STATE OF NEW YORK
SUPREME COURT COUNTY OF SARATOGA

ALICIA M. FARONE and LOUIS J. FARONE, III,

Petitioners/Plaintiffs,

-against-

TOWN OF SARATOGA ZONING BOARD OF APPEALS,

Respondent,

-and-

CRAIG DEMPSEY, Individually, and d/b/a S&S SARATOGA FARM, MARIA DEMPSEY, Individually, and d/b/a S&S SARATOGA FARM, and COREY DEMPSEY, Individually and d/b/a S&S SARATOGA FARM,

Respondents/Defendants.

DECISION, ORDER & JUDGMENT

Index No.: EF20221241

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KUPFERMAN, J.,

This case involves a neighborly feud between adjacent property owners. The main issue is whether the use of certain property as a commercial event and wedding venue constitutes a violation of the zoning law. The petitioners (the Farones) have commenced this hybrid action/proceeding challenging an administrative board's determination that such use was authorized under a special use permit and therefore lawful under the zoning law. The petitioners further assert a nuisance claim against their neighbors (the Dempseys) and seek an injunction prohibiting them from using the property as a wedding/event venue.

Background

The Farones own real property located in the Town of Saratoga ("Town"). They reside there with their two children in a single-family dwelling. Their property also has a barn housing chickens. The Dempseys own an adjacent property. It is approximately five acres, on which is situated a barn, colonial-style house, various other structures, and a small pond. The Dempseys use their property to operate a commercial wedding, performance and event venue and a vacation rental business. The Farones' house is allegedly located approximately 500 feet from the barn used to host the weddings/events.

The Dempseys assert that the use of their property as a wedding/event venue is authorized by a special use permit issued by the Town's Planning Board in November 2016. The Planning Board's meeting minutes reflect that Mary Maranville (the prior owner/purchaser) applied for the special use permit to operate an agricultural education business on the property. At the meeting/hearing on her application, Mary Maranville confirmed that the "main purpose" would be for agriculture education. She stated that she had educated 15,000 children and that to continue she needed to fund raise and host small weddings to raise the money needed to operate her

business. This included small farm-to-table fundraisers as well as small farm-to-table weddings. She stated that weddings would be "very limited" and that "they [would] take place there during the day, so there is no concern of lights and loud music at night." She stated that she intended to preserve the property in its current state and did not plan to make significant improvements.

The Planning Board's records reflect that Louis Farone opposed the application for the special use permit. He expressed concerns about traffic, light pollution, smells, noise, and septic problems. He felt that this was a violation of his property rights, claiming people say they will do one thing and then do another.

At the conclusion of the proceedings, the Planning Board voted (7-0) to grant the special use permit with the following conditions:

> "1. Special Use Permit goes into effect upon date of closing for the property [i.e., the purchase by Mary Maranville]
> 2. Ag & Markets permit must be obtained, if required
> 3. NYS Department of Health clearance
> 4. Limit farm-to-table functions to 80 people and no more than 40 vehicles
> 5. If additional property is purchased for expansion of parking or expansion of business, Applicant must come back before the Planning Board."

The Planning Board issued a "notice of action" around the same time. The notice states that the special use permit was granted with conditions and lists these same conditions. The notice, however, indicates that it was to "advise only" and that "[t]he official action on [the] application [was] recorded in the [November 2016] minutes of the Board" (emphasis added).

The following year, Mary Maranville and Kevin Dott (then co-owners of the Dempseys' property) sought to amend/expand the special use permit. Several meetings were conducted on the application to amend/expand before it was allegedly abandoned. During the meetings, several Planning Board members expressed concern that the use was supposed to be for farm-to-table

education for young school children with occasional weddings to supplement the income necessary to operate the business, but that the property was being used as a wedding venue. Some of the Planning Board members accused Mary Maranville of misleading them from the beginning and applying for the permit under false pretenses. She was asked to submit a new application if she desired to use the property as a wedding venue or in some other materially different manner than originally proposed. One board member further commented that wedding venue was not listed as a special use under the zoning law.

The record does not contain any indication that the Planning Board issued a final decision on the application to expand/amend, although it did issue a temporary certificate of use allowing for two weddings in excess of the 80-person limit. The temporary certificate expressly states that "this action shall not be construed to be an approval of, or a recommendation in favor of, the application still under consideration."

In October 2020, Craig Dempsey purchased the property to use it for weddings and events. Prior to purchasing the property, he allegedly investigated the history of the property and reviewed the relevant Planning Board minutes, including the minutes from November 2016. He also alleges that the Town's Code Enforcement Officer ("CEO") and the Town Supervisor both separately confirmed to him that he would not have any problems with using the property for weddings/events if he limited them to a maximum of 80 people and 40 vehicles. Moreover, he alleges that they assured him that the issues with the Farones had been resolved long ago by the issuance of the special use permit. He also spoke with the manager of a nearby hotel/restaurant and occasional wedding venue, who allegedly confirmed the statements made by the CEO and Town Supervisor.

Craig Dempsey apparently did not speak to the Farones prior to purchasing the property. Rather, he alleges that he first spoke with Alicia Farone about a month after he purchased it. He

alleges that Alicia Farone indicated during their conversation that she was adamantly opposed to any weddings at the property and that she was considering her legal options to prevent such use. Despite this opposition, Craig Dempsey nevertheless proceeded to use the property as a wedding/event venue and make improvements to use the property in this manner.

In July 2021, the Farones' counsel sent a letter to the CEO. The letter sought to put the Town on notice of alleged zoning violations occurring on the Dempseys' property, including the use of the property as a wedding/event venue. The letter requested that the Town take appropriate action to enforce the Town of Saratoga Zoning Regulations ("Zoning Regulations").

After receiving no response, in August 2021, a follow up letter was sent to the CEO. In October 2021, the CEO responded with a letter determination advising that there were "no zoning violations" and further stating that the "[e]vent barn has been properly approved by ... Planning Board with guidelines and they have been in compliance since approval" ("CEO's Determination").

In December 2021, the Farones filed an interpretive appeal of the CEO's Determination with the Town's Zoning Board of Appeals ("ZBA"). In January 2022, the ZBA held a meeting/hearing on the interpretive appeal. During the proceedings, the CEO stated "[t]he original permit was for agriculture education with small weddings several times a year/conferences several times a year to support the cost of the [agricultural education] program, but ended up solely being a venue for weddings." Louis Farone stated that the Planning Board felt the agriculture education business was a good fit, not the wedding venue. He explained that Mary Maranville went from asking for a permit for agriculture education and weddings as fund raisers for the education program, to just doing weddings.

At a continuation of the meeting/hearing in February 2022, Craig Dempsey stated that he bought the property as a wedding/event venue. They had already hosted 9 weddings, birthday parties, and baby showers, among other things. They had 19 weddings booked for 2022 and 4 weddings for 2023. They planned on having 25 events per year. He asserted that he had invested a lot of money into the business, and it would be a financial disaster for him if he could not use the property in this manner. He asserted that he would not have purchased the property if he could not use it for these weddings/events.

The Farones' counsel asserted at the meeting/hearing that the use had changed since the special use permit was issued and that the permit did not authorize the use at issue. He disputed that a special use permit was in place allowing for the property to be used as a commercial wedding and event venue. He asserted that Mary Maranville had an agriculture business and that the Planning Board allowed her a temporary conditional permit for two weddings. He relied upon a proposed local law from 2018/2019 (which was not adopted) seeking to amend the Zoning Regulations to permit a commercial event venue as a special use in the subject zoning district. He asserted that the Town elected not to amend the regulations to add this type of use as a permitted special use, and that such use was therefore not allowed.

At the meeting/hearing, Alicia Farone stated that she was against this and did not want a wedding/event venue near her property. She asserted that she had no issue with Craig Dempsey "as they've been very responsible with their business." Notwithstanding, she was against this, and she stated that such use was not permitted.

The CEO spoke at the meeting/hearing. He stated that the permit originally was for a farm-to-table agricultural business with weddings and events to subsidize the business. It was quickly realized that the prior owner was only doing weddings and far beyond the 80 permitted people and

40 allowed cars. The CEO asserted that in issuing his decision he relied upon the decision made by the Planning Board. The CEO asserted that the Planning Board has discretion to allow certain things if not clearly in the regulations and that the Planning Board did so in this case.

In April 2022, the ZBA voted 4-3 to adopt Resolution #22-01, which upheld and affirmed the interpretation and determination of the CEO "to the extent that [the matter was] properly before [it]."[1] The ZBA concluded that the special use permit allows for events such as weddings that do not to exceed 80 people or 40 vehicles, and that the exceeding of these thresholds was a matter of code enforcement and not an issue subject to ZBA review.

The ZBA further concluded as follows:

> "To the extent [the Farones] have sought the ZBA's interpretation as to whether or not a wedding or event venue is permissible at the Property pursuant to a Special Use Permit, as opposed to a Use Variance, this issue cannot be considered by the ZBA. The Special Use Permit allowing events, including weddings, was approved by the Town Planning Board in November 2016 at a meeting Applicant Louis Farone attended and participated in.... Any timeframe in which the determinations of the [CEO] and/or Planning Board that led to the issuance of the Special Use Permit in 2016 could have been challenged either administratively or through a Court proceeding have long expired. The ZBA cannot now make a determination on this underlying zoning issue six years after the Special Use Permit was issued. We believe this would be particularly inappropriate considering that the Applicants had actual knowledge of issuance of the Special Use Permit when it was issued six years ago; the record before the ZBA indicates that the current owners and their predecessors have used the property to host weddings during the intervening six years; and the current owner indicated that he did his due diligence prior to purchasing the Property by confirming with the Town that he could use the property for weddings as conditioned by the 2016 Special Use Permit."

[1] One member who voted to adopt the resolution stated that this was not a zoning issue and could not be considered by the ZBA. In addition, the ZBA's counsel commented that the CEO found no violation and the permit was issued by the Planning Board in 2016; she asserted that the permit was in place and never challenged and the time to appeal/challenge the permit has since expired.

The Pending Litigation

In May 2022, the Farones filed this hybrid action/proceeding seeking judicial review of the ZBA's resolution. They contend that the use of the property for weddings/events is not a permitted use or a special use within the zoning district where the property is situated, and that the Dempseys must obtain a use variance (rather than a special use permit) to lawfully operate a commercial wedding/event venue. They also dispute that the special use permit authorizes the use of the property as a wedding/event venue. They assert that the property may be used for weddings/events only in connection with an agricultural education business. In addition to seeking to annul the ZBA's determination, the Farones also assert a nuisance claim against the Dempseys and seek to enjoin the Dempseys from operating a wedding/event venue on the subject property.

The Dempseys have filed a motion seeking to dismiss the petition-complaint pursuant to CPLR 3211(a)(1), (5), and (7). They assert that the special use permit and the defenses of statute of limitations and laches bar the claims, and that the nuisance cause of action is insufficiently pleaded and barred by documentary evidence, among other things. The ZBA has submitted a verified answer and a certified copy of the administrative record. The ZBA asks the Court to dismiss the Article 78 claims. They too rely on the special use permit and the statute of limitations defense.

In response, the Farones have filed a cross motion seeking permission to amend the petition-complaint. The proposed amendment seeks to challenge the validity of the special use permit and to add the Planning Board as a party for this purpose. The proposed amendment asserts that the Planning Board did not have jurisdiction to issue the special use permit and that it is therefore null and void and not subject to the 30-day statute of limitations period generally applicable to challenges to the issuance of special use permits pursuant to Town Law § 274-b (9).

Analysis

Documentary Evidence

The Dempseys assert that the following documents constitute documentary evidence sufficient to dismiss the petition-complaint: (1) the special use permit, (2) the CEO's letter and opinions, and (3) the statements made by Alicia Farone at the ZBA meeting/hearing. A motion seeking to dismiss a claim on the ground of documentary evidence "may be granted only where the documentary evidence utterly refutes the plaintiff's factual allegations, thereby conclusively establishing a defense as a matter of law" (Gulfstream Anesthesia Consultants, P.A. v Cortland Regional Med. Ctr., Inc., 165 AD3d 1430, 1432-1433 [3d Dept 2018] [internal quotation marks and citations omitted]; see CPLR 3211[a][1]). This requires "evidence that is unambiguous, authentic, and undeniable, and includes judicial records and documents reflecting out-of-court transactions such as mortgages, deeds, contracts, and any other papers, the contents of which are essentially undeniable" (id. at 1433 [internal quotation marks and citations omitted]).

Here, the documents relied upon by the Dempseys do not utterly refute the Farones' factual allegations. The special use permit does not unequivocally specify that the property may be used as a wedding/event venue. In fact, the "notice of action" does not even specify the actual special use granted. Similarly, the CEO's letter and opinions are far from conclusive on the CPLR Article 78 claims; they were challenged administratively, and now they are subject to judicial review (see Town Law §§ 267-a; 267-c; see also Zoning Regulations § 400-66). Nor would the CEO's determination bar the nuisance claim (see Little Joseph Realty v Town of Babylon, 41 NY2d 738, 740 [1977] [holding that "a use which fully complies with a zoning ordinance may still be enjoined as a nuisance"]; see also Manuli v Hildenbrandt, 144 AD2d 789, 790 [3d Dept 1988]; Leising v Town of Clarence, 144 AD2d 969, 970 [4th Dept 1988]).

The Dempseys also misplace reliance on the statements made by Alicia Farone at the ZBA meeting/hearing in February 2022 as a basis to dismiss the nuisance claim. Alicia Farone allegedly said that she had no issue with Craig Dempsey and that "they've been very responsible with their business," and that the use was not permitted. These statements are too vague and ambiguous to determine the validity of the nuisance claim (see Gulfstream Anesthesia Consultants, P.A., 165 AD3d at 1432-1433). In addition, these statements are not formal judicial admissions or conclusive evidence; at best, they concern a matter of credibility and are therefore not dispositive of the claim as a matter of law (see Fern v International Bus. Machs. Corp., 204 AD2d 907, 908-909 [3d Dept 1994]; Prince, Richardson on Evidence §§ 8-215 & 8-219 [Farrell 2008]). Moreover, at the time of the hearing, Craig Dempsey had only scheduled a fraction of the weddings he intended, and this case was filed approximately three months after the statements were made. As such, the "utterly refute" standard required to dismiss based on documentary evidence is not satisfied.

The Dempseys have also submitted an affidavit from Craig Dempsey in support of their motion to dismiss. To the extent they rely on this as documentary evidence, the affidavit is similarly insufficient to grant the motion (see Crepin v Fogarty, 59 AD3d 837, 838 [3d Dept 2009] ["affidavits submitted by a defendant do not constitute documentary evidence upon which a proponent of dismissal can rely"]).

The Statute of Limitations / Special Use Permit

The respondents contend that the special use permit authorizes the use of the property as a wedding/event venue and that the present challenge to the subject use (authorized by the special use permit) is now barred based on the expiration of the applicable statute of limitations period. "Dismissal may be warranted under CPLR 3211 (a) (5) where a defendant establishes, prima facie,

that a cause of action is time-barred by the expiration of the applicable statute of limitations" (State of N.Y. Workers' Compensation Bd. v Wang, 147 AD3d 104, 110 [3d Dept 2017]). Upon such a showing, "[t]he burden then shifts to the plaintiff to raise a question of fact as to whether the statute of limitations has been tolled or was otherwise inapplicable, or whether the action was actually commenced within the period propounded by the defendant" (id. [internal quotation marks and citations omitted]).

As discussed above, the "notice of action" does not provide that the property may be used as a wedding/event venue. In fact, the language in the notice fails to identify the specific use for which the permit was granted; it simply references Mary Maranville's application (which is not in the administrative record) and notes that a special use permit was granted with conditions. Further, while "farm-to-table functions" is referenced as part of the approved conditions in the subject notice, this condition simply limits any such functions to 80 people and 40 vehicles. The notice does not specify the extent to which such functions may be held or whether such use is a principal/primary use or an incidental/secondary use.

The notice further serves to "advise only." The official action on the application was memorialized in the Planning Board's minutes from November 2016. As the minutes reflect, the principal intended use of the property concerned an agricultural education business. In fact, Mary Maranville expressly stated during the public hearing that this was her "main purpose." Further, the number of weddings were supposed to be "very limited" and the use of the property for weddings/events was linked directly to the main purpose, to wit: to offset the costs associated with operating the agricultural education business. These circumstances reveal that the use for weddings/events was merely an incidental use rather than a principal use.

The public hearing also lasted only 16 minutes, and during this limited time there was no discussion about using the property principally as a wedding/event venue.[2] If such use had been contemplated, the Planning Board would have likely discussed the matter and considered the appropriate factors for such use, as they were required to do (see Town Law § 274-b [1]; Zoning Regulations, Article VIII). Yet, no such discussion or consideration occurred.

The minutes of the subsequent meetings before the Planning Board further indicate that the Planning Board did not originally intend to authorize a wedding/event venue as a primary use. Several Planning Board members criticized the prior owner for changing the use after obtaining the special use permit and/or misrepresenting the true nature of the intended use. The CEO also further informed the ZBA that the intended use changed after the permit was issued.

Ascertaining the nature of the use authorized for weddings/events was critical to determine whether the use violated the zoning law; yet, the CEO and ZBA simply ignored the issue altogether (see e.g. Matter of Brophy v Town of Olive Zoning Bd. of Appeals, 166 AD3d 1123 [3d Dept 2018] [involving the ancillary use of a bed and breakfast for weddings]; Sinon v Zoning Bd. of Appeals, 117 AD2d 606 [2d Dept 1986] [discussing the difference between a primary use and an accessory/incidental use]; Incorporated Vil. of Old Westbury v Alljay Farms, 100 AD2d 574 [2d Dept 1984], mod 64 NY2d 798 [1985] [same]; see also 15 Warren's Weed New York Real Property § 156.10 [Bender 2023]; 12 NY Jur Buildings, Zoning, and Land Controls §§ 282-289 [West Group 2023]; 54 ALR4th 1034).

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[2] The Dempseys misplace reliance on a general reference in the meeting minutes to Mary Maranville "seeking a special use permit to open her business, [also known as] ... Students for Eco-Education and Agriculture ... which consists of an agricultural education business, small farm-to-table fundraisers as well as small farm-to-table weddings." While this certainly evidences that the property/business would be used to some extent for small farm-to-table weddings, again it does not indicate the extent or type of such use (e.g., dominant vs. incidental).

Further, no record evidence exists to support the CEO's bald assertion that that the Planning Board subsequently authorized the principal use as a wedding/event venue. Nonetheless, even if true, the only special use permit relied upon by the CEO and ZBA was the one from November 2016. That special use permit was limited; it provided "authorization of a particular land use" (Town Law § 274-b [emphasis added]). It was not an open-ended invitation for the Planning Board to subsequently allow as of right a change in the character of the use authorized (e.g., changing an incidental/ancillary use into a dominant use) or a materially different use (e.g., changing the use from agricultural education to a wedding/event venue). Such a change would have required compliance with the applicable procedures necessary to grant such approval (see e.g. South Woodbury Taxpayers Assn. v American Inst. of Physics, 104 Misc2d 254 [Sup Ct, Nassau County 1980]; Warner v Board of Review of City of Newport, 104 RI 207, 243 A2d 92 [1968]; 3 Zoning Law and Practice § 21-1 [Bender 2023]; 15 Warren's Weed New York Real Property § 161.21 [Bender 2023] ["Where a special permit use is already established, it may be enlarged or extended without the need for a new special permit, if the enlargement or extension is of the same character as that originally granted and if it does not substantially intensify the use"]; see also Matter of Marzocco v City of Albany, 217 AD2d 872, 872-873 [3d Dept 1995] [a change in character of the property from the prior non-conforming use required a use variance under the zoning law]).

Accordingly, the special use permit did not authorize the principal or independent use of the property as a wedding/event venue. The claims asserted in the petition-complaint are therefore not barred by the special use permit or the statute of limitations defense (see Rapasadi v Phillips, 2 AD2d 451, 453 [3d Dept 1956] ["we cannot say that when the new structure was commenced, plaintiffs were bound to anticipate that its use would be unlawful and to take immediate action 'or forever after lose their right'" (citation omitted)]).

Laches

The Dempseys also allege that the defense of laches precludes the Farones from challenging the use of the property as a wedding/event venue. They assert that they relied on the special use permit as authority to use the property for this use and that they further purchased the property and improved it for such use.

"In order to invoke the doctrine of laches, a party must show: (1) conduct by an offending party giving rise to the situation complained of, (2) delay by the complainant in asserting his or her claim for relief despite the opportunity to do so, (3) lack of knowledge or notice on the part of the offending party that the complainant would assert his or her claim for relief, and (4) injury or prejudice to the offending party in the event that relief is accorded the complainant" (Matter of Kuhn v Town of Johnstown, 248 AD2d 828, 830 [3d Dept 1998] [internal quotation marks and citations omitted]; see Dwyer v Mazzola, 171 AD2d 726, 727 [2d Dept 1991]).

Here, the Dempseys knew or should have known that the Farones would assert their rights. The Farones repeatedly voiced their objections to the use of the property in this manner. They initially objected to the more limited request by the prior owner to use the property for weddings to supplement the main business. They later voiced additional objections when the prior owners sought to amend/expand the special use permit.

In 2018, for example, the Times Union (a regional newspaper) reported that Alicia Farone stated that "[t]he current use has no educational purpose at all" and that "wedding guests and vacationers party well into early morning hours, disturbing her and her family's sleep." She reported that her family had unwelcoming encounters with guests and that she did not feel that it was safe for her children. She also allegedly commented that the vehicles for the weddings were being parked in a dangerous and irresponsible manner.

In September 2019, another article in the Times Union reported that Alicia Farone stated that allowing weddings at the property disturbs the peace of her family and her farm animals. She allegedly complained that the wedding venue was loud, went late, and was not conducive to family life. She also asserted that a wedding venue does not comply with area zoning, which is rural residential, defined in the Zoning Regulations as "low density residential growth and development without compromising existing agricultural uses." She further asserted that the use of the property as a wedding venue was not an approved use and that the zoning law did not allow it.

When they first met, Alicia Farone further voiced similar objections to Craig Dempsey and indicated that she was considering legal action. Aside from directly hearing these comments, Craig Dempsey reviewed the regulations and the Planning Board's minutes to ascertain the extent to which he could use the property. The regulations were not clear to him. The minutes further contain several statements made by Planning Board members criticizing the prior owner's use of the property primarily for a wedding/event venue. The prior owner was accused of misrepresenting her intended use when she applied for the special use permit; she was also told that the use of the property primarily as a wedding/event venue was beyond what was authorized and that she would need to submit a new application to use the property in such a manner.

In addition, the Dempseys cannot claim that the Farones' alleged inaction prejudiced them (see Rapasadi, 2 AD2d at 453). They knew or should have known that such use was either not permitted or at least highly questionable. Their alleged reliance on the CEO (who did not have the final say) and a business manager (who had no authority to bind the Farones) was simply not reasonable or proper due diligence. Further, as explained above, the special use permit did not authorize the principal use of the property as a wedding/event venue. As such, the Dempseys'

purported reliance on it was also misplaced and unfounded (compare Matter of Crowell v Zoning Bd. of Appeals of the Town of Queensbury, 151 AD3d 1247, 1250 [3d Dept 2017]).

Accordingly, no basis exists to apply the doctrine of laches to bar the Farones from challenging the principal use of the property as a wedding/event venue.

Failure to State a Cause of Action

The Dempseys also contend that the Farones have failed to state a cause of action. The Dempseys essentially rely on many of the same arguments made in support of their other arguments (e.g., that the special use permit precludes the action, that the documentary evidence justifies dismissal, and that the alleged statements of Alicia Farone contradict her nuisance allegations). As discussed above, these contentions are insufficient.

Further, although the Dempseys dispute the sincerity of the nuisance claim, courts on a motion to dismiss for failure to state a cause of action must "assume the facts alleged to be true [and] view them liberally and in the light most favorable to the plaintiff" (Torrance Constr., Inc. v Jaques, 127 AD3d 1261, 1263 [3d Dept 2015]). Applying this standard, the nuisance claim properly pleads all the essential elements required to state a cause of action (see 4 Bender's Forms of Pleading 23:Sugg [Bender 2023]; see also CPLR 3013; 3026).[3]

[3] The petition-complaint for example alleges that the property is being used as a wedding/event venue in violation of the zoning law and that such use includes "indoor and outdoor activities"; gatherings of "up to 100 or more persons"; "food and alcoholic beverages"; "dancing"; loud music for "unreasonable lengths of time and hours"; offensive noises; "disorderly conduct of guests"; "guests urinat[ing] near [their residence]"; "motor vehicles [parked] near or on the boundary line of [their residence]"; and strangers/guests standing and wandering around. In addition, this has allegedly caused the Farones' residence to be unfit for peaceful occupation; impaired their rest and sleep; disrupted their farm animals; and depreciated the value of their property.

The Interpretation of the Zoning Regulations

The Farones further contend that the use of the property for weddings/events is not specifically permitted and is therefore prohibited absent a use variance. In contrast, the Dempseys contend that even though wedding/event venues are not specifically identified as a permitted use, there are several permitted uses in the regulations that are the types of commercial business that would host small weddings and events, such as those uses permitted for "public/private recreation"; a "restaurant"; and a "bed-and-breakfast." The Dempseys assert that the nature of the wedding/event venue falls squarely within these categories and that such use is therefore permitted.

The ZBA (through its counsel) similarly contends that the Zoning Regulations may reasonably be interpreted to permit the issuance of a special use permit for a wedding/event venue. The ZBA asserts that there are a variety of uses permitted with a special use permit, including "restaurant," "public/private recreation," "bed-and-breakfast," "adult use business," "retail business or service," "motel," and "rental services." The ZBA contends that the use at issue is a combination of those uses allowed in that there is provision of food with associated bathroom facilities and the gathering of people such as would occur on recreational lands.

"Generally, a zoning board's interpretation of a zoning law is afforded great deference and will only be disturbed 'if it is irrational or unreasonable'" (Matter of Meier v Village of Champlain Zoning Bd. of Appeals, 129 AD3d 1364, 1365 [3d Dept 2015] [citation omitted]). "Although courts will ordinarily defer to a zoning board's interpretation of a local ordinance, when the issue presented is one of pure legal interpretation of the underlying zoning law or ordinance, deference is not required" (Matter of Winterton Props., LLC v Town of Mamakating Zoning Bd. of Appeals, 132 AD3d 1141, 1142 [3d Dept 2015] [internal quotation marks and citations omitted]; Matter of Subdivisions, Inc. v Town of Sullivan, 92 AD3d 1184, 1185 [3d Dept 2012]).

The Dempseys' property is located within the Town's Rural Residential Zoning District (the "Rural Residential District"). Pursuant to Section 400-35 of the Town's Zoning Regulations, the purpose of the Rural Residential District is to "accommodate low-density residential growth and development without compromising existing agricultural uses and areas exhibiting physical constraints to development," and allows for "other uses appropriate to the existing character of the district." The regulations include a list of uses specifically allowed within the district. There are permitted uses (i.e., those permitted as of right) and uses requiring a special use permit. "Those uses not specifically permitted ... are prohibited" (see Zoning Regulations § 400-8.10).

"Permitted Uses" within the Rural Residential District include "one-family detached dwelling units," "two-family dwelling units," "agricultural pursuits and any accessory buildings and uses normally associated with the conduct of commercial agricultural activity," "road-side stands as accessory use to a residential use," "home occupation," "accessory building apartment," and "customary accessory uses" (which are defined as "a use customarily incidental and subordinate to the main or principal use or building and located on the same lot with such principal use or building") (see Zoning Regulations §§ 400-35B and 400-34B).

"Uses Requiring Special Permit" within the Rural Residential District include all special permitted uses in the Rural District (those enumerated in Section 400-34B), except mining, plus other additional uses (those enumerated in Section 400-35B). The special uses expressly listed in the regulations include, among others, "agri-business," "public/private recreation," "restaurant,"

"bed &-breakfast," "adult use business," "retail business and/or service," and "motel" (see Zoning Regulations §§ 400-35B and 400-34B).[4]

Based on the clear wording of the regulations, the Court is not persuaded that "similar" or "combined" uses are expressly permitted under the regulations (see Raritan Dev. Corp. v Silva, 91 NY2d 98 [1997]; Matter of Fox v Town of Geneva Zoning Bd. of Appeals, 176 AD3d 1576 [4th Dept 2019]; see also Matter of North Shore Steak House v Board of Appeals of Inc. Vil. of Thomaston, 30 NY2d 238, 243 [1972] ["a special exception allows the property owner to put his property to a use expressly permitted by the ordinance" (emphasis added)]).

The regulations could have, but did not, expressly authorize the issuance of a special use permit for "similar" or "combined" uses (compare Matter of Woodland Community Assn. v Planning Bd. of Town of Shandaken, 52 AD3d 991 [3d Dept 2008] [the zoning code expressly provided that a special use not specifically listed shall be considered prohibited unless it was a "similar use"]). In fact, the regulations instead list specifically permitted uses and prohibit all uses not specifically permitted. This creates an inference that that the inclusion of those listed excludes any uses that are not listed (Incorporated Vil. of Old Westbury v Alljay Farms, 100 AD2d 574, 575 [2d Dept 1984], mod 64 NY2d 798 [1985]; see also Moody Hill Farms v Zoning Bd. of Appeals, 199 AD2d 954, 956 [3d Dept 1993]; Biggs v Zoning Bd. of Appeals of the Town of Pierrepont, N.Y., 52 Misc 3d 694, 698 [Sup Ct, St. Lawrence County 2016]).

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[4] Additional special uses listed in the regulations include: "stable and riding academy," "veterinarian office," "animal hospital or clinic," "kennel," "municipal building," "places of worship," "public and private school," "sawmill," "cemetery," "garden shop," "home industry," "antique shop," "funeral home," "lumber and building supply," "automotive body shop," "boat, RV and motor vehicle storage," "storage and repair of general construction equipment," "camping grounds," "rental services," "additional one family dwelling unit," "wholesale business," "printing shop," "automobile sales and/or service," "gasoline station," "fuel storage and distribution," "medical facility," "bank," and "professional office buildings" (see Zoning Regulations §§ 400-35B and 400-34B).

Nor would it be rational to conclude on this record that the use at issue is the same as or substantially similar to any of the uses specifically identified as permitted in the Zoning Regulations (compare e.g. Matter of Brophy v Town of Olive Zoning Bd. of Appeals, 166 AD3d 1123 [3d Dept 2018] [concluding that the ZBA reasonably concluded that a "bed and breakfast" was similar to a "boardinghouse" or a "tourist home", especially considering the record evidence that "bed and breakfast" establishments were commonly permitted in the town]).

"Public and private recreation", for example, is defined in Appendix A of the regulations as "[a] facility offering recreational opportunities to the general public or to a fee-paying membership, including amusement parks, theaters, golf, swimming clubs, tennis clubs, and fishing and hunting clubs and other similar facilities." Marriage is generally not considered a "recreational opportunity" or consummated as a sport or hobby. There is also no evidence in the record that the property has any recreational facilities similar to the ones identified in this definition (e.g., an amusement park) or that the property caters to people marrying for recreational purposes.

In addition, "restaurant" is defined as "[a] building, or portion thereof, where food and beverages, whether or not alcoholic, are sold to the public for consumption on the premises." "Bed-and-Breakfast" is defined as "[a] dwelling in which overnight accommodations are provided or offered for transient guests for compensation, but such use is secondary to the occupancy of the dwelling by a family." While these businesses have some similar characteristics as a wedding/event venue, they are too dissimilar in character to consider them as the same or similar use (see e.g. Calabrese v Chave, 33 AD2d 689 [2d Dept 1969]; People v Kalomiris, 56 Misc 2d 174 [District Ct, Nassau County 1968] [discussing the unique differences between a restaurant that allows dancing and a dance hall]).

Wedding venues for instance often cater to persons living farther away from the vicinity as compared to a local restaurant; in this case, the Dempseys allegedly market the property online to a national customer base. Wedding guests, moreover, also often travel together in large groups (booking several blocks of rooms at hotels) compared to non-wedding guests who generally visit the area in fewer numbers. Interjecting such a large number of non-residents into the Town for weddings/events could very well burden the Town's facilities and disrupt the neighboring properties to a greater degree than a small-town bed-and-breakfast or a local restaurant.

Wedding guests, moreover, generally do not attend simply to eat the food or use the restrooms or the overnight accommodations. Rather, their primary purpose is to celebrate; wedding guests may and often do engage in dancing, partying, drinking alcoholic beverages, and even roaming the lands around the venue. Such venues may in fact often be more similar to bars and dance halls, neither of which are specifically listed as a permitted use or as a special use.

Further, while restaurants and other commercial businesses may host occasional weddings, this does not make these properties wedding/event venues. Rather, the hosting of weddings is merely incidental or secondary to the dominant or primary purpose permitted for such properties (e.g., the sale of food and beverages for a restaurant) (see People v Kalomiris, 56 Misc 2d at 174; see also Matter of Brophy, 166 AD3d at 1123).

The distinct nature of the use at issue is further evident by the local law proposed in 2018/2019 (but not adopted) seeking to amend the regulations to permit a commercial event venue as a special use. The proposed local law highlights the unique nature of the use and the specific features and circumstances unique to wedding/event venues. It also evidences that an authorized special use for wedding/event venues does not already exist in the regulations.

Notwithstanding, this interpretation of the regulations is based on the limited record and arguments presented. Given that the CEO and ZBA have not yet specifically addressed this issue, this interpretation is without prejudice to the issue being addressed further during any relevant future administrative proceedings (discussed below).

The Validity of Resolution 22-01

As discussed above, the ZBA misinterpreted the special use permit and irrationally concluded that it provided the legal authority for the use at issue. This interpretation rests on an arbitrary and overly selective reading of the "notice of action" and meeting minutes.

There is no evidence that the prior owner applied for authority to primarily use the property as a wedding/event venue or that the Planning Board intended to confer such authority when it issued the special use permit. The matter was neither discussed nor considered during the November 2016 meeting. Further, the notice of action does not reference or authorize a wedding/event venue. Rather, it references "farm-to-table functions." While such a term is vague without context, the notice was to "advise only" and expressly provided that the official action taken was recorded in the meeting minutes. A plain reading of those minutes indicates that the principal or main use was for the agricultural education business and that the use for weddings/events was linked directly to the main purpose, to wit: to offset the costs associated with operating the agricultural education business. Accordingly, based on the record before the Court, the use for weddings/events was merely an incidental use rather than a principal use.

Moreover, there is no record evidence that the use authorized by the special use permit was the same in character as or similar to the use at issue. To the contrary, the record indicates that the original principal use of the property authorized was for an agricultural education business whereas it is now being used primarily as a wedding venue.

Further, as discussed above, the regulations do not authorize the use of property as a wedding/event venue. To the extent that the ZBA's resolution rests on a contrary interpretation of the regulations, such an interpretation would also be irrational and unreasonable based on the record presented (see e.g. Raritan Dev. Corp., 91 NY2d at 98; Matter of Fox, 176 AD3d at 1576).

Accordingly, the ZBA misplaced reliance on the special use permit as the legal authority for the use at issue. The petition-complaint is therefore granted to the extent of annulling the ZBA's determination (Resolution #22-01). This ruling however is specific to the April 2022 resolution and does not annul or invalidate the special use permit. The permit is still valid and enforceable.

The Request for a Remand

Based on the Court's interpretation of the special use permit, the Farones' request for a remand is denied as academic and premature. As discussed above, the CEO misplaced reliance on the special use permit as authority for the use at issue. The ZBA should have annulled his determination for this reason alone and, as such, there is no reason to remand the case to the ZBA to interpret the regulations any further. Moreover, the Dempseys will be required to seek and obtain the necessary administrative approval(s) if they desire to continue the use at issue. This issue (special use permit vs. variance) is better left in the first instance for administrative consideration in connection with any subsequent administrative application seeking authority for the particular use at issue or some other use, whatever the case may be.

Motion to Amend the Petition-Complaint

The Farones seek permission to amend their pleading to add a claim seeking to annul the special use permit. They assert that the Planning Board did not have jurisdiction to issue the special use permit and that the use at issue required a use variance from the ZBA. They further contend

that because the Planning Board acted without jurisdiction, the challenge is not time barred. The respondents in contrast dispute that a variance was required and contend that the proposed claim is barred by the statute of limitations defense and therefore patently devoid of merit.

A party may amend his or her pleading at any time by leave of court (see CPLR 3025[b]). When leave is sought to amend a pleading, it shall be freely given upon such terms as may be just (see id.). "[T]he movant need not establish the merits of the proposed amendment and, in the absence of prejudice or surprise resulting directly from the delay in seeking leave, such applications are to be freely granted unless the proposed amendment is palpably insufficient or patently devoid of merit" (Lakeview Outlets Inc. v Town of Malta, 166 AD3d 1445, 1446 [3d Dept 2018] [internal quotation marks and citations omitted]).

Here, the Court is cognizant of the limited powers delegated to the Planning Board (see Matter of Department of Personnel of City of N.Y. v New York City Civ. Serv. Commn., 79 NY2d 806 [1991]; Matter of Nicholas v Kahn, 47 NY2d 24, 31 [1979] ["administrative agencies are but creatures of the Legislature and are possessed only of those powers expressly or impliedly delegated"]). The Planning Board has not been delegated the power to grant variances (see Town Law §§ 261; 267 [2]; Commco, Inc. v Amelkin, 62 NY2d 260, 265-266 [1984]; Zoning Regulations, Article XIII). It also has limited authority to issue a special use permit; such must be for a particular land use set forth in the regulations (Town Law §§ 271, 274-b; see Matter of North Shore Steak House v Board of Appeals of Inc. Vil. of Thomaston, 30 NY2d 238, 243 [1972]).

Notwithstanding, the Planning Board did not act without or in excess of its jurisdiction when it issued the special use permit. The regulations expressly authorized the Planning Board to review "all applications for special permitted uses" (Zoning Regulations § 400-30; see also Town Law §§ 271; 274-b). In reviewing the permit application at issue, the Planning Board had the

power to authorize the main use as embraced within the listed uses allowed for "agri-business" or "restaurant" (see Matter of Brophy, 166 AD3d at 1125). The Planning Board also had the power to authorize occasional weddings/events as "customarily incidental and subordinate to" this main use of the property; in fact, the prior owner asserted that occasional weddings and events were critical to and necessary for the viability of the main use.

Nevertheless, even assuming for the sake of argument that the regulations did not authorize this incidental use, the Court would consider the proposed claim as time barred. The Town Law specifically provides for judicial review of a special use permit pursuant to CPLR Article 78 (Town Law § 274-b [9]). The statute provides that "[s]uch proceedings shall be instituted within thirty days after the filing of [the] decision ... in the office of the town clerk" (id.). The statute further directs the courts to "dispose of the matter on the merits, determining all questions which may be presented for determination" (id.).

Considering the mandates of the statute, the Planning Board's alleged error in allowing for this incidental use could have and should have been directly challenged within the limited 30-day period. As such, the proposed claim is now barred based on the statute of limitations defense (see Town Law § 274-b [9]; see also Matter of Crowell v Zoning Bd. of Appeals of the Town of Queensbury, 151 AD3d 1247 [3d Dept 2017]; Matter of Loparco v Napierala, 96 AD3d 1213 [3d Dept 2012]; Stankavich v Town of Duanesburg Planning Bd., 246 AD2d 891 [3d Dept 1998]).[5]

Accordingly, the motion to amend is denied.

It is therefore,

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[5] Under other circumstances, these statutory mandates might not have applied, such as if the proceedings were determined to be too vague to provide adequate notice regarding what was allegedly authorized or, alternatively, if it were determined that the special use permit was improperly expanded as of right. The Court's interpretation of the special use permit, however, renders these issues as moot in this case.

ORDERED, ADJUDGED, and DECREED, that the motion to dismiss the petition-complaint is **DENIED**; that the part of the petition seeking a remand is **DISMISSED** as academic and premature; that the part of the petition seeking to annul the ZBA's resolution is **GRANTED**; and that the motion to amend the petition-complaint to add a claim to invalidate the special use permit as jurisdictionally defective is **DENIED**; and it is further

ORDERED, ADJUDGED, and DECREED, that Resolution #22-01 of the Town of Saratoga Zoning Board of Appeals is **ANNULLED**; and it is further

ORDERED, ADJUDGED, and DECREED, that the First Cause of Action in the Complaint (nuisance) is severed from the CPLR article 78 proceeding pursuant to CPLR 407 and 603. The non-municipal parties are directed to complete discovery within the next one hundred and twenty (120) days. A compliance/settlement conference for the non-municipal parties has been scheduled for **March 23, 2023, at 10:00 a.m.**

This constitutes the Decision, Order & Judgment of the Court. The Court is hereby uploading the original Decision, Order & Judgment into the NYSCEF system for filing and entry by the County Clerk. The Court further directs the Petitioners/Plaintiffs to serve notice of entry of this Decision, Order & Judgment in accordance with the Local Protocols for Electronic Filing for Saratoga County.

Dated: January 11, 2023
at Ballston Spa, New York

HON. RICHARD A. KUPFERMAN
Justice Supreme Court

Enter.