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VIA EMAIL

City of Albany Board of Zoning Appeals
200 Henry Johnson Boulevard
Albany, NY 12210

Re: Area Variance Application for Druthers Brewing Company II, Inc. at 1053 Broadway

Dear Members of the Board of Zoning Appeals:

I am writing to you on behalf of our client Druthers Brewing Company II, Inc. (“Applicant”), who submitted an application on May 17, 2021 seeking an area variance from Section 375-402(1)(c)(vii)(G)(4) of the City of Albany Unified Sustainable Development Ordinance (“USDO”). The Applicant proposed to construct a 13-foot wide, 110-foot long deck and ADA-compliant ramp (“Project”) on the side of the building at 1053 Broadway (“Property”) where it operates its brewery/restaurant. In addition to its May 17, 2021 request, the Applicant now submits this supplement to the application seeking area variances from two further provisions of the USDO in order to complete the Project in full compliance with City law.

As noted above, the Applicant requested an area variance from Section 375-402(1)(c)(vii)(G)(4) of the USDO, which prohibits front porches from intruding into a right-of-way or easement. The Project, as proposed, will extend into the right-of-way on Bridge Street. However, the Property is zoned in the Mixed-Use Form-Based Warehouse (“MU-FW”) District and is subject to the Mixed-Use Core frontage standards. Pursuant to Section 375-402(2)(c)/Table 375-402.1 of the USDO, certain frontage elements, including porches, are not expressly permitted for such buildings. Only forecourts, stoops, shopfronts, galleries, and arcades are expressly permitted. Thus, in order to complete the Project as proposed, the Applicant will also require an area variance from USDO § 375-402(2)(c)/Table 375-402.1, allowing for construction of a front porch.

Further, simply out of an abundance of caution, the Applicant is also seeking an area variance from the front build-to zone requirement. Section 375-402(2)(c)/Table 375-402.1 of the USDO states that the front build-to zone for lots subject to the Mixed-Use Core frontage standards is between zero and six feet. Because the Project as proposed will extend past the

property line and into the right of way on Bridge Street—which the Applicant believes to be the “front” of the building given the location of the main entrance—the Project will be outside this front build-to zone. Although USDO § 375-402(1)(c)(vii)(G)(4) states that front porches may occur forward of the build-to zone or setback, given that porches are not expressly permitted at the Property, the Applicant is seeking an additional area variance from USDO § 375-402(2)(c)/Table 375-402.1 to carefully ensure full compliance of the Project with the USDO.

Moreover, all three area variance requests will meet the five factors the Board of Zoning Appeals (“BZA”) must consider pursuant to General City Law § 81-b(4)(b): (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created. N.Y. GEN. CITY LAW § 81-b(4)(b) (McKinney 2018).

Granting the three requested variances will not cause an undesirable change in the character of the neighborhood or a detriment to nearby properties. The Applicant has been operating its brewery since 2015, and permitting a deck (“porch”) that will protrude into the right-of-way or extend forward of the build-to zone in order to seat additional patrons outside will not change the character of the neighborhood. The MU-FW District was created to accommodate a variety of building uses, and bars and taverns are expressly permitted as of right. USDO §§ 375-204(7)(b); 375-302/Table 375-302.1. There is also another brewery operating roughly 500 feet from the Property, demonstrating the Applicant’s conformance with the mixed-use nature of the neighborhood. Secondly, although parking and traffic concerns have been raised by the a neighboring landowner, the Applicant has proposed to eliminate parking on Bridge Street and install a 5-foot wide sidewalk as part of the Project to address these concerns.

The Applicant also demonstrated that its goals—namely, creation of outdoor dining space—cannot be accomplished without these variances. The Applicant initially sought to purchase a neighboring parcel, but the owners were involved in litigation for several years and the Applicant’s offer to purchase the property expired. The Applicant also considered constructing a rooftop deck, but the cost to fortify the building and install an elevator far exceeded what was reasonably feasible for the Applicant, and there was simply not enough space to make these modifications. Lastly, the Applicant considered extending its use of picnic tables on Bridge Street as it did during the first few months of the COVID-19 pandemic, however, that did not address the traffic and parking concerns, and only presented a temporary solution to the lack of outdoor dining space.

Additionally, the three requested variances are not substantial when viewed in light of the overall minimal impact they will have on the community. An area variance, even if substantial, could still be granted to an applicant where no impact or detriment to the community will result and the character of the neighborhood will not be affected. 2 N.Y. ZONING LAW & PRAC. § 29:15 (2021). Here, as noted above, the overall impact to the community will be minor, particularly since the Applicant has proposed to address the parking and traffic concerns raised by

the neighboring landowner. Moreover, the extension of the deck into the right-of-way and forward of the build-to zone will not be excessive. The main entrance, as it exists now, consists of a staircase, ramp, and landing which already extends past the property line. Thus, the Applicant is only looking to extend the length of this structure further along the side of the building to accommodate outdoor dining.

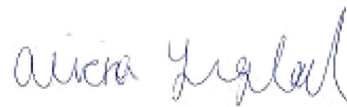
The Project will similarly present no adverse impact on the physical or environmental conditions of the neighborhood. As noted above, bars and taverns are expressly permitted in the MU-FW District. The Project is also consistent with the Albany 2030 Comprehensive Plan for the City of Albany (“Comprehensive Plan”), which places the Property in Brownfield Opportunity Area (“BOA”) 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. Moreover, there will be no significant adverse environmental impacts from the Project, as demonstrated by the Applicant in the Environmental Assessment Form (“EAF”) Part 1.

Lastly, the hardship the Applicant is facing is not self-created. The increased demand for outdoor dining that the Applicant is attempting to respond to has been largely borne out of the ongoing COVID-19 pandemic. This was certainly not expected, nor has it been within the Applicant’s control. Also, 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. Finally, even if the BZA were to consider this hardship self-created, this does not prevent the granting of the requested variances.

As such, in addition to its May 17, 2021 request for an area variance from USDO § 402(1)(c)(vii)(G)(4), the Applicant is seeking two additional area variances from USDO § 375-402(2)(c)/Table 375-402.1 to complete the Project in full compliance with City law. The Applicant has also demonstrated it is entitled to these variances since, after balancing the requisite factors, the benefit of granting the variances to the Applicant outweighs any minor impact on the community. *See* N.Y. GEN. CITY LAW § 81-b(4)(b).

Thank you for your kind attention to this matter. Please let me know if you have any questions or concerns. I can be reached at (518) 433-2416 or alegland@hodgsonruss.com.

Very truly yours,



Alicia Legland

Enclosures

cc: Martha Mahoney, Assistant Corporation Counsel
Brett Williams, Assistant Corporation Counsel