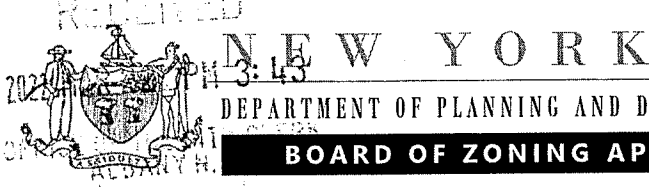


CITY OF ALBANY



NEW YORK

DEPARTMENT OF PLANNING AND DEVELOPMENT

BOARD OF ZONING APPEALS

NOTIFICATION OF LOCAL ACTION DECISION OF THE CITY OF ALBANY BOARD OF ZONING APPEALS

► Important Note: This is not a building permit. All building permits must be approved and issued by the Division of Building & Regulatory Compliance prior to the start of any construction.

Property Address: 1053 Broadway, Albany, NY 12204

Project Description: Construction of a 13-foot wide, 110-foot long deck in the public right-of-way

Request: Area Variance - §375-402(2)(c)/Table 375-402.1- to allow for porch to extend past the front build-
to zone under the Mixed-Use Core frontage standards.

Parcel ID: 65.16-4-1

Project Number: #00424

Application Number: AV #0093

Zoning District: MU-FW (Mixed-Use, Form-Based Warehouse) **Public Hearing Date(s):**
January 12, 2022; February 2, 2022; and
March 16, 2022

Neighborhood Association: Warehouse District **Date of Decision:** March 16, 2022

Ward: 4 **Decision:** Approved with Conditions

The request is Approved with Conditions (subject to six conditions, listed at end of decision) by the following vote:

For:	5	Daley:	Y	Quain:	Y
Against:	0	Barnum:	Y	White-Lake:	Y
Abstain:	0	Le Blan-Jeffrey:	Y		

Applicant: Druthers Brewing Company II, Inc.

Property Owner: 1053 Brewing, LLC

Representing Agent(s): Christopher Martell, Druthers Brewing; Alicia Legland and Chuck Malcomb, Hodgson Russ

Relevant Considerations are in the following project files: Project #00424 – 1053 Broadway <https://selfservice.albanyny.gov/node/440> (last accessed Mar. 16, 2022). The full record, including public documents and public meeting and hearing recordings, upon which the Board’s decision is based is affixed hereto as Exhibit “D.”

Summary:

The applicant, Druthers Brewing Company II, Inc. (“Druthers” or the “Applicant”), operates a brewery and restaurant at 1053 Broadway (the “Property”) in the City of Albany (the “City”). The Property is located in the Mixed-Use, Form-Based Warehouse (“MU-FW”) zoning district and is bordered by Broadway and Bridge Street. The orientation of the Property’s physical structure is unique in that while the Property’s mailing

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address lists Broadway, the entrance to the Property is on Bridge Street. Thus, the Property functionally fronts Bridge Street, not Broadway. Located in the MU-FW zoning district, the Property is situated near other bar/tavern and restaurant establishments, such as Fort Orange Brewing (450 N Pearl St., Albany, NY) and the Copper Crow (904 Broadway, Albany, NY), as well as properties using the land for industrial uses, such as Surpass Chemical Company, Inc. (62 Mill Street) and the property located at 1028 Broadway.

On November 12, 2021, the Applicant, citing the need to accommodate and provide outdoor dining options for its patrons due to the ongoing COVID-19 pandemic and desire to be in full compliance with zoning requirements under the USDO, applied to the Board seeking area variances from USDO §§ 375-402(2)(c)/Table 375-402.1 Mixed-Use Core allowed frontage elements; 402(2)(c)/Table 375-402.1 Mixed-Use Core building placement front build-to zone requirements in order to construct a 13-foot wide, 110-foot long deck and ADA-compliant ramp on the side of Applicant's building "fronting" Bridge Street (the "Project") that would extend into the City right-of-way. Specifically, USDO § 375-402(2)(c)/Table 375-402.1 Mixed-Use Core allowed frontage elements expressly permits certain frontage elements, including "forecourt, stoop, shopfront, gallery, [and] arcade." Since a porch (or deck) is not expressly permitted as an allowed frontage element in a district subject to the Mixed-Use Core dimensional standards, including the MU-FW district, the Applicant must obtain an area variance from USDO § 375-402(2)(c)/Table 375-402.1 Mixed-Use Core allowed frontage elements in order to construct the proposed Project. Applicant's application for an area variance from USDO § 375-402(2)(c)/Table 375-402.1 Mixed-Use Core allowed frontage elements is referred to as "AV #0092". In addition, USDO § 375-402(2)(c)/Table 375-402.1 Mixed-Use Core building placement front build-to zone requirements provides a front build-to zone of zero feet minimum to six feet maximum. Since the Applicant's proposed Project, at 13-feet in width, would extend beyond the six-foot maximum front build-to zone, the Applicant must obtain an area variance from USDO § 375-402(2)(c)/Table 375-402.1 Mixed-Use Core building placement front build-to zone requirements in order to construct the proposed Project. Applicant's application for an area variance from USDO § 375-402(2)(c)/Table 375-402.1 Mixed-Use Core building placement front build-to zone requirements is referred to as "**AV #0093**". In addition, Applicant previously submitted an application for a variance from USDO § 375-402(1)(c)(vii)(G)(4), which prohibits front porches from extending into the right-of-way, in order to construct Applicant's proposed Project. Applicant's application for an area variance from USDO § 375-402(1)(c)(vii)(G)(4) is referred to as "AV #0079", and the Board voted to commence a Rehearing of AV #0079 on October 27, 2021.

The Applicant's three area variance applications, AV #0079, AV #0092, and AV #0093, are collectively referred to and filed under Project #00424 with the City's Department of Planning & Development. This decision is

limited to the Board's decision of **AV #0093**.

Upon proper referral to the County Planning Board by the City's Department of Planning & Development, on December 16, 2021, the Albany County Planning Board ("ACPB") issued a recommendation on the proposed Project pursuant to its authority under NYS General Municipal Law § 239-m. The ACPB recommended disapproval of the Project and provided the following four comments to the Board:

- "1. The City of Albany should address the public health and safety concerns expressed by Surpass Chemical Company, Inc. regarding the tractor trailer route that is dangerously close to the proposed deck.
2. The proposed ADA complaint ramp is to be located next to Surpass' scale house driveway which potentially exposes customers on the deck to heavy industrial traffic containing hazardous materials from the diesel exhaust.
3. The city should consider the undesirable changes to the character of the neighborhood due to the presence of industrial use in close proximity.
4. In determining whether to grant an area variance, the zoning board of appeals should take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant."

The ACPB's December 16, 2021 Recommendation is affixed hereto as Exhibit "A."

Following the Board's identification as lead agency for the Project, an Unlisted Action, under SEQR on December 8, 2021, on January 12, 2022, the Board continued the public hearing for the rehearing of AV #0079 and held public hearings for AVs #0092 and #0093. The Board moved 5-0-0 to formally designate itself as lead agency under SEQRA for making the determination of environmental significance for the proposed Project, an Unlisted Action, comprised of the three area variance applications (AV #0079, AV #0092, AV #0093). The Board's January 12, 2022 Resolution is affixed hereto as Exhibit "B."

On February 2, 2022, the Board continued public hearings for the rehearing of AV #0079 and AVs #0092 and #0093. The Board moved 5-0-0 to make a determination of non-significance for the Unlisted Action under SEQRA. After taking a hard look and thoroughly analyzing the relevant areas of environmental concern, the Board passed a resolution accordingly, in compliance with SEQRA, entitled, "SEQR - Determination of Non-Significance Resolution and Negative Declaration for the project known as 1053 Broadway Proposed Deck in the Public Right-of-Way Project #00424," which attached and incorporated a document entitled "Negative Declaration for the Deck Project at Druthers Brewing Company at 1053 Broadway for the project known as 1053 Broadway Proposed Deck in the Public Right of Way Project #00424." The Board's February 2, 2022

Resolution is affixed hereto as Exhibit "C."

On March 16, 2022, the Board moved, and said motion carried 5-0-0, to **conditionally grant Area Variance #93**, subject to the following **six conditions**:

Condition 1.) The Bridge Street roadway must remain 24-feet in width; no reduction in width of the roadway is permitted.

Condition 2.) The Applicant must satisfy all requested comments/required modifications stated in the August 27, 2021 Albany Fire Department and Albany Police Department Division of Traffic Engineering Letters.

Condition 3.) The Applicant must reduce the length and width of the proposed deck and scale back the deck length on the Eastern end to a length that complies with the Vision Clearance and Public Safety requirements set out under USDO § 375-406(9) and is acceptable to the APD Division of Traffic Engineering to ensure that: (i) there are no sight distance or sightline concerns for vehicles traveling Westbound on Bridge St. from Mill St. or from the driveway between 1053 Broadway and 62 Mill St.; and (ii) there are no sight distance concerns for pedestrians on the South side of Bridge St. to view oncoming eastbound vehicle and pedestrian traffic.

Condition 4.) Curb and sidewalk details shown on the plan must comply with City specifications. As such, the Applicant must construct a sidewalk 5-feet in width on Bridge St. in accordance with USDO § 375-403(5)(a)(i), which requires that "all development and redevelopment in the City" have "a sidewalk of at least five feet in width shall be installed along each street frontage."

Condition 5.) The proposed deck must have two entrance/exit locations per the Building Code, and the two entrance/exit locations must be accessible to the sidewalk referenced in Condition #4.

Condition 6.) The Applicant must obtain an easement, license agreement, or other valid revocable consent or agreement from the City allowing for the Applicant's use over any portion of the City right-of-way, in a form acceptable to the Office of Corporation Counsel; and if the Applicant obtains an easement from the City, such grant of municipal-owned property must be approved by the Common Council of the City of Albany.

Discussion:

In accordance with USDO § 375-505(10)(c)(i) and NYS GCL § 81-b(4)(b), in making its determination regarding a request for an area variance, the Board shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community. In engaging in the statutory balancing test, the Board shall also consider five factors, discussed and analyzed below.

Factor 1:

The first factor to be considered under USDO § 375-505(10)(c)(i)(A) and NYS GCL § 81-b(4)(b)(i) is 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. Under this factor, the Board should look to the development patterns in the community and consider whether the dimensional alteration being proposed will result in a structure or a configuration that would be considered out of place in the neighborhood. See Patricia Salkin, 2 N.Y. ZONING LAW & PRAC., § 29:13. Undesirable change in the neighborhood. A comparison of surrounding properties to the subject property is also relevant. See *id.*

Here, the Applicant is seeking an area variance from the dimensional standards set out under USDO § 375-402(2)(c)/Table 375-402.1 Mixed-Use Core building placement front build-to zone requirements in order to construct a 13-foot wide, 110-foot long deck and ADA-compliant ramp on the side of Applicant's building "fronting" Bridge Street, which would extend beyond the six-foot maximum front build-to zone (by 7 feet). In consideration of this factor, the Board examined the present character of the neighborhood. The Property is located in the MU-FW zoning district. Pursuant to USDO § 375-204(7)(c), the purpose of the MU-FW district is to "allow for a greater variety of building reuse and encourage the redevelopment of the Warehouse District into a walkable, urban mixed-use center containing residential, retail, commercial, and entertainment uses, while protecting the continued viability of the existing industrial uses that are included in and surround that area." Further, pursuant to USDO §§ 375-302/Table 375.302.1; 375-303(4)(b)(i)-(ii), commercial uses providing food and beverage services, including bars/taverns and restaurants, the very use of Applicant's Property, are permitted land uses by right in the MU-FW zoning district.

The record shows that the Applicant presently operates the brewery and restaurant at its Property located in a mixed commercial and industrial area, and has been since 2015. Completion of the proposed Project, through the Board's granting of AV #0093, will allow the Applicant to seat additional patrons outside. Moreover, the proposed Project is compatible with the stated purpose of the MU-FW District under USDO § 375-204(7)(c). Although the immediately adjacent property is industrial, the USDO and the City's comprehensive plan encourage increased mixed-use development in this neighborhood. The Albany 2030 Comprehensive Plan for the City of Albany (the "Comprehensive Plan") includes Applicant's Property in Brownfield Opportunity Area Study Area A, North Warehouse District. As the Comprehensive Plan notes, there is a "growing activity node centered on food and drink establishments that is spurring a rethinking of the future of this district." CITY OF ALBANY, Albany 2030 Comprehensive Plan for the City of Albany (2012) at App. A, p. 17. <https://www.albanyny.gov/DocumentCenter/View/3759/Albany-2030-Comprehensive-Plan-wAppendices> (last accessed Mar. 16, 2022).

The Board's granting of AV #0093 to permit the construction of a front porch (or deck) proposed at 13-feet in width that would extend beyond the six-foot maximum front build-to-zone in the MU-FW zoning district in order to seat additional patrons outside will not produce an undesirable change in the character of the neighborhood. The Applicant's business is not the only bar/tavern or restaurant in the neighborhood. Two nearby establishments located in the MU-FW zoning district operating as bars/taverns or restaurants include Fort Orange Brewing (450 North Pearl St.) and the Copper Crow (904 Broadway). In addition, the proposed variance will not result in a structure or configuration that would be seriously out of place in the neighborhood. The Copper Crow bar/tavern and restaurant presently has an outdoor raised deck or porch that is on the front/side of the Copper Crow's property on Broadway. Thus, in comparison to surrounding properties, the subject property's proposed Project would not be considered seriously out of place in the neighborhood. Therefore, an undesirable change will not be produced in the character of the neighborhood by the Board's granting of AV #0093.

Furthermore, the Board's granting of AV #0093 will not create a detriment to nearby properties. The Applicant's neighbor, Surpass, has provided public comment to the Board during the Board's review of AV #0093 in the form of oral and written testimony on several occasions, including, but not limited to, December 6, 2021 (written testimony), December 8, 2021 (oral testimony), January 12, 2022 (oral testimony), and January 31, 2022 (written testimony), stating that the Applicant's proposed Project, including the three variances requested (AVs #79, 92, and 93), would create a detriment to Surpass' ability to conduct business and use its land for industrial purposes, in that the construction of the proposed deck on the Applicant's business "fronting" Bridge St., extending beyond the six-foot maximum front build-to-zone, would create or exacerbate existing pedestrian and vehicular traffic concerns that could hinder Surpass' ability to safely drive its trucks on Bridge St. In a letter of opposition dated December 6, 2021, Surpass stated that "[t]he deck will change a normal brick and mortar restaurant/bar operation into a roadside café environment. It will increase the number of people walking on both Bridge Street and the surrounding sidewalks. It will place Druthers' employees and patrons in even closer proximity to Surpass' and other companies' large tractor trailers." In addition, Surpass stated that "[a]n undesirable change will be produced in the character of this industrial neighborhood by granting Druthers' application. If approved, it will cause a substantial increase in vehicular and pedestrian traffic as well as parking."

The Board has thoroughly considered the opposition to the area variance raised by Surpass and echoed by the Albany County Planning Board in its December 16, 2021 Recommendation. Regarding Surpass' concern that "[t]he deck will change a normal brick and mortar restaurant/bar operation into a roadside café

environment," the Board considered the concern and found that the concern did not contain merit necessitating the Board's rejection of the variance. The proposed size of the deck at 13'x110' or 1,430 sq. ft. is approximately 6.4% of the property's total size of 22,300 sq. ft. A proposed deck that would constitute 6.4% of a property's total footprint does not result in the change of the property's operation from a restaurant into a "roadside café." Furthermore, the proposed size of the deck may be reduced in light of the conditions imposed by the Board, specifically Condition #3, as discussed more below. Regarding Surpass' concern that the proposed deck "will increase the number of people walking on both Bridge Street," the Board concerned the concern and found that it did not contain merit necessitating the Board's rejection of the variance. The record shows that the proposed deck at the proposed size of 13'x110' (which, as stated, may be reduced) is intended to accommodate 60 patrons outdoors. The record shows that Applicant's intended purpose of creating the outdoor dining option by constructing a deck is primarily rooted in finding a solution to create safe outdoor dining options for its patrons who may not desire to dine indoors during the ongoing COVID-19 pandemic. While the deck would, objectively, increase the number of patrons that can dine at the Applicant's establishment, both indoors and outdoors, the record repeatedly shows that, due to the ongoing COVID-19 pandemic, the Applicant has faced great difficulty in its ability to seat patrons indoors safely. The record suggests that the outdoor dining that would be facilitated through the construction of the proposed deck would allow for a shift of where existing patrons are seated, from indoors to outdoors. The Board notes that the deck could likely result in an increase in patrons going to Applicant's establishment, however the increase is not significant and the conditions imposed by the Board in conditionally granting the variance would alleviate the concerns raised by Surpass.

As stated, the Board finds that the concerns raised by Surpass related to pedestrian and vehicular traffic and sightline concerns would be ameliorated by imposing conditions on the Board's granting of the area variance. Specifically, the Board's imposition of Conditions #4 and #5, in particular, which require the Applicant to construct an ADA-compliant sidewalk on Bridge St. and that such sidewalk must be accessible by the entrance/exit locations of the proposed deck actually improves the existing traffic concern related to pedestrian safety on Bridge St. In addition, the Board's imposition of Conditions #1 and #3, in particular, which would require the Applicant to reduce the length and width of the proposed deck to ensure that there are no sight distance or sightline concerns for vehicles and pedestrians and clearly mandates that the width of Bridge St. cannot be narrowed will both ameliorate vehicle and pedestrian traffic concerns raised by Surpass and ensure that Surpass vehicles will have continued access to travel on Bridge St.

On December 7, 2021, the Board received a letter of opposition to the proposed variance from a nearby

property owner, Watters Real Property, LLC, located at 1046-1056 Broadway, sharing "concerns about the already difficult parking circumstances on Broadway for all the other businesses within a small radius around Druthers." The 1046-1056 Broadway property owner also stated that "[t]he increased patronage of the restaurant/brewery would be very welcoming in the warehouse district if the amount of available parking was addressed first." In considering such testimony, the Board also considered written testimony provided by the Applicant, included in the public record, which provides that the Applicant is and will continue to rent a satellite parking lot off Broadway with a 70-car capacity. The Applicant also proposed the elimination of parking on Bridge St. as part of the application. However, the Board finds that it is outside the scope of the Board's jurisdiction to impose conditions that would eliminate parking on Bridge St., a public street, and/or would require the applicant to continue renting a satellite parking lot. The Board accepts the Applicant's statements made in good faith that the Applicant will continue to rent the satellite parking lot for its patrons. Thus, the concern regarding the "already difficult parking circumstances on Broadway" is considered to be addressed by the Applicant's renting of a satellite parking lot off Broadway for its patrons.

On January 7, 2022, the Board received a letter of support from a nearby property owner located at 1028 Broadway, which stated that the Applicant's proposed Project, through the Board's granting of the area variance, would "make their business more customer friendly/inviting [and] will assist in revitalizing the economic conditions of this Albany neighborhood." In addition, the 1028 Broadway property owner stated that "with Druthers Brewing opening this will be a start of an economic transformation of the Broadway, Albany corridor which is currently in need of economic revitalization." The Board finds such statements to be compatible with the purpose of the MU-FW zoning district as set out under USDO § 375-204(7)(c).

In conclusion, the Board thoroughly considered the testimony received by nearby property owners stating both their support and opposition for the proposed variance. In considering the opposition received, the Board considered conditions that would offset or ameliorate the concerns raised. The Board finds that the total record and evidence supports the Board's finding that the proposed variance, especially taken into consideration with the conditions imposed, will not create an undesirable change in the character of the neighborhood, but rather, will further achieve the community planning goals of the MU-FW zoning district.

Therefore, the BZA finds that an undesirable change will not be produced in the character of the neighborhood by the granting of the requested area variance and that a detriment to nearby properties will not be created by the granting of the area variance.

Factor 2:

The second factor to be considered under USDO § 375-505(10)(c)(i)(B) and NYS GCL § 81-b(4)(b)(ii) is whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance. Under this factor, the Board should consider alternatives available to the Applicant that are lawful under the City's Zoning law, and the Applicant should show that they have explored the possibility of lawful alternatives to the requested variance. See *Chandler Prop., Inc. v. Trotta*, 9 A.D.3d 408 (2d Dept., 2004). "In an effort to demonstrate consideration of alternatives, applicants may present efforts to purchase substandard lots from . . . adjoining property owners [or submit evidence showing] the economic infeasibility of compliance with the applicable regulations." Patricia Salkin, 2 N.Y. ZONING LAW & PRAC., § 29:14. Alternatives to the variance.

Here, the benefit sought by the Applicant is to accommodate the increasing need and demand for outdoor dining options due to the ongoing COVID-19 pandemic at Applicant's property. The record demonstrates the Board's consideration of, and the Applicant's exploration of, lawful alternatives to the requested area variance that could achieve the Applicant's objective of outdoor dining, and why such alternatives were ultimately not practical and/or economically feasible for the Applicant.

Alternative 1:

First, the record shows that the Applicant attempted to purchase one of the neighboring properties, as stated by the Applicant during the Board's public hearing and review of the requested variance. Doing so would have allowed the Applicant to achieve the result of providing safe, outdoor dining to its patrons without having to build a deck (or porch) that would extend past the allowable front build-to-zone (of six-feet maximum) under the Mixed-Use Core frontage standards. The record shows that the Applicant was unable to purchase the neighboring property because the property was tied up in ongoing litigation for several years and the Applicant's offer on the property expired.

Alternative 2:

Second, the record shows that the Applicant considered constructing a rooftop deck, as stated by the Applicant during the Board's public hearing and review of the requested variance. Doing so would have allowed the Applicant to achieve the desired safe, outdoor dining space without having to build a deck (or porch) that would extend past the allowable front build-to-zone (of six-feet maximum) under the Mixed-Use Core frontage standards. However, the record shows that the Applicant was unable to move forward with

constructing a rooftop deck, given the prohibitive cost and lack of space needed to fortify the structure and install an elevator. The record demonstrates that this alternative was similarly not possible for the Applicant to pursue.

Alternative 3:

Third, the record shows that the Applicant temporarily used picnic tables on Bridge Street in summer 2020, during the initial onset of the COVID-19 pandemic, to seat customers outside, during which time Applicant's employees would set out the tables and bring them back in daily, as stated by the Applicant during the Board's public hearing and review of the requested variance and referenced in testimony provided by Surpass to the Board. The record shows that the Applicant and Surpass entered a Memorandum of Understanding for the duration of this temporary set-up where Surpass agreed to not use Bridge St. during certain hours and the Applicant agreed to only employ the outdoor street dining during times that would not conflict with Surpass' typical hours of operation or use of Bridge St. The record demonstrates that this alternative was not feasible in the long-term and that the Applicant required a solution that is permanent and that reestablishing its use of the picnic tables was not a permanent solution.

The New York State Appellate Division, Second Department, has held that "[a]n alternative that does not enable the applicant to achieve the desired benefit is not truly a feasible alternative to obtaining an area variance." *Baker v. Brownlie*, 248 A.D.2d 527 (2d Dep't 1998). Thus, after thorough consideration by the Board and a sufficient showing by the Applicant of lawful alternatives and why they weren't feasible, the Board has determined that the benefit sought by the Applicant cannot be achieved by some method feasible for the Applicant to pursue.

Therefore, the Board finds that the benefit sought by the applicant cannot be achieved by some method feasible for the applicant to pursue, other than an area variance.

Factor 3:

The third factor to be considered under USDO § 375-505(10)(c)(i)(C) and NYS GCL § 81-b(4)(b)(iii) is whether the requested area variance is substantial. Under this factor, while "substantiality" is hard to quantify, the Board should consider whether the nonconformity proposed is too great in comparison to the lawful dimensions allowed. New York case law suggests that determining the "substantiality" of a variance cannot be "achieved by using a simple mathematical formula." Patricia Salkin, 2 N.Y. ZONING LAW & PRAC., § 29:15. Size of the variance. Further, "what constitutes a substantial variance is fact specific to each case,"

and boards may look at the conformance of the variance sought as compared to the character of the neighborhood and its overall impact on the community. *Id.* For example, the NYS Appellate Division, Third Department, has held that a six-foot height variance “was not substantial when compared to other buildings, would improve the physical and environmental condition and character of the neighborhood, and was the minimum variance required.” *Schaller v. New Paltz Zoning Bd. of Appeals*, 108 A.D.3d 821 (3d Dep’t 2013). Conversely, even when a variance is considered substantial, New York courts have upheld the granting of an area variance that was substantial when “the variance would [not] have an undesirable effect on the character of the neighborhood, adversely impact physical and environmental conditions, or otherwise result in a detriment to the health, safety, and welfare of the neighborhood or community.” *Wambold v. Village of Southampton Zoning Bd. of Appeals*, 140 A.D.3d 891 (2d Dep’t 2016).

Here, the Applicant’s proposed nonconformity is to construct a 13-foot wide, 110-foot long deck and ADA-compliant ramp on the side of Applicant’s building “fronting” Bridge Street that would extend past the front build-to-zone (six-foot maximum), required under the Mixed-Use Core frontage standards under USDO § 375-402(2)(c)/Table 375.402.1, by seven feet. Thus, the Applicant is proposing to deviate from the USDO provision mandating a specific front build-to zone for all structures subject to the Mixed-Use Core frontage standards.

The Board acknowledges that the Applicant’s requested deck (or porch) at a width of 13-feet would extend past the front build-to-zone (six-foot maximum) by seven-feet, and could be considered to exceed the allowable dimensional standards under the USDO by 116%. Objectively speaking, exceeding the allowable dimensional standards by 116% is a quantified percentage that is substantial. However, the Board carefully examined the totality of the evidence in the record and the unique facts involved in this specific case, including the fact that the entrance to Applicant’s establishment, as it currently exists, requires a staircase and ramp, connecting to a landing outside of the establishment’s main entrance, and that such current entrance/exit structure roughly encompasses the width of the proposed deck. Thus, the Applicant has stated in the record that the Applicant is only proposing to lengthen the already-existing structure further along the side of the building to accommodate tables and chairs, and that the variance could be considered merely as an extension of Applicant’s existing entrance/exit structure. Further, as stated under Factor 1 above, the proposed size of the deck at 13’x110’ or 1,430 sq. ft. is approximately 6.4% of the property’s total size of 22,300 sq. ft. A proposed deck that would constitute 6.4% of a property’s total footprint does not equate to substantial when assessing the property as a whole. Moreover, in considering the proposed deck width of 13 feet, which, if constructed at the width proposed, would extend seven feet beyond the

maximum front build-to zone dimensional requirements, may not be substantial when considering other USDO provisions. As such, the Board carefully considered the reality that any proposed deck size to be constructed as a frontage element in the MU-FW zoning district would trigger the need for a variance and would likely be considered substantial since a front deck (or front porch) would not be practical at or under the requisite front build-to zone maximum at six-feet in width. However, perhaps because of this reality, the Board notes that USDO § 375-402(1)(c)(v)(G)(4) states that “[f]ront porches may occur forward of the build-to zone or setback.” Thus, it could be construed that the requested variance is not necessary given that the zoning code expressly permits that front porches may occur forward of the front build-to zone, which if a deck is a front porch, is the case here.

Regarding the proposed size of the deck, at 110-feet in length and 13-feet in width, if such a variance would be considered substantial, the Board further considered conditions that would reduce the length and width of the deck (see Condition #3), thus reducing any potential impact of substantiality related to the deck size. Further, the Board considered additional facts in the record, including that the COVID-19 pandemic is an ongoing public health crisis and that the Applicant’s purpose of constructing the deck—to provide safe, outdoor dining options for its patrons in order to remain a viable business—is laudable. The Board also considered the full character of the neighborhood, wherein the makeup is such that there is an outdoor front porch or deck, that appears to be a frontage element and may extend beyond the maximum front build-to zone dimensional requirements, at a neighboring establishment (Copper Crow, 904 Broadway), suggesting that the Applicant’s proposal to construct a front deck would not be completely out of character of the neighborhood. The Board also considered the benefits that will be provided to the community through the imposition of Condition #4, which requires the Applicant to construct a sidewalk, and which will actually improve pedestrian traffic in the area. The Board further considered the imposition of Condition #3 regarding pedestrian and vehicle sightline and accessibility concerns and requires the Applicant to reduce the length and width of the deck, and finds that such conditions ameliorate the traffic concerns and any public safety concerns raised by the neighboring property, Surpass.

As noted above, the discrepancy between the action proposed by the Applicant and the requirements of the zoning code is not the only consideration for the Board’s substantiality determination. Given the standard applied by New York courts, that substantiality is a fact-specific inquiry, is considered on a case-by-case basis, and that the overall impact of the requested variance must be taken into account, the Board finds that the variance is not prohibitively substantial and that the conditions imposed by the Board will ensure that the Board’s conditional granting of AV #0093 will not have an undesirable effect on the character of the

neighborhood, adversely impact physical and environmental conditions, or otherwise result in a detriment to the health, safety, and welfare of the neighborhood or community. Moreover, as stated, the conditional grant of AV #0093, including the imposition of Condition #4, will benefit the neighborhood and pedestrian access by the construction of sidewalks.

The impact of the proposed variance on the neighborhood, and specifically, on neighboring properties, taken into consideration with the conditions imposed by the Board, is not detrimental. While the record shows that there have been ongoing traffic and parking concerns on Bridge St., the Board considered Applicant's inclusion of parking elements into its variance application, such as Applicant's offer to continue to rent a satellite parking lot with 70 parking spaces, as discussed under Factor 1, to offset parking concerns. The Board considered such offer by Applicant, however, for the Board to condition the variance on such an offer is outside the scope of the Board's jurisdiction. Rather, the Board imposed conditions (see Conditions #1, 2, 3, and 4, in particular) to address traffic, parking, and safety concerns, which will benefit the neighborhood and pedestrian access and walkability of the surrounding area. Lastly, the record supports the Board's finding that the proposed variance of constructing a front deck at Applicant's bar/tavern in a MU-FW zoning district aligns with the City's development plans and stated purposed for the zoning district and that the overall impact of the proposed variance on the neighborhood is minimal.

The Board finds that although the requested area variance may be considered substantial when objectively looking at the number of feet which the proposed width of the deck would extend beyond the maximum front build-to zone dimensional requirements, the requested variance, along with the conditions imposed, which will reduce the length and width of the deck, is the minimum variance necessary, pursuant to NYS GCL § 81-b(4)(c), for meeting the Applicant's desired outcome of providing safe, outdoor dining options for patrons during the ongoing COVID-19 pandemic. The Board further finds that the presence of the provision under the zoning code, specifically § 375-402(1)(c)(v)(G)(4), which states that "[f]ront porches may occur forward of the build-to zone or setback," mitigates any potential substantiality because the requested variance, could be construed as being permissible pursuant to § 375-402(1)(c)(v)(G)(4). However, out of an abundance of caution, and given the facts as presented in the record, the variance could be considered substantial.

Further, while the Board finds that the requested variance, under a purely objective lens, may be considered substantial, the substantiality of the variance does not warrant the Board's denial of the requested variance. As stated, the requested variance, taken together with the conditions imposed, is the minimum variance

necessary. The New York Court of Appeals has held that no one factor is determinative as to whether the variance should be granted, and the propriety of the decision in any one case is dependent on the peculiar circumstances of the matter, local conditions, and the discretion of the zoning board of appeals. See *Ifrac v. Utschig*, 98 N.Y.2d 304 (2002). Thus, substantiality is only one factor, one of five factors, for the Board to weigh in applying the statutory balancing test for granting area variances under USDO § 375-505(10)(c)(i) and NYS GCL § 81-b(4)(b).

Therefore, in light of the analysis stated above and the conditions imposed by the Board in conditionally granting the variance, the Board finds that the requested variance is likely substantial, but is not prohibitively substantial such that warrants denial, and further that the requested variance is the minimum variance necessary and, when looking at the zoning code holistically, in particular, USDO § 375-402(1)(c)(v)(G)(4), that permits a front deck to protrude beyond the front build-to zone may be expressly permitted by the zoning code when considering decks.

Factor 4:

The fourth factor to be considered under USDO § 375-505(10)(c)(i)(D) and NYS GCL § 81-b(4)(b)(iv) is whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. For this factor, the Board should weigh a proposal's potential impact on factors such as drainage, traffic, circulation, dust, noise, odor, and impact on emergency services. See *Coco v. City of Rochester Zoning Bd. of Appeals*, 236 A.D.2d 826 (4th Dept., 1997).

Here, the record shows that the proposed variance will not adversely affect the physical or environmental conditions of the neighborhood. As discussed under Factor 1, the Applicant's property is located in the MU-FW zoning district. Pursuant to USDO § 375-204(7)(c), the purpose of the MU-FW district is to "allow for a greater variety of building reuse and encourage the redevelopment of the Warehouse District into a walkable, urban mixed-use center containing residential, retail, commercial, and entertainment uses, while protecting the continued viability of the existing industrial uses that are included in and surround that area." The proposed variance is compatible with the stated purpose of the MU-FW District under USDO § 375-204(7)(c). Although the immediately adjacent property is industrial, the USDO and the City's comprehensive plan encourage increased mixed-use development in this neighborhood. As stated, the Albany 2030 Comprehensive Plan for the City of Albany (the "Comprehensive Plan") includes the Property in Brownfield Opportunity Area Study Area A, North Warehouse District. Further, as the Comprehensive Plan notes, there is a "growing activity node centered on food and drink establishments that is spurring a rethinking of the

future of this district.” CITY OF ALBANY, Albany 2030 Comprehensive Plan for the City of Albany (2012) at App. A, p. 17. <https://www.albanyny.gov/DocumentCenter/View/3759/Albany-2030-Comprehensive-Plan-wAppendices> (last accessed Mar. 16, 2022). As such, the proposed variance will not adversely affect the physical or environmental conditions of the neighborhood, in light of the compatibility of the proposed Project with the purpose of the zoning district and City’s Comprehensive Plan, as stated above.

In addition, the record does not demonstrate any showing that the proposed variance would adversely affect natural environmental characteristics such as drainage, flooding, runoff, grading, trees, and vegetation. The Board took a hard look at the environmental impacts of the proposed Project, which includes AV #79, 92, and 93, when conducting its review under SEQRA. The Board issued a Negative Declaration for the proposed Project, identified as an Unlisted Action, under SEQRA on February 2, 2022, which provides a thorough assessment, analysis, and finding that the proposed Project will not result in significant adverse environmental impacts. The record also shows that the Applicant stated on his application that no impacts on the environment are expected to result from the proposed Project

The Board notes that in considering Factor 4, the Board must also look at whether the proposed variance could adversely affect a topographic change in the natural environmental such as traffic. The record includes testimony in opposition to the proposed variance from neighboring properties related to traffic concerns. The Board has thoroughly considered such concerns. As stated above, the Board’s imposition of Conditions #4 and #5, in particular, which require the Applicant to construct an ADA-compliant sidewalk on Bridge St. and that such sidewalk must be accessible from the entrance/exit locations of the proposed deck, actually improves the existing traffic concern related to pedestrian safety on Bridge St. In addition, the Board’s imposition of Conditions #1 and #3, in particular, which require the Applicant to reduce the length and width of the proposed deck to ensure that there are no sight distance or sightline concerns for vehicles and pedestrians and clearly mandates that the width of Bridge St. cannot be narrowed, both ameliorate vehicle and pedestrian traffic concerns raised by Surpass and ensures that Surpass vehicles will have continued access to travel without issue on Bridge St. Lastly, the Board acknowledges case law on this factor stating that when considering environmental concerns, the Board “must not rely solely on the speculation of community residents opposed to the variance.” Patricia Salkin, 2 N.Y. ZONING LAW & PRAC., § 29:16. Adverse effect of impact on the physical or environmental conditions (citing *Rogers v. Baum*, 234 A.D.2d 685 (3d Dep’t 1996)). Further, the Board must look to “real evidence or expert testimony of some nature . . . as the basis for a determination on this factor.” 2 N.Y. ZONING LAW & PRAC., § 29:16. Adverse effect of impact on the physical or environmental conditions (citing *Frank v. Scheyer*, 227 A.D.2d 558, 642 N.Y.S.2d 956 (2d Dep’t 1996)). Here,

the APD Division of Traffic Engineering and Albany Fire Department reviewed the proposed variance and Project and provided letters dated August 27, 2021 containing comments, concerns, and observations for consideration. (The APD Division of Traffic Engineering and Albany Fire Department August 27, 2021 letters are affixed hereto as Exhibit "E.") The Board has duly considered such comments, concerns, and observations and has written them into the Board's imposition of Condition #2 in the conditional grant of AV #0093. Further, nothing in the record shows opposition from the Division of Traffic Engineering to the proposed variance or a conclusion, as rendered by an expert, that the proposed variance would adversely impact traffic.

Therefore, the Board finds that the proposed variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

Factor 5:

The fifth factor to be considered under USDO § 375-505(10)(c)(i)(E) and NYS GCL § 81-b(4)(b)(v) is whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board but shall not necessarily preclude the granting of the area variance.

The record shows that the Applicant acknowledged that the need to construct a deck to provide for outdoor dining options was not considered at the time that the Applicant purchased the property at 1053 Broadway. However, the unique circumstances as applied to this variance application include that the request for the variance was borne out of the ongoing COVID-19 pandemic and the need for the Applicant to provide safe, outdoor dining options for its patrons. Further, the record shows in a letter dated November 12, 2021, the Applicant states that the "property lines of the parcel are unique in that they are almost flush with the side of the building along Bridge Street. A variance would thus be required for any type of expansion on this side of the property, as it would almost invariably protrude into the right-of-way or past the build-to-zone."

The Board further acknowledges the standard for its consideration of this factor. NYS GCL § 81-b(4)(b)(v) expressly states that whether the alleged difficulty was self-created is relevant to the Board's review of an area variance application, but that a self-created difficulty does not "necessarily preclude the granting of the area variance." Further, the New York Court of Appeals has held that no one factor is determinative as to whether the variance should be granted, and the propriety of the decision in any one case is dependent on the peculiar circumstances of the matter, local conditions, and the discretion of the zoning board of appeals. See 98 N.Y.2d 304 (2002). Thus, given the significance of the other requisite factors, including Factors 1, 2, and 4, discussed above, which weigh in favor of the Board's granting of the variance, the Board's finding that the hardship is

self-created does not weigh against the granting of the requested variance.

Therefore, the Board finds that the alleged difficulty was self-created by the Applicant, but that the self-created difficulty is not prohibitive to the Board's conditional granting of the area variance, and that the conditional grant of AV #0093, with the six conditions imposed, is the minimum variance necessary.

Conclusion

For the reasons and findings stated above, the Board finds that while the requested variance may be considered substantial and a self-created difficulty, such factors are not prohibitive in the Board's conditional approval of the requested variance, given that the other factors largely outweigh and support the Board's granting of the variance subject to certain conditions and demonstrate that the benefit to the Applicant outweighs the detriment to the health, safety, and welfare of the neighborhood or community if the variance is granted. As discussed, the NYS Court of Appeals has held that no one factor is determinative as to whether the variance should be granted. See 98 N.Y.2d 304. Further, the standard for granting variances under New York law is a statutory balancing test. Here, the record demonstrates, and the analysis herein shows, that the variance will not produce an undesirable change in the character of the neighborhood or create a detriment to nearby property owners, the benefit sought by the Applicant cannot be achieved by an alternative method, and that the variance will not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district. Even though the variance may be considered substantial (when assessing the variance in objective, mathematical terms), taken in concert with the zoning code as a whole, the variance may not be considered. However, out of an abundance of caution, here the Board finds that even though the variance may be considered substantial and a self-created hardship, New York case law supports this Board's decision that when a majority of factors favors the Applicant, as is the case here, the variance is typically granted. See Patricia Salkin, 2 N.Y. ZONING LAW & PRAC., § 29:12. Balancing test for granting an area variance (citing *Easy Home Program v. Trotta*, 276 A.D.2d 553 (2d Dep't 2000)). Further, the requested variance, along with the conditions imposed by the Board, is the minimum variance necessary for the Applicant to achieve the desired outcome of providing safe, outdoor dining options for patrons during the ongoing COVID-19 public health crisis, while protecting the character of the neighborhood and the health, safety, and welfare of the community in accordance with NYS GCL § 81-b(4)(c). **Therefore, the Board decides to conditionally approve Area Variance #0093, overruling the recommendation of the Albany County Planning Board. In conditionally approving Area Variance #0092, the Board imposes the following six conditions, pursuant to the Board's authority under NYS GCL § 81-b:**

CONDITIONS

Condition 1.) The Bridge Street roadway must remain 24-feet in width; no reduction in width of the roadway is permitted.

Condition 2.) The Applicant must satisfy all requested comments/required modifications stated in the August 27, 2021 Albany Fire Department and Albany Police Department Division of Traffic Engineering Letters.

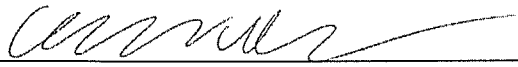
Condition 3.) The Applicant must reduce the length and width of the proposed deck and scale back the deck length on the Eastern end to a length that complies with the Vision Clearance and Public Safety requirements set out under USDO § 375-406(9) and is acceptable to the APD Division of Traffic Engineering to ensure that: (i) there are no sight distance or sightline concerns for vehicles traveling Westbound on Bridge St. from Mill St. or from the driveway between 1053 Broadway and 62 Mill St.; and (ii) there are no sight distance concerns for pedestrians on the South side of Bridge St. to view oncoming eastbound vehicle and pedestrian traffic.

Condition 4.) Curb and sidewalk details shown on the plan must comply with City specifications. As such, the Applicant must construct a sidewalk 5-feet in width on Bridge St. in accordance with USDO § 375-403(5)(a)(i), which requires that "all development and redevelopment in the City" have "a sidewalk of at least five feet in width shall be installed along each street frontage."

Condition 5.) The proposed deck must have two entrance/exit locations per the Building Code, and the two entrance/exit locations must be accessible to the sidewalk referenced in Condition #4.

Condition 6.) The Applicant must obtain an easement, license agreement, or other valid revocable consent or agreement from the City allowing for the Applicant's use over any portion of the City right-of-way, in a form acceptable to the Office of Corporation Counsel; and if the Applicant obtains an easement from the City, such grant of municipal-owned property must be approved by the Common Council of the City of Albany.

I, Martin Daley, representing the Board of Zoning Appeals of the City of Albany, hereby certify that the foregoing is a true copy of a decision of the Board made at a meeting thereof duly called and held on **March 16, 2022**

Signed:  Date: March 22, 2022

► Important Note: Unless otherwise specified by the Board, this decision shall expire and become null and void if the applicant fails to obtain any necessary zoning, building, or other permits or comply with the conditions of such decision within one (1) year of the date of signature.

EXHIBIT "A"

Albany County Planning Board's December 16, 2021 Recommendation.



ALBANY COUNTY PLANNING BOARD
NOTIFICATION

RECOMMENDATION DATE: December 16th, 2021

Case #: 01-211203873
Applicant: Project #00424 - 1053 Broadway
Project Location: 1053 Broadway
Tax Map Number: 65.16-4-1
Referring Agency: City of Albany Zoning Board of Appeals
Considerations: Rehearing of Area Variance: 375-402(1)(c)(vii)(G)(4) - to allow for a front deck to extend into the right-of-way or any easement in a Mixed-Use, Form-Based zoning district. Area Variance: 375-402(2)(c)/Table 375-402.1 - to allow for construction of a front

ACPB
Recommendation: Disapprove

1. The City of Albany should address the public health and safety concerns expressed by Surpass Chemical Company, Inc. regarding the tractor trailer route that is dangerously close to the proposed deck.
2. The proposed ADA complaint ramp is to be located next to Surpass' scale house driveway which potentially exposes customers on the deck to heavy industrial traffic containing hazardous materials from the diesel exhaust.
3. The city should consider the undesirable changes to the character of the neighborhood due to the presence of industrial use in close proximity.
4. In determining whether to grant an area variance, the zoning board of appeals should take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant.

Advisory:

Gopika Muddappa, Senior Planner
Albany County Planning Board

NOTE:

- This recommendation is rendered in compliance with applicable requirements of Section 239 of New York State General Municipal Law. Final determination on this matter rests with the appropriate municipal body.
- A recommendation of "APPROVE" or "MODIFY LOCAL APPROVAL" should not be interpreted as a recommendation by this body that the referring agency approve the matter referred. Such recommendation does not indicate that this body has reviewed all local concerns; rather the referral has met certain countywide considerations. Evaluation of local criteria is the responsibility of the referring agency.
- General Municipal Law Section 239 requires that the local agency notify the county within thirty days of its final action. Please use the OFFICIAL NOTICE OF LOCAL ACTION form that is attached for this purpose.
- General Municipal Law Section 239 sets forth the procedural requirements for taking local action contrary to the County Planning Board's recommendation of objection or conditional approval.
- Albany County is required to submit a Municipal Separate Storm Sewer System Permit (MS4) (No. GP-0-10-002) Notice of Intent (NOI) to comply with the NYS DEC permit for the control of wastewater and stormwater discharges in accordance with the Clean Water Act. Construction Activity Permit No. GP-0-1-001 issued by NYSDEC is also required for activity with soil disturbances of one acre or more. The law is required by the Clean Water Act to control point source discharges to ground water as well as surface waters.

449 New Salem Road, Voorheesville, NY 12186
TELEPHONE: (518) 655-7932 FAX: (518) 765-3459

In compliance with Article 12-B, Section 239 of New York State General Municipal Law, this serves as official notification to the Albany County Planning Board of the action taken on the application described above.

LOCAL ACTION ON ACPB RECOMMENDATION:

- AGREED WITH COUNTY PLANNING BOARD RECOMMENDATIONS TO MODIFY OR DISAPPROVE
- OVER-RULED COUNTY PLANNING BOARD RECOMMENDATIONS TO MODIFY OR DISAPPROVE

LOCAL DECISION ON PROJECT:

- PROJECT APPROVED
- PROJECT DISAPPROVED

VOTE RECORDED: _____ DATE OF LOCAL ACTION: _____

Set forth the reasons for any action contrary to the ACPB recommendations (use additional sheets if needed):

SIGNED: _____ TITLE: _____

EXHIBIT "B"

Board of Zoning Appeals' January 12, 2022 Resolution:

"SEQRA Lead Agency Resolution for the project known as 1053 Broadway Proposed Deck in
the Public Right-of-Way Project #00424."

SEQRA RESOLUTION

CITY OF ALBANY BOARD OF ZONING APPEALS

MOTION TO BECOME SEQRA LEAD AGENCY

for the project known as

**1053 Broadway Proposed Deck in the Public Right-of-Way
Project #00424**

January 12, 2022

The City of Albany Board of Zoning Appeals hereby makes the following resolution:

WHEREAS, the City of Albany Board of Zoning Appeals (the “Board of Zoning Appeals”) has received applications for area variances (AV #0079, AV #0092, AV #0093) from Druthers Brewing Company II, Inc. (the “Applicant”) for a proposal to construct a 13-foot wide, 110-foot long deck along the side of the building fronting Bridge Street (the “Project”) where it currently operates its brewery and restaurant located at 1053 Broadway, Albany, NY 12204 (Tax ID No.: 65.16-4-1); and

WHEREAS, under the applicable standards of the State Environmental Quality Review Act (“SEQRA”), 6 NYCRR Part 617, the Board of Zoning Appeals concluded that it is the appropriate agency to serve as Lead Agency for the coordinated environmental review of the proposed Unlisted Action; and

WHEREAS, the Board of Zoning Appeals on December 8, 2021 declared itself the Lead Agency for the above referenced Project under the provisions of the State Environmental Quality Review Regulations; and

WHEREAS, the Board of Zoning Appeals provided written notices to this effect to the involved and interested agencies; and

WHEREAS, by an agreement dated December 30, 2021, the City of Albany Common Council, which was identified as an involved agency, consented to the Board of Zoning Appeals’ designation as lead agency for the Project; and

WHEREAS, the Board of Zoning Appeals has not received any written objections from any involved agency to the Board's designation as the lead agency under the SEQR Regulations; and

WHEREAS, the Board of Zoning Appeals has previously determined that it is the most appropriate agency to ensure the coordination of this Project and for making the determination of significance thereon under the SEQR Regulations.

NOW, THEREFORE, BE IT RESOLVED: after due deliberation, the Board of Zoning Appeals hereby declares itself as SEQRA Lead Agency for the Project identified above herein.

	<u>For</u>	<u>Against</u>	<u>NIA</u>
Daley	✓		
Barnum	✓		
Le Blan-Jeffrey	✓		
Quain	✓		
White-Lake	✓		

I Martin Daley representing the Board of Zoning Appeals of the City of Albany, hereby certify that the foregoing is a true copy of a decision of the Board of Zoning Appeals, made at a meeting thereof, duly called and held on the day of: January 12, 2022.

Signature: _____

Date: _____

1/14/22

EXHIBIT "C"

Board of Zoning Appeals' February 2, 2022 Resolution and Negative Declaration:

"SEQR - Determination of Non-Significance Resolution and Negative Declaration for the project known as 1053 Broadway Proposed Deck in the Public Right-of-Way Project #00424."

CITY OF ALBANY BOARD OF ZONING APPEALS RESOLUTION
SEQR – DETERMINATION OF NON-SIGNIFICANCE RESOLUTION AND NEGATIVE DECLARATION
for the project known as
1053 Broadway Proposed Deck in the Public Right-of-Way
Project #00424

SEQR RESOLUTION

CITY OF ALBANY BOARD OF ZONING APPEALS

**SEQR – DETERMINATION OF NON-SIGNIFICANCE RESOLUTION AND
NEGATIVE DECLARATION**

for the project known as
1053 Broadway Proposed Deck in the Public Right-of-Way
Project #00424

February 2, 2022

The City of Albany Board of Zoning Appeals hereby makes the following resolution:

WHEREAS, the City of Albany Board of Zoning Appeals (the “Board of Zoning Appeals” or “Board”) has received applications for three area variances (AV #0079, AV #0092, AV #0093) (the “Action”) from Druthers Brewing Company II, Inc. (the “Applicant”) for a proposal to construct a 13-foot wide, 110-foot long deck along the side of the building fronting Bridge Street (the “Project”) where it currently operates its brewery and restaurant located at 1053 Broadway, Albany, NY 12204 (Tax ID No.: 65.16-4-1); and

WHEREAS, the Board of Zoning Appeals has determined the above referenced Action to be an Unlisted Action pursuant to 6 N.Y.C.R.R. Part 617 of the State Environmental Quality Review (“SEQR”) Regulations; and

WHEREAS, the Board of Zoning Appeals has reviewed and accepted the completed Short Environmental Assessment Form Part 1 completed by the Applicant and Parts 2 and 3 prepared by City Planners from the Department of Planning & Development and the Counsel to the Board of Zoning Appeals; and

WHEREAS, the Board of Zoning Appeals has completed a coordinated review of the above referenced Unlisted Action in coordination with involved and interested agencies identified on Applicant’s Short Environmental Assessment Form Part 1; and

WHEREAS, the Board of Zoning Appeals on December 8, 2021 identified the Project as an Unlisted Action under SEQR, motioned to declare itself the lead agency for the Project, and, thereafter, and promptly notified involved and interested agencies about the Board’s coordination request to serve as lead agency for the Unlisted Action; and

WHEREAS, the City of Albany Common Council, identified as an involved agency of the Project, in an agreement dated December 30, 2021 consented to the Board of Zoning Appeals’ designation as lead agency for the coordinated review of the above referenced Unlisted Action; and

CITY OF ALBANY BOARD OF ZONING APPEALS RESOLUTION
SEQR – DETERMINATION OF NON-SIGNIFICANCE RESOLUTION AND NEGATIVE DECLARATION
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WHEREAS, the Board of Zoning Appeals on January 12, 2022 in a separate resolution has formally designated itself as lead agency under the SEQR Regulations for making the determination of significance upon said Action, comprised of the above-listed three area variance applications (AV #0079, AV #0092, AV #0093); and

WHEREAS, pursuant to 6 N.Y.C.R.R. § 617.3(i) of the SEQR Regulations, the Board of Zoning Appeals and Applicant entered into a mutual agreement dated January 14, 2022 to extend the time period for which a lead agency undertaking a coordinated review of an unlisted action is required to make a determination of environmental significance pursuant to 6 N.Y.C.R.R. § 617.6(b)(3)(ii) of the SEQR Regulations; and

WHEREAS, the Board of Zoning Appeals has duly considered the whole Action and the criteria for determining significance as set forth in 6 N.Y.C.R.R. § 617.7(c)(1) of the SEQR Regulations, the information contained in the Short Environmental Assessment Form Parts 1, 2, and 3, any other information provided by the Applicant, involved and interested agency input, and public input; and

WHEREAS, the Board of Zoning Appeals has identified the relevant areas of environmental concern, has taken a hard look and thoroughly analyzed the relevant concerns, and has made a reasoned elaboration of the basis for its determination on whether the environmental concerns identified and analyzed will or will not be significant.

NOW, THEREFORE, BE IT RESOLVED: that, after due deliberation, the Board of Zoning Appeals hereby declares that said Action **WILL NOT** result in any significant adverse environmental impacts based on the review of the Short Environmental Assessment Form Parts 1, 2, and 3, information provided by the Applicant, involved and interested agency input, and public input; and

BE IT FINALLY RESOLVED: that the Board of Zoning Appeals does hereby make a Determination of Non-Significance on said Action, and the Chair of the Board of Zoning Appeals is hereby directed to issue the Negative Declaration as evidence of the Board of Zoning Appeals' determination of environmental non-significance, and further the Board of Zoning Appeals hereby declares as follows:

1. Based upon a thorough review and examination of the known facts relating to the Action and its careful review of all potentially adverse environmental impacts, and the entire record and proceedings relating to the Action as of the date of adoption of this Resolution, including, but not limited to, information included on the Project's Short Environmental Assessment Form Parts 1, 2, and 3, information provided by the Applicant, involved and interested agency input, and public input, the Board finds that the Action will not have a significant adverse impact on the environment and that a draft environmental impact statement will not be prepared.

CITY OF ALBANY BOARD OF ZONING APPEALS RESOLUTION
SEQR – DETERMINATION OF NON-SIGNIFICANCE RESOLUTION AND NEGATIVE DECLARATION
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2. The attached negative declaration, incorporated herein by reference, constitutes the Board’s written determination of environmental non-significance of the Action and is issued and adopted for the reasons stated in the attached negative declaration.

3. The City of Albany Board of Zoning Appeals is hereby authorized and directed to distribute copies of the resolution as necessary for a negative declaration prepared on an Unlisted Action under SEQR Regulations.

4. This resolution is effective immediately.

	<u>For</u>	<u>Against</u>	<u>NIA</u>
Daley	✓		
Barnum	✓		
Le Blan-Jeffrey	✓		
Quain	✓		
White-Lake	✓		

I, Martin Daley, representing the Board of Zoning Appeals of the City of Albany, hereby certify that the foregoing is a true copy of a resolution of the Board of Zoning Appeals, adopted at a meeting thereof, duly called and held on the day of: **February 2, 2022**.

Signature:  Date: 02/02/2022

CITY OF ALBANY BOARD OF ZONING APPEALS RESOLUTION
SEQR – DETERMINATION OF NON-SIGNIFICANCE RESOLUTION AND NEGATIVE DECLARATION
for the project known as
1053 Broadway Proposed Deck in the Public Right-of-Way
Project #00424

CITY OF ALBANY BOARD OF ZONING APPEALS

**NEGATIVE DECLARATION FOR THE DECK PROJECT AT DRUTHERS
BREWING COMPANY AT 1053 BROADWAY**

for the project known as
1053 Broadway Proposed Deck in the Public Right-of-Way
Project #00424

NEGATIVE DECLARATION
Determination of Non-Significance

Lead Agency: City of Albany Board of Zoning Appeals

Date: February 2, 2022

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 of the Environmental Conservation Law (State Environmental Quality Review Act (“SEQRA”).

The City of Albany Board of Zoning Appeals (“Board”), as lead agency, has determined that approval of the area variances (“Action”) will not have a significant adverse environmental impact and that a Draft Environmental Impact Statement (“DEIS”) will not be prepared.

Name of Action: Construction of a Deck at Druthers Brewing Company on Bridge Street (“Project”).

Location of Action: 1053 Broadway Albany, NY 12204 (“Property”).

SEQRA Status: Unlisted Action; coordinated review.

Description of Action: The Board has reviewed the three area variance applications (AV #0079, AV #0092, AV #0093) submitted by Druthers Brewing Company II, Inc. (“Applicant”) for a proposal to construct a deck at the Property, which will extend into the right-of-way on Bridge Street owned by the City of Albany (“City”). The Property is

CITY OF ALBANY BOARD OF ZONING APPEALS RESOLUTION
SEQR – DETERMINATION OF NON-SIGNIFICANCE RESOLUTION AND NEGATIVE DECLARATION
for the project known as
1053 Broadway Proposed Deck in the Public Right-of-Way
Project #00424

located in the Mixed-Use Form-Based Warehouse (“MU-FW”) District and is subject to the Mixed-Use Core frontage standards. To complete the Project, 1053 Brewing, LLC (the property owner) will need to obtain an easement, license agreement, or other valid revocable consent or agreement allowing for Applicant’s use over this portion of the right-of-way from the City; and if the Applicant obtains an easement from the City, such grant of municipal-owned property must be approved by the City of Albany Common Council (“Common Council”), and the Applicant will need to obtain three area variances from the Board, as stated above.

Reasons Supporting this Determination:

The Board has identified the relevant areas of environmental concern and has taken a hard look at each of the identified areas as required by SEQRA. The Board compared the Action with the criteria for determining significance identified in 6 N.Y.C.R.R. § 617.7(c)(1) and in accordance with 6 N.Y.C.R.R. §§ 617.7(c)(2) and (3). As indicated below in the discussion of each criterion specified in 6 N.Y.C.R.R. § 617.7(c)(1), the Project will not have a significant adverse impact on the environment.

(i) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;

The Action would allow for increased use of outdoor dining at the Applicant’s business. As a result, there may be an increase in traffic in the form of additional cars attempting to park at the location as well as an increase in noise given the larger number of patrons than are currently visiting the business. However, Applicant currently rents, and intends to continue renting, a satellite parking lot off Broadway, thus, any impact relating to traffic will be minimized and will not be significant. Also, given the industrial nature of the neighborhood surrounding the Property, the noise of additional outdoor brewery patrons during limited hours of the day will not produce a substantial adverse change to the current noise levels.

Additionally, the Action will not create a substantial change in existing air quality or ground or surface water quality or quantity, nor will there be any significant increase in solid waste production. The Albany County Planning Board was identified as an interested agency in the Board’s coordinated review of this Unlisted Action because the Action met the referral requirements pursuant to N.Y.S. General Municipal Law (“GML”) § 239-m(3)(b)(iii), as the Action would apply to real property within 500-feet of a state road or highway (in this case, the proposed deck at 1053 Broadway would be within 500-feet of state Route 32). In a recommendation letter dated December 16, 2021, the Albany County Planning Board provided comments expressing concerns that the proposed deck and ADA compliant ramp would be located next to Surpass Chemical Company’s scale driveway, which could potentially expose

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Druthers' patrons dining outdoors and using the ramp to heavy industrial traffic containing hazardous materials from the diesel exhaust. However, these concerns, which would not be caused by the Project, do not rise to the level of constituting a significant negative impact. The Board has duly considered such concerns, and finds that they do not rise to the level of constituting a significant adverse impact.

After thorough consideration of the Action, the Board finds that the Action would not cause a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic, or noise levels; a substantial increase in solid waste production; nor a substantial increase in potential for erosion, flooding, leaching, or drainage problems. Therefore, the Action will not cause such impacts.

(ii) the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources;

There will not be any removal or destruction of large quantities of vegetation or fauna, nor will there be substantial interference with any wildlife or habitat or other natural resources. The Property is already developed and is located in a commercial/industrial area. The Project will not disturb any habitat or vegetation.

(iii) the impairment of the environmental characteristics of a Critical Environmental Area as designated pursuant to subdivision 617.14(g) of this Part;

The Property is not located in or adjacent to a Critical Environmental Area as designated under 6 N.Y.C.R.R. § 617.14(g). Therefore, there will be no such impacts.

(iv) the creation of a material conflict with a community's current plans or goals as officially approved or adopted;

The Project does not present a material conflict with the City's plans or goals for development of the area. Rather, the Project adheres fully to such goals. Restaurants and bars/taverns are permitted in the MU-FW District as of right and the purpose of this district, as stated in the City of Albany Unified Sustainable Development Ordinance ("USDO"), is to "allow for a greater variety of building reuse and encourage the redevelopment of the Warehouse District into a walkable, urban mixed-use center containing residential, retail, commercial, and entertainment uses." Albany City Code USDO §§ 375-303(4)(b)(i)-(ii); 375-204(7)(c). The Project is in furtherance of the permitted use.

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Additionally, the Project is consistent with the Albany 2030 Comprehensive Plan for the City of Albany (“Comprehensive Plan”). The Property is located within Brownfield Opportunity Area Study Area A, the North Warehouse District. In discussing this area, the Comprehensive Plan notes the “growing activity node centered on food and drink establishments that is spurring a rethinking of the future of this district.” Comprehensive Plan, App. A, p. 17 (2012). The compatibility of this Project with the City’s Comprehensive Plan aligns with SEQR guidance from the N.Y.S. Department of Environmental Conservation, which provides that “[c]ourts have supported reliance upon a municipality’s comprehensive plan and zoning as expressions of the community’s desired future state or character.” The SEQR Handbook, 4th Ed., p.84 (2020); *see Village of Chestnut Ridge v. Town of Ramapo*, 841 N.Y.S.2d 321 (2d Dep’t. 2007).

Therefore, the Project does not present a material conflict with the City’s plans or goals for development of the area.

(v) the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character;

There will be no impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of community or neighborhood character. The Albany County Planning Board commented that the Board should consider the undesirable changes that this Project would have on the character of the neighborhood due to the presence of industrial use in close proximity. After due consideration of this comment and the character of the mixed-use neighborhood, which contains several restaurants and bars/taverns, it is determined that the Project will blend into the neighborhood as the establishment has done since opening, alongside other similar establishments that operate or have recently opened in the neighborhood.

Further, regarding traffic concerns raised, the record shows that the Applicant currently rents a satellite parking lot off of Broadway, and will continue to do so, which currently, and will continue to, ameliorates the parking and safety concerns of the Action.

(vi) a major change in the use of either the quantity or type of energy;

There will be no such impacts. The expansion of the restaurant that is contemplated here will not result in any significant increase in energy usage.

(vii) the creation of a hazard to human health;

After taking a hard look at the matter, the Board finds that the Action does not create a hazard to human health.

The Project record shows that some community members are concerned that siting outdoor dining in a mixed commercial and industrial area presents a hazard to patrons and employees of the

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restaurant, as well as to employees of the industrial businesses. In particular, Surpass Chemical Company submitted written testimony to the Board dated December 6, 2021, which expresses concerns that the Action would create a hazard to human health. Specifically, Surpass Chemical Company’s testimony to the Board stated as follows:

“The federal Occupational Safety & Health Act mandates that Druthers must provide its employees a place of employment free from recognized hazards that are likely to cause them harm. 29 U.S.C. §654(a). The federal Occupational Safety & Health Administration (“OSHA”), has promulgated regulations setting forth the “permissible exposure limits” for both noise, 29 CFR §1910.95, as well as the hazardous materials contained in diesel exhaust, 29 CFR §1910.1000. These regulations will, in all likelihood, be violated by the noise and exhaust created by the persistent truck traffic which will travel within feet of Druthers proposed exterior deck absent protective equipment like that provided to employees working on airport tarmacs.”

After due consideration, the Board finds that no additional hazard is being presented by the Project. Moreover, practically speaking, there will be no chronic or prolonged exposure of noise and exhaust caused by truck traffic as alleged by Surpass. The health hazards alleged by Surpass Chemical Company are not created by the Action. The diesel exhaust emitted by trucks is not created by the Action.

Further, regarding the traffic concern, the record shows that the Applicant currently rents a satellite parking lot off of Broadway, and will continue to do so, which currently, and will continue to, ameliorates the parking and safety concerns of the Action. In addition, as part of the Project application, the Applicant has proposed to install a five-foot wide sidewalk to address traffic or safety concerns. The Board duly finds that installation of a five-foot wide, ADA-compliant sidewalk would alleviate pedestrian safety conflicts on Bridge Street.

In a recommendation dated December 16, 2021, the Albany County Planning Board, an interested agency of the Action under SEQRA, pursuant to the project’s referral under GML § 239-m, commented that the Board of Zoning Appeals should address the public health and safety concerns expressed by Surpass Chemical Company regarding the tractor trailer route that they believe is “dangerously close to the proposed deck.” After due consideration of the Albany County Planning Board’s comments, the Board finds that the Action does not create a hazard to human health. The proposed deck will not be any closer to the road on Bridge Street than the current entrance staircase/ramp at Druthers. There is nothing in the record showing that the width of the current entrance/staircase ramp presents a hazard by being “dangerously close” to Bridge Street, a street which tractor trailers happen to use.

In addition, the record shows that City Departments reviewed the plans for the proposed project and provided comments and recommendations to the City Planning Department. In a letter dated August 27, 2021, the City Police Department Traffic Engineering Division commented that the length of the proposed deck (at 110-feet) presents sight distance concerns at the eastern most end

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of the deck and Druthers' building. In response, the Applicant has stated numerous times on the record that they are amenable to revising their project to abate City Department concerns, including reducing the length of the proposed deck to eliminate the sight line concerns raised. Further, the letter from the Traffic Engineering Division did not contain concerns that the Action would have a significant, negative impact on traffic or the environment, as asserted by Surpass Chemical. In a letter dated August 27, 2021, the City of Albany Fire Department ("AFD") expressed concerns and requested changes to the project, including moving the main gas connect to the building (on Bridge Street) to accommodate AFD's access; providing a design for relocating the AFD connection along the north wall if the new deck is installed; and requesting no parking on either side of Bridge Street, from Broadway to Mill St. In response, the Applicant has stated numerous times on the record that they are amendable to revising their project to meet City Department concerns. Further, AFD's letter did not express concerns suggesting that the Action would create a hazard to human health, rather, AFD's letter contained requested modifications, which the Applicant has voluntarily shown a willingness to comply with those requests within the Applicant's ability.

As stated, the concerns raised by Surpass Chemical Company that the proposed deck would create a hazard to human health are not caused or created by the Action.

In reviewing the Action, the purview of the Board is to make a determination of the environmental significance involved in the construction of a proposed deck [at a commercial establishment that neighbors a chemical company]. The dimensional standards of the proposed deck is within the Board's purview. The impact of the proposed deck on traffic, the environment, and the neighborhood is within the Board's purview. The actions and business practices of neighboring businesses are not within the Board's purview.

After taking a hard look at the potential impact of the Action, the Board finds that no additional hazard is being presented by the Project. Thus, the Action does not create a hazard to human health.

(viii) a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses;

There will not be a substantial change in the use, or intensity of use, of land. The proposed deck will add 15 tables to the establishment. This does not rise to the level of significance or constitute a substantial change in the use. Further, there will be no impacts to recreational resources or open space.

(ix) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;

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The Project will allow more patrons to dine at one time, however, the increase is not significant. During the times when the Applicant must reduce its indoor dining capacity, the ability to seat patrons outside is not likely to substantially increase the overall number of patrons visiting the business at one time. Additionally, patrons will visit the business for limited hours and will not be attracted to the area for multiple days as a result. Thus, there will be no such impacts.

(x) the creation of a material demand for other actions that would result in one of the above consequences;

There will be no such impacts.

(xi) changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment; or

The Project will not create changes in two or more elements of the environment that combined have a substantial adverse impact on the environment. Thus, there will be no such impacts.

(xii) two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision.

The Project does not embody two or more related actions undertaken, funded, or approved by an agency that combined have a significance adverse effect on the environment. Thus, there will be no such impacts.

Conclusion:

As required by 6 N.Y.C.R.R. § 617.7(a)(2), the Board of Zoning Appeals has determined that, following the coordinated review of the above referenced Unlisted Action, an Environmental Impact Statement is not required under the SEQR Regulations because the Board of Zoning Appeals has determined either that there will be no adverse environmental impacts resulting from the Project or that the identified adverse environmental impacts will not be significant.

As required by 6 N.Y.C.R.R. § 617.7(b), the Board of Zoning Appeals has:

1. Considered the Action as defined in 6 N.Y.C.R.R. §§ 617.2(b) and 617.3(g).
2. Reviewed the Short Environmental Assessment Form for Parts 1, 2, and 3 of the Project, the criteria identified in 6 N.Y.C.R.R. § 617.7(c)(1), any other information provided by the Applicant, involved and interested agency input, written and oral comments received in the public hearing process, including public input, and other supporting information to identify relevant areas of environmental concern.

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3. Analyzed the identified relevant areas of environmental concern to determine whether the Action will have a significant adverse impact.
4. Set forth herein its Finding of No Significant Environmental Impact.

As required by 6 N.Y.C.R.R. § 617.7(c)(2), for the purpose of determining significant adverse impacts on the environment of those factors listed above, the long-term, short-term, direct, indirect and cumulative impacts, including simultaneous or subsequent actions, to the extent reasonable, as included in any long-range plan for the action, any action that is a result of the reviewed action or is dependent on the action were reviewed.

As required by 6 N.Y.C.R.R. § 617.7(c)(3), the significance of any likely consequences were assessed in connection with the setting of the action, the likelihood of occurrence, duration, irreversibility, geographic scope, magnitude and the number of people affected as a consequence of the action.

Based on this review, the Board of Zoning Appeals has determined that no significant adverse environmental impacts would result from this Action.

For Further Information:

Responsible Officer in Lead Agency:

Contact Person: Martin Daley
Title: Chair, City of Albany Board of Zoning Appeals
Address: 200 Henry Johnson Boulevard, Suite 3, Albany, NY 12210
Phone: (518) 465-6066

Counsel to the Lead Agency:

Contact Person: Martha Mahoney, Esq.
Title: Assistant Corporation Counsel, City of Albany Law Department
Address: 24 Eagle Street, Room 106, Albany, NY 12207
Phone: (518) 434-5050

Staff to the Lead Agency:

Contact Person(s): Samuel Morreale
Poulomi Sen
Title: Senior Planners, City of Albany Department of Planning & Development
Address: 200 Henry Johnson Boulevard, Suite 3, Albany, NY 12210
Phone: (518) 465-6066

EXHIBIT "D"

City of Albany Development Review Case File for Project #00424 and YouTube Recordings of
City of Albany Board of Zoning Appeals Public Meetings and Hearings relevant to Project
#00424.

City of Albany Development Review Case File for Project #00424

Documents:

- [☑ Master Application 2021-11-12](#)
- [☑ Master Application](#)
- [☑ AV 0079](#)
- [☑ AV 0092 and 0093](#)
- [☑ Site Plan](#)
- [☑ Photos](#)
- [☑ SEAF Part One](#)
- [☑ SEAF Part Two](#)
- [☑ SEAF Part Three](#)
- [☑ SEQR Lead Agency Agreement](#)
- [☑ SEQRA Mutual Agreement](#)
- [☑ Adopted February 2, 2022 SEQRA Negative Declaration Resolution](#)
- [☑ Correspondence - June 21, 2021](#)
- [☑ Albany County Planning Board Decision](#)
- [☑ Letter of Opposition 6-23-2021](#)
- [☑ Correspondence - July 9, 2021](#)
- [☑ Albany County Planning Board Notification - June 17, 2021](#)
- [☑ Letter of Opposition - December 7, 2021](#)
- [☑ Letter of Opposition - December 6, 2021](#)
- [☑ Letter of Opposition - July 26, 2021](#)
- [☑ Letter of Support - January 7, 2022](#)
- [☑ Fire Department Correspondence - August 27, 2021](#)
- [☑ Traffic Engineering Correspondence - August 27, 2021](#)
- [☑ Applicant Correspondence - November 12, 2021](#)
- [☑ Letter of Opposition - January 31, 2022](#)
- [☑ 12-08-2021 BRZ Public Meeting Zoom Chat](#)
- [☑ Albany County Planning Board December 2021 Recommendation](#)
- [☑ Adopted January 12, 2022 SEQRA Lead Agency Resolution](#)
- [☑ Druthers Staff Memo.pdf](#)
- [☑ Suggested conditions \(03.16.2022\).pdf](#)

City of Albany Board of Zoning Appeals YouTube Recordings of Public Meetings and Hearings, relevant to Project #00424:

1. City of Albany Board of Zoning Appeals Public Meeting and Hearing held March 16, 2022; <https://youtu.be/b-CfYQ9it4I> (last accessed Mar. 16, 2022).
2. City of Albany Board of Zoning Appeals Public Meeting and Hearing held February 2, 2022; <https://youtu.be/btfbUZztMPI> (last accessed Mar. 16, 2022).
3. City of Albany Board of Zoning Appeals Public Meeting and Hearing held January 12, 2022; <https://youtu.be/VIDVEEXEjSM> (last accessed Mar. 16, 2022).
4. City of Albany Board of Zoning Appeals Public Meeting and Hearing held December 8, 2021; <https://youtu.be/4fRadMpI-Y8> (last accessed Mar. 16, 2022).
5. City of Albany Board of Zoning Appeals Public Workshop held November 10, 2021; <https://youtu.be/iSZmYVyllAE> (last accessed Mar. 16, 2022).
6. City of Albany Board of Zoning Appeals Public Meeting and Hearing held October 27, 2021; https://youtu.be/FFMMHVJRJ_dk (last accessed Mar. 16, 2022).
7. City of Albany Board of Zoning Appeals Public Meeting and Hearing held August 11, 2021; https://youtu.be/jeNEciX_jbE (last accessed Mar. 16, 2022).
8. City of Albany Board of Zoning Appeals Public Meeting and Hearing held July 28, 2021; <https://youtu.be/MFX5jBacuOg> (last accessed Mar. 16, 2022).
9. City of Albany Board of Zoning Appeals Public Meeting and Hearing held June 23, 2021; <https://youtu.be/QCmXUtpi3SA> (last accessed Mar. 16, 2022).

EXHIBIT "E"

City of Albany Police Department Division of Traffic Engineering and Albany Fire Department
August 27, 2021 Letters



KATHY SHEEHAN
MAYOR

CITY OF ALBANY
POLICE DEPARTMENT
TRAFFIC ENGINEERING DIVISION
10 N ENTERPRISE DRIVE
ALBANY, NEW YORK 12204
TELEPHONE: (518) 434-5791
FAX: (518) 434-4315

ERIC HAWKINS
CHIEF OF POLICE

August 27, 2021

Bradley Glass
Planning Director
Albany Planning Department
200 Henry Johnson Boulevard
First Floor, Suite 3
Albany, New York 12210

RE: 1053 Broadway, Druthers proposed deck

Mr. Glass,

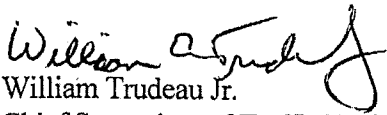
We have reviewed the most recent documents in reference to the outdoor deck proposal for the Bridge St side of 1053 Broadway and are submitting the following comments/concerns/observations:

Comments/Concerns

- At the eastern most end it appears that the deck will limit the view (sight distance) from a vehicle exiting the driveway from Surpass Chemical looking to the west for oncoming eastbound vehicle and pedestrian traffic.
- Also at the eastern most end, the deck could limit the view (sight distance) for pedestrians on the south side of Bridge St to view vehicles exiting Surpass Chemical.
- Delivery vehicle locations area not shown on the plans but should be noted on where deliveries are made.
- DGS Engineering Division should verify the curb and sidewalk details shown on the plans to assure compliance with City specifications.
- Plans note a deviation from the twenty-four foot width of street. No reduction in width of the roadway is permitted

Should you have any questions regarding our comments/concerns or observations, please contact me at your convenience.

Sincerely,


William Trudeau Jr.
Chief Supervisor of Traffic Engineering
Albany Police Department



KATHY M. SHEEHAN
MAYOR

CITY OF ALBANY
DEPARTMENT OF FIRE AND EMERGENCY SERVICES
26 BROAD STREET
ALBANY, NEW YORK 12202
TELEPHONE (518) 447-7879
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JOSEPH W. GREGORY
CHIEF OF DEPARTMENT

Mr. Brad Glass
Albany Planning Director
200 Henry Johnson Blvd
First Floor, Suite 3
Albany, New York 12210

August 27, 2021

Re: 1053 Broadway

Dear Brad,

In reviewing the most recent plans for the outdoor deck at 1053 Broadway, the Fire Department has several concerns. The main gas connect to the building is on the Bridge St side of the building and would need to be moved for our access, but there is no design on how this will occur. Also, the Fire Department connection is along the north wall and there is no design for where this will be relocated if the new deck is installed. Finally, due to the size of Bridge St, we would request that Bridge St does not allow any parking on either side of the street from Broadway to Mill St.

Sincerely,

Joseph W. Gregory
Chief of the Department