service modifications necessitated by exterior alterations, shall be installed underground. When feasible, existing aboveground utility service systems shall be placed underground.

Planning Board Finding: The Planning Board determines that the proposed utilities for the Project will be located underground.

(2) Landscaping.

(a) Landscaping shall be an integral part of the entire project area, and shall buffer the site from and/or integrate the site with the surrounding area, as appropriate.

Planning Board Finding: The Planning Board finds that the Applicant has proposed extensive landscaping as shown on Landscape Plans dated July 2018 that, when viewed in conjunction with the location of the of the buildings at a great distance from 44/55, protects and buffers the surrounding area.

(b) Landscape plantings of shrubs, ground cover and shade trees, as well as perennials and annuals and other materials such as rocks, water, sculpture, art, walls, fences, paving materials and street furniture, shall be encouraged to create pedestrian-scale spaces and to maintain landscape continuity within the community. All landscaping within the site shall be designed to facilitate conservation of the environment and preservation of community aesthetic character. This shall be accomplished through the use of native plant material and the retention of existing natural vegetation, thereby reducing or eliminating the need for irrigation, pesticides, herbicides and fertilizers.

Planning Board Finding: The Planning Board finds the detailed and extensive natural landscape material plans are appropriate to this location to maintain landscaping continuity in the community.

(c) Existing tree stock eight or more inches in diameter at breast height shall be protected and preserved to the maximum extent possible to retain valuable community natural resources and promote energy conservation by maximizing the cooling and shading effects of trees. The preservation of mature plant species, hedgerows, wetlands and woodlots shall be encouraged and included as a design element in the development of the site.

Planning Board Finding: The Planning Board finds that the Project is designed to avoid the elimination of or impact to existing trees. In particular the large stand of trees adjacent to the Kill will not be fragmented and the lodging facilities near or within the tree stand will be strategically placed to avoid tree impacts to the maximum extent practicable. In addition, the Project is designed with the buildings and facilities grouped together so as to keep large expanses of the Project site untouched. In several of those areas the Project sponsor is creating conservation easements to protect the open areas in perpetuity.

(d) Landscape buffers shall be provided between uses that may be incompatible, such as large-scale commercial uses and residences. Such buffers may include planted trees and shrubs, hedgerows, berms, existing forestland or forest created through natural succession. The width of such buffer areas will depend upon the topography, scale of the uses, and their location on the property and nature of buffer composition.

Planning Board Finding: The Planning Board finds the 36 page landscaping plan confers exceptional buffering qualities

(e) If deemed appropriate for the site by the Planning Board, shade trees at least six feet tall and two-inch caliper shall be planted and maintained at twenty-foot to forty-foot intervals along roads, at a setback distance acceptable to the Highway Superintendent.

Planning Board Finding: The Planning Board finds the landscape plans meet the tree requirements of the code.

(f) For landscaping parking lots, see § 220-38A(4)(c).

Planning Board Finding: The Planning Board finds that the landscaping plan proposed for the parking areas meets the requirements of the code.

(3) Parking, circulation, and loading.

(a) Roads, driveways, sidewalks, off-street parking, and loading space shall be safe, and shall encourage pedestrian movement.

Planning Board Finding: The Planning Board has reviewed this criterion extensively with its consultants and the Gardiner Fire Department. The review process has resulted in project changes to improve roads, circulation and parking

locations/orientation. The internal design and layout of the project with its internal walkways results in a walkable site with connection to the Kill and a separate connection to the adjacent Tuthilltown Gristmill. The location of the Project in a more rural part of Town does not provide for a walkable community in the traditional sense of that term. The broader area is walkable and bikeable but the improvements for such activities are already in place and any changes to the existing built environment for these activities is not properly the obligation of the Project sponsor.

(b) Vehicular and pedestrian connections between adjacent sites shall be provided to encourage pedestrian use and to minimize traffic entering existing roads. The construction of connected parking lots, service roads, alleys, footpaths, bike paths, and new public streets to connect adjoining properties shall be required where appropriate.

Planning Board Finding: The Planning Board notes, that as described above, there is an interconnection between the Project and the adjacent Tuthilltown Gristmill. There is also a walking path connection to the Kill to provide access to that recreational water resource. The property on the other side of the site is in private ownership and interconnection is not appropriate or desired. Given the location of the project in a more rural area of the town, every option for interconnection has been proposed and will be built. These interconnections will have some small success in limiting the amount of cars that must leave the site to visit nearby attractions.

(c) Off-street parking and loading standards in § 220-38 shall be satisfied.

Planning Board Finding: The Planning Board has reviewed the parking standards as has its planner and engineer. The Planning Board determines that parking and loading standards are satisfied. In particular, the Planning Board is satisfied that the number of available parking spots is suitable for the proposed use and will not result in haphazard or inappropriate parking on or near the site.

(d) Access from and egress to public highways shall be approved by the appropriate highway department, including Town, county, and state.

Planning Board Finding: The Planning Board notes that the location, orientation and geometry of the highway access has been reviewed and approved by the NYS Department of Transportation.

(e) All buildings shall be accessible by emergency vehicles.

Planning Board Finding: The Planning Board notes that the Project access, roads and layout have been reviewed with the Gardiner Fire Department and has resulted in changes to the project design. The Planning Board, Fire Department and Planning Board engineer have reviewed and approved the Project layout with respect to emergency access. In addition, the Project sponsor has committed to providing two Utility Terrain Vehicles (UTVs) for exclusive use by emergency responders during emergencies

(f) Parking spaces shall have wheel stops or curbs to prevent injury to trees and shrubs planted in landscaped islands.

Planning Board Finding: The Planning Board notes that the plans call for and require tire stops in locations where they are necessary to prevent vehicles from contacting landscaping, vegetation or other items.

(g) Bicycle parking spaces and racks shall be provided in an area that does not conflict with vehicular traffic. Designated van/car pool parking, and other facilities for alternatives to single-occupancy vehicle use shall be provided wherever possible.

Planning Board Finding: The Planning Board finds that there is adequate on-site parking and the proposed facility is not of the type that requires van/car pool parking. The Planning Board is requiring a bicycle rack to be provided in the vicinity of the restaurant/main lodge.

(h) In developments where a link to schools, churches, shopping areas, trails, greenbelts and other public facilities is feasible, or where a trail connection is recommended in the Comprehensive Plan or in a Town Open Space Plan, a trail corridor shall be reserved on the approved site plan for this purpose.

Planning Board Finding: The Planning Board notes that there is an extensive discussion of the interconnection of the site which will not be repeated here. The Planning Board finds that the trails and interconnection provided in the site plan satisfies this requirement.

(4) Reservation of parkland. For any site plan containing residential units, the Planning Board may require the reservation of parkland or payment of a recreation fee pursuant to Town Law § 274-a(6).

Planning Board Finding: The Planning Board notes that this is not a subdivision subject to parkland reservation requirements or recreation fees.

(5) Miscellaneous standards.

(a) Buildings and other facilities shall be designed, located, and operated to avoid causing excessive noise on a frequent or continuous basis.

Planning Board Finding: The Planning Board references and incorporates the prior discussion regarding the rationale for locating the buildings and the mitigation measures for noise.

(b) Drainage of the site shall recharge groundwater to the extent practical. The peak rate of surface water flowing off-site shall not increase above predevelopment conditions and shall not adversely affect drainage on adjacent properties or public roads or increase turbidity of water flowing off-site.

Planning Board Finding: The Planning Board finds that the Project has a full Stormwater Pollution Prevention Plan which meets the requirement of the code. The SWPPP provides a design and basis to treat stormwater and limit offsite flows to not exceed the pre-development rates.

(c) Applicable requirements for proper disposal of construction and demolition waste shall be satisfied, and any necessary permits or agreements for off-site disposal shall be obtained.

Planning Board Finding: The Planning Board shall require as a condition of approval that all construction and demolition debris generated by the project will be disposed of in an appropriately permitted C&D landfill. On-site disposal of C&D debris is prohibited.

(d) No materials shall be placed below the finished grade of a site other than utilities, sand, gravel, rocks, and soil that are uncontaminated by any solid waste or hazardous materials. Materials that were previously contaminated and have been reconditioned shall not be permitted under this Subsection D(5)(d), except that decontaminated material may be used as a base for road or parking lot construction, provided that such decontaminated material does not pollute groundwater or surface water.

Planning Board Finding: The Planning Board notes this requirement and imposes the requirements as a condition of approval.

(e) Structures shall be located, constructed and insulated to prevent on-site noise from interfering with the use of adjacent properties. Similarly, buildings shall be situated to prevent off-site noise from intruding on new development. Methods for blocking noise shall be used where appropriate, and shall include fencing, walls and natural buffers, such as berms and landscape planting with deciduous and coniferous trees and large shrubs.

Planning Board Finding: The Planning Board incorporates by reference the prior discussion of noise mitigation measures and finds that the measures to be implemented satisfy this requirement and the provisions of 220-40 based on field measurement and automated amplified sound system designs.

The Planning Board notes that the stated purpose of the RA Zoning District is to promote agriculture, forestry, recreation, and land conservation, as well as compatible open space and rural uses by encouraging such activities and siting development in a manner that preserves large tracts of contiguous open space and agricultural land. The Planning Board finds, for the reasons detailed above, that the proposed project advances the purposes of the RA Zoning District.

The Zoning Law §220-10(A) identifies that the use regulation are intended to allow flexibility of land use to encourage business development that is consistent with the character and scale of Gardiner's hamlets, neighborhoods and rural areas. Moreover the use categories in the Use Table are intentionally broad in order to allow flexibility and responsiveness to innovation. The Planning Board finds that this policy goal is advanced by the proposed project. A new business is being created in the community. It is one that is innovative while at the same time the scale and scope of development on the lot is limited. The development areas are far removed from the existing residences. The amount of development on the parcels is not significant compared to their overall size and the character is consistent with the rural area of the Town within which it is sited.

The Zoning Law at §220-11 contains a dimensional table setting forth the various dimensional requirements for lots in the RA district. The Planning Board has reviewed the dimensional requirements and notes that the project complies with all of the required setbacks and dimensional limits. The Main Sheet of the Site Plan drawings contains a summary of the dimensional requirements and notes how the project complies.

RURAL SITING PRINCIPLES

The Zoning Law at §220-31 provides nonbinding guidelines that are to be considered in the siting of non-residential uses that are subject to site plan or special permit approval. The guidelines are restated below (in italics) and the Planning Board has made every effort to adhere to the guidelines in the review and approval of this matter. The guidelines are:

A. Wherever feasible, retain and reuse existing old farm roads and lanes rather than constructing new roads or driveways. This minimizes clearing and disruption of the landscape and takes advantage of the attractive way that old lanes are often lined with trees and stone walls. (This is not appropriate where reuse of a road would require widening in a manner that destroys trees or stone walls.)

Planning Board Finding: Existing farms roads on the Site have been used to the extent practicable. However, the above listed criteria are not exactly applicable to this Site because as a nursery the larger trees were largely cleared such that the farm roads do not follow a typical agricultural pattern. Moreover, the farm roads on the Site are not tree lined and do not have stone walls thereby eliminating those attractive features from the considerations that drive the suggestion to re-use existing farm roads.

B. Preserve stone walls and hedgerows. These traditional landscape features define outdoor areas in a natural way and create corridors useful for wildlife. Using these features as property lines is often appropriate, as long as setback requirements do not result in constructing buildings in the middle of fields.

Planning Board Finding: Due to the Site's prior use as a nursery and, in general, there are no stone walls or hedgerows to preserve. However, significant portions of the Site will remain undeveloped with additional portions placed in conservation easements.

C. Avoid placing buildings in the middle of open fields. Place them either at the edges of fields or in wooded areas. Septic systems and leach fields may be located in fields, however.

Planning Board Finding: The elements of this criterion have been discussed and debated extensively. In part, the Site does not present itself as a traditional vacant parcel because its former use as a nursery significantly impacted the natural pattern of forestation and vegetative growth. As noted on the plans, much of the site is an

open field. Trees (and contiguous forest) are found along the slope from the Kill and at the top of the slope. As a result, there are limited options to place buildings other than in open fields. The Project does have some of its buildings placed at or slightly within the edge of the contiguous forest. However, due to public comment, Planning Board concerns and other reasons, the buildings were relocated to maximize the distance from the Kill. This places them generally at the edge of the woods. The wastewater treatment system components will be placed with the open field as suggested by this criterion.

D. Use existing vegetation and topography to buffer and screen new buildings if possible, unless they are designed and located close to the road in the manner historically found in the Town. Group buildings in clusters or tuck them behind treelines or knolls rather than spreading them out across the landscape.

Planning Board Finding: The Planning Board finds that it has satisfied this criterion to the maximum extent possible. The consensus during the review process was to place the buildings the maximum distance from the main road to limit visibility from the main road and to limit impact on existing residences. At the same time there was a desire and need to maximize the distance of the facilities from the Kill. The resulting layout of the site plan achieves these twin (and somewhat competing) aims. The Planning Board finds that the buildings are clustered and grouped in an appropriate manner to reduce visibility while at the same time achieving an appropriate project layout and function.

E. Minimize clearing of vegetation at the edge of the road, clearing only as much as is necessary to create a driveway entrance with adequate sight distance. Use curves in the driveway to increase the screening of buildings.

Planning Board Finding: The Planning Board finds that the Project does not impact vegetation at the edge of the road in any material way. There will be a single curb cut and limited signage along the road. A large portion of the road frontage will be placed in a conservation easement further protecting the vegetation. At the same time, the Planning Board acknowledges that the vegetation along the road frontage is somewhat limited at present due to the former use of the property as a nursery.

F. Site buildings so that they do not protrude above treetops and crestlines of hills as seen from public places and roads. Use vegetation as a backdrop to reduce the prominence of the structure. Wherever possible, open up views by selective cutting of small trees and pruning lower branches of large trees, rather than by clearing

large areas or removing mature trees.

Planning Board Finding: The tallest building on the site is 35 feet tall. The Planning Board notes that the elevation of the Site decreases from the edge of the main road as one proceeds across the Site towards the Kill. As one reaches the Kill there is a large stand of trees. As a result of the limited building height, the terrain and topography, the buildings will not protrude above treetops or crestlines of hills.

G. Minimize crossing of steep slopes with roads and driveways. When building on slopes, take advantage of the topography by building multilevel structures with entrances on more than one level (e.g., walk-out basements, garages under buildings), rather than grading the entire site flat. Use the flattest portions of the site for subsurface sewage disposal systems and parking areas.

Planning Board Finding: The Planning Board finds that while there is a slope down from the main road towards the Kill, the slope is fairly gentle and the concerns identified in this criterion as to steep slopes are not implicated.

H. Minimize land disturbance generally. Whenever development is undertaken, removal of vegetation, grading, and operation and storage of heavy equipment should only occur where necessary for the proposed development. Special attention should be given to preserving the root systems of existing trees by avoiding soil compaction within their drip lines.

Planning Board Finding: The Planning Board finds that the proposed site plan minimizes land disturbance. The site statistics identify that although the code has a limit of 10% impervious surface coverage only 7% of the site will be covered with impervious surfaces. The Planning Board notes that the cabins will be built upon helical piles which will significantly minimize their impact on soil compaction and limit impact to root systems.

WETLAND AND WATERCOURSE PROTECTION

The Zoning Law at 220-35 has requirements for wetland and watercourse protection. The impacts to wetlands are minimal and are covered by existing Army Corps of Engineers Nationwide Permit provisions. The watercourse protection is of significance due to the presence of the Shawangunk Kill immediately adjacent to the site. As noted above, the NYSDEC has already reviewed the Applicant's permit request under 6 NYCRR 666 and the NYSDEC has issued a permit for construction associated with the project under the Wild,

Scenic & Recreational Rivers System Act program. This existing permit is significant as it indicates that the NYSDEC has reviewed the project against the standards found in 6 NYCRR Part 666 and determined that the Project complies with the standards. In addition, the NYSDEC permit contains extensive conditions on the project construction and operation. The Planning Board incorporates those permit conditions by reference. The purpose of 6 NYCRR Part 666 is to establish statewide regulations for the management, protection, enhancement and control of land use and development in river areas on all designated wild, scenic and recreational rivers in New York State. The Town regulations require that the Planning Board ensure that an applicant comply with the requirements of the NYSDEC and ACOE. That has occurred here. The Town requirements mandate that the Planning Board impose appropriate conditions to minimize damage to wetlands and watercourses. The Town is doing that by incorporating by reference the NYSDEC and ACOE requirements. In addition, during the review process the Town required that the setback between the Kill and the rental units be increased. The Town Code at §220-35(D) provides certain requirements for projects within 150 feet of the top of the bank of regulated streams. While those requirements are restated below, notably, there is no development within 150 feet of the top of the bank of the Shawangunk Kill.

220-35 (D) Regulations to protect streams. Within 150 feet of the top of the bank of any stream classified as AA, A, B or C(t) by the DEC, the Planning Board shall ensure that any development subject to its approval:

(1) Will not result in erosion or stream pollution from surface or subsurface runoff. In making such determination, the Planning Board shall consider slopes, vegetation, drainage patterns, water entry points, soil erosivity, depth to bedrock and high water table, and other relevant factors;

Planning Board Finding: The project components are not within 150 feet of the top of the bank. In any event, the project has a full Stormwater Pollution Prevention Plan and Erosion Control Plan which will be implemented to control erosion and prevent it from entering or impacting the Kill.

(2) Will not result in impervious surface coverage exceeding 2% of the regulated area (i.e., the land lying within 150 of the stream bank);

Planning Board Finding: Other than the walking trail to reach the Kill there is no impervious surface coverage within 150 feet of the stream bank. The walking trail to the Kill will be a natural surface.

(3) Will provide an adequate vegetated buffer along the stream to prevent adverse impacts on the stream; and

Planning Board Finding: The existing vegetated buffer is to remain. While there will be some structures placed within the existing canopy (near its edge), they are all in excess of 150 feet from the stream bank and the vegetated buffer is to remain in place within the 150 foot buffer. The area within the buffer is protected by a 249 GML Conservation Easement.

(4) Will maintain existing tree canopy over the stream and the stream bank.

Planning Board Finding: As noted above, there will be no impact to the vegetation within the 150 foot buffer and certainly, there is no impact to the tree canopy over the stream and streambank proposed or allowed.

In addition, the Zoning Law provides additional limitations within 100 feet of the top of the bank of the stream.

Section 220-35(E)(1) provides that the following shall not be located within 100 feet of the top of the bank of a stream classified as AA, A, B or C(t) by the DEC or, in the absence of a clear bank, from the outer edge of the riparian wetland adjacent to the stream:

(a) Principal and accessory structures 200 square feet or larger in footprint area.

Planning Board Finding: No principal or accessory structures are within 100 feet of the top of the stream bank.

(b) Septic systems, leach fields, and wells.

Planning Board Finding: No septic systems, leach fields or wells are located within are within 100 feet of the top of the stream bank.

(c) Driveways, roads, and parking lots, except as otherwise provided in Subsection E(3) below.

Planning Board Finding: No driveways, roads or parking lots are within 100 feet of the top of the stream bank.

(d) Excavation and fill areas.

Planning Board Finding: No excavation and fill area are within 100 feet of the top of the stream bank.

(e) Herbicide and fertilizer applications.

Planning Board Finding: No herbicide or fertilized applications will take place within 100 feet of the top of the stream bank.

(f) Storage of chemicals.

Planning Board Finding: No storage of chemicals will occur within 100 feet of the top of the stream bank.

(g) Vegetation removal, except as necessary to allow hiking trails and structures permitted by Subsection E(2).

Planning Board Finding: There will be no vegetation removal within 100 feet of the top of the stream bank other than minor clearing associated with the trail to access the Kill. This area is protected by a Conservation Easement.

Notably, the Zoning Law at 220-35(E)(2) provides that the setbacks shall not apply to docks, piers, bridges, and other water-related structures which by their nature must be located on, adjacent to, or over the watercourse, or to access driveways or roads associated with such structures.

AGRICULTURAL PROVISIONS

The Zoning Law provides certain exemptions for agricultural uses within an agricultural district defined in Agriculture and Markets Law Article 25-AA. The project is within a qualifying agricultural district. Zoning Law §220-37(C) provides:

C. Agricultural zoning exemptions. Within an agricultural district as defined in Article 25-AA of the New York State Agriculture and Markets Law, adopted by the county and certified by the state, the following exemptions from provisions of this Zoning Law shall apply to land and buildings on farm operations:

(1) There shall be no height, building footprint, or impervious surface coverage

limits on agricultural structures, including but not limited to barns, silos, grain bins, wind energy conversion systems, and fences, as well as equipment related to such structures, as long as they are being used in a manner that is part of the farm operation.

(2) There shall be no lot line setback restrictions on agricultural structures, except setbacks from lots that are either not within the agricultural district or lots that have existing residential uses. Agricultural structures containing animals, animal feed, or animal waste shall be set back at least 200 feet from watercourses and 100 feet from lots that have existing residential uses, whether or not such residential lots are within an agricultural district. This setback requirement shall not apply to preexisting nonconforming structures.

(3) Agricultural structures and practices shall not require site plan review or special permit approvals, except that agricultural structures with a footprint greater than 20,000 square feet or exceeding 35 feet in height shall require minor project site plan approval pursuant to § 220-67.

(4) Soil mining which does not require a permit from the New York State Department of Environmental Conservation shall be permitted by right, subject to a zoning permit from the Building Inspector.

Since there is no requirement for a special use permit or site plan review for most agricultural operations, the Planning Board is approving the agricultural parcel which will be subject to a conservation easement. The conservation easement limits the location of the agricultural structures to a discrete area of the lot with maximizes their distance from neighboring properties. In addition, the conservation easement provides that the agricultural structures and site layout will be subject to Site Plan Review by the Planning Board.

Finally, it is noted that agriculture is exempt from review under the Type II list of SEQRA at 6 NYCRR 617.5(c)(4). “The following actions are not subject to review under this Part...(3) agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming.”

The Applicant has provided an agricultural data statement. The Planning Board has reviewed the information contained therein. Based upon the Planning Board’s experience in the Town, there is no indication that the proposed project will have any negative impacts on the functioning of farm operations within the agricultural

district. To the contrary, the project will bring a number of people into the town that may purchase farm related products or visit farm operations. The project will also put a parcel of agricultural land back into productive use.

SIGNAGE

The Zoning Law regulates signs at §220-39. The Planning Board has reviewed the nature, size, location and necessity of the signs proposed by the Applicant (A4.00) and finds them to be consistent with the Town's sign regulations.

SCOPE, AUTHORITY AND PURPOSE OF THE ZONING LAW

The Zoning Law §220-4 provides that all provisions of the Zoning Law shall be construed to fulfill the purposes stated in §220-3. In addition, the Zoning Law shall be construed to encourage agriculture. In fact, Zoning Law §220-37 provides specific exemptions and protections for agricultural uses. The purposes set forth in §220-3 are restated below.

A. To conserve the natural resources and rural character of the Town by encouraging development in appropriate locations and by limiting building in areas where it would adversely affect the Town's predominantly rural pattern and scale of settlement;

Planning Board Finding: The Planning Board determines that the location of the facility is appropriate as it is placed on a major state road and immediately adjacent to the Tuthilltown Gristmill. The placement of the facility is not foreign or unusual to this part of the Town. The recreational nature of the facility specifically corresponds the requirements of ECL Part 666.

B. To minimize negative environmental impacts of development, especially in visually and environmentally sensitive areas such as the Shawangunk Ridge, along the Wallkill River, Shawangunk Kill, Palmaghatt Kill, Mara Kill, and their tributaries, in aquifer and aquifer recharge areas, and on steep slopes, erodible soils, wetlands and their buffers, floodplains, active farmlands, and other designated open space resources identified in the Comprehensive Plan;

Planning Board Finding: The Planning Board received public and professional comment on potential impacts to the Shawangunk Kill. The Planning Board reviewed reports on the potential for endangered species, a full Stormwater Pollution Prevention Plan, a detailed wastewater treatment system design and the

Project underwent several revisions to its layout before the Planning Board was satisfied that the location of the buildings and other improvements in relation to the Kill was appropriate and protective of that water body. The Planning Board is requiring a setback from the Kill that is at least 150 feet and in most places is significantly greater. In addition, the buildings are being located at the edge of the large stand of trees that typifies the area from the bank of the Kill to the top of the slope and beyond. No clear cutting is allowed and only a very limited number of trees will be removed for the construction of the cabins.

C. To encourage a range of business activities in appropriate locations which are compatible with the Town's rural character and scale, concentrating retail businesses in and near hamlets, allowing large-scale business and industry in well-buffered locations with good transportation access;

Planning Board Finding: This consideration is not exactly on point for the type of development proposed. That is, the type of development is not retail which is to be focused near the hamlet. It is not industry. As a lodging facility with a restaurant open to the public it is not clear that it should be considered a large scale business. However, borrowing from the suggested criteria, the Project, assuming for the sake of argument it should be considered a “large-scale business” is located on a very large parcel as compared to the amount of land required for the development. The large parcel allows for significant setbacks in all directions. The project will have its curb cut on NYS Route 44/55 which is considered good transportation access. The Planning Board determines that the nature of the business and its scale is compatible with the area as it is immediately adjacent to the Tuthilltown Gristmill site. The use as an eco-lodging facility is consistent with the rural, recreational nature of this area of the Town of Gardiner.

D. In recognition of the economic value of Gardiner's natural beauty and environmental amenities, to protect the integrity of scenic views, ridgelines, steep slopes, agricultural land, existing and potential recreation areas, waterways, ground- and surface water supplies, ecological systems, wetlands, wildlife habitat, and natural vegetation, and to maintain environmentally significant open space in its predominantly undeveloped state, in order to maintain property values and preserve the open and rural character of the Town;

Planning Board Finding: As noted throughout this document, the Planning Board has made strides to reach a conclusion of the review of this project that balances the needs of the community with the proposed development. Indeed, the “economic value of Gardiner’s natural beauty and environmental amenities” are

exactly what encourages an eco-lodging facility to propose to be located within the Town. The 26 month process has focused the exact environmental considerations listed above to ensure that the proposal will not adversely impact aesthetics, the Kill, groundwater supplies, wildlife and the like. The Planning Board acknowledges that there is not unanimity on these topics at the Planning Board level and certainly not with the nearby residents who have opposed the project. At the same time, the Zoning Law is not drafted to allow only single family homes in the Town and the process employed over this considerable period of time is one that a majority of the Planning Board and its Planner and Engineering Consultant have determined to be protective of the Town and its environment.

E. To preserve and protect lands and buildings that are historically significant and to enhance the aesthetic and architectural quality of the entire community;

Planning Board Finding: There is nothing in the record to suggest that the land or any nearby buildings are historically significant except for the Tuthilltown Gristmill. The Planning Board notes the nearby Tuthilltown Gristmill which operates as a distillery and is a tourist and business enterprise in its own right. Nothing about the proposed project will adversely affect the quality of the Tuthilltown site. The Planning Board has reviewed the nature and quality of the proposed architectural design of the facility and finds that, while it cannot generally be seen from off the site, it is appropriate and will enhance the aesthetic and architectural quality of the community. As noted above, the OPRHP has determined that the project will have no impact on archeological and/or historic resources.

F. To encourage the continuation of agriculture and the preservation of open space, and to avoid regulating agricultural uses in a manner that unreasonably restricts or regulates farm structures or farming practices, while encouraging other economic activities that require large areas of contiguous open space, such as forestry, tree farming, and recreation, as well as the support services and industries that add value to all of these uses, such as wood products, food processing, resort, and tourist facilities;

Planning Board Finding: This particular criterion is most on point with the proposed project. The Planning Board finds that the Project fully satisfies this criterion. The Project clearly encourages the continuation of agriculture by placing a 33 acre parcel into a conservation easement for the purposes of having an agricultural operation. In addition, the lodging facility parcel will place a 54 acre portion of the site into two conservation easements. That combined with the small

scale of the overall development will preserve open space and encourage agriculture. While normally agricultural uses are exempt from site plan and special permit requirements, the review of the agricultural parcel will be subject to a conservation easement and will undergo Site Plan Review when a plan is proposed as an additional measure of review.

The Planning Board finds that the Project is consistent with this criterion by encouraging economic activity in the form of recreation on a large open space. In addition, the Project is providing support services that add value to recreation activities such as resort and tourist facilities.

G. To regulate building density in order to concentrate population in appropriate locations where municipal infrastructure is available, and to ensure access to light and air, conserve open space, facilitate the prevention and fighting of fires, minimize the cost of municipal services, and accomplish the other purposes enumerated in § 263 of the Town Law of New York State;

Planning Board Finding: The Planning Board has evaluated the private water and sewage systems for the Project and has found them to be appropriate. While in certain cases, there is a planning need to concentrate population where municipal systems are available. Notably, there is no municipal water system in the entire Town of Gardiner. There is municipal sewer in the hamlet, that system does not necessitate that every land use and every project be in the hamlet. The Planning Board has received and incorporated the comments of the Gardiner Fire Department into its review of this project with respect to public safety. As noted extensively above, the Planning Board finds that this project takes into account and preserves open space.

H. To integrate harmoniously different types of housing and varied land uses in hamlet centers to encourage pedestrian activity and reduce automobile traffic;

Planning Board Finding: The Planning Board notes that this project is not in a hamlet center and as a result this particular criterion is not applicable.

I. To provide a range of housing opportunities for all segments of the local population with due consideration for regional housing needs;

Planning Board Finding: The Project is not a housing project so it does not benefit or detract from providing housing opportunities to the local population.

J. To protect residences from nonagricultural nuisances, odors, noise, pollution, and unsightly, obtrusive, and offensive land uses and activities;

Planning Board Finding: In the discussion points above, nuisance, noise, odors, pollution and the like have been discussed at length and the Planning Board has found that the Project, as modified through the review process, and with conditions, will not cause a nuisance or offensive odors, noise, pollution or the like. For the sake of brevity, those discussions are incorporated herein by reference and are not restated.

K. To improve transportation facilities in areas designated for intensive settlement and to maintain a network of smaller country roads in areas designated for low-density development and the protection of open space, agriculture, steep slopes, and rural character;

Planning Board Finding: The nature of this Project does not lend itself to a requirement to improve transportation facilities. The site is located on a state route that is suitable in capacity and layout for the minor additional traffic that will be produced by this site. No public roads are proposed.

L. To reduce traffic congestion on major roads by establishing a pattern of settlement and circulation that reduces the need for driving, provides alternative routes between destinations, and encourages walking, bicycling, and the use of public transportation;

Planning Board Finding: The Project as proposed will reduce the need for additional trips by having an on-site restaurant which can be used by patrons staying at the lodging facility. In addition, there is a walkable connection to the adjacent Tuthilltown Distillery which will also eliminate the need for some car trips. Finally, the agricultural lot is envisioned to be an attraction for those staying at the lodge as is access to the recreational river. At the same time, the Planning Board acknowledges that there are other recreation, cultural and historical attractions in the Town of Gardiner and the larger region. Those attractions are generally only realistically accessible by car.

M. To encourage the conservation of energy and the appropriate use of solar and other renewable energy resources;

Planning Board Finding: The Project does not presently have a solar energy component. The Applicant has indicated that solar panels may be considered in

the future.

N. To preserve the natural beauty of the Town as provided in the Comprehensive Plan, especially the unique ecological and scenic resources of the Shawangunk Ridge and escarpment, and to guide development consistent with maintaining the Town's natural, scenic, and ecological resources.

Planning Board Finding: The Planning Board notes that the Chapter 220 Zoning Law was adopted to implement the Comprehensive Plan. As noted throughout this document (and not restated here), the Planning Board has reviewed the application with the goal of protecting the unique resources of the Town of Gardiner and believes it has done so through the review process, project changes and the conditions to be imposed on the Project.

O. To provide a flexible system of land use regulation that enables the Town's economy and population to grow, while preserving the most important natural, historic, scenic, architectural, and cultural features; and

Planning Board Finding: The Planning Board believes that the Zoning Law contains an adequate system for the thorough and detailed review of the Project. The Zoning Law has proven itself to be a “flexible system of land use regulation” which has provided the framework for a detailed review, including significant public participation, and has resulted in a modified project that is sensitive to the concerns that have been raised and is sited and laid out in the best possible way on the site.

P. To base such flexible land use regulations on the unique characteristics of the landscape, the needs of the people of the Town of Gardiner, the property rights of landowners to make economically beneficial use of their land, and the impact of proposed land uses on the natural and human environment, and to avoid patterns of development that adversely affect the scenic, historic, rural, and natural character of the Town.

Planning Board Finding: The review of this project has been centered on conformance to the Gardiner Zoning Code recognizing the unique characteristics of the site, the proximity of the Kill and the potential for impacts to neighbors. The Planning Board’s focus has been ensuring that the project accommodates the landowners’ desire to make economically beneficial use of their property while at the same time not creating a Project that would have a significant adverse effect on the neighborhood and would benefit the Town as a whole.

PUBLIC COMMENT AND THE HEARTWOOD 7

As noted above, the Planning Board has provided a lengthy public process in the review of this application. There were multiple public hearings and many written comments were provided to the Planning Board and its consultants for review. In particular, the neighboring property owners distilled their objections to the Project down to seven discrete points and submitted them in letter form to the Planning Board. Acknowledging the need to continue to engage in a public dialogue of the issues identified as of most concern to the neighboring residents, the Planning Board referred the “Heartwood 7” letter to its engineering consultant, Sterling Environmental, for review and consideration of whether the concerns had an engineering basis and whether the concerns had been addressed in the lengthy review of the project. Sterling Environmental issued a letter dated November 6, 2018 which is incorporated by reference herein and serves as the Planning Board’s response to the Heartwood 7. That being said, the Heartwood 7 concerns require additional consideration and response as follows:

1. Conservation Easement – The Heartwood 7 letter seems to suggest that the entire site outside of what is approved as the developed area of the site plan be placed in a conservation easement to prevent any further development or project changes. As noted above and in the Sterling Letter, the entire 33.1 acre agricultural parcel will be in a conservation easement. A total of 21.1 acres of the lodging facility site (out of the 108.2 acre parcel) will be in a conservation easement. In total 54.2 acres out of 141.3 acres (38.4% of the total land) are in a conservation easement. This is a significant amount of open space that will remain in perpetuity.

2. Noise and Event Frequency – The Planning Board is aware that the operation of other locations within the Town has demonstrated a pattern of noise issues. As a result, the Heartwood Project included a noise study and a determination that with mitigation there would be no appreciable increase in the noise levels at the property lines. The Project will employ noise limiters on the amplified music. The noise limiters will cut power to the system if the amplified music is exceeding a level which will cause an increase at the property line in excess of 3 dBm. The location of the amplified music is limited to the center of the site at the event barn. As noted in the Sterling letter, there are several alternative paths to enforce compliance if the facility is operating out of compliance. The Planning Board notes that this item is of particular importance to its review and should the facility operate out of compliance or should the conditions imposed not protect the neighborhood from noise levels that are

disruptive or approach the level of a nuisance, the Planning Board retains the right to review this Special Permit and impose additional conditions such as earlier quiet hours, a limit on the number of events with amplified music or a limit on, or elimination of, outside events.

3. Maximum Occupancy Limits – As noted in the Sterling letter, the occupancy limit proposed in the Heartwood 7 list has been met by the Applicant.

4. Restaurant Usage for Lodging Facility Guests Only – The Planning Board pauses to add some additional commentary to that provided by Sterling Environmental. The Planning Board is striving to approve a project with conditions that will not cause an impact to the neighborhood. There has been no showing that there are any concerns with traffic volume on Route 44/55. The Planning Board can discern no logical reason to limit the restaurant to lodging facility guests only. The restaurant will be a largely enclosed use (albeit with some outdoor seating). It is located in the central portion of the site. The Town seeks to have business ventures succeed. A limitation of this nature on a restaurant will eliminate an amenity from the remainder of the town and broader region and may cause it to fail. Because there is no compelling environmental or policy reason for such a limitation, the Planning Board cannot endorse it.

5. Reasonable Setbacks from the Shawangunk Kill – In addition to the discussion in the Sterling letter, the Planning Board notes (as discussed above) that the setbacks are in excess of nearby uses and were ratified by the NYSDEC which has significant programmatic oversight of development near rivers designated as Wild, Scenic or Recreational. The Planning Board believes that the setback imposed is appropriate and protective of the environment.

6. Establishment of Citizen Complaint Board – As noted by Sterling Environmental, the Zoning Law and Code Enforcement Officer have ample means by which to enforce zoning compliance. Creation of another entity to hear complaints is beyond the jurisdiction of the Planning Board and is duplicative of the venues already available. In addition, there would likely be due process objections raised. If there are violations of the site plan approval or special permit, they should be brought to the attention of the Code Enforcement Officer for action. If the Applicant does not deliver the Project that has been proposed and operates outside of this permit or as a nuisance, then a future Planning Board is admonished to carefully review those circumstances and their authority to revoke permits as allowed under the Zoning Law.

7. Annual Permit Renewal Requirement – The Planning Board acknowledges the residents’ desire to gain leverage over the applicant by requiring that the permits be renewed on an annual basis. While such a system may work for certain land uses, the Planning Board believes an annual permit renewal for this use is unworkable. At the same time, the Planning Board agrees that there should be leverage available to nearby residents should the Applicant not deliver on the low-key, non-intrusive project they have presented to the Planning Board and the public. As noted above, the site plan approval and special permit issued herein are for a use that is not to have a significant impact on the neighbors or come anywhere close to constituting a nuisance. If the Applicant or a future operator cannot deliver on that commitment, they should pause their efforts to develop the project as the Planning Board is making a commitment to the community that if significant noise or other nuisance issues arise triggering the Planning Board to review the issued permit, it is expected that, if the complaints are substantiated, a future planning board will impose additional conditions and limitations on the operation or may consider revoking the special permit to operate.

CONDITIONS OF APPROVAL

- 1) The agricultural parcel will undergo Site Plan Review when there is a defined plan for its development.
- 2) There shall be specific performance of the approved plans and specifications.
- 3) A bicycle rack will be installed in the vicinity of the main buildings.
- 4) There shall be no on-site disposal or burning of construction and demolition debris.
- 5) No materials shall be placed below the finished grade of a site other than utilities, sand, gravel, rocks, and soil that are uncontaminated by any solid waste or hazardous materials. Materials that were previously contaminated and have been reconditioned shall not be permitted under this Subsection D(5)(d), except that decontaminated material may be used as a base for road or parking lot construction, provided that such decontaminated material does not pollute groundwater or surface water.
- 6) Conservation Easement: The Final Plat shall state that both the conservation easements and the covenants and restrictions as approved by the Board Attorney,

shall be filed within the Office of the Ulster County Clerk simultaneously with the filing of the Final Plat by the Applicant. Proof, by way of written receipt and date stamped documents for said filings, shall be provided to the Board Attorney by the Applicant's Attorney.

- 7) The General Notes on the Index Sheet constitute conditions of approval.
- 8) U.C. Health Department approval of the water supply system.
- 9) U.C. Health Department and/or NYSDEC approval of subsurface sanitary construction and signature on the final plat for all construction shown on the approved plat (within the approved building envelope).
- 10) There shall be full compliance with all permits issued for the Project by other agencies.
- 11) Payment of any outstanding fees.
- 12) Submission of plans in final form and ready for signature.
- 13) Pursuant to Gardiner Code 220-E this Conditional Final Approval is valid for 18 months and is subject to extension as provided therein.
- 14) **INSERT HERE: Any other additional conditions proposed an approved by the Planning Board at their meetings to review and approve this Resolution.**

IT IS FURTHER RESOLVED, that the Planning Board of the Town of Gardiner hereby authorizes and requires the Planning Board Chairman, the Planning Board Secretary, the Planning Board Clerk and the Attorney for the Town to take the appropriate steps to effectuate this resolution including any filing and distribution requirements.

