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Ed Hludzenski, Chairman
Town of Cape Vincent
Zoning Board of Appeals
1964 NYS Route 12E
Cape Vincent, NY 13618

Re: *Application of Ron Clapp*
Carleton Villa, LLC
Tax Map Section 39.27; Carleton Island Lot 1

Dear Mr. Hludzenski:

We represent the Friends of Carleton Island and submit this letter in opposition to the Zoning Board of Appeals (the "Board") taking action on the application of Ron Clapp (the "Applicant") to construct a "glamping resort" (the "Project") on a 6.9 acre lot (the "Property") until a more thorough review of the potential environmental impacts that may result from the Project can be studied appropriately. My client does not generally oppose the Applicant making improvements to his land. However, the current Application before the Board should be tabled and the Applicant should be directed to prepare a more complete application that can be shared with the public for further comment (this Application was submitted after 4 pm on the business day prior to the meeting). Following the rules set forth in the Town Code and the State Environmental Quality Review Act ("SEQR") will ensure that the potential negative impacts of the Project are properly studied and the quality of life of the other residents on Carleton Island is protected.

A. Area Variances

The Board should not grant the requested area variances. The Property is zoned "Island District." The Application does not comply with the required front yard setback. Table 7 of the Island District Zoning regulations (Section 3.7) states that the minimum front yard setback is two hundred (200) feet. No structures are permitted in the lot exclusion area defined by the front yard setback. The Project's initial design included approximately 23 cabins and safari tents within the setback area. We are told that the design has been revised to only include 12 cabins. Section 9 of the Code defines "Lot Line – Front" in the context of waterfront lots as being measured from shoreline set at an elevation of 247.30 feet above sea level.

The two images below illustrate a one hundred (100) foot setback from the shoreline. I have placed red lines over the 100 foot setback line to illustrate how narrow this neck of

land is. It is evident that if a 200 foot setback is applied, the current plan cannot go forward without very significant area variances.

First Plan

Second Plan

Table 7 is depicted below:

Table 7 Islands > 10 acres	Area Minimum	Frontage Minimum	Setbacks Minimum			Height Maximum
USE			Front	Side	Rear	
Permitted	Five (5) Acres	300′	200′	50′	50′	35′
Special Use Permit	Five (5) Acres	300′	200′	50′	50′	35′

The Second Plan still has seven cabins located directly adjacent to the 100 foot setback line. Though the Applicant has not provided the relevant 200 foot setback line on the map, it appears that the remaining five cabins are all within the front yard setback as well. In essence, though the Applicant has reduced the number of cabins in the plan, the revisions have not diminished the size of area variances that are being requested. All of the cabins appear to be located within the front yard setback.

When making its determination on an application for an area variance, the Board must balance the benefit to be realized by the applicant against the potential detriment to the health, safety and general welfare of the neighborhood and community. Town Law § 267- b(3); Sasso v. Osgood, 86 N.Y.2d 374 (1995) (stating that the statutory factors for an area variance must be applied instead of the previous practical difficulties standard); Hampshire Mgmt. Co. v. Nadel, 241 A.D.2d 496 (2d Dep't 1997) (overturning board's decision where it considered factors besides those enumerated in the statute). In balancing these interests, the Board must consider the following five factors:

(1) Change in Character of the Neighborhood. Whether an undesirable change will be produced in the character of the neighborhood, or a detriment to nearby properties will be created by the granting of the area variance;

(2) Alternative Methods. Whether the benefit sought by the applicant can be achieved by some method which will be feasible for the applicant to pursue but would not require a variance;

(3) Substantial. Whether the requested area variance is substantial;

(4) Adverse Impact on the Environment / Neighborhood. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

(5) Self-Created. Whether an alleged difficulty is self-created.

Each of these factors is addressed below. Overall, the size of the variances requested is extremely substantial, the character of the neighborhood will obviously be irrevocably

changed and the environment is likely to be adversely altered by an unprecedented amount of shoreline development. For these reasons, the Board should deny the Application.

1. Character of the Neighborhood

The Project will result in an undesirable change to the neighborhood. A project will result in an undesirable change in the character of the neighborhood where the proposed structures are dissimilar to the other buildings in the neighborhood and would "constitute an undesirable visual intrusion." Heitzman v. Town of Lake George Zoning Bd. of Appeals, 309 A.D.2d 1126, 1128 (3d Dep't 2003).

The comments received from residents of Carleton Island have been overwhelmingly negative. Though not all of the residents are present this time of year, over 150 people have signed up to watch this meeting by live stream. Carleton Island is a quiet retreat without any commercial uses, industrial uses or even roads. The homes that exist on Carleton Island, for the most part, have been handed down over multiple generations by families that have taken great pains to preserve the natural beauty and environmental resources present on the island.

The Project contemplates the installation of a high-density camping resort on a narrow neck of land surrounded on all sides by people's homes. The Project includes the installation of four docks and a floating platform in close proximity to existing single-family residences. The Project further includes the construction of an artificial beach, the destruction of a large swath of wooded area and the drastic alteration of the shoreline for commercial use. All of these "improvements" will bring noise, light, odors, visual impacts and a heretofore unprecedented increase in density, to the doorsteps of current residents. The proposed development would be completely unprecedented compared to the present use of land on Carleton Island, and thus, it cannot be denied that the Board should consider the severity of the undesirable change that would occur if the Project were allowed to proceed.

2. Alternative Methods

An area variance should be denied where the applicant's goal can be achieved by some method other than a variance. Robbins v. Seife, 215 A.D.2d 665 (2d Dept. 1995). An obvious alternative is available. If the Applicant desires to operate a resort on Carleton Island, he could renovate the existing Villa structure and have the impacts contained therein. Instead, the current design spreads twelve cabin out to maximize negative impacts on neighbors and the environment.

3. Substantial

The area variances requested are too substantial to grant. The larger the magnitude of the variance requested, the more likely it is that it will have a negative impact on the neighborhood, and in turn, should be denied. National Merritt v. Weist, 41 N.Y.2d 438 (1977); Ifrah, 98 N.Y.2d at 309 (area variance of 60% deemed "undisputably substantial"); Matter of Greco v. Fischer, 13 Misc.3d 1216(A), 2006 N.Y.Misc. LEXIS 2678 (Sup. Ct., Suffolk Cty. 2006) ("requested variance is substantial to the extent it seeks a 50% variance").

The Applicant is essentially requesting thirteen front yard setback variances. As far as we can tell (without more detailed drawings) all twelve proposed cabins and the bathhouse will be located entirely within the front yard setback. At least seven of the cabins and the bathhouse are located only 100 feet from shoreline (a 200 foot setback is required. Eight 50% setbacks and five smaller setbacks would completely obliterate the setback requirement in the Code and set a terrible precedent for the future development of the entire Town. It cannot be reasonably disputed that the Application includes requests for extremely substantial setbacks.

4. Impacts on the Environment

The Project will also result in adverse impacts on the environment. The Board should require the Applicant to provide additional information in order to allow the Board to intelligently weigh the impacts of the Project on the environment. Currently, the Application in incomplete on this subject. Shockingly, the Application does not contain a single expert report on even one potential adverse environmental impact.

Notwithstanding the lack of detailed information about the Project, the following is clear: (1) the Project will require the physical alteration of approximately 7 acres of land; (2) the Project is likely to impact the St. Lawrence River due to its proximity to North and South Bay on Carleton Island; (3) groundwater impacts are likely because the Project does not contain adequate space to accommodate a septic system large enough to service the cabins, bathhouse and Villa; (4) the Project area is home to multiple threatened/endangered species according the environmental mapper and is in the vicinity of a Significant Waterfowl Winter Concentration Area; (5) historic resources will be impacted by the Project including the site of a historic fort and the Villa; (6) the Project will have severe impacts on Transportation in the form of new boat traffic and parking requirements in on the shore in order to accommodate this business; (7) there is no articulated plan to provide energy for the Project; and (8) the additional of large numbers of people to the island will result in noise, light and odors.

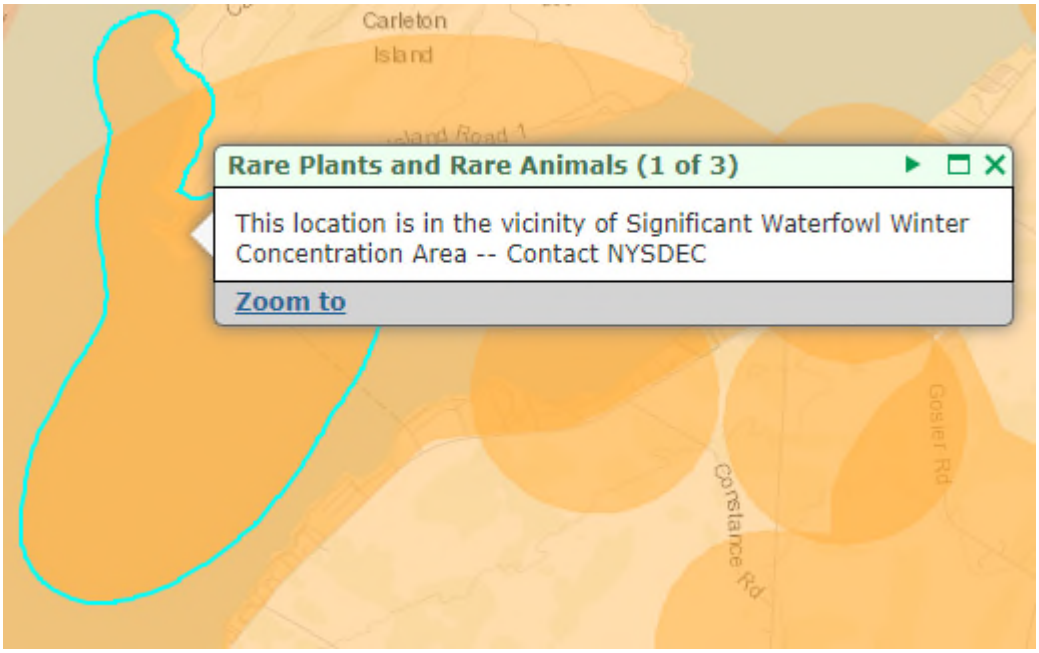
B. SEQR

The Project will require the physical alteration of approximately 7 acres of land. The Applicant has not represented that it will obtain a SPDES general construction permit. In addition, the Applicant has not provided a storm water pollution prevention plan (SWPPP). The Applicant must provide a SWPPP to this Board before it can evaluate the impact of construction on the river and the land. The alteration of so much land in such a sensitive area must be carefully studied.

The Project is likely to impact the St. Lawrence River due to its proximity to North and South Bay on Carleton Island. The Applicant has already begun construction of a ramp to facilitate site work. We are uncertain as whether a shoreline permit was obtained from DEC before this work was initiated. The Project includes the installation of an artificial beach, four docks and a large floating platform. In addition, the shoreline will be cleared and altered. The Applicant must obtain multiple permits from the DEC before any of these Project features can be evaluated. The Board should seek comment from the DEC on these features and should require the Applicant to submit a report from an expert stating what the likely impacts of these improvement will be on the river.

This location is a pristine island in the St. Lawrence River that must be protected. The Applicant should be required to prepare visual simulations of the Project both from the perspective of the water, as well as neighboring properties. Historic resources will also be impacted by the Project including the site of a historic fort and the Villa. The Applicant should be required to produced visual simulations from a variety of vantage points so that the Board can better evaluate the likely visual impact on historic resources as well.

The NYSDEC Environmental resource mapper identifies three separate rare animal/plant communities of concern at this location including waterfowl, bats and other animals. The Applicant should be required to retain a biologist to provide a report studying the potential impact of the development on these natural resources.



Groundwater impacts are likely because the Project does not contain adequate space to accommodate a septic system large enough to service the cabins, bathhouse and Villa. The Applicant currently states that it will rely on a septic system to service the site. It does not appear as though there is nearly enough space to accommodate such a large system. This Board must have a complete picture of what the plan will be before it can act. The Applicant should provide an expert report providing information about what the design of the sewage treatment system will entail and where it might be located.

The Applicant will be required to obtain drinking water from wells and to dispose of sewage from both the villa and bathhouse through a new sewage treatment system. The New York State Department of Health will ultimately have to sign off on the adequacy of those systems. However, the required systems must be fully designed and included on the site plan before the Board can make a decision about the special use permit or variances. No approvals should be issued until a complete plan is presented.

The Applicant has not thought through the impact of additional boat traffic required to operate this business. No parking plans have been provided explaining where customers and employees will park on the mainland.

The preservation of the character of the Villa is important. It is true that this structure is in a severe state of decay and the Applicant's desire to repair it is certainly welcome. However, given the historic nature of the structure, it is vital that the application include

a description of the proposed alterations to the structure so that the ZBA can evaluate those impacts intelligently. The Applicant must address comments from SHPO.

The Applicant should be required to provide a photometric study, landscaping plan and drainage plan so that the ZBA can evaluate those impacts as well. The Applicant must also be required to prepare a noise study and mitigation plan for the both the construction and operational phases of the Project.

Without any information to evaluate, it is impossible for the ZBA to complete the SEQR process.

Special Use Permit Standards of Review

The Applicant should be required to provide information about anticipated levels of noise and illumination in order to allow the ZBA to properly evaluate the special use permit application.

The proposed density and intensity of use of the development and its close proximity to the shoreline seriously threaten the environment and the use and enjoyment of neighboring properties. It is certainly not in keeping with the traditional character of Carleton Island. The ZBA should illicit the input of the neighbors to find the right balance for this Project. The current proposal is clearly much too intensive compared to the existing development pattern on the island and is in need of being significantly altered.

Sincerely,

BOND, SCHOENECK & KING, PLLC

Brody D. Smith, Esq.
Member