Town of Rockland Zoning Board of Appeals

October 14, 2020 #2-20 Use Variance Western Catskills Truck Co. LLC

At 7:00 p.m. Chairman Arthur Riegal called to order the public hearing for the Use Variance application from Western Catskills Truck Co. LLC seeking permission to operate their food truck at the Catskill Brewery at 672 Old Rt 17, Livingston Manor (SBL # 39.-2-10).

Zoning Board members present: Chairman Arthur Riegal, Perry Kuehn, Allen O'Keefe, Sheila Shultz and Sarah Madison. Also present: Code Enforcement Officer, Glenn Gabbard, Rose Mary Hankins, clerk to the board, members of the public and the applicant.

Chairman Riegal noted that this hearing was to address the application for the food truck located at the Catskill Brewery parcel and not to amend the town code as a whole. He also explained the difference between an area variance and a use variance.

Mr. Randy Lewis presented information on the food truck. The truck was purchased approximately two years ago to primarily serve food off site for special events (weddings, farmer market etc) and occasionally at the Brewery site for their own special event. Under the NY State Executive Order #202.52 the State Liquor Authority guidance requiring the purchase of food items for consumption if alcoholic beverages are served. The majority of scheduled events were canceled this summer and with the need to serve food at the Brewery resulted in the food truck being parked on site.

The Code Enforcement Officer sent a letter to Mr. Lewis in June of 2019 stating that the food truck located at 672 Old Rt 17 is not a use currently listed in the schedule of district regulations contained in the Town of Rockland's zoning law as well as not being contemplated by their site plan as approved by the Planning Board.

There was discussion on the use of the food truck. Mr. Lewis stated that he feels serving food with alcohol is far better than not and keeping it in operation on site helps keep his business going during this unprecedented time. Their long term plans were to build out a restaurant and serve food on site.

Mrs. Shultz asked if the applicants had approached the Town Board to review the town codes concerning the use of a food truck, they had not done so.

There was no one from the public present who wished to comment. Chairman Riegal noted that an email had been received from a neighbor expressing their support of the food truck.

At 7:33 p.m. the public hearing was closed and the regular meeting of the Zoning Board of Appeals opened.

Town of Rockland Zoning Board of Appeals Regular Meeting, October 14, 2020

Chairman Riegal opened the regular meeting with the pledge to the flag. By unanimous consent the minutes of the February 4, 2020 and May 4, 2020 meetings were accepted as distributed.

Chairman Riegal stated that this board has the authority to modify, reverse or affirm the town code in these circumstances due to undue hardship. Discussion followed and the following action taken.

ZBA: Standard of Review: Use Variance

Zoning Board of Appeals must balance the benefit to the applicant verses detriment to the health, safety and welfare of the neighborhood. The burden of proof lies with the applicant. Strict application of the Zoning Law would result in "unnecessary hardship" since:

1. Reasonable return cannot be realized by adhering to existing code.

Discussion: Applicant stated that 40% of sales are generated by the food truck and the business would need to close without its use.

Resolution: The applicant has proven that reasonable return cannot be realized without the food truck in operation.

Roll Call Vote: Perry Kuehn – yes

Allen O'Keefe – yes

Sarah Madison – yes

Sheila Shultz – yes

Arthur Riegal – yes

2. The hardship is unique and not applicable to the District in general.

Discussion: The applicant does not have a kitchen on premises in which to prepare and serve food from to meet the state requirements.

Resolution: The applicant is one of three breweries in the Town of Rockland but the only one without a kitchen to meet the Executive Order requirement so hardship therefore is unique.

Roll Call Vote: Perry Kuehn – yes

Allen O'Keefe – yes

Sarah Madison – ves

Sheila Shultz – yes

Arthur Riegal – yes

3. The essential character of the neighborhood will not be altered.

Discussion: The food truck is a nice addition to the neighborhood.

Resolution: The food truck is a nice addition to the street scape and the neighborhood will not be altered by it.

Roll Call Vote: Perry Kuehn – yes

Allen O'Keefe – yes

Sarah Madison – yes

Sheila Shultz – yes

Arthur Riegal – yes

4. The alleged hardship is not self-created.

Discussion: The hardship is not self-created.

Resolution: Given the current economic environment of Covid-19, the reduction of inside dining space and the decline of catering business, the hardship is not self-created.

Roll Call Vote: Perry Kuehn – yes

Allen O'Keefe – yes

Sarah Madison – yes

Sheila Shultz – abstained Arthur Riegal – yes

Zoning Board Action

Approve_____ Deny___ Approved with conditions (below) _X___ Resolution: Pursuant to NY State Executive Order #202.52 and under the extraordinary circumstances

of Covid-19, the requested use variance is approved with the following conditions:

- 1. A sunset clause stating that 90 days after the State Executive Order is lifted Catskill Brewery will cease operation of the food truck on its premises.
- 2. Operation of the food truck is allowed only on the premises of 672 Old Rt 17, Livingston Manor.
- 3. Operation of the food truck is allowed off site at private, contracted catering events.

Roll Call Vote: Perry Kuehn – yes

Allen O'Keefe – yes

Sarah Madison – yes

Sheila Shultz – yes

Arthur Riegal – yes