

January 27, 2023

Philip D. Neuer, Chairman, and Members
Township of West Orange Zoning Board of Adjustment
66 Main Street
West Orange, New Jersey 07052

**Re: ZB-21-21
Daughters of Israel, Inc.
Block 171, Lot 12
1155 Pleasant Valley Way
Application for Preliminary & Final Major Site Plan Approval,
Use Variances and Bulk Variances
Club Liquor License**

Dear Chairman Neuer and Board Members:

During the initial public hearing concerning this matter held on September 15, 2022, the applicant was asked to review and address certain legal issues concerning the possibility of serving alcoholic beverages as an amenity, for independent living residents and their guests, in the pub restaurant being contemplated as part of the proposed new campus. In response, Daughters of Israel ("Daughters") submitted a detailed response by letter dated September 22, 2022, in which we explained that Daughters was considering seeking what is known as a "club license" to authorize the sale of alcoholic beverages for on-premises consumption, as authorized by N.J.S.A. 33:1-12. That response is incorporated herein by reference, in full.

During the public hearing on January 19, 2023, the issue arose again, following testimony by the applicant's witnesses to the effect that club licenses are common in newer facilities of this type. The Board asked Daughters to provide a list of other similar facilities which have club licenses. This submission is intended to address that request and provide further information concerning the acquisition and use of such a license.

Based on a review of the New Jersey Division of Alcoholic Beverage Control's "Retail Licensee Listing" dated January 5, 2023, the following continuum of care facilities currently have a club license which permits the service of alcoholic beverages for on-premises consumption:

1. Cedar Crest, 1 Cedar Crest Drive, Pompton Plains
License #: 1431-31-014-001
Licensee: Mountainview Social Club Inc.
2. Fellowship Village, Inc., 8000 Fellowship Road, Basking Ridge
License #: 1802-31-015-001
Licensee: The Fellowship Club Inc.

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3. Lantern Hill, 535 Mountain Avenue, New Providence
License #: 2011-31-006-002
Licensee: Hilltop Social Club Inc.
4. Seabrook, 300 Essex Road, Tinton Falls
License #: 1336-31-018-002
Licensee: Seabrook Village Residents Association Inc.
5. Heath Village, 430 Schooleys Mountain Road, Hackettstown (Washington Twp.)
License #: 1438-31-008-001
Licensee: Heath Village

The first four facilities are registered as continuing care retirement communities (“CCRCs”); the fifth offers similar living options but is not registered as a CCRC.

Club licenses involve a number of regulatory requirements, as outlined in our letter dated September 22, 2022. To summarize:

- A club license may only be issued to organizations operated for benevolent, charitable, fraternal, social, religious, recreational, athletic, or similar purposes. N.J.S.A. 33:1-12.
- Alcoholic beverage sales can only be for immediate consumption on the licensed premises, and must be “to bona fide club members and their guests.” N.J.S.A. 33:1-12, Section 5; N.J.A.C. 13:2-8.8. No sales for off-premises consumption are permitted. N.J.A.C. 13:2-8.9.
- To satisfy the statutory requirement concerning service only to bona fide club members and their guests, the usual arrangement is for the CCRC to set up a separate “club” entity operated by the club members.
- Residents of the CCRC apply for membership, and once admitted, would become club members. Clubs must have been in continuous operation for a period of three years immediately prior to application for a license, N.J.A.C. 13:2-8.3, and have been in exclusive possession and use of a clubhouse or club quarters during the entirety of that time period. N.J.A.C. 13:2-8.4. The Director of Alcoholic Beverage Control (the “Director”) may waive this provision upon a showing of special cause, N.J.A.C. 13:2-8.5(b), and often does so in the case of CCRCs.
- Officers of the club and members of its governing body may not have been convicted of a disqualifying offense pursuant to the alcoholic beverage control laws (Title 33 of New Jersey statutes) unless the statutory disqualification resulting from such conviction has been removed by order of the Director of Alcoholic Beverage Control.

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They also must otherwise be qualified in accordance with Title 33, the regulations promulgated thereunder, and municipal ordinance. N.J.A.C. 13:2-8.6.

- A list of club members must be maintained. N.J.A.C. 13:2-8.7.
- A minimum three-day waiting period applies to admission into the club so that members cannot be granted instant membership. N.J.A.C. 13:2-8.1.

Thus, the regulations governing club licenses substantially restrict who may obtain one and how such a license must be operated.

As noted previously, the Township's Land Use Regulations do not regulate uses based on whether or not sale or consumption of alcoholic beverage occurs, or whether an alcoholic beverage license is obtained. Thus, there is no requirement that an existing CCRC, restaurant, or other use apply for or obtain approval from the Planning Board or Zoning Board of Adjustment to operate with a liquor license.

Chapter 11 of the Township Code, titled "Alcoholic Beverage Control," provides for the maximum number of each license type which may be issued. In the case of club licenses, § 11-3.4 sets that number at one club license, and that license has been issued to another licensee.¹ Thus, before Daughters could even apply for a club license, that ordinance would have to be amended, in accordance with the usual requirement of two readings, public notice and public hearing, to authorize the issuance of an additional club license.

As with any liquor license, approval of the local "issuing authority," in this case the Township Council, is required before a license can be issued. The application for an alcoholic beverage license is quite thorough and requires substantial information about the licensee, its members, and the licensed premises. Thus, there is a comprehensive vetting process, including criminal background checks, that would be performed before a license could be issued. Further, alcoholic beverage licensing is within the exclusive jurisdiction of the New Jersey Division of Alcoholic Beverage Control and the Township Council; the Zoning Board of Adjustment has no role in that process.

Finally, as noted in our letter dated September 22, 2022, it is not certain that Daughters will seek to obtain a club license. It is merely being considered, and therefore was included as part of the application to the Zoning Board of Adjustment in the interest of transparency. If Daughters ultimately decides to seek a club license, that will not occur for at least several years (until at least the completion of Phase 2).

¹ License #0722-31-074-002, issued to West Orange Elks Home Inc., for premises operated by BPO Elks #1590 West Orange located at 424 Main Street.

GIBBONS P.C.

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For the foregoing reasons, it is respectfully suggested that the potential for seeking a club license at an undetermined future date, upon amendment of the Township's alcoholic beverage ordinance, is speculative at best, and in any event, is not a matter which is properly before the Zoning Board of Adjustment. If and when Daughters elects to seek such a license, the Township Council will have the authority and the responsibility to conduct an appropriate review as part of the ordinance amendment and license application processes.

Very truly yours,

A handwritten signature in black ink, appearing to read "Howard D. Geneslaw", written in a cursive style.

Howard D. Geneslaw
Director

HDG

cc: Daughters of Israel
Petry Engineering, LLC
KDA Architects
Banisch Associates
Eventus Strategic Partners