

APPROVED 7/27/22

Town of Claverack
Zoning Board of Appeals
P.O. Box V
Mellenville, NY 12544
June 22, 2022
7:30 p.m.

Chairman David Graziano called the June 22, 2022 meeting of the Town of Claverack Zoning Board of Appeals to order at 7:30 p.m.

Chairman Graziano led the Board and members of the audience with the Pledge of Allegiance

Members in attendance were: Chairman David Graziano, Steven Melnyk, John Porto, Rob Fitzsimmons; Town attorney, George Schmitt; Town engineer and Jodi Keyser; Secretary

Absent with regret: Chris Post and August Abatecola

Review the minutes of the April 27, 2022 meeting. Chairman David Graziano had several corrections/additions to the minutes.

Motion to approve the corrected minutes was made by John Porto with a second from Steven Melnyk. All members were in favor. Motion carried. Minutes approved.

New Applications for 6/22/22

Getaway Interpretation of Use: Tax Map #(SBL) 132 . – 1 – 4 through 132 . – 1 – 74. Located on NYS Rte. 23 Interpretation of Use for a proposed campground.

Rob Fitzsimmons informed the Board that he has been in contact with representative for Getaway, Ms. Bakner and representing Ms. Bradford and Mr. Kirkpatrick, Mr. Lyons and they have indicated that they are working on an agreement. Ms. Bakner stated that this is ongoing. Rob Fitzsimmons informed the Board that the representatives of Getaway have requested to give a brief description of the project and then want to discuss the appeal. Mr. Lyons informed the Board that he and his client would like to present also. Chairman David Graziano stated that the interpretation actually has two pieces one being whether the appeal was a timely request and if this is deemed a nonissue then the ZBA can go forward with the Interpretation portion. Rob Fitzsimmons informed the Board that there are no hard and fast rules for an interpretation other than both representatives will present their sides and after the briefs tonight the Board can set public hearing.

Chairman Graziano stated that the ZBA needs to first deal with the issue of whether the appeal was made within the 60-day timeframe. Chairman Graziano continued that the Town of Claverack Building Department denied the building permit on January 19, 2022 and then the Getaway representatives presented at the February 7th, March 7th, and April 4th Town of Claverack Planning Board meetings. Chairman Graziano asked the Getaway representatives when they first mailed a letter out to the neighbors. Ms. Bakner answered in March. Ms. Bradford stated that she received the mailing on March 21st and immediately filed a FOIL request. Ms. Bradford continued that she was able to review the application on April 5, 2022 prior to the Planning Board meeting and then reviewed the application on the TOC website on April 18th. Ms. Bradford continued that she filed the Interpretation and then was informed that she filled out the forms incorrectly and had missed the deadline for the ZBA meeting so had started the process in a timely manner. Chairman Graziano stated that he feels confident that the fact is Ms. Bradford and Mr. Kirkpatrick were notified of the Getaway project on March 21, 2022 and filed for the Interpretation in May so it falls within the 60-days. Chairman Graziano continued that he wanted to seek technical advice so he visited the NYS Department of State website and found that the 60-

days from the original date if neighbors filed within 60-days from the actual notice of a sign or a letter. Chairman Graziano continued that he is aware that the neighboring property owners are notified at a later date of a public hearing but that date is in the future and asked would that be a valid date or a wakeup call. Chairman Graziano stated that he is trying to determine if the application is going forth or not. Chairman Graziano continued that he tried to compose a timeframe of dates and background of submissions and outreach to neighbors. Ms. Bakner informed the Board that Getaway representatives were careful to follow the proper procedures and checklist to get the determination from the TOC CEO which is clear from the beginning that the determination was made on January 19, 2022 and they then submitted the application to the Town of Claverack Planning Board which reviewed the application on 3 concurrent meetings. Chairman Graziano stated that the technical information that he found is considerable and as much as the Getaway representatives wanted to reach out to the neighbors from the beginning as they have described it comes late to the neighbors. Ms. Bakner informed the Board that Getaway sent out invitations to the neighbors to visit their Catskill operation and have had a goal from the beginning to let the neighbors and the Town of Claverack residents know what is going on and what their project is about. Ms. Bakner continued that she is sure that Ms. Bradford is likely mad that the project is not what she had envisioned next to her home. Ms. Bakner continued that Getaway had sent out letters, the application was noticed on the Town of Claverack website in the monthly Planning Board agendas and minutes and only unsophisticated people wouldn't know about the project. Ms. Bakner stated that once Ms. Bradford knew of the project had ample time to file the FOIL and cannot understand why she waited so long to appeal. Ms. Bakner continued that Ms. Bradford is an attorney so she well understands how this works and feels that she has established through the history that she had notice well over 60-days. Ms. Bakner stated that just as Mr. Lyons represents municipalities and ZBA's in other areas it is the ZBA's job to interpret the law and to look at the plan meaning of the law and uphold the determination of the Code Enforcement Officer. Chairman Graziano agreed that the meeting agendas and minutes were posted to the website but also understands that not everyone scours the Town of Claverack website on a daily basis or reads the Register Star newspaper. Chairman Graziano continued that agreed that there are ways to find out but the problem is which date determines the first notification would have been received would it be February 7th or March 18th. Chairman Graziano continued that if the ZBA determines that the February 7th date is the first notification of the application then the appeal for interpretation is cut and dry and the meeting is over. Chairman Graziano continued, but if the date of notification is set as March 18th then the ZBA proceeds. Steven Melnyk addressed Ms. Bakner stating that he did not like her choice of words that all unsophisticated people don't know about Town issues wasn't appropriate. Ms. Bakner stated that her point was that Ms. Bradford is an attorney so she would know what she should be watching for. Mr. Lyons stated that Ms. Bradford is an attorney however is not a land use attorney. Mr. Lyons stated that the courts find that the 60-day rule is not fair and leaves out the neighbors and he feels that Ms. Bakner's argument about Ms. Bradford having been aware of the determination is not accurate. Mr. Lyons continued that most people do not jump onto the Town of Claverack website to find out what is going on in the Town isn't the norm and his clients filed a FOIL in a timely and prompt manner then filed their appeal. Mr. Lyons continued that the rule should be applied fairly to people that are outside of the system as they started the process as soon as they were aware of the determination. Ms. Bakner stated that the issue with Shultis vs Town of Red Hook cited info had time to submit appeal and Ms. Bradford and Mr. Kirkpatrick waited a substantial amount of time while in the meantime the Getaway applicants continued to prepare their application and spent a great deal of money. Ms. Bakner continued that Ms. Bradford should have used her time more constructively to file her appeal before May 6th. Chairman Graziano continued that he researched Panza v. Damiano, supra and Farina v. Zoning Board of Appeals of the City of New Rochelle as reference to help with

creating the timeline for submissions. Mr. Lyons answered that cases sited post Panza state elasticity has value and are resolved on a case-by-case basis. Ms. Bakner agreed with Mr. Lyons but has a different view of elasticity. Laura Bradford informed the Board that she received the letter from Getaway on 4/18/22 and she then became curious so she tried to see some materials to get up to speed on the project. Ms. Bradford continued that she looked on the Town of Claverack website but nothing was posted regarding the application so she filed a FOIL request with the Town. Ms. Bradford continued that even though she is an attorney she found this information very difficult to understand and to find and if she had waited for the official notification of the project, it would be way too late. Ms. Bradford continued that she hasn't made it a practice to check the Town of Claverack website on a regular basis so would not know anything was planned for her area. Ms. Bradford stated that it was nice of the Getaway team to send out letters introducing themselves and the proposal and she is grateful because if they didn't send the notice, she wouldn't even know what was happening until it was too late. Chairman Graziano stated that he understands that the Getaway team has spent a great deal of money already with the project and now additional legal fees especially if things go bad but he feels that the applicant did not receive notice of the project and filed the appeal within the 60-days required. Rob Fitzsimmons informed the applicant and Getaway representatives that the ZBA is fine with the timing and the appeal can proceed.

Laura Bradford informed the Board that she and her husband purchased her home on Thielman Rd. last fall 2021. Ms. Bradford continued that they invested all of their savings to purchase their forever home and fell in love with the rural character of the area. Ms. Bradford continued that she was shocked and saddened in March when she found out that the property directly next to her property would become a high turnover cabin rental. Ms. Bradford informed the Board that she is making a case that this campground is actually a year-round full-service hotel and not a campground as proposed. Ms. Bradford continued that the mailing she received from the Getaway team completely left her house off of the plan and she suspects that was done on purpose because of the proximity of the back-office house to her property. Ms. Bradford continued that this project is within the Rural Conservation zone and hotels/motels are prohibited and also does not fit with the Comprehensive Plan. Ms. Bradford continued that this type of boutique use is becoming very popular in the Hudson Valley but does not create many full-time jobs, profits leave the Town and these types of use are worse than a solar field. Ms. Bradford continued that the Town of Claverack took two years to develop and approve the Comprehensive Plan that set some areas of the Town aside to maintain the rural character of the area and create areas of low-density residential use. Ms. Bradford continued that she doesn't understand why the Town would re-zone a residential subdivision to allow a commercial operation is upsetting. Ms. Bradford continued that Getaway is actually a provider of rental homes not seasonal campsites that are described in the Town Code definition of a campground. Ms. Bradford continued that these cabins fit the definition of hotel/motel to a T. Ms. Bradford continued that the Town definition for a campground states any lot or group of lots set aside for temporary and or seasonal use and are year-round occupancy hotel/motel sites which is prohibited within the Rural Conservation Zone. Ms. Bradford continued that the cabins are attached to utilities, have cleaning services, are provided with sheets, and necessities therefore it is a hotel and not a campground. Ms. Bradford continued furthermore this area is designated for a low density and is an approved subdivision for 16 residential homes but the proposed plan is calling for more than 50 houses on the 90 acres which goes against the Town of Claverack approved Comprehensive Plan. Ms. Bradford continued that the Getaway team has told the Town that they do not allow group bookings but they do if you look at their website, they cater to youth/college age people. Ms. Bradford continued that they also cluster the cabins into pods of 4 to allow for groups. Ms. Bradford continued that the Town of Claverack passed the Comprehensive Plan in 2005 that is to maintain the rural character of the area so this type of commercial operation does not make any sense. Ms. Bradford continued that the community

should think about what this full-time year-round residential campground would mean to this area and the Getaway team is trying to present their project as a traditionally defined campground but in actuality it is a boutique hotel.

Teressa Bakner stated that the interpretation of use is up to the Building Department/Code Enforcement Officer. Nico Turek informed the Board that he is the director of real estate for Getaway since 2015 and have two sites in the area with another 20 across the country. Chairman Graziano asked Mr. Turek if they were on the agenda for the Town of Claverack Planning Board in January 2022 then why did they wait to send out letters to the neighbors until March. Mr. Turek answered that after they received the determination from the Town building department, they went out to begin the Site Plan and in March felt comfortable that they had enough of the plan designed to let the neighbors know about it. Chairman Graziano asked that even though they were on the Planning Board agendas for three months they didn't reach out to the neighbors. Nico Turek stated that they were not sure that the project would be allowed to move forward. Ms. Bakner informed the Board that she copied them on two correspondences from May and June to the Planning Board and wanted to address everything and the Town definition of a campground. Ms. Bakner read the TOC definition of a campground for the Board. Ms. Bakner continued that all of the structures are fully mobile and can be moved at any point. Nico Turek stated that the site is prepared as if there were recreational vehicles and that the cabins are designated and registered as recreational vehicles as stated on the stickers. Mr. Turek continued that the stays are temporary with the longest stay being one week long but most are weekend stays. Mr. Turek continued that he understands the concerns of the adjacent neighbor but that allowing 45 cabins as opposed to 45 recreational vehicles coming and going after each stay would not be wanted by anyone. Ms. Bakner stated that the Rural Conservation Zone specifically allows for campgrounds with a detailed review site plan/special exception process. Ms. Bakner continued that they agree that the definition of a campground is plain and the ZBA is looking at the determination by the TOC CEO which is based on the information that was provided by the Getaway team. Ms. Bakner continued that other than that determination the Getaway team currently has campground permits for their two sites in Greene County and are in the process of applying for a campground permit with the Columbia County Department of Health. Ms. Bakner continued that there are many sites where people can go to rent recreational vehicles but this model is inviting people to rent tiny cabins instead. Ms. Bakner continued that the Getaway model maintains a high level of care of their sites and defrays the unattractive tents and RV's that are unkept. Ms. Bakner stated that the cabins are temporary and can be removed at any time. Ms. Bakner continued that the cabins are connected to sewer and water systems and the CCDOH are glad that these are connected and controlled. Nico Turek informed the Board that these sites provide the gold standard to campgrounds with 50-amp electric. Chairman Graziano stated that this is what they call glamping. Chairman Graziano continued that after reading the definition of a campground he has a problem with saying that this is a cabin campground. Ms. Bakner answered that this is just a different way to look at the site unlike the typical cabin these structures are built just like a recreational vehicle and are never permanent cabins. Ms. Bakner continued that the site has 24-7 people watching over the campground to maintain the sites. Chairman Graziano stated that this is in a way an RV site. Laura Bradford stated that under the TOC Code these are not recreational vehicles or travel trailers that are allowed in campgrounds. Chairman Graziano stated that they are not tents but are not cottages or cabins either. John Porto stated that in plain terms these are tiny homes. Ms. Bakner answered that is a broad term since these are used for temporary stays or seasonal overnight occupancy. Chairman Graziano stated that if the definition is not defined in the Town of Claverack Code, then it is not allowed. Ms. Bakner stated that just because these structures are not defined in the TOC Code they are still allowed and are being considered by the TOC Planning Board but are before the TOC ZBA because of Ms. Bradford's

concerns. Ms. Bakner stated that she does not understand why the neighbors would not like to see a nice campground as proposed but rather one that meets the exact definition. Matt Liponis informed the Board that they met with TOC CEO Don Smith and provided him with all of the information so he could understand that these would be temporary stays and he determined that the project fit as a campground. Mr. Lyons asked for rebuttal argument the difference between a campground and this hotel/motel temporary stay. Mr. Lyons continued that the review can start over deciding whether the CEO is correct or what should he have done. Mr. Lyons continued that the TOC CEO Mr. Smith did what was right he got an application then made a decision to proceed but didn't take the time to ask questions. Mr. Lyons continued that there isn't anything wrong with making something nice but at the same point a full-time caretaker makes the use a hotel. Laura Bradford stated that in NYS defines a campground as open from May to October and there is a difference since people bring their own bedding, food, necessities, etc. Ms. Bradford continued that she is concerned with the water table with water use by 45-50 cabins, 30 plus loads of laundry per day which is way more than required by a typical campground. Ms. Bradford continued that the area will be heavily used by traffic and vehicles driving around the grounds would create a hardship on her property all hours of the day and night. Ms. Bradford stated that this area was designed for low density residential use and should remain as such. Ms. Bradford continued that the density is currently a 16-lot residential subdivision and the proposed project would create vastly more impact than 16 houses. Ms. Bakner answered that the current subdivision would create more impact with 16 residential houses that typically have 2-3 bathrooms at approximately 2,000 square feet per building. Rob Fitzsimmons informed the Board that this is an Interpretation and is a Type II Action for SEQRA purposes so they should not look into environmental quality only look at the TOC Code and only apply the determination with what the language states.

Ms. Bakner stated that this project is a campground with a temporary use only for a maximum stay of one week at a time, year-round camping that has less impact during the winter than summer since no one would be outside. Ms. Bakner continued that Getaway has committed to landscape design, traffic plan and water/septic designs as required. Chairman Graziano asked if he books a cabin on the website what happens when he shows up at the site? Nico Turek answered that he would receive a text message with the name of his cabin/unit and a map. Chairman Graziano asked if he would deal with the manager upon arrival. Mr. Turek answered no would sign in electronically upon arrival. Chairman Graziano asked if there is an onsite manager at all times. Mr. Turek answered that there is a facilities manager and an onsite manager in the back-house. Chairman Graziano stated that this is concerning to him. John Porto asked how the guest signs in. Mr. Turek answered that the guest will receive a code that they punch in to enter the grounds. Mr. Porto asked how do the guests get the keys to their unit. Mr. Turek answered that the units are electronic keypads also. John Porto asked where they store equipment. Mr. Turek answered the utilities shed houses equipment and there is a full-time maintenance worker. John Porto asked if the maintenance worker is on site full time. Mr. Turek answered yes just like at the state campgrounds. Mr. Turek stated that the Cairo site has 100 units and this site is only set up for 45-50 units with a common septic no individual septic system. Mr. Turek invited members of the Board to visit the Cairo Junction Rd. site anytime.

Rob Fitzsimmons stated that this is a well submitted and well briefed and can be deemed complete to move forward. Mr. Lyons asked permission to put in his rebuttal regarding the elasticity definition. Chairman Graziano informed Mr. Lyons that all rebuttal should be to the Secretary by July 6th.

Rob Fitzsimmons stated that due to the frustration with the Zoom process he suggests moving the meeting to the Library Community room. Rob Fitzsimmons informed the applicant and attorney that they will need to obtain a sign from the Town Clerk's office noticing the public hearing for the ZBA to be

held on 7/27/22 and place the signs on the property of Getaway but suggested reaching out to them for placement.

Ms. Bradford will obtain the signs and will supply the list of abutters.

Ms. Bradford's comments:

§ 2.40. CAMP GROUND. Any lot, or adjoining lots if under the control of one person or business, including buildings and other structures on such lot, on which are located five or more campsites, tents, tent houses, trailers, cabins, camp cottages, vehicles, including recreational vehicles, or other structures **intended for temporary or seasonal overnight occupancy**.

This case presents the question whether the definition's limited list of "temporary or seasonal" structures exclude year-round small rental homes. I argue that the clear intent of the Code is that campground structures must either be (a) on the site temporarily, such as a tent or RV, or, if present year-round, such as a cabin, (b) must be limited to seasonal use.

The list of structures in the definition clearly contain these limitations. They are: tents, tent houses, trailers, cabins, camp cottages, vehicles, including recreational vehicles. The notable feature of all of these structures is that they are either (a) **portable**, and so on the site temporarily, such as a tent, trailer or RV, or, (b) if they are permanent structures, such as a "cabin," the code is explicit that they must be designed for **seasonal** use.

The definitions of "trailer" and "cabin" clearly exclude the Getaway "tiny houses."

A trailer:

§ 2.219. TRAVEL TRAILER. A travel trailer is any **portable vehicle or structure which is designed to be transported on its own wheels**; which is designed and intended to be used for temporary living quarters for travel, recreational or vacation purposes; .

A trailer qualifies only if it is portable, and therefore on site temporarily. The Getaway trailers are hooked up to utilities, and so are not portable or temporary.

A cabin:

§ 2.39. CABIN. Any structure **designed primarily for seasonal use**.

If campgrounds meant any structure rented out for temporary stays, it would be nonsensical to mention 'seasonal use' in the definition of a 'cabin.' That limitation shows a clear, firm intent to exclude year-round cabins as camp sites.

Getaway misconstrues the definition in a way that removes any limitations. Under Getaway's proposed definition, any small structure rented for temporary overnight stays can be a campground. This definition cannot be correct as it reads the words "portable" and "seasonal" out of the Code. That is not permitted.

If the ZBA is prepared to embrace such a broad reading of the definition of a camp site, it should be prepared for an onslaught of applications from homeowners and businesses seeking to add tiny rental homes to their property. It should also be prepared for motels and hotels to apply for permits in residential areas as “campgrounds.” Once this interpretation is permitted here, it will be impossible to limit these other claims.

We ask that the ZBA hold the line on what constitutes a campground to functionally portable or seasonal structures.

John Lyons Comments:

Mr. Lyons introduced himself and Laura Bradford. Mr. Lyons continued that he is a land use lawyer, practicing almost 40 years. I have represented many ZBAs over the years. Our firm is presently counsel to the ZBAs in Rhinebeck, Saugerties, Olive, & Ancram. I know what it's like to be sitting behind the ZBA table. Getaway: The proposed project Getaway is a proposed house rental facility located on 90+ acres of land between Route 23 and Old Barrington Road. The proposal is for up to 50 cabins, each with its own permanent parking space, connections to central water and wastewater facilities, and electrical supply. Each structure will have a kitchen, bathroom, linens, Cutlery, toiletries, electricity, and food and alcohol available for purchase. Each house will be available for rental year-round. There will also be an on-site caretaker who will live on a house on the project property. The Rural Conservation Zoning District The project is located in the Town's Rural Conservation (RC) zoning district. In that district, “campgrounds” are an allowed use subject to a special exception permit. Lodging facilities, such as motels and hotels are not allowed uses in the RC Zone. According to the Zoning Law, the purpose of the RC Zoning District is as follows: § 4.2.1. Rural Conservation: The purpose of this district is to protect sensitive land areas that contribute to the environmental quality, ecological functioning, scenic rural character and recreational opportunities in the Town of Claverack. Very low-density residential development outside the hamlet areas is encouraged if done in a manner that protects steep slopes (greater than 15%), forested habitats, open spaces, wetlands and floodplains. The purpose of the Rural Conservation Zoning District defines the Town Board's vision for the lands within the district, and the qualities in the district worthy of protection and preservation. Application to the Planning Board & the CEO's Determination Getaway has applied to the Planning Board for a special exception permit and site plan approval asserting that this facility falls within the definition of “campground” in the Claverack Zoning Law. The CEO's determination to send Getaway's application on the Planning Board for review. Getaway constituted a determination by the CEO that the application was a “campground.” This Appeal. This is an appeal from the CEO's determination. This appeal asserts that this project should not have been classified as a campground by the CEO because the project does not meet the Zoning Law's definition of “campground.” Key Definitions. §2.40. Camp Ground. Any lot, or adjoining lots if under the under the control of one person or business, including buildings and other structures on such lot, on which are located five or more campsites, tents, tent houses, trailers, cabins, camp cottages, vehicles, including recreational vehicles, or other structures intended for temporary seasonal overnight occupancy. §2.39. CABIN. Any structure designed primarily for seasonal use. §2.181. SEASONAL USE. The use of facilities for part of the year. § 2.129. MOTEL. A building, or group of buildings, whether detached or in connected units, used as individual sleeping or dwelling units with related office, and with or without restaurant facilities, designed primarily for travelers, and provided with accessory off-street parking facilities. This shall not be construed to include parking areas for house trailers or mobile homes. A dwelling unit is permitted for a manager or caretaker. Your Role as the ZBA in an Interpretation I want to begin by discussing your role as a Board in interpreting your Zoning Law, because a clear understanding of that role will play an important part in your decision in this case. After my remarks, Laura will discuss the definition language & what that language means in this case. The role of the ZBA is to read the plain language of the zoning law and apply that language to the facts in a particular case. The ZBA must interpret the law as it is written, and determine if the proposed use by Getaway fits within the intention of "camp

ground" as that use is written in the Town's Zoning Law. When creating a zoning law for a municipality, it is the role of the town board, the elected, legislative body of the town, to make determine land use policy. What does that mean? It means that it is the role of the Town Board to decide what land uses are allowed in Claverack, and of the allowed uses, where in Town those uses will be permitted. The problem that can occur for municipalities is that, over time, there can be significant changes in how people want to use land - oftentimes, it may involve a more intense use than what was originally envisioned and which is then attempted to be pushed through under the "guise" of a permitted use. Some of these land uses were never envisioned at the time many Zoning laws were written. This is a scenario that has become quite familiar in the Hudson Valley in the last 5 years or so. Facilities like the one proposed by Getaway, present exactly that problem. These kinds of land uses are growing like Topsy all over the Hudson Valley. And they are creating conflicts because they propose a land use that is new & different and, in most cases, was not envisioned by local zoning laws. So how do we address the new types of uses from a local land use perspective? The answer is that it requires the local legislative bodies to take action and amend zoning laws to address these new uses. That is a town board's duty - to make land use policy decisions. That is the right way to address new and novel uses. The wrong way, and we've seen some of this too, is to stretch and twist to try to fit these new uses into existing definitions, definitions which were not written with these uses in mind. When a ZBA tries to do that as part of interpretation, as a practical matter they are improperly usurping the role of the town board, the town's legislative body, by making its own land use policy decisions. Although both take place outdoors, traditional camping and a Getaway-type facility should not be considered one-in-the-same. In fact, in terms of facilities and amenities, Getaway's facility has more similarities with a motel or hotel than it does with a traditional campground. If you look at the language of the definition of "camp ground," you see that the language really contemplates a more traditional vision of camping. That's the definition that should be applied here. One of my clients, Laura Bradford, who so happens to be a lawyer, will walk you through the details of the language and explain why the plain meaning of that definition does not encompass what is being proposed by the folks at Getaway. As will be demonstrated during the course of this appeal, if you look at the structure of this facility, the infrastructure, and the amenities offered, this facility actually squarely fits the Zoning Law's definition of a motel. § 2.129. MOTEL. A building, or group of buildings, whether detached or in connected units, used as individual sleeping or dwelling units with related office, and with or without restaurant facilities, designed primarily for travelers, and provided with accessory off-street parking facilities. This shall not be construed to include parking areas for house trailers or mobile homes. A dwelling unit is permitted for a manager or caretaker. Just keep in the back of your minds as you conduct your review. The task before you is to interpret and apply the language of the law as it exists. It's not to engage in gymnastics to make the definition work for this project. It's not to step into the shoes of your town board and make a land use policy decision. This Board should not look as to whether the proposed project will be nice, or whether it would be beneficial to the Town or even if it would create a nuisance. This Board also should not look at any work that's gone into making an application to the planning board. That is not what your job is today. As an interpretation, your review and determination must focus on the language of the Zoning law as it exists, in this case, the definition of "camp ground" as it exists. And to apply that definition. I'll turn it over to Laura Bradford now and she'll walk you through the language of the definition and what that definition means in the context of this case. [Laura presents] Timeliness We've presented you with a letter that spells out the rule which has been in place in New York State since 1964 when the State's highest court issued its decision in *Pansa v Damiano*. And in its most basic terms, the rule recognizes that neighbors don't always know right away when decisions are made by the code enforcement officer because the neighbors aren't involved in whatever action is requiring a decision from the CEO. So, the Courts say that fairness requires that, for neighbors, the time to appeal from CEO decisions begins to run when the neighbor learns of the decision. In this case, the appeal was filed well within 60 days of our clients' learning of the decision. Our letter nails down all the dates and details. Thank you for your time and attention.

Ms. Terresa Bakner of Whiteman, Osterman and Hanna LLC representing Getaway comments:

This firm represents Getaway House, Inc. ("Getaway" or the "Company") in connection with its Special Use Exception Application and related submissions to the Town Planning Board for the Company's proposed campground destination

off Route 23 across from the Yorkshire Motel in Claverack (the "Project"). As you know, on May 3, 2022, Mr. David Kirkpatrick and Ms. Laura Bradford (the "Petitioners") submitted an administrative appeal (the "Appeal") to the Claverack Zoning Board of Appeals ("ZBA") challenging a January 19, 2022 interpretation of the Claverack Zoning Code made by the Town Building Inspector, Mr. Donald R. Smith, who concluded that the Company would need a Special Use Exception Permit from the Planning Board before Getaway could obtain a Building Permit for the Project (the "Zoning Interpretation"). Shortly thereafter, on May 18, 2022, Getaway submitted its initial response to the Appeal, which was transmitted to Petitioners on the same day. In response, Petitioners provided Getaway with an updated copy of the Appeal, dated May 8, 2022, which makes several modifications to Petitioners' original argument challenging the Zoning Interpretation (the "May 8th Appeal Letter"). Additionally, on June 20, 2022, Petitioners submitted two additional filings in support of their Appeal arguing that (1) the Appeal was timely filed; and (2) the Zoning Interpretation is arbitrary, irrational, and otherwise contrary to law (the "June 20th Filings"). In anticipation of the upcoming hearing on this matter before the ZBA, Getaway wishes to address Petitioners' revised arguments, as contained in the May 8th Appeal Letter and as supplemented by the June 20th Filings, Secretary Jodi Keyser June 22, 2022 Page 2 4886-0561-7446, v. 1 which are discussed below. In the interest of brevity, this letter does not address those portions of Petitioners' Appeal that remain unchanged, as those issues were discussed at length in the Company's original May 18th appeal response. For a full recitation of the background related to this matter, as well as a response to those portions of Petitioners' Appeal that remain unchanged, Getaway respectfully refers the ZBA to the Company's initial appeal response letter, dated May 18, 2022.

I. JUNE 20th FILINGS As mentioned above, the June 20th Filings argue that (1) the Appeal was timely filed; and (2) that the January 19th Zoning Interpretation was arbitrary, irrational, and otherwise contrary to law. For the reasons set forth below, these arguments must be rejected, and the Appeal denied in its entirety.

a) Petitioners Failed to Take a Timely Appeal of the Building Inspector's January 19, 2022 Zoning Interpretation to the Town ZBA. Petitioners argue that the window to appeal the Zoning Interpretation should last for more than 120 days because they were somehow not aware of the Zoning Interpretation until April 5, 2022. This interpretation of the law flies directly in the face of Town Law § 267-a[5][b], which sets a statutory appeal period of sixty (60) days from the date the Zoning Interpretation was filed, at latest, on January 26th. In support of this position, Petitioners cite *Pansa v. Damiano*, a 1964 Court of Appeals decision, which found that the appeal period for a petitioner seeking revocation of a building permit should not begin to run "until his objections have been overruled in a 'decision' of which he has had notice" provided that such objections to the decision were put forth "in the proper form and within a reasonable time." 14 N.Y.2d 356, 360 (N.Y. 1964). As Petitioners admit, *Pansa* was decided before the enactment of Town Law § 267-a, which sets a statewide standard 60-day appeal period, which is triggered upon "the filing of any...interpretation...." Town Law § 267-a[5][b] (emphasis added). As such, the appeal period expired on March 27th, sixty (60) days after the Zoning Interpretation was filed on January 26th. Even assuming, *arguendo*, that the *Pansa* doctrine continues to apply after the Legislature imposed a standard 60-day appeal period, Petitioners' argument still fails. As noted above, the Court of Appeals qualified the doctrine to apply only in cases where an appellant filed their objections to the decision "in the proper form and within a reasonable time." *Pansa*, 14 N.Y.2d at 360. Here, Petitioners have satisfied neither of these requirements. On March 18, 2022, more than a week before the appeal period was set to expire on March 27th, Getaway provided Petitioners with a detailed description of the proposed Project, its location, and even a concept plan that had been submitted to the Town Planning Board. At that time, a wealth of information regarding the Project, including the fact that Getaway was seeking a special use exception permit and site plan approval for a campground destination, was available on the Town's website in the form of meeting minutes, agendas, and even recordings of Planning Board meetings. Together, these materials make obvious the conclusion that an interpretation from the Building Inspector had been rendered for the Project, which necessarily concluded that Getaway Secretary Jodi Keyser June 22, 2022 Page 3 4886-0561-7446, v. 1 would need to obtain a Special Use Exception Permit and Site Plan Approval from the Town Planning Board before the Company could obtain a Building Permit. This conclusion is inescapable because both the Town Zoning Code and Planning Board Application Checklist require that the Building Inspector's denial letter explaining his reason for denial is necessary before an applicant may submit an application to the Town Planning Board.¹ Despite being faced with this obvious conclusion more than a week before the appeal period was set to expire, Petitioners elected to delay filing their appeal until May 8, 2022, nearly two (2) months after they received notice of the proposed Project via direct mail, more

than 100 days after the Zoning Interpretation was introduced to the public record on January 24th, and more than a month after the appeal period expired on March 27th. Courts considering similar circumstances have flatly refused to entertain such untimely challenges. See, e.g., *Peehl v. Vill. of Cold Spring*, 129 A.D.3d 844, 845 (App. Div. 2d Dep't 2015) (finding that neighbors' unexcused delay in filing administrative appeal of building inspector determination after constructive notice and expiration of the appeal period precluded relief); accord *Clarke v. Town of Sand Lake Zoning Bd. of Appeals*, 52 A.D.3d 997, 1000 (App. Div. 3d Dep't 2008); see also *Schultz v. Town of Red Hook Zoning Bd. of Appeals*, 293 A.D.2d 621, 622 (App. Div. 2d Dep't 2002). Petitioners argue that awareness of the proposed Project does not equate to awareness of the Zoning Interpretation. This contention has no basis in law. Awareness of a project constitutes constructive notice of the underlying approval. See, e.g., *Loparco v. Napierala*, 96 A.D.3d 1213 (3d Dep't 2012); *Clarke*, 52 A.D.3d 997. Similarly, this argument relies upon the false assumption that Petitioners are unsophisticated litigants without an understanding of the law. This could not be further from the truth – Ms. Bradford is an NYC-based attorney herself, a graduate of Stanford Law School, and has been licensed to practice for 23 years. Moreover, Petitioners were well informed of the proposed Project via constructive and actual notice before the appeal period expired on March 27th. Once Getaway advised Petitioners of the proposed Project by direct mail on March 18th, Petitioners had ample opportunity to timely appeal, and instead waited nearly two months to file their objections on May 8th, seven weeks after the appeal period expired. Actual and constructive notice aside, the statutory language of Town Law § 267-a[5][b] is clear – the operative date upon which the time to take an appeal is not the date of a landowner's receipt of an interpretation. Instead, the operative date upon which the 60-day period runs to appeal a determination of the Building Inspector is the date upon which the determination is filed. See Town Law § 267-a[5][b]. Because Petitioners failed to appeal the Zoning Interpretation until May 8th, seven weeks after the appeal period expired on March 27th, the Appeal is time-barred. For these reasons, Getaway respectfully requests that the Appeal is denied in its entirety as untimely. 1 See, e.g., Planning Board Application Checklist, at ¶ 3, (requiring that a denial letter from the Town Building Inspector is required before an application can be considered complete), available at <https://townofclaverack.com/wpcontent/uploads/2022/03/Planning-Board-Checklist-11.pdf>; see also Claverack Zoning Code § 16.3.6.A (“[before any use of or construction of a property ... the owner must request an application for site plan and/or special exception use permits from the Building Inspector. The Building Inspector shall determine whether the applicant needs ... site plan review with or without a review for special exception use.”) Secretary Jodi Keyser June 22, 2022 Page 4 4886-0561-7446, v. 1 b) The Zoning Interpretation Properly Concludes that Getaway's Proposed Use Constitutes a Campground under the Zoning Code. Also meritless are Petitioners' arguments that the Building Inspector's Zoning Interpretation is irrational, arbitrary, and otherwise contrary to law. As fully set forth in Getaway's initial appeal response letter, dated May 18, 2022, prior to rendering the Zoning Interpretation on January 19th, the Building Inspector was fully informed of Getaway's proposed use for the Property and thereafter rationally concluded that the Project fits squarely within the definition of “Camp Ground” under section 2.40 of the Claverack Zoning Code. Petitioners nevertheless continue to assert nonsensical arguments in support of their theory that the proposed Project does not fit within this definition, contending - somehow - that because Getaway's tiny cabins are neither portable (even though they are), nor intended for seasonal use, the Project does not fit within the definition of “Camp Ground”, as quoted in relevant part below: CAMP GROUND. Any lot, or adjoining lots if under the control of one person or business, including buildings and other structures on such lot, on which are located five or more campsites, tents, tent houses, trailers, cabins, camp cottages, vehicles, including recreational vehicles, or other structures intended for temporary or seasonal overnight occupancy. Claverack Zoning Code § 2.40 (emphasis added). In support of their argument, Petitioners invoke *Matter of Raritan Development Corp. v. Gaston Silva*, a 1997 Court of Appeals decision that stands, in part, for the “plain meaning” canon of statutory construction – that is, where a statute uses unequivocal words to evince the intent or requirements of the law, courts are without discretion to broaden the scope or application of such law. 91 A.D.2d 98 (N.Y. 1997). Contrary to Petitioners' contentions, this canon of statutory construction clearly supports Getaway's position and the Building Inspector's Zoning Interpretation. The definition quoted above is unequivocal, allowing for various types of sleeping quarters that are “intended for temporary or seasonal overnight occupancy.” Claverack Zoning Code § 2.40. The proposed Project falls squarely within this definition because it entails the development of 45 campsites, each of which is improved with a tiny cabin (on wheels) that is intended for temporary

overnight occupancy not to exceed seven (7) consecutive days. The Building Inspector was informed of this fact prior to January 19th when he rendered the Zoning Interpretation. Without a legal or factual foothold, Petitioners' argument falls flat. From a factual perspective, Petitioners mischaracterize Getaway's operations in at least two respects. First, Getaway's tiny cabins are not homes. Instead, they constitute "cabins ... or other structures intended for temporary ... overnight occupancy." *Id.* Second, Getaway's cabins are not permanent structures. Instead, they are movable trailers on wheels that can be easily removed from the Property for maintenance or any other purpose. Secretary Jodi Keyser June 22, 2022 Page 5 4886-0561-7446, v. 1

From a legal perspective, Petitioners similarly miss the mark. They advocate for application of the "plain meaning" canon of statutory construction – one that places the utmost importance on the meaning of words – while simultaneously seeking to eliminate the term "or" and the phrase "or other structures" from the definition of "Camp Ground" entirely. Moreover, Petitioners claim that the term "temporary" modifies the types of structures that are permissible on campgrounds instead of the type of intended occupancy. But the language is clear – so long as the type of occupancy intended for the structure is of a temporary or seasonal nature, it falls within the definition. That is exactly the case here because the maximum period of occupancy for any individual cabin is seven (7) consecutive days. Petitioners' argument misses this point altogether and fails to recognize that both Section 2.40 of the Town Zoning Code and Getaway's maximum period of occupancy serve the exact same purpose – to protect against a campground becoming a mobile home park, a use that is specifically prohibited within the Rural Conservation Zoning District. See Claverack Zoning Code, Table 1: Schedule of Use Regulations § A.4. Limiting campgrounds to periods of occupancy that are transient in nature (i.e., temporary or seasonal) prevents such a possibility. Indeed, Courts have previously upheld similar interpretations in comparable circumstances. In *Catskill Heritage Alliance, Inc. v. Crossroads Venture, LLC*, a ZBA was presented with the challenge of determining whether lodges were permitted within a particular zoning district. In absence of an enumerated definition for the term "lodge", the ZBA turned to a common understanding of the word, which suggested temporary overnight occupancy. The ZBA's interpretation of the code to allow for lodges within the specified zoning district so long as the sleeping accommodations were limited to transient occupancy was upheld by the Third Department as "entirely rational". 161 A.D.3d 1413, 1417 (3d Dep't 2018). The case at issue here is nearly identical, with the exception that the Town's Zoning Code explicitly permits campgrounds intended for temporary overnight occupancy within the Rural Conservation Zoning District, subject to Special Use Exception permitting by the Planning Board. For these reasons, and those articulated in the Company's initial appeal response letter, dated May 18, 2022, Getaway respectfully requests that the ZBA reject Petitioners' argument, uphold the Zoning Interpretation, and deny the Appeal in its entirety.

II. MAY 8th APPEAL LETTER

The revisions contained in Petitioners' May 8th Appeal Letter fall into one of three categories: (1) misapplication of law; (2) irrelevant assertions; and (3) mischaracterizations of the Project, the Company, and/or its operations. For the reasons set forth below, these revised arguments must be rejected, and the Appeal denied because it (1) is untimely; and (2) fails to establish that the Building Inspector's Zoning Interpretation of a Camp Ground was arbitrary, irrational, biased, or in violation of statutory or constitutional requirements. With respect to misapplications of law, Petitioners cite *Ruback's Grove Camper's Association, Inc. v. Moore* in support of their Appeal, a 2012 decision by the Appellate Division for the Third Department in which Plaintiffs sought declaratory judgment that language contained in certain long-term leases precluded year-round residency at campsites rented out by the Secretary Jodi Keyser June 22, 2022 Page 6 4886-0561-7446, v. 1

defendant. 946 N.Y.S.2d 687, 688 (App. Div. 3d Dep't 2012). The Court found that the language at issue, "camp or summer cottage", manifested "an intent that the leased campsites could be used on a nonpermanent or temporary basis", thereby precluding "year-round residency" (*id.* at 689). Petitioners attempt to use this case to demonstrate that campgrounds are generally intended for temporary or seasonal overnight occupancy. We agree. In fact, this is the exact purpose for which Getaway intends to use the Property. The Company has no intention or desire to become a residential landlord and therefore imposes a maximum period of occupancy for any individual cabin to seven (7) consecutive days, ensuring the proposed Project fits squarely within the Claverack Zoning Code definition for "Camp Ground." Petitioners also misconstrue Getaway's argument, suggesting that the Company understands the term "temporary" to modify the type of structure that can be built on the Property. This is incorrect. As the Company has recognized from the start, the term "temporary" modifies the phrase "overnight occupancy" in the definition quoted above. Because Getaway's cabins can only be rented for a maximum period of seven (7) consecutive days – a period that is, by its very nature, "temporary

... overnight occupancy” – the proposed Project falls squarely within the definition of “Camp Ground” under Section 2.40 of the Claverack Zoning Code. The Building Inspector clearly agreed when he rendered his January 19th Zoning Interpretation. At that time, he was fully apprised of Getaway’s maximum occupancy limitations. Equipped with this information, he correctly determined that the Project, a proposed campground, was permitted within the Rural Conservation Zoning District subject to Special Use Exception permitting by the Town Planning Board. Petitioners’ arguments are entirely unsupported by the law and the facts of this matter. At no time have they identified or otherwise provided a long-term lease for the Company’s cabins. This is because no such document exists. Instead, Petitioners point to irrelevant statements made in pitches to various investors rather than focusing on the Project record at issue here. These assertions are nothing more than red-herring arguments, and the ZBA should not be distracted by them. They are evidence only of the fact that Getaway once sought funding for its business and are irrelevant to this matter. To be clear, the facts and circumstances that are material to Petitioners’ Appeal have been incorporated into the record and include (1) the uses that are allowed within the Rural Conservation District, (2) relevant provisions and definitions of the Town Zoning Code, (3) Getaway’s proposed use of the Property, (4) the Zoning Interpretation, and, with respect to timeliness of the Appeal, (5) the language of Town Law § 267-(a)(5) and interpretive caselaw, and (6) the timing of the Zoning Interpretation as compared to the date of Petitioners’ Appeal, nothing more. For these reasons, Getaway respectfully requests that the ZBA uphold the Zoning Interpretation. Finally, Getaway wishes to draw to the ZBA’s attention several mischaracterizations of the Project, the Company, and its operations contained in Petitioners’ May 8th Appeal Letter. First, Petitioners characterize Getaway’s cabins as rental homes. This is incorrect – Getaway’s tiny cabins, unlike homes, are not intended or suitable for full-time occupancy. They are intended for temporary overnight occupancy not to exceed seven (7) consecutive days. Petitioners allege that Secretary Jodi Keyser June 22, 2022 Page 7 4886-0561-7446, v. 1 the cabins will be continuously occupied. This statement is also false for the same reason. Second, Petitioners mischaracterize statements made in pitches to various investors within the hospitality industry and uses them to conclude that Getaway does not believe that its campground destinations are, in fact, campgrounds. This is both incorrect and irrelevant. Getaway has maintained and continues to maintain that the proposed Project constitutes a campground. Moreover, the question at issue here is whether the Building Inspector rationally determined that the proposed Project constitutes a “Camp Ground” as defined under Section 2.40 of the Claverack Zoning Code. Third, Petitioners state that the Getaway is the current owner of the Project Site. As indicated in filings before the Town Planning Board, the Property is currently owned by Mr. Richard Cross, with whom Getaway is under contract for an anticipated sale of the Property. The transaction has not yet closed, making Mr. Cross the current owner of the Project Site. Fourth, Petitioners suggest that Getaway is not invested in the communities in which its campgrounds are located, painting the Company as an evil “out-of-state corporation” that is steadfastly committed to overdevelopment of local communities. This could not be further from the truth. Getaway takes pride in partnering with local businesses, creating jobs and value for its host communities. Respect for land, neighbors, and local resources is at the core of the Company’s business model. Fifth, Petitioners imply that the Town is somehow unable to determine for itself what scale of development it will welcome to the area in the face of large companies. This is also not true – Claverack has maintained its character as a tightknit, rural community for decades, and will continue to do so through its well-informed public officials, detailed Zoning Code, and continued public participation in decisions that will affect the Town. Finally, Petitioners suggest that Getaway and its on-site managers will not be committed to enforcing its own rules and local regulations on campground guests if the Project is approved. This statement is nothing more than an assumption with no basis in fact. To the contrary, Getaway creates space for quiet reflection in natural settings, encouraging all guests to reconnect with what matters most by taking time to escape from the distractions of modern-day-life. If guests find that this expectation is not a reality due to the behavior of other unruly guests, the likelihood of return business decreases dramatically. Maintaining the Company’s reputation as an organization that values quiet space and time to unplug and appreciate the beauty of nature is therefore of the utmost importance. Getaway’s onsite managers understand this and act accordingly, ensuring that guests follow Getaway’s rules and local ordinances. III. CONCLUSION Getaway respectfully requests, for the reasons set forth herein, that the Appeal be denied in its entirety because it (1) is untimely; and (2) fails to establish that the Building Inspector’s Zoning Interpretation was arbitrary, irrational, biased, or in violation of statutory or constitutional requirements.

Motion to Adjourn the meeting was made by John Porto with a second from Steven Melnyk. All members were in favor. Meeting adjourned at 9:15 p.m.

Respectfully submitted

Jodi Keyser, Secretary