

December 17, 2018

To: Gardiner Planning Board
From: Marc Moran, Alternate Member
Re: Heartwood Project and Conditions Regarding Noise

This memorandum proposes the special permit for the Heartwood project include more stringent restrictions on noise than are currently being considered.

I generally support this project. It is an innovative use of this property, is preferable to the as-of-right development of single-family homes, and it should have little negative impact to the environment or the surrounding neighborhood. One aspect of the project troubles me: the potential impact of noise, specifically outdoor amplified sounds.

Acoustic Study

The applicant has made a reasonable and, I believe, good-faith effort to address this concern. An acoustic study commissioned by the applicant (the Cerami Report) established baseline noise levels at the property line and then calculated future noise levels at the source (i.e. the outdoor portion of Heartwood's event space) that "should have no appreciable effect on receptors" beyond the property: 125 dBA (7am-8pm) and 115 dBA (8pm-7am). In addition to establishing undefined "quiet hours" after 10pm, the applicant has proposed to employ "noise limiters" to ensure that amplified source noise levels remain within these limits.

The acoustic study's methods and recommendations appear to conform to NYSDEC noise guidance and suggest compliance with the town's noise ordinance, which sets limits of 70 dBA (day) and 60 dBA (night) at the property line. However, the source noise levels proposed in the acoustic study don't seem especially conservative or protective. The proposed levels don't appear to include any margin of error or technical inexactness, or anticipate possible malfunction of the "noise limiters", or even allow for the possibility that a particular neighbor might be more sensitive to sound than generalized guidance suggests. Nor have the source noise levels been field verified or demonstrated as adequate.

This is more than an academic critique or speculative concern, as the source noise levels proposed (up to 125 dBA) are significant -- roughly equivalent to the sounds of "operating heavy equipment," "a jet taking off 200 feet away," or "auto horn 3 feet away." See *NYSDEC noise guidance (Table E)*

NYSDEC Noise Guidance

The applicant and the board's consultant have understandably relied upon NYSDEC's 2001 "Assessing and Mitigating Noise Impacts" in assessing Heartwood's noise impacts. This policy document was prepared by NYSDEC primarily to assist that agency's staff in reviewing specific types of projects, including mining operations & solid waste facilities - essentially industrial operations which are inherently loud, and projects where limiting objectionable off-site noise can be particularly challenging. The nature of the Heartwood project is fundamentally different. While the NYSDEC guidance document is clearly useful and relevant here, the board's reliance on it should not be absolute.

Zoning Code - Special Permit Findings (220-63)

This section of the code is replete with language emphasizing the protective nature of special permits, explicitly requiring the board to issue written findings that a project approved by special permit will "not result in excessive off-premises noise...or create any public or private nuisances," will be "compatible with surrounding uses," and will have "no greater overall off-site impact than would full development of the property with uses permitted by right."

The Heartwood project is presented as an environmentally sensitive, nature-oriented, low-impact Lodging Facility. In fact, in discussing noise impacts of this project, our Negative Declaration declared that:

"[I]t is the stated aim of the applicant for this facility to provide an ambiance of rest and relaxation to guests..." and that "excess noise will negatively impact guests as well as neighbors."

Under the permit conditions currently contemplated, Heartwood would be allowed to hold an unlimited number of outdoor events, all with amplified sound at levels [at the source] similar to heavy equipment operating or a jet taking off nearby. This does not seem particularly protective, and is very different than what we'd expect from even the full development of the property with single family homes (the "use permitted by right"), where outdoor amplified music would be the exception, not a regular occurrence.

It is difficult to imagine how routine outdoor amplified sound emanating from Heartwood, even considering the property's size and the currently proposed technical safeguards, *won't* negatively impact the surrounding neighborhood, or "create a public or private nuisance" [to quote from the code], or needlessly disturb homeowners simply trying to enjoy a quiet summer evening in their backyards.

Town's Noise Ordinance

As currently envisioned, this project will likely place an unreasonable burden on the Town. Regular outdoor events with amplified sound - even with technical safeguards in place - virtually ensure there will be regular complaints from neighbors, who will demand a thorough investigation and full enforcement of the town's noise ordinance. Applying and enforcing noise ordinances is uniquely cumbersome, time-consuming and technically demanding, and are typically successful only in the most egregious cases. Reliance on the ordinance should be the town's last resort; it should not substitute for reasonable and protective conditions included prospectively in a special permit.

May 2018 SEQR Determination (Negative Declaration)

In adopting our SEQR Determination, and specifically in the Negative Declaration's discussion of the potential impact of noise ("Reasons Supporting this Determination," paragraph 15), this board recognized the applicant's commitments to limit noise, but also allowed for additional permit conditions upon further review. This discussion also explicitly contemplated the issuance of a special permit *subject to annual renewal* and possible modification of conditions regarding noise.

We now understand the law does not allow for such annual reviews. Once this permit is issued, there will be no further review of noise impacts, or any possibility of additional conditions or limitations placed on this project. The permit should therefore take a reasonable but decidedly conservative approach, and include provisions to ensure the requirements of the zoning code are fully met.

Conclusion

Allowing outdoor amplified sound at Heartwood, a project allowed only by special permit, seems inconsistent with rational public policy, our SEQR determination, and the specific requirements for a special permit - the collective thrust of which is to ensure the surrounding neighborhood experience no significant impact from this project.

I suggest the special permit for this project prohibit outdoor amplified sound. This restriction would be fully consistent with the applicant's stated vision of Heartwood as a place that provides guests with "an abundance of rest and relaxation." It would not impose an unreasonable burden on the applicant, as Heartwood would be able to host an unlimited number of weddings and other events - with amplified music - inside the project's 100-person special event barn. Outdoor events and gatherings would still be allowed, just not with amplified sound.

In my view, including such a condition in the special permit is the most significant step the board could take to ensure Heartwood will be a good neighbor and an asset to community for years to come.

cc: Jim Freiband
Dave Brennan
Mark Millsbaugh