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August 19, 2022

VIA OVERNIGHT MAIL (11 Copies) AND E-MAIL

Town of Newburgh Zoning Board of Appeals
21 Hudson Valley Professional Plaza
Newburgh, New York 12550

Attn: Siobhan Jablesnik, Acting Secretary

RE: Potential Brand Hotel(s) in Town of Newburgh
Our File No.: 15607-67087

Dear Chair and Members of the ZBA,

As you know, I represent River Link Hotels, LLC ("River Link" or "Applicant") in connection with its desire to locate approximately two (2) national brand hotels within the Town of Newburgh. We appeared last month in connection with our request for an interpretation of Section 185-27.D(1) of the Town's Zoning Code. The public hearing was held open until the board's August meeting.

The hotel industry has changed significantly, the last decade. These new types of hotels are intended for business/government travelers coming in for a few days during the mid-week; or a family visiting for the weekend for a travel sporting event. These suites cannot function as apartments (as they have no stoves ovens or ranges within the room and do not constitute a dwelling unit). It is crucial to the Applicant that 50% of the units can be offered as suites.

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Attached is a letter from a New York State Licensed Architect which explains how the Applicant's proposed suites, containing a sink, microwave, dishwasher and fridge do NOT meet the definition of "kitchen" for a dwelling unit under the New York State Building Code. The letter from the NYS licensed architect continues by noting that the Applicant's proposed suites are still treated as "Sleeping Units" under the New York State Building Code, despite containing a sink, microwave, dishwasher and fridge.

Moreover, a couple of the ZBA members questioned the portable cook top that could be offered by the front desk for the proposed suites. The Applicant has spoken with both brands; and they have agreed NOT to offer the portable cook tops. Thus, there is no longer an option to have a portable cooktop in these proposed suites. This further creates distance between these suites, from a "Dwelling Unit" or your standard extended stay hotel (which both contain an oven or stove).

When you compare the Applicant's standard room to the proposed suites, the only additional items are the extra sink, the dishwasher, and the larger fridge. Other than that, the offerings are basically the same. In addition, there is no separate room within the suite where the sink, microwave, dishwasher and fridge are located.

Next, I would like to address the potential opposition from the owners of the existing hotel located at 1 Crossroads Court (Hampton Inn and Suites), which is located on the opposite side of State Route 17K. The basis for their objection is purely to protect its own economic interests by preventing competition and maintaining its monopoly. Although the existing hotel owners may speak at the ZBA's public hearing (since the hearing is open to the general public anyone can speak); it is well settled that threats of increased business competition do not fall within the zone of interest that provides the existing hotel any legal standing to sue or the ability to challenge the ZBA's determination with the courts.¹ Further, even if the competing business is an adjacent property owner, that adjacent owner still does not automatically have standing to challenge approvals for a new competing business, simply because of their close-proximity; rather, the existing hotel must prove some actual injury suffered different from the public at large.² Here, the existing hotel cannot claim any actual injury based upon the ZBA's interpretation, other than a potential economic injury due to increased business competition.

¹ Matter of Sun-Brite Car Wash, Inc. v. Bd. of Zoning and Appeals of the Town of N. Hempstead, 69 NYS2d 406, 414 (1987).

² CPD N.Y. Energy Corp. v. Town of Poughkeepsie Planning Board, 139 A.D.3d 942 (2nd Dept. 2016)(neighboring gas station owners alleged traffic impacts failed to allege any harm distinct from the general public) *see also* Panevan Corp. v. Town of Greenburgh, 144 A.D.3d 806, 40 N.Y.S.3d 530 (2nd Dept. 2016)(adjacent gas station owner's conclusory and speculative claims of traffic congestion did not confer standing).

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Thus, although the existing hotel may object to the Applicant's interpretation request before the ZBA, the existing hotel does not have any standing to challenge the ZBA's determination with the courts. More importantly, anything stated by the existing hotel and its representatives should be "taken with a grain of salt"; and should not be taken too seriously. The ZBA should not let the existing hotel's fear of increased business competition potentially prevent excellent economic opportunities for the Town of Newburgh in the form of rateables, hotel occupancy taxes, and jobs within Orange County's blossoming tourism industry. According to Amanda Dana, Orange County's Director of Tourism, there is a need for additional rooms in Orange County, especially on weekends in season. She also noted that encouraging visitors to stay longer is very important to tourism.

Lastly, the Code Compliance Office has issued the necessary letter so there is no question about the ZBA's jurisdiction to hear this interpretation request.

In connection with the ZBA application enclosed please find the following:

- (1) A copy of the letter from NYS Licensed Architect, Krutee N. Shah, RA of Paradigm Architecture & Urban Design, dated August 16, 2022; and
- (2) The additional letter from the Code Compliance Office;

We look forward to discussing this further at the ZBA's next meeting on August 25, 2022. In the interim, if you have any questions or comments, please feel free to contact me. Thank you.

Very truly yours,



JOHN W. FURST

JWF/jwf/2156017

Enclosures

Cc: David Donovan, Esq. (via e-mail only)
River Link Hotels, LLC (via e-mail only)
COS 17 II, LLC and DiBrizzi Trust (via e-mail only)
Richard Cantor, Esq. (via e-mail only)

Very truly yours,

JOHN W. FURST

Paradigm Architecture, LLC

VIA: Internet E-Mail

August 16, 2022

Town of Newburgh Zoning Board of Appeals

21 Hudson Valley Professional Plaza
Newburgh, New York 12550

Attn: Siobhan Jablesnik, Acting Secretary

Re: Potential Brand Hotel(s) in the Town of Newburgh
Dear Chairman Scalzo and Members of the ZBA,

I am a New York State Licensed Architect, and I have been involved with designing and permitting hotels in New York State so that they are consistent with the local municipal zoning code as well as the latest version of the New York State Building Code. We have been asked to review §185-27.D(1) of the Town of Newburgh Zoning Code, specifically as it relates to the latest version of the New York State Building Code.

There is a question as to whether the suites in the proposed hotel(s), which will contain a sink, microwave, dishwasher and fridge contain “kitchen facilities” as noted in §185-27.D(1) of the Town of Newburgh Zoning Code. The relevant portion of §185-27.(D)(1) reads as follows:

Hotel and Motel units shall not contain kitchen facilities of any type
in more than 25% in a particular hotel of motel complex....

The Town’s zoning code does not appear to define “kitchen facilities”. Thus, we looked to the New York State Building Code for guidance. As shown below, based upon our expert review of the NYS Building Code, since the proposed suites will not contain an oven or range, the proposed suites do not contain a kitchen with full cooking facilities, and thus does not meet the definition of a “kitchen” for a “dwelling unit”. Therefore, we believe the 25% limitation does not apply to the applicant’s proposed type of suites. Per the NYS Building Code these units are treated as ‘Sleeping Units’ not “Dwelling Units”

New York State 2020 Building Code

The term Group R refers collectively to the four individual residential occupancy classifications: Groups R-1, R-2, R-3 and R-4. These classifications are differentiated in the State Code based on the following criteria:

1. Whether the occupants are transient or non-transient in nature.
2. The type and number of **dwelling units** or **sleeping units** contained in a single building.
3. The number of occupants in the facility.

Section 310.2 Residential Group R-1.

Residential Group R-1 occupancies containing *sleeping units* where the occupants are primarily *transient* in nature, including:

- *Boarding houses (transient)* with more than 10 occupants
- *Congregate living facilities (transient)* with more than 10 occupants
- *Hotels (transient)*

❖ The key characteristic of Group R-1 that differentiates it from other Group R occupancies is that the occupants are considered **transient** in nature (i.e., those whose length of stay is not more than 30 days). There is an expectation that the occupants are not as familiar with the building as those residents in non-transient facilities such as apartment buildings (Group R-2) and single-family dwellings (Group R-3). If occupants are unfamiliar with their surroundings, they may not recognize potential hazards or be able to use the means of egress effectively.

The most common building types classified in Group R-1 are hotels and motels. The proposed suites in this instance, are also catered to transient occupants with most stays not lasting longer than a week.

Facilities classified as Group R-1 occupancies may include dwelling units, sleeping units or a combination of both. A standard guestroom, with its associated bathroom, is considered a sleeping unit. Some hotels offer a style of rooms that can include spaces similar to a living room and kitchenette. Here, the proposed suites will not be equipped with a kitchen because there will be no oven or stove within the suites, just a fridge, sink, microwave, and dishwasher. There are extended stay hotels that do offer a stove/oven within rooms (along with the fridge, microwave, dishwasher and sink), but that is NOT the case here.

When a unit is not equipped with a kitchen with full cooking facilities (i.e., range), it does not meet the definition of a “dwelling unit”. Where this occurs, such units are treated as sleeping units for the application of State Code provisions

Section 202 Definitions

Dwelling Unit: A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

❖ A dwelling unit, as stated, is a residential unit that contains all of the necessary facilities for independent living.

The Proposed hotel guestrooms are sleeping units. They are not equipped with a kitchen with full cooking facilities and thus not meet the definition of a dwelling unit.



Krutee N. Shah, RA
Principal Architect
license No: 036481



TOWN OF NEWBURGH

~Crossroads of the Northeast~

CODE COMPLIANCE DEPARTMENT
21 HUDSON VALLEY PROFESSIONAL PLAZA
NEWBURGH, NEW YORK 12550

TELEPHONE 845-564-7801
FAX LINE 845-564-7802

NOTICE OF DISAPPROVAL OF BUILDING PERMIT APPLICATION

Date: 08/16/2022

Application No. 22-0876

To: COS17, LLC
1089 Little Britian Rd
New Windsor, NY 12553

SBL: 95-1-80
ADDRESS: Route 17k

ZONE: IB

PLEASE TAKE NOTICE that your application dated 08/16/2022 for permit to construct 2 hotels for a total of 166 rooms with 83 rooms 50% having kitchen facilities. on the premises located at Route 17k is returned herewith and disapproved on the following grounds:

Town of Newburgh Municipal Code:

1) 185-27-d-1D. Hotel and motel units shall not contain kitchen facilities of any type in more than 25% in a particular hotel or motel complex.


Joseph Mattina

Cc: Town Clerk & Assessor (500')
File