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August 22, 2022

**BY EMAIL** [zoningboard@townofnewburgh.org](mailto:zoningboard@townofnewburgh.org)  
**AND REGULAR MAIL**

Chairperson Darrin J. Scalzo and Members of  
the Town of Newburgh Zoning Board of Appeals  
Town Hall  
1496 Route 300  
Newburgh, New York 12550

**RE: APPLICATION OF RIVER LINK HOTELS; ISSUE OF  
KITCHENS; HEARING FOR INTERPRETATION OF  
SECTION 185-27(D)(1)**

Dear Chairperson Scalzo and  
Members of the Town of Newburgh Zoning Board of Appeals,

I am writing to supplement my submission of July 28, 2022 on the above matter. The ZBA should affirm the "Notice of Disapproval of Building Permit Application" dated August 16, 2022 by Joseph Mattina of the Town of Newburgh Code Compliance Department. Mr. Mattina is correct that the application to construct two hotels is not allowed by the Newburgh Zoning Code<sup>1</sup>.

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<sup>1</sup> My July 28, 2022 submission alleging lack of jurisdiction is withdrawn by reason of the issuance of the Notice of Disapproval.

I not only concur with the conclusion by Mr. Mattina that the application to construct two hotels should be disapproved but suggest that the Board modify and extend the Determination by Mr. Mattina.

It is as a well accepted adage of statutory interpretation that statutes are to be interpreted so that all sections of the statute are given meaning and that no section of the statute is rendered without meaning. A full briefing on this point is available if requested by the ZBA.

There are two relevant provisions in the Newburgh Zoning Code to be interpreted. First, Section 185-3 of the Code defines “hotel” as a place which provides transient lodging accommodations and includes “. . . a central kitchen **ONLY** [emphasis added] and a central dining room . . . .”

Section 185-27(D), the second relevant section, contains “Supplementary regulations” for hotels. Subdivision D states that hotel units shall not contain kitchen facilities of **ANY TYPE** [emphasis added] in more than twenty-five per cent (25%) in a particular hotel or motel complex.

The question is thus posed as to the manner in which these two provisions are read so that each provision is given meaning. It is asserted that the proper interpretation is that a hotel may contain only a central kitchen with the proviso that the central kitchen shall not occupy or take up more than twenty-five (25%) percent of the area or space of the hotel.

This reading of the Code obviates the erroneous interpretation sought by River Link concerning the issue of the component facilities of a kitchen. Without regard to the number of cooktops, if any, intended to be provided by the applicant, a hotel in the Town of Newburgh may have **ONLY** a central kitchen.

The Determination should be extended because the proper interpretation of the Newburgh Code (Section 185-3) is that a hotel may have **ONLY** [emphasis added] a central kitchen that does not exceed 25% of the size or area of the hotel. Section 185-27(D) of the Code refers to 25% but does not identify 25% of what. Is it 25% of the number of rooms? Is it 25% of the building area? The Code does not provide an express answer for what it is that has a 25% limit. Although the 25% reference is not specific, it would not make sense to interpret 185-27(D) to refer to 25% of the number of rooms because of the definition of a hotel in Section 185-3 that provides for only a central kitchen. Rather, it makes sense to interpret the provision to refer to 25% of the size or area of a hotel.

An issue has been raised by counsel for the applicant concerning the “standing” of my client, the owner/operator of a hotel in close proximity to the hotels proposed by the applicant. As noted at the first public hearing, there is no requirement for standing to make a presentation at a public hearing.

Next, the law is clear that the possibility of a competitive interest does not disqualify a party from litigating in an Article 78 proceeding if the party may suffer harm and impacts within the scope of land use and environmental matters in addition to the possibility of having a competitive interest. The competitive interest does not give standing but it does not prohibit standing.

At this time, however, my client is seeking an administrative determination from the Agency and we are not involved in a lawsuit. Therefore, the concept of standing in a lawsuit is irrelevant to the discussion before the Agency.

The matter before the Agency is purely a legal matter for

interpretation.

If there comes a time when my client seeks to commence a proceeding, my client will allege the applicable land use and environmental impacts. The issue of standing before the Agency raised by the applicant is a “red herring.”

Counsel for the applicant also provides a letter from an architect named Krutee N. Shah. The letter is a smoke screen that does not offer an opinion that the proposed facilities in the proposed hotel fail to constitute kitchens under the Newburgh Zoning Code. The letter states only the conclusion that the proposed facilities do not meet the definition of a kitchen for a dwelling unit under the NYS Building Code without providing the definition of a kitchen under the NYS Building Code.

Counsel for the applicant also recites the assertion that the hotel companies, in this case Marriot and Hilton, have agreed that the applicant need not offer portable cook tops. Statements from Marriot and Hilton to this effect, however, are missing from the submission.

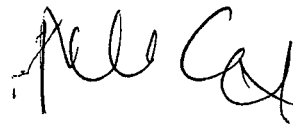
The discussion in the letter by counsel concerning trends in the hotel industry and standing in a lawsuit are both smoke screens in an attempt to divert the attention of the Agency to the issue before the Agency, to wit, is the determination by Mr. Mattina disapproving an application for two hotels where 50% of the rooms having kitchen facilities correct. It is noted, as Mr. Mattina noted, that the 25% reference in the Code is to kitchen facilities “of any type” and not merely facilities that meet the definition of kitchens under the Building Code.

I have provided a courtesy copy of this communication to David A. Donovan who serves as the attorney for the Board and to John Furst who serves as counsel for the applicant.

I thank you in advance for your anticipated courtesy and hope that you will agree with the interpretation urged in this letter.

The determination by Mr. Mattina is correct and should be affirmed. It should also be extended as set forth above to clarify that the Newburgh Code allows only a central kitchen not larger than 25% of the size or area of the hotel.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard Cantor". The signature is fluid and cursive, with the first name "Richard" and last name "Cantor" clearly distinguishable.

Richard Cantor

RIC/sec

cc: John Furst via Email  
David A. Donovan, Esq. via Email  
Client via Email