

DRAFT

**VILLAGE OF UPPER NYACK PLANNING BOARD
RESOLUTION OF SITE PLAN APPROVAL**

Property Address: 536 North Highland Ave., Village of Upper Nyack (the “Property”)
County Map No.: 59.12-02-01
Zoning District: Office Business (OB) Zoning District (the “Property”)
Applicant/Owner: 536 Highland LLC (the “Applicant”)
SEQRA Classification: Type II (6 NYCRR 617.5c18) No further SEQRA review required.
Date of Public Hearing: October 19, 2022; November 16, 2022

SUMMARY

The Applicant is seeking site plan approval to use the first floor of the existing building on the Property as a restaurant that has limited capacity to serve patrons on-site and which primarily prepares food on-site for service off-site (the “Catering Restaurant”). Because the proposed Catering Restaurant regularly delivers food to customers off-site, the Applicant is also seeking approval pursuant to Village of Upper Nyack Zoning Law (the “Village Zoning Law”) §6.1.3.7.1 to park accessory refrigerated box trucks used to make such off-site deliveries on the Property.

INFORMATION REVIEWED

1. Cover Letter of Keir B. Levesque, Architect, dated August 15, 2022, and the following supporting information: (a) Application form; (b) property deed; (c) GML 809 disclosure form; (d) short environmental assessment form, dated August 11, 2022; and (e) *Site Plan*, prepared by Keir B. Levesque, Architect, dated August 9, 2022 (bold date on plan).
2. Letter from the Rockland County Department of Planning, dated October 17, 2022.
3. Review Memoranda from Village Engineer Dennis Letson, PE to Planning Board dated October 19, 2022 and November 16, 2022.
4. Cover Letter of Keir B. Levesque, Architect, dated October 26, 2022, and the following supporting information: (a) *Site Plan*, prepared by Keir B. Levesque, Architect, dated August 9, 2022, Revised October 26, 2022 (bold date on plan); (b) photographs of the Property and the commercial trucks proposed to be parked on the Property; (c) information sheets on the proposed landscaping to be installed on the Property.
5. Email Correspondence from James A. Torres, PE at the Rockland County Department of Planning, dated November 4, 2022, along with a letter from the Rockland County Department of Health to 536 Highland Avenue LLC, dated November 3, 2022 with enclosures (Water system field compliance inspection summary report; Water system operation report).
6. Presentations by the Applicant’s representative at the public hearing on this Application.
7. There were no comments from members of the public on this application.

EXISTING CONDITIONS AND PRIOR APPROVALS

The Property is located on the west side of Route 9W in the Village's OB District. It measures approximately 1.79 acres in area. The eastern portion of the Property adjacent to Route 9W is generally flat and then the grade increases significantly in the western portion of the Property toward the Village's municipal boundary with the Town of Clarkstown. The Property is improved with a two-story principal building, a two-story accessory prefabricated storage building, and related accessory structures including a dumpster behind the principal building, and fencing. Vehicular access to the Property is provided via two curb cuts onto Route 9W (one way in/one way out). There are 41 existing parking spaces on the Property with one-way circulation drive aisles through the parking area. Water service to the Property is provided by an on-site well. All improvements on the Property are in the generally flat portion of the Property near Route 9W; the sloped western portion of the Property is not developed. The members of the Planning Board have visited the Property and are familiar with its location and layout.

Prior to February 2022 the principal building on the Property was used as a traditional sit-down restaurant with a banquet facility on the second floor. In February of 2022 the Applicant applied for site plan approval to allow the conversion of the second-floor banquet space to offices for an HVAC company with the first floor remaining as restaurant space. As a part of that application, the Applicant also proposed to use the existing prefabricated building on the Property as storage for the HVAC company's supplies and materials, and to designate six (6) parking spaces in the rear portion of the parking area on the Property as overnight parking for the HVAC company's cargo vans and construction vehicles. Because the Property as reconfigured for that use did not comply with the minimum parking requirements of the Village Zoning Law, the Planning Board referred the application to the Village's Zoning Board of Appeals for a parking variance.

On May 3, 2022 the Zoning Board of Appeals granted the Applicant a parking variance to allow 41 parking spaces to serve the Property where 44 parking spaces would be required by the strict application of the Village Zoning Law.

On May 18, 2022, the Planning Board granted the Applicant site plan approval to allow the HVAC office and related accessory storage and parking use of the property/restaurant use. Pursuant to that approval, among other things, the accessory commercial vehicle parking permitted on the Property was limited to the hours of 5pm to 9pm daily and the curb near to the northeastern most parking space was required to be reconfigured to protect the car in such space from potential conflict with cars entering the Property from Route 9W.

THE CURRENT APPLICATION

In August of 2022 the Applicant submitted the current application for site plan approval to use the first floor of the existing building for the proposed Catering Restaurant. Because of the nature of the Catering Restaurant, the applicant's representative explained that it has less intensive customer and employee parking needs than a more traditional restaurant but requires on-site facilities to park refrigerated commercial box trucks to enable catering orders to be transported to customers. Therefore, as a part of the application the Applicant is requesting that additional parking spaces be designated for accessory parking of commercial vehicles pursuant to Village Zoning Law §6.1.3.7.1 for the Catering

Restaurant use. Parking spaces 20, 21, 22, 23, 30, 31, 32, and 33 are proposed to be used for this purpose as indicated on the site plan. This area is outside of the Front Building Setback and complies with the required side and rear yard setbacks. During the public hearing, the Applicant's representative explained that the box trucks cannot fit in a single parking space, so setting aside the above-referenced spaces will allow the Applicant to park up to 4 box trucks within the designated area.

As originally proposed, the applicant was also seeking a special use permit pursuant to Village Zoning Law §6.1.3.7.2 to permit the parking of commercial vehicles that are not accessory to a principal use on the Property to occur on the Property. However, at the public hearing on October 19, 2022, as confirmed in a letter from the Applicant's representative dated October 26, 2022, the applicant withdrew the application for the special use permit for the non-accessory commercial parking of vehicles on the Property.

As mentioned above, water service to the Property is provided by an onsite private water system (well) which is subject to regulation and review by the Rockland County Department of Health. By letter dated November 3, 2022, the Rockland County Department of Health notified the Applicant of violations of the New York State Sanitary Code related to the on-site well and directed the Applicant about the steps that must be taken to rectify the violations. At the November 16th session of the public hearing, the Applicant's representative advised the Board that the Applicant was already taking steps to address the violation and was not using water from the well on the Property.

AGENCY REFERRALS AND COMMENTS

Because the Property is located within 500 feet of Route 9W and the Village/Town of Clarkstown municipal boundary, this application was referred to the Rockland County Department of Planning for review pursuant to General Municipal Law 239-m.

By letter dated October 17, 2022 the Rockland County Department of Planning recommended several modifications to the proposed application. The Department of Planning's comments are summarized below in bold italics and the Planning Board's response appears below the comment.

Comment 1: The Village must determine whether the proposed use qualifies as a permitted restaurant use in the OB District. If it does not, a use variance will be required.

Response 1: The Zoning Inspector of the Village of Upper Nyack has determined that the Catering Restaurant is a permitted use.

Comments 2, 3, and 4: Comments 2, 3, and 4 relate to the application for a special use permit to park non-accessory commercial vehicles on the Property.

Responses 2, 3, and 4: The application for a special use permit to park non-accessory commercial vehicles on the Property has been withdrawn.

Comment 5: *The applicant must show the area designed for snow storage on the site plan as required by Zoning Law §6.1.3.3.6.*

Response 5: An area reserved for snow removal stockpiling has been added to the site plan.

Comment 6: *“A note on the site plan indicates the six western spaces were approved for overnight parking of cargo van and construction vehicles. It must be clarified whether these vehicles are considered commercial vehicles. If so a special permit is required.”*

Response 6: The referenced cargo and construction vehicle parking does qualify as commercial vehicle parking. The parking of such vehicles is accessory to the HVAC company’s office and storage use of the Property was permitted pursuant to Village Zoning Law §6.1.3.7.1 by site plan approval granted by the Planning Board on May 18, 2022. Therefore, no special use permit is required. As a condition of this approval (see conditions below) the applicant has been directed to add a section reference to Village Zoning Law §6.1.3.7.1 in the map note near these spaces to clarify the authority pursuant to which they were approved.

Comment 7: *“Section 5.3.3.2 of the Zoning Code requires a planting strip that has a width of 10 feet be maintained along the lot’s Route 9W frontage. For each 100 lineal feet (or major fraction thereof), there shall be four deciduous shade trees and two evergreen trees. Shrubs, hedges, ground covers, and flowers must also be disbursed in this area. A landscaping plan that includes these elements must be provided to help shield the view of the proposed vehicle storage from the State Highway.”*

Response 7: Pursuant to Village Zoning Law §5.3.3.2 the Planning Board may waive the requirements of such section provided it finds that the landscaping is adequate to buffer the improvements from Route 9W. The Planning Board hereby grants a waiver from the landscaping requirements of Section 5.3.3.2 and **overrides** comment 7. Currently there are two landscaped islands along the Property’s 9W frontage. The southern island, which is generally in front of the principal building, is all grass and the larger, northern island, which is in front of the parking area, is grass with one existing 16” DBH flowering Dogwood tree. The Applicant is proposing to add Seven (7) three-gallon Juniper shrubs and six (6) three-gallon Inkberry Holly shrubs to the northern planted island. These evergreen shrubs are salt resistant, will have a planted height of approximately 18 inches, and will grow to a mature height of approximately 3 feet. Although they will not completely obscure the view of the parking area on the Property, they will beautify the Property’s 9W frontage and will provide a visual buffer to soften the view of the parking area from Route 9W. The Planning Board is concerned that placing larger plantings within that area will obscure the sight lines from the driveway entrance and exits on Route 9W. The Planning Board finds that the proposed landscaping strikes the right balance of screening and visual improvement to the Property’s frontage with preservation of adequate sight lines.

Comment 8, 9, and 10: *The application must be referred to the New York State Department of Transportation, the Town of Clarkstown and the New York/New Jersey Trail Conference for review, and any comments of such agencies must be addressed. Any permits required by the New York State Department of Transportation must be obtained.*

Response 8, 9, and 10: The application has been referred to the New York State Department of Transportation, the Town of Clarkstown and the New York/New Jersey Trail Conference. The Town of Clarkstown, by letter dated September 28, 2022 (sic), deemed this application a matter of local concern. No comments were received from the Department of Transportation or the Trail Conference. This approval will be conditioned upon the Applicant obtaining permits from the Department of Transportation if such permits are required.

Comment 11: *“The northern entrance to the site is proposed to be reconfigured so that a vehicle entering the site does not conflict with a vehicle parked in the northeastern space [Space 19]. However this new entrance will still only leave approximately 14-15 feet for the vehicle to park, which is insufficient. This space must be removed so that there is no conflict between parked vehicles and those entering the site.”*

Response 11: The Planning Board hereby **overrides** this comment. The Property is currently benefitted by a parking variance permitting 41 spaces where 44 is required. Therefore, no spaces should be removed. At the recommendation of the Village Engineer, the Planning Board will condition the grant of this site plan approval on the use of parking space 19 by compact cars only. The applicant will be directed to include a pavement marking in 6-inch white letters labeling the space “Compact Car Only”. The curb realignment referenced in Comment 11, which was required as a part of the May 18, 2022 approved Site Plan for the Property, along with the restriction on the use of space 19 for compact cars only will preserve this additional space but limit the potential for conflict with the entrance driveway

Comment 12: *The August 9, 2022 site plan illustrates an area with an unknown owner between the western property line and the municipal boundary. The 2021 tax maps depicts the western boundary as the municipal line. The applicant and the Village shall determine whether the subject property is part of this discrepancy.*

Response 12: The Applicant has corrected this discrepancy on the site plan and now shows the Property’s western boundary to be coterminous with the municipal boundary.

Comment 13: *The vicinity map was generated using information provided by the GIS Division of the Rockland County Planning Department. This must be credited.*

Response 13: Credit to the GIS Division of the Rockland County Planning Department has been added to the site plan.

BOARD FINDINGS (see VILLAGE ZONING LAW §10.6)

1. Vehicular and Pedestrian Circulation. The proposed application is the reuse of the first floor of the existing building for the Catering Restaurant and the related accessory parking of commercial vehicles. No new disturbance or site work is proposed as part of this application. Although the Applicant is seeking to use some of the existing parking spaces for the accessory parking of commercial vehicles for the Catering Restaurant, because the Catering Restaurant is expected to have a parking demand that is significantly less than a traditional restaurant, the Planning Board finds that the parking will still be adequate on the Property and the flow of pedestrian and vehicular traffic through the existing curb cuts and driveways on the Property will not be negatively affected. The Applicant has agreed to restripe the parking area, which will more clearly define the flow of traffic through the Property. It has also agreed to mark parking space 19 as a compact car space to reduce the risk of conflict between a car in that space and a car entering the Property from Route 9W.

2. Site Layout. No changes to the existing site layout are proposed.

3. Screening, Landscaping and Buffer Areas. No physical changes other than the restriping of the parking area and the addition of landscaping within the planted island adjacent to Route 9W are proposed as a part of this application. Because the flat, usable portion of the Property is almost entirely covered with existing impervious surfaces and other improvements, and no changes to those improvements are proposed, there is no opportunity to add additional landscape screening along the side property lines. The Property to the north is vacant and the property to the south is a similarly improved commercial property and therefore having the side yards of the Property remain in their existing condition will not negatively impact the surrounding community. Because of the topography of the lot, the improvements on the Property are setback approximately 390 feet from the rear lot line and obscured from view from the residentially-zoned land in the Town of Clarkstown by significant slopes and vegetation. For the reasons explained above in response to Rockland County Planning Comment number 7, the Planning Board waives the requirements of Section 5.3.3.2 and finds that the proposed landscaping to be added along Route 9W is adequate to soften and improve the view of the Property from Route 9W.

4. Stormwater Management. The Applicant is not proposing any additional areas of impervious surface coverage as a part of this application. Therefore, no additional stormwater mitigation is needed.

5. Utility Services. No change in utility service to the Property is proposed as a part of this application. The Planning Board has reviewed the violations issued by the Rockland County Department of Health related to the existing private water supply on the Property and will condition the grant of this approval on the remediation of the on-site private water supply system to the satisfaction of the Rockland County Department of Health.

6. Conformance with the Village Comprehensive Plan. The Comprehensive Plan of the Village of Upper Nyack encourages commercial uses in the OB District along the 9W corridor. The proposed restaurant use is a permitted commercial use and is in keeping with the goals of the Comprehensive Plan.

7. Clearing and Grading. No clearing, grading or other site disturbance is proposed as a part of this application.

DETERMINATION AND CONDITIONS

Based on the foregoing, the materials submitted in support of this application, and the information provided at the public hearing on this application, the Planning Board approves the *Site Plan, 536 N. Highland Ave. (Rt. 9W)*, prepared by Kier B. Levesque, RA, dated August 9, 2022, last revised October 26, 2022, subject to the following conditions:

1. Conditions to be satisfied before the Chairman signs the site plan.

- a. The location of the well shall be shown on the site plan.
- b. The Applicant shall correct the typographical error so that the adjacent municipality reads “Town of Clarkstown.”
- c. The Applicant shall add a reference to Village Zoning Law §6.1.3.7.1 following the note reading “Existing overnight parking of cargo vans and construction vehicles Hours 5pm to 9am daily. Approved 5.18.22.”
- d. The Site Plan shall be revised to include an entry in the revision note section to indicate the date that the plan is submitted for Planning Board signature. The description for the revision date note shall read “For PB Signature.”

2. Conditions to be satisfied before a Certificate of Occupancy for the restaurant use is issued by the Building Department.

- a. The Applicant shall: (i) label parking space 19 “Compact Car Only” in white 6-inch letter pavement markings, and (ii) restripe the parking area including all pavement markings directing the one-way flow of traffic through the Property.
- b. The Applicant shall fully resolve all violations issued by the Rockland County Department of Health related to the water system on the Property and obtain an approval letter from the Rockland County Department of Health before placing the water system back into service.
- c. The Applicant shall provide two (2) copies of an as-built survey signed and sealed by a licensed professional to the Zoning Inspector.
- d. The Applicant shall provide the Zoning Inspector with a certification signed and sealed by a landscape architect or other qualified professional certifying that all landscaping shown on the Site Plan was installed in compliance with the requirements of the Site Plan.
- e. The Applicant shall obtain all permits, if any, required by the New York State Department of Transportation.

3. General or Ongoing Conditions.

a. The Inkberry and Juniper shrubs proposed to be located along the Property's 9W frontage shall be kept in a healthy condition or replaced with the same or a substantially similar species.

b. This final site plan approval authorizes the Applicant to undertake only the activities specifically set forth herein, in accordance with this resolution of approval and as delineated on the final site plan endorsed by the Planning Board Chairman. Any changes or modifications to such plan require amended site plan approval from the Planning Board.

c. Not more than 4 commercial box trucks may be parked within parking spaces 20, 21, 22, 23, 30, 31, 32 and 33.

4. Expiration of Approval.

a. Except as otherwise provided in Village Zoning Law §10.4.1, this approval shall expire if it is not signed by the Planning Board Chairman within 90 days of the date hereof, if a building permit for the work proposed herein is not issued within 3 years of the date hereof, or if a Certificate of Occupancy or Certificate of Compliance has not been issued within 2 years of the date that the building permit is issued.

b. This Site Plan approval shall expire if the use permitted hereunder substantially ceases for a period of 12 consecutive months.

c. The portion of this approval permitting the parking of accessory commercial vehicles in parking spaces 20, 21, 22, 23, 30, 31, 32, and 33 is granted because the Applicant has demonstrated that the parking demand for the Catering Restaurant will be less than a traditional restaurant and therefore adequate parking will be available for employees and patrons notwithstanding the spaces designated for commercial vehicle parking. Accordingly, approval to park commercial vehicles in such spaces shall expire if the Catering Restaurant's ceases operations on the Property.

DATED: January 18, 2023

VOTE: Motion to Approve Resolution:

Second:

Vote:

Village of Upper Nyack Planning Board

William Pfaff, Chairman