

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

SEQRA RESOLUTION

CITY OF ALBANY BOARD OF ZONING APPEALS

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NEGATIVE DECLARATION**

for the project known as
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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

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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.

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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

**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

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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 house 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 SEQRA 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:

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