

MINUTES
ZONING BOARD OF APPEALS
July 20, 2022

MEMBERS PRESENT: DAN SULLIVAN, CHAIRMAN
MICHAEL BOSCO
PATRICIA CASTELLI,
ROBERT BONOMOLO, JR.

ABSENT: THOMAS QUINN
BILLY VALENTINE

ALSO PRESENT: Deborah Arbolino, Administrative Aide
Dennis Michaels, Deputy Town Attorney
Anne Marie Ambrose Official Stenographer

This meeting was called to order at 7: 00 P.M. by Mr. Sullivan, Chairman.
Hearings on this meeting's agenda, which are made a part of this meeting, were held as noted below:

PUBLISHED ITEMS

APPLICANTS

DECISIONS

NEW ITEMS:

ONYX MANAGEMENT
BREWERY/NIGHTCLUB
100 Corporate Drive
Blauvelt, New York
65.18 / 1 / 16; LI zoning district

PARKING VARIANCE
APPROVED

ZBA#22-50

THE DECISIONS RELATED TO THE ABOVE HEARINGS are inserted herein and made part of these minutes.

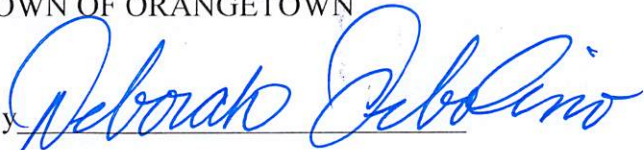
The verbatim minutes, as recorded by the Board's official stenographer for the above hearings, are not transcribed.

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 8:30 P.M.

Dated: July 20, 2022

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By



Deborah Arbolino, Administrative Aide

DISTRIBUTION:
APPLICANT
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
TOWN BOARD MEMBERS
BUILDING INSPECTOR (Individual Decisions)
Rockland County Planning

TOWN CLERK'S OFFICE
2022 JUL 27 A 9:47
TOWN OF ORANGETOWN

PARKING VARIANCE APPROVED

To: Nicole Vasquez
One Gateway Center
Newark, New Jersey 07102

ZBA #22-50
Date: July 20, 2022
Permit #51748 or BLDR00950-22

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#22-50: Application of ONYX Management Brewery/Nightclub for a variance from Zoning Code (Chapter 43) of the Town of Orangetown Code, Section 3.11, LI District, Column 6 (620 Parking Spaces required: 391 Parking Spaces provided) for a brewery/nightclub. The property is located at 100 Corporate Drive, Blauvelt, New York and is identified on the Orangetown Tax Map as Section 65.18, Block 1, Lot 16; in the LI zoning district.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a Hearing held on Wednesday, July 20, 2022 at which time the Board made the determination hereinafter set forth.

Steven Wrabel, Attorney, McCullough, Goldberger & Staudt, LLP, Jonathan Davis, Onyx Equities Property Management, Ronald Rieman, Engineer, Colliers Engineering & Design, and Dimitri Theofanides, owner District 96 appeared and testified.

The following documents were presented:

1. Plans labeled "Interior Brewery Plans Brewery & Restaurant Plan BOH Garage Level Plan" dated April 30, 2021 no revision date not signed or sealed by Project Design / Architecture, Cycle Projects.
2. Plan labeled District 96 100 Corporate Drive-Building #8 Site Plan dated 6/02/2022 with a revision date of 07/14/2021 signed and sealed by Franz Wilhelmlaki, P.E.
3. A cover letter dated June 3, 2022 from Seth M. Mandelbaum, Attorney, Managing Partner, McCullough, Goldberger & Staudt, LLP.(exhibits attached: Parking Study dated November 2, 2021 by Colliers Engineering & Design; Exhibit B Traffic Impact Study dated November 2, 2021 by Colliers Engineering & Design.
4. Power point presentation dated 7/20/2022.
5. A letter dated July 18, 2022 from Rockland County Department of Planning signed by Douglas J. Schuetz, Acting Commissioner of Planning. (3 pages)
6. A sign-off form from Rockland County Highway Department "out of jurisdiction" signed by Dyan Rajasingham, dated June 13, 2022.

Mr. Sullivan, Chairman, made a motion to open the Public Hearing which motion was seconded by Ms. Castelli and carried unanimously.

On advice of Dennis Michaels, Deputy Town Attorney, counsel to the Zoning Board of Appeals, Mr. Sullivan moved for a Board determination with respect to ZBA# 22-50 (Applicant Onyx Management Group), since the Planning Board noticed its intent to declare itself Lead Agency under the State Environmental Quality Review Act (or SEQRA) and distributed that notice of intention to all Involved Agencies, including the ZBA who consented, or did not object, to the Planning Board acting as Lead Agency pursuant to coordinated review under SEQRA Regulation 617.6 (b)(3); and since the Planning Board conducted a SEQRA Review and, on May 25, 2022, rendered an environmental determination of no significant adverse environmental impacts to result from the proposed land use action (i.e., "Negative Declaration" or "Neg. Dec."), the ZBA is bound by the Planning Board's Neg Dec and the ZBA cannot require further SEQRA review pursuant to 617.6 (b)(3); and alternately, based upon the testimony heard by the ZBA, and the fact as presented in the application submissions and in the record, since this application seeks and area variance relating to reuse of a commercial structure, where the commercial use is a

permitted use under the Orangetown Zoning Code, and since the proposed land use action does not meet or exceed any of the SEQRA Type I thresholds, this application is exempt from environmental review as a Type II action pursuant to SEQRA Regulation 617.5 (c)(18). The motion was seconded by Ms. Castelli and carried as follows: Mr. Bosco, aye; Mr. Sullivan, aye; Mr. Bonomolo, aye; and Ms. Castelli, aye. Mr. Quinn and Mr. Valentine were absent.

Steven Wrabel, Attorney, testified that the building was built in 2009; that there has been 43,000 sf of vacant space in building since it was built; that they have found a tenant to occupy 22,500 sf for brewery and nightclub use; that a conditional use permit approval was granted for the nightclub component by the Planning Board in May 2022 subject to the Zoning Board of Appeals granting a parking variance and getting approval from IUC; that the tenant is looking to expand their District 96 brand to this new location; that the use will be similar to the Defiant Brewery in Pearl River with restaurant use food and beer; that they are re-using the interior space and they have completed a traffic study which the Planning Board granted a Neg Dec; that the can go through the five factors for granting a variance; that first is whether an undesirable change would be produced in the character of the neighborhood or detriment to nearby properties and this use is a use permitted by special permit and the changes to the building will be interior; that the second is whether the benefit sought by the applicant can be achieved by some other method, rather than by the granting of an area variance and there is no other method because of the high number of parking that is assigned to nightclub use; third is whether the variance request is substantial and the answer would be yes but that also is attributed to the nightclub assignment of required parking; that the proposed variance would have an adverse effect or impact on the physical or environmental conditions in the neighborhood and again there will be no exterior changes or additional impervious area; that the traffic study showed no substantial increase in traffic; and last was this self-created and the answer is no because of this unique site and the particular wording in the code.

Ms. Castelli questioned the total occupancy of the building because the number of seats on the plans did not match the handout that was given to the Board at the hearing; and asked about the other uses in the building and peak hours of use for the site.

Jonathan Davis, Onyx Equities Property Management, testified that SCHROM, the other tenant upstairs in the building, has ten employees and when they are filming they have all of them in the office; that this company does promotional videos for food companies and film in the studio; and that Restaurant Depot downstairs has more than enough parking for their use.

Michael Bosco questioned the bay doors and if the company planned on shipping the beer from this location; stating that this part of Route 303 is known for accidents; and asked what the New York State Department of Transportation had to say about the application?

Dimitri Theofanides, owner, District 96, testified that 90% of the beer is sold on premises; that some people do come in to take cans out with them; that they do ship for events and that would be a pallet going out; that they are going from a 7-barrel system to a 20-barrel system in this location; that 98% of the beer is used in house; that from time to time they may ship from this location.

Ronald Rieman, Engineer, Colliers Engineering & Design, testified that the Town Code requires one parking space per 15 sf of space for nightclub and one parking space per 100 sf of space for restaurant; that the study that was done used the highest rate for the brewery and restaurant depot and SCHROM Co.; and if the nightclub was classified as a restaurant the space would require 127 parking spaces instead of the 570 that are being required.

TOWN CLERK'S OFFICE
2022 JUL 27 A 9:47
TOWN OF ORANGETOWN

Steven Wrabel testified further that the brewery will have hours of operation from 7:00A.M. to 6:00 P.M.; that the nightclub hours of operation will be Sunday through Thursday 11:00 A.M. to 10:00 P.M. and Friday and Saturday from 11:00A.M to 11:00 P.M. and the employees will start at 6:00 A.M.; that District 96 proposes a split operation between a brewery and restaurant; that manufacturing is an as-of-right use in the LI zone; that nightclub is a conditional use by the Planning Board that was granted on May 25, 2022; and that the occupancy of the building will not exceed New York State Fire Code.

Public Comment:

No public comment.

The Board members made personal inspections of the premises the week before the meeting and found them to be properly posted and as generally described on the application.

A satisfactory statement in accordance with the provisions of Section 809 of the General Municipal Law of New York was received.

Mr. Sullivan made a motion to close the Public Hearing which motion was seconded by Ms. Castelli and carried unanimously.

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing all the documents submitted, the Board found and concluded that the benefits to the applicant if the variance(s) are granted outweigh the detriment (if any) to the health, safety and welfare of the neighborhood or community by such grant, for the following reasons:

1. The requested parking space variance will not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The Board acknowledged the use of the brewery as a use permitted by right and the "nightclub" as a use permitted by Special Permit which was granted May 25, 2022 .The Board noted that the parking requirements for "nightclub" versus restaurant are considerable: Restaurant requires one parking space per 100 sf of restaurant floor space; Nightclub requires one parking space per 15 sf of nightclub floor space. Although it was determined that "night club" is the appropriate use designation in the LI District for the proposed District 96 taproom, the board compared the parking requirements for a restaurant because the use and hours of operation seem more appropriate for a restaurant.
2. The requested parking space variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. The Board acknowledged the interior work being done to accommodate this use and that there will not be any additional impervious surface added to the lot and 391 parking spaces are being provided, if the "nightclub" was a "restaurant" under the parking code it would only required 127 parking spaces. The occupancy of the building must comply with the New York State Fire Code for Occupancy.
3. The benefits sought by the applicant cannot be achieved by other means feasible for the applicant to pursue other than by obtaining a variance. The Board acknowledged the use of the brewery as a use permitted by right and the "nightclub" as a use permitted by Special Permit which was granted May 25, 2022 .The Board noted that the parking requirements for "nightclub" versus restaurant are considerable; Restaurant requires one parking space per 100 sf of restaurant floor space; Nightclub requires one parking space per 15 sf of nightclub floor space. Although it was determined that "night club" is the appropriate use designation in the LI District for the proposed District 96 taproom, the board compared the parking requirements for a restaurant because the use and hours of operation seem more appropriate for a restaurant.

4. The requested parking space variance although quite substantial, and affords benefits to the applicant that are not outweighed by the detriment, if any, to the health, safety and welfare of the surrounding neighborhood or nearby community. The Board acknowledged the interior work being done to accommodate this use and that there will not be any additional impervious surface added to the lot and 391 parking spaces are being provided, if the "nightclub" was a "restaurant" under the parking code it would only required 127 parking spaces.

5. The applicant purchased the property subject to Orangetown's Zoning Code (Chapter 43) and is proposing a new addition and/or improvements, so the alleged difficulty was self-created, which consideration was relevant to the decision of the Board of Appeals, but did not, by itself, preclude the granting of the area variance.

DECISION: In view of the foregoing and the testimony and documents presented, the Board RESOLVED that the application for the requested parking space variance is APPROVED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

(i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.

(ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.

(iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.

(iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.

TOWN OF ORANGETOWN
2022 JUL 27 A 9:47

(v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown granting any required final approval to such project, whichever is later, but in any event within two years of the filing of this decision. Merely obtaining a Building Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute "substantial implementation" for the purposes hereof.

The foregoing resolution to approve the application for the requested parking space variance is APPROVED; Comments #1, #2, #3 and #5 of the Rockland County Department of Planning letter dated July 18, 2022 are overridden for these specific reasons: (1) Parking Study and Traffic Study by a licensed traffic engineer demonstrates that the proposed parking for District 96 will be more than adequate to the ITE Manuel ; (2) the Orangetown Planning Board , as Lead Agency under SEQRA, adopted a Negative Declaration under SEQRA including a specific finding that the proposed action "will not significantly affect existing traffic levels".; (3) the variance addresses a potential future office tenant by including in the required parking spaces 70 additional spaces for that currently vacant space; and (4) although the Director of OBZPAE has determined that 620 parking spaces are required for the proposed nightclub use as well as an additional 70 spaces for empty space on the third floor resulting in a requirement of 690 spaces, the ZBA does have the jurisdiction to recalculate the requirement; which motion was presented and moved by Mr. Sullivan, seconded by Mr. Bosco and carried as follows: Mr. Bonomolo, aye; Mr. Bosco, aye; Mr. Sullivan, aye; and Ms. Castelli, aye. Mr. Quinn and Mr. Valentine were absent.

The Administrative Aide to the Board is hereby authorized, directed and empowered to sign this decision and file a certified copy thereof in the office of the Town Clerk.

DATED: July 20, 2022

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 
Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR-G.M. orM.M.

TOWN CLERK
HIGHWAY DEPARTMENT
ASSESSOR
DEPT. of ENVIRONMENTAL
MGMT. and ENGINEERING
FILE.ZBA, PB
CHAIRMAN, ZBA, PB, ACABOR

TOWN CLERK'S OFFICE
2022 JUL 27 A 9:47
TOWN OF ORANGETOWN