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## VILLAGE OF WARWICK INCORPORATED 1867

CHAIRMAN: GEORGE AULEN  
MEMBERS: WILLIAM OLSEN, JAMES PATTERSON, JESSE GALLO & RYAN  
DENERLEY  
Alternate: RAEY WEBSTER

VILLAGE OF WARWICK  
PLANNING BOARD MEETING  
OCTOBER 19, 2017

The monthly meeting of the Village of Warwick Planning Board was held on Thursday, Oct. 19, 2017 at Town Hall located at 132 Kings Hwy, Warwick, NY. Present were: George Aulen, Bill Olsen, Jim Patterson, Jesse Gallo, Ryan Denerley, Village Engineer, David Getz and Planning Board atty, Robert Dickover, John Cappello, Ross Winglovitz, John Christison, Michael DeCelestino. Others present were: Geraldine Driscoll, Margaret Bowes, Edward Sattler, Patrick Gallagher, Jackie Wright, Renelle Lorry, Margaret McNeely, Dan Mack, Teri Mack, John Maxcy, Harry Clark, Jack Pennings, Rachel Berlin, Caroline Martin, Stephen Gross, Kerry Boland, Ruth Woods, Marcela Gross, David Gordon, Dave Smith, Tom Andreas, Rosanne Andreas, Joel Wadeson, Lauren Buturla, Tyler Carey, Fred Schweikent, James Carton, Glen Carter, Matt Lockwood, Susan Graf, Christopher Smith, John Gallagher, Christine Toohey, Gail Graf, Robert Angello, Janice Grave, Jeannine Dreyhaupt, Jim Sciarra, Judith Dickinson and others.

A MOTION was made by Jim Patterson, seconded by Bill Olsen and carried to accept the minutes of the September 21, 2017 minutes. (4 Ayes) {1 Abstention – Ryan Denerley}

Mr. Aulen – The Board received a letter from Hudson Highland Environmental Consulting which will be made part of the record. The Board received a draft the supplement of Part 3. It summarizes the information that was previously discussed and reviewed for the Negative Declaration adopted at the last meeting. Has the Board had an opportunity to review this? The entire Board responded – Yes.

A MOTION was made by Jim Patterson, seconded by Bill Olsen and carried to accept the supplement to Part 3 of the Long EAF. (5 Ayes)

Mr. Aulen read the public hearing notice.

Mr. Aulen – There is a purpose to this hearing; What it is about and just as importantly what it is not about. Tonight’s hearing is concerned with a site plan proposal for an eating and drinking establishment at 16 Elm Street. The site plan before this board is the specific proposal for this project. It shows the location of buildings, driveways, parking, drainage facilities and the various accessory infrastructure elements that make up the proposal.

This hearing is designed to hear your comments on these specifics. We invite any comments or suggestions you may have regarding the site plan for the project.

The Board wants your comments, this hearing is designed to receive your comments. We will listen to you carefully. However, there should be and there will be dignity and order to our proceedings. In a moment the applicant’s consultants will describe and outline the project. It is not possible to explain every nuance of what is proposed. The site plan has been and remains available for public inspection at the office of the Building Department.

When the applicant has concluded their presentation we will then turn to you for comments.

Just as it is not possible to explain every nuance of the project, it is not possible to answer every question you may have, at least not to any great extent.

If we spent all night answering questions we would never get to the task at hand.

That task is to learn from you what the Board or its consultants might not have yet considered.

Therefore, we ask you not to ask questions, but rather to raise issues.

Your questions will not likely be answered tonight but we will consider all of your comments and questions, and consider all of the issues you raise, into our future proceedings.

You are a large crowd. I am sure many of you wish to speak. In order to hear from you in an orderly fashion, please note the following ground rules for this portion of the meeting:

Everyone wishing to speak must sign in. There is a sign-in sheet. Before making a comment, you must identify yourself and give your address and we ask that you spell your name slowly for our records. The comment of each person is limited to 3 minutes. If time permits, we may hear from you a second time. The time of each person belongs to that person; it may not be assigned or transferred to any other person. The board is interested in issues but it is not interested in the number of people who share interest in each issue. Therefore, please, if the issue has already been raised; if the point has already been made, do not raise it or make it again. We will deal with each issue brought to us after the hearing is closed and in the normal course of the Board’s procedures.

A MOTION was made by Bill Olsen, seconded by Jesse Gallo and carried to open the public hearing. (5 Ayes)

A MOTION was made by Jim Patterson, seconded by Ryan Denerley and carried to close the public hearing. (5 Ayes)

A MOTION was made by Jim Patterson, seconded by Bill Olsen to adjourn the meeting. (5 Ayes)

Attached please find the stenographer, Michael DeCelestino's report of the public hearing, Sign In Sheet and a letter from Hudson Highland Environmental Consulting.

Respectfully submitted,

Maureen J. Evans,  
Planning Board secretary



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October 13, 2017

George Aulen, Chairman  
Village of Warwick Planning Board  
77 Main Street  
Warwick, NY 10990

Re: 16 Elm Street

Dear Chairman Aulen and Honorable Members of the Board:

I represent a group of neighbors in the vicinity of 16 Elm Street. I am providing these comments on their behalf regarding the proposed Yesterday's Irish Pub at 16 Elm Street. I want to begin by objecting strenuously to the adoption of a negative declaration (neg dec) following the review of the Environmental Assessment Form (EAF) prepared for this project. Based on more than 30 years of preparing and reviewing environmental assessments prepared under SEQRA, I submit that the issuance of this neg dec was improper and without a sound basis. In fact, I believe the action taken by the Planning Board is the most egregious violation of the SEQRA standards that I have witnessed during the entire course of my professional career, and I have advised my clients to pursue an Article 78 legal action against the Planning Board both for making the neg dec decision, and for what appears will be the inevitable approval of the project. Based on what I present below in this letter, I strongly advise the Planning Board to rescind the neg dec and require further study, including to the point of issuing a positive declaration and requiring the preparation of a draft environmental impact statement (DEIS) that would be subject to public scrutiny and comment.

### SEQRA

The standards that reviewing agencies such as the planning board must adhere to in conducting a SEQRA review have been well established by the courts in New York State. In particular, the standards for determining whether there might be at least one significant adverse environmental impact, requiring more study in the form of an environmental impact statement, apply here. To do such a declaration of significance, and in particular to justify a "negative declaration such as the Planning Board has done in the case of 16 Elm Street, SEQRA requires the lead agency to identify "the relevant areas of environmental concern" and to take a "hard look" at them. *Merson v. McNally*, 90 N.Y.2d 742, 665 N.Y.S.2d 605, 609 (1997) [citing *Matter of Chemical Specialties Mfrs. Assn. v. Jorling*, 85 N.Y.2d 382, 397, 626 N.Y.S.2d 1 (1995)]; *Kahn v. Pasnik*, 90 N.Y.2d 569, 664 N.Y.S.2d 584 (1997).

Where the lead agency issues a "neg dec", as the Planning Board has done in the case of 16 Elm Street, the agency must support their findings by a written, narrative "reasoned elaboration." See, e.g., *Board of Cooperative Educational Services of Albany-Schoharie-Schenectady-Saratoga Counties v. Town of Colonie*, 268 A.D.2d 838, 702 N.Y.S.2d 219 (3d Dep't 2000); *Group for South Fork, Inc. v. Wines*, 190 A.D.2d 794, 593 N.Y.S.2d 557 (2d Dep't

1993); *West Branch Conservation Ass'n, Inc. v. Planning Board, Town of Ramapo*, 177 A.D.2d 917, 576 N.Y.S.2d 675 (3d Dep't 1991); *Morrell v. New York State Dept. of Environmental Conservation*, 119 A.D.2d 1009, 500 N.Y.S.2d 586 (4th Dep't 1986).

The lead agency cannot therefore simply set forth a "conclusory statement, unsupported by empirical or experimental data, scientific authorities or any explanatory information." *Tehan v. Scrivani*, 97 A.D.2d 769, 771, 468 N.Y.S.2d 402, 406 (2d Dep't 1983).

The analysis supporting a negative declaration should be adequately documented, and "should take into account (1) 'the impacts which may reasonably expected to result from the proposed action' 6 NYCRR [§617.7(c)(1)] as compared against the criteria listed in 6 NYCRR [§617.7(c)(1)(i-xii)]." *Fernandez v. Planning Board of Pomona*, 122 A.D.2d 139, 141, 504 N.Y.S.2d 524, 526 (2d Dep't 1986).

When determining environmental significance using the criteria outlined in 6 N.Y.C.R.R. §617.7(c), the lead agency is responsible for the adequacy of the information contained in the EAF. *Kirk-Astor Drive Neighborhood Ass'n. v. Town Board of Town of Pittsford*, 106 A.D.2d 868, 483 N.Y.S.2d 526 (4th Dep't 1984), *app. dis'd* 66 N.Y.2d 896, 498 N.Y.S.2d 791 (1985); *Matter of LaDelfa v. Village of Mt. Morris*, 213 A.D.2d 1024, 625 N.Y.S.2d 117 (4th Dep't 1995).

"The threshold at which the requirement that an EIS be prepared is triggered relatively low." *Chinese Staff v. City of New York*, 68 N.Y.2d 354, 509 N.Y.S.2d 499 (1986). It only requires the reasonable possibility of at least one adverse environmental impact. In contrast, because it ends the SEQRA review, a negative declaration requires an affirmative finding of no significant adverse impact.

## EAF Part 2

The purpose of Part 2 of the EAF is to identify potential adverse impacts that need further consideration by the reviewing agency to make a declaration of significance. The questions included in Part 2 provide suggested thresholds to help the reviewing agency identify what, if any, impacts may occur as a result of the project, and the potential magnitude of potential impacts. Those potential impacts that appear to be similar or exceed the thresholds provided are considered to have a moderate to large impact, and should receive further analysis and discussion in a Part 3. Because of its perceived potential adverse impacts, this proposal has generated a lot of controversy among not only immediate neighboring property owners, but also Village residents several blocks away. It is therefore difficult to conceive that the Planning Board would not find that the areas of concern raised by these residents deserve further scrutiny. However, that is precisely what has occurred. The Planning Board concluded that the proposed project will have no impact, or only a very small impact, despite very loud and persistent voices and uncontroverted professional evidence to the contrary.

In addition, the New York State Department of Environmental Conservation (NYSDEC) provides further guidance to assist reviewing agencies in making Part 2 determinations. In understanding the concept of what potential "moderate" and "large" impacts mean, the NYSDEC provides these definitions:

*"Moderate Impact: These are impacts that are moderate in magnitude and that have more impact on environmental resources. Moderate impacts can also occur when the impact affects a larger part of the parcel or even extending to a small area just beyond the parcel. Moderate environmental impacts may be either isolated (only in one location), or of regional concern (in a larger area). They generally are longer lasting (duration measured in weeks or several months), are often reversible and can be more readily addressed through mitigation measures or project changes. The resources affected often have broader local or regional concern and often are activities or resources that are regulated or protected by some local, state, or national agency.*

*"Large Impact: These are impacts that are severe in magnitude or cover larger areas in the neighborhood or community. The environmental impacts anticipated could be irreversible, challenging to mitigate, of wide regional scale, or of long duration. A large impact may also be unlikely to occur, but if it does, would be very damaging to the environment. The resources affected often have broader local or regional concern and often are activities or resources that are regulated or protected by some local, state, or national agency." (Emphasis added)*

There are many areas within the Part 2 in which it appears there should have been no question that there is a potential "moderate to large impact." Contrary to the conclusions reached by the Planning Board. I believe each of the following areas should be considered to have a moderate to large impact, and thereby requiring further discussion in a Part 3:

##### **5. Impact on Flooding**

The proposed action may result in development on lands subject to flooding.

Suggested thresholds:

- a. The proposed action may result in development in a designated floodway.
- b. The proposed action may result in development within a 100 year floodplain.
- c. The proposed action may result in development within a 500 year floodplain.

All three of the suggested threshold conditions exist on the project site, and further, all three designated types of areas are proposed to be developed to some degree and covered with impervious surfaces. The applicant has claimed that areas covered with gravel are considered to be impervious, with both paved and gravel covered areas being assigned a runoff coefficient number (CN) of 98. The applicant further claims that some of the gravel surface will be removed, and therefore actually have a beneficial impact. However, the majority of the area designated as being covered in gravel supports the thick growth of grass and other ground cover, which provides clear evidence that the CN is something considerably less than 98. These ground covers could not survive if the underlying medium was truly impervious. It is understandable why the applicant would want to take advantage of the presence of some gravel, and thereby represent that there is no impact because the area being covered with impervious is already impervious, but the existing site conditions clearly indicate pervious conditions currently exist. There is no doubt that replacing grass covered surfaces with macadam or other impervious surfaces will indeed reduce infiltration and increase stormwater runoff. To claim otherwise is disingenuous.

As an example of how this specific question is handled in other communities, I can cite an application in the Town of Philipstown in Putnam County where I am part of a team for a

*Hudson Highlands Environmental Consulting 71 Colonial Avenue, Warwick, NY 10990 (845) 986-5350*

residential application called "Hudson Highlands Reserve." In that case, both floodway and floodplain for the Clove Creek is present on a portion of the property that is being completely preserved in a natural state, and is not proposed for development of any kind. In that case, the Planning Board nonetheless still concluded that the proposed project posed a "potential" moderate to large impact, and required that we provide a discussion on the topic as part of the Part 3 submission. The action taken by that Planning Board, while being conservative, was the correct way of handling this issue under SEQRA and satisfying the "hard look" standard. In the case of the 16 Elm Street proposal, where these areas are being directly impacted and covered with impervious surfaces, it should be incontrovertible that this constitutes a potential "moderate to large" impact.

#### 10. Impact on Historic and Archeological Resources

The proposed action may occur in or adjacent to a historic or archaeological resource.

b. The proposed action may occur wholly or partially within, or substantially contiguous to, an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory.

NYSHPO lists the project site itself with an inventory #7148.00174, identified as "L&H RR Co., Rail Yard & shops." As seen in the graphic below, which overlays a 1933 survey of the rail yard



Figure 1: 1933 property survey overlaid on project plans

on the proposed project plans, proposed excavations for the building will occur in areas that were known to support the paint shop (where engines and cars were brought in to be painted) and the casting house, and a proposed excavation for the detention pond will occur where there had been the car shop and several railroad sidings. It is therefore clear that the proposed action has the "potential" for a "moderate to large" impact. Some mention was made of a letter from SHPO that may alleviate some responsibility on the part of the applicant, but this letter and any discussion regarding any archaeological investigation that may have preceded it needs to be addressed in a Part 3 and made available for public review. This is in part the purpose of a Part 3; to provide a place in the EAF for this type of elaboration.

### **13. Impact on Transportation**

The proposed action may result in a change to existing transportation systems.

- a. Projected traffic increase may exceed capacity of existing road network.

Using ITE (Institute of Traffic Engineers) rates, a 190-seat restaurant could generate well over 500 vehicle trips per day, with 49 vehicle trips occurring during a peak hour. The provision of a bar at the same location could potentially generate as much as an additional 41 vehicle trips during the peak hour. All of this would occur on a minor collector street that was never intended for significant commercial use. On this issue, 3 of the 5 members of the Planning Board actually agreed that a traffic study should be required, but the Board then allowed the applicant to design what precisely would be studied. The resultant study, which was limited only to the Elm Street/West Street intersection and the length of Elm Street between West Street and the railroad tracks, was completely inadequate. At a minimum, the study should have also included the Elm Street/Orchard Street intersection and the Mitchell Corners driveway/Car Wash driveway as an additional 4-way intersection. Traffic concerns have been raised by residents on Welling Ave., who assert that their street is heavily utilized by traffic avoiding Main Street and the two lights in the middle of the Village, and they believe will be used as a primary access to the pub. By leaving out the Elm Street/Orchard Street intersection, the traffic study as designed fails entirely to address this concern. The timing of the traffic study also makes it inadequate as it was conducted during the summer, when school is out, and many local residents who normally would be utilizing the streets in question are on vacation. At a minimum, however, even the inadequate traffic study should be provided as part of a Part 3 discussion in the EAF.

### **15. Impact on Noise, Odor, and Light**

The proposed action may result in an increase in noise, odors, or outdoor lighting.

- a. The proposed action may produce sound above noise levels established by local regulation.

This issue is probably the single most important area of concern for the neighborhood, largely stemming from the proposed outdoor seating with a speaker system, but also from the operation of venting equipment and other mechanicals. Chapter 145 (Zoning) of the Village Code provides guidance for the Planning Board in considering site plans. Paragraph 145-91, sub-paragraph 4.12 states, "*(s)tructures shall be located, constructed, and insulated to prevent on-site noise from interfering with the use of adjacent properties.*" The residents hired a professional sound engineer who provided an analysis to the Planning Board that, given the extreme close proximity of the proposed outdoor seating to the neighboring residential properties, it will essentially be impossible for the project as proposed to adhere to the Village

noise regulations, particularly the noise performance standards in section 145-104B(1) of the village code. In some cases, site development would come as close as 20 to 30 feet from the back doors of neighboring homes. It will be impossible to shield the noise generated by entertainment, customer voices, and outdoor equipment so as "to prevent on-site noise from interfering with the use of adjacent properties," or to meet the numerical limitations in the code, as demonstrated by the residents' consultant (and unrefuted by the Planning Board).

The Planning Board's response was shockingly insufficient, and completely failed to take any steps to evaluate the potential impact despite the obvious problem, the overwhelming concern and the technical evidence submitted to them. Instead, the Board accepted the applicant's promise to take noise readings *after* the project was built and operating, but without any potential remedy if the expected noise violations actually do occur. With no analysis of the noise impact whatsoever, it is incredible that the Planning Board could then conclude that there was "no or small impact" and not require a more involved Part 3 analysis. Perhaps, if the Planning Board accepted that a potential large impact may occur and required further analysis, it would lead to the conclusion that outdoor speakers would be prohibited, or that the proposed outdoor seating be taken out of the plans in its entirety. By prejudging, with the complete lack of any credible basis, that there would be noise impact, however, the potential to make a finding that would lead to this type of mitigation is eliminated. As such, this level of review is clearly inadequate, and completely fails to satisfy the "hard look" standard required under SEQRA.

c. The proposed action may result in routine odors for more than one hour per day.

The restaurant operation will necessarily be exhausting cooking smoke and odors to the exterior of the building. The restaurant itself will be as close as 60 feet to a neighboring home. It is incontrovertible that this and other nearby homes will be impacted by the odors vented outside of the restaurant on a daily, year-round basis.

d. The proposed action may result in light shining onto adjoining properties.

While the applicant has taken steps to try to prevent outdoor lighting from shining directly on neighboring properties, the proposed project will unavoidably result in a significant increase in artificial light extending outside the bounds of the project site. Given the residential nature of the neighboring properties, and their close proximity, this should be considered a moderate to large impact.

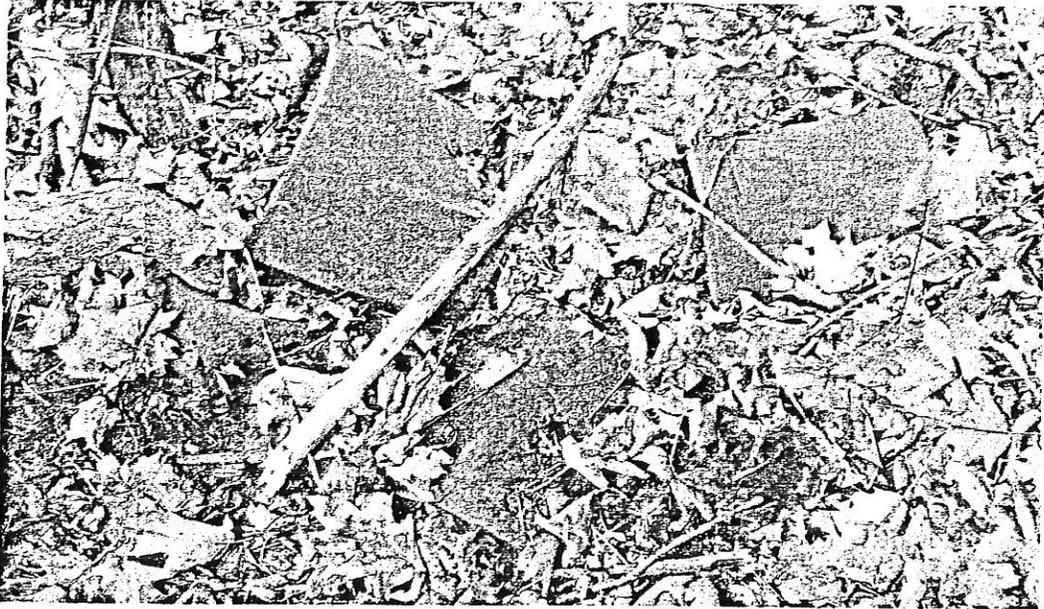
#### **16. Impact on Human Health**

The proposed action may have an impact on human health from exposure to new or existing sources of contaminants.

h. The proposed action may result in the unearthing of solid or hazardous waste.

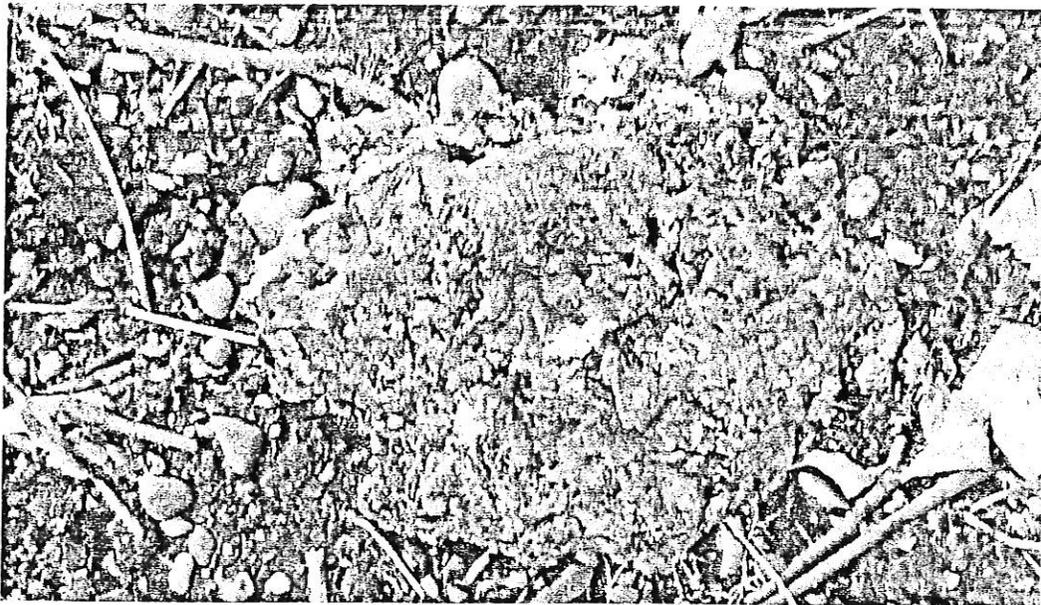
The project site has a history of heavy industrial use over a period of close to 100 years, during which there were no regulatory controls on the handling of hazardous materials. It is extremely likely that during this time, the site became contaminated with hazardous materials. It is particularly notable that a 1933 survey of the property shows an industrial structure used for painting and a casting house within the immediate footprint of the restaurant complex in areas that would be disturbed by excavation.

At least six rotted paint cans can be seen on the surface within the area designated on the 1933 property survey as the paint shop, as seen in Figure 2. The thickness of the steel used in the cans confirm that these cans were not recently dumped on the property. It would be expected that many more would be found beneath the surface.



**Figure 2: Paint Cans on Surface in Area of Paint Shop**

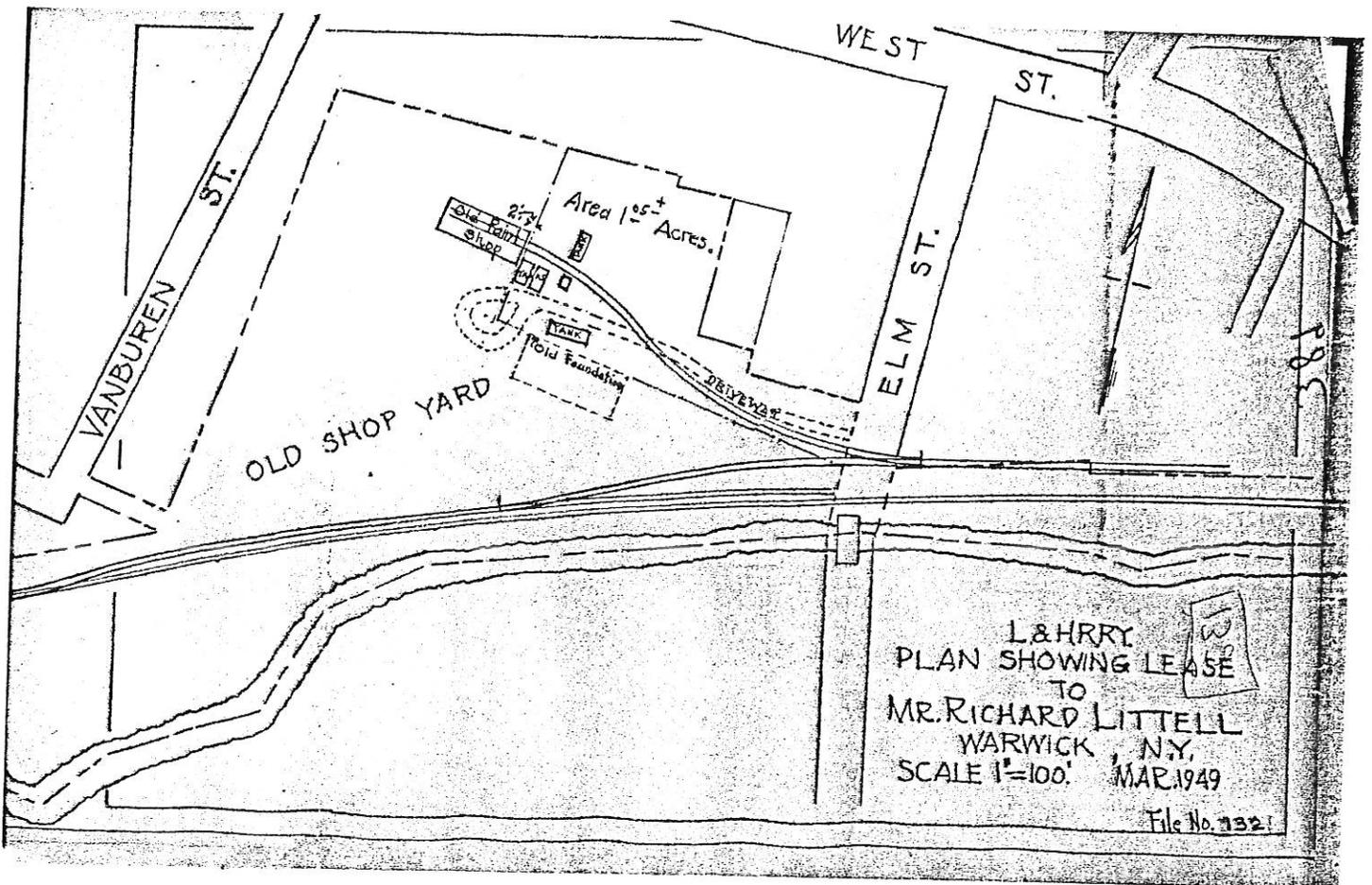
Located closely nearby was also a building utilized for paint storage. Neighbors report finding some paint cans on the site with evidence of lead paint still intact. Similarly, a sample of slag waste (Figure 3) was observed in the vicinity of the casting house.



**Figure 3: Waste Slag in Vicinity of Casting House**

Other industrial structures located on the property, such as the machine shop, car shop, roundhouse, and railroad turntable, could all also be potential sources of hazardous materials extant within the property.

In addition, a 1949 survey (Figure 4) not only still shows the "old paint shop" still in place, but also no less than four features labeled simply as "tanks", with no indication as to what materials may have been contained in the tanks, or whether they were above or below ground. It is entirely possible that if below ground, they may still be in place, including within an area proposed to be excavated for a stormwater basin.



**Figure 4: 1949 Survey Showing Paint House and Tanks**

What appears to be a potential opening to an underground feature is also evident in close proximity to the proposed location of the restaurant and bar (Figure 5).



**Figure 5: Unidentified Industrial Feature Near Building Site**

Especially given the fact that the proposed use will be providing food services, it is imperative that the property be fully analyzed for hazardous materials before any such use is approved, and addressed in a Part 3.

**17. Consistency with Community Plans**

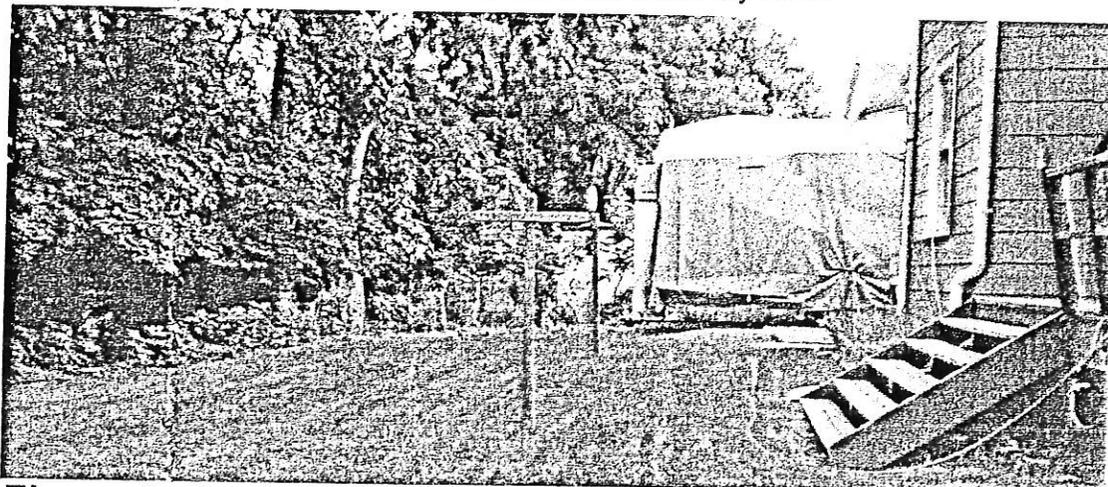
The proposed action is not consistent with adopted land use plans.

- a. The proposed action's land use components may be different from, or in sharp contrast to, current surrounding land use pattern(s).

To avoid floodplain and floodway regulations, proposed building construction was targeted to the extreme northwest corner of the site, where it will be interjected into an existing residential neighborhood that dates back well over 100 years. The project is clearly in sharp contrast to and in conflict with the surrounding residential neighborhood, and will have no meaningful buffering. Chapter 145 (Zoning) of the Village Code provides guidance for the Planning Board in considering site plans. Paragraph 145-91 states that *"(i)n considering and acting upon Site Plans, the Planning Board...shall take into consideration the Public Health, Safety and Welfare, the comfort and convenience of the public in general...and of the immediate neighborhood in particular."* Further, in sub-paragraph 1.2., Chapter 145 advises, that *"(s)ite plans involving non-residential uses proposed adjacent to a residential district or residential uses shall be reviewed with regard to the impact of the development on such district or use."*

It is unlikely that the effect of the floodplain regulations upon the site's eventual development in this manner, and its impact upon the neighboring residential uses, were fully considered when the existing zoning designation was applied. It is difficult to envision how any development of the site as zoned could satisfactorily meet the guidance provided in Chapter 145. In some cases, site development would come as close as 20 to 30 feet from the back doors of neighboring homes. (See Figures 6 and 7 below.) It will be impossible to shield the noise

generated by entertainment, customer voices, and outdoor equipment so as "to prevent on-site noise from interfering with the use of adjacent properties," especially considering the applicant's proposal to erect an outdoor deck that would be utilized for dining and potentially other activities. No fencing, no noise dampening materials, no architectural enhancements can possibly adequately mitigate the impact that would inevitably adversely impact the use and peaceful enjoyment of the residential properties by its occupants. An unavoidable concomitant reduction in property values for these residences will absolutely follow.



**Figure 6: Backyard of 15 Van Buren Street. Property line is coincident with clothesline. Excavation will occur approximately 10 feet to left of clothesline**



**Figure 7: View at 15 Van Buren Street from deck seen above. Arrow points to blue flag that marks corner of proposed pub.**

### **18. Consistency with Community Character**

The proposed project is inconsistent with the existing community character.

e. The proposed action is inconsistent with the predominant architectural scale and character.

Chapter 145 advises in sub-paragraph C (Compatibility) that the Planning Board should seek to accomplish an objective that achieves *"architecture that is compatible with the character and scale of the surrounding neighborhood,"* including *"building size, height, massing and appearance."* Chapter 145 continues in sub-paragraph H to state that a *"building out of context with the surroundings can have a remarkable disruptive effect on the visual character of the Village...The exterior appearance of buildings erected in any neighborhood can adversely affect the desirability of the immediate area and the neighborhood for residential, business and other purposes."* The footprint of the proposed structure would be four to six times that of the surrounding homes, and effectively even larger when the attached deck is considered. The structure would be completely out of scale with these residences that are only a matter of feet away. For instance, the proposed 3500 square foot structure would be more than 5 times the 684 square foot footprint of the immediately neighboring house at 15 Van Buren Street pictured in Figure 6, which would make that home feel dwarfed by comparison, especially given its close proximity as depicted in Figure 7.

As noted in the Warwick Zoning Code contained in Chapter 145, the scale and proximity of the proposed structure, especially in combination with the noise, odor, and light impacts it will impose on the neighboring residential properties can be expected to *"adversely affect the desirability of the immediate area and the neighborhood."* With a loss in desirability, the property values of the neighboring properties will drop, as it is unlikely that families such as those that currently occupy the homes in the immediate area of Van Buren, West, and Elm Streets will continue to be willing to invest in these properties in such close proximity to what will be considered a nuisance use. It is far more likely that these homes will be turned into lower-valued rental properties with transient tenants, permanently changing the character of the community.

The project's inconsistency with neighboring uses and community character is also clearly evidenced by the neighbors' strong and virtually unanimous opposition to the project. Their voices have been evident in many contexts but have not yet formally appeared before the Planning Board because that Board refused to hear from them. Their first opportunity will be at the hearing next week, *after* the Planning Board has already determined on their behalf (without the benefit of their testimony) that they will not be impacted, and where their comments will be limited to just five minutes each.

### **Summary**

The actions of the Planning Board in reviewing the EAF violate the standards of SEQRA that have been established by the courts. As noted in my comments above, the reviewing agency must take a *"hard look"* at all relevant areas of environmental concern, which this EAF fails to satisfy. In issuing a negative declaration, the Planning Board also failed to provide a written, narrative *"reasoned elaboration"* to support their decision. Instead, as has been found inadequate by the courts, the Board issued a simple *"conclusory statement, unsupported by empirical or experimental data, scientific authorities or any explanatory information."*

George Aulen, Chairman  
Village of Warwick Planning Board  
October 13, 2017

In my professional opinion, there are potential significant adverse impacts within the areas of flooding, archaeological resources, traffic, noise, odor, light, hazardous materials, community character and property values, all of which should have been considered as potentially moderate to large impacts requiring the preparation of a Part 3. I therefore believe the Planning Board should rescind the Negative Declaration as provided in the SEQRA regulations [see 6 N.Y.C.R.R. §617.7(f)] so as to require further analysis within a Part 3. I also believe the potential adverse impacts warrant a more intensive investigation that requires a positive declaration under SEQRA. As noted by the courts, "*(t)he threshold at which the requirement that an EIS be prepared is triggered relatively low,*" and I believe that threshold has clearly been satisfied with the proposed action. Further study, with the opportunity for public participation and review, should be done within the context of an environmental impact statement (EIS) in, but not limited to, all these areas of potential adverse impact.

While the proposed development of this parcel may be considered "as of right" in accordance with the current zoning, the Planning Board is nonetheless empowered by SEQRA, Chapter 69 of the Village Code (Flood Damage Prevention), and Chapter 145 of the Village Code (Zoning) to completely reject the proposed use if it finds significant adverse environmental and/or social impacts, and in any event has the legal responsibility under SEQRA to fully investigate those impacts.

Serious consideration should be given to the possibility that given the presence of the floodplain, coupled with the site's recognized historical and archaeological significance, as well as the high potential for the presence of industrial contamination, and the high potential for impacts to the surrounding residential neighborhood, that the proposed use to provide food services on this particular parcel may be inappropriate. A reasonable conclusion may be, from a planning perspective, that the prior use as a parking lot may represent the highest and best use for this land. This alternative, along with the consideration of alternative sites for the proposed restaurant, should be considered within an EIS.

I have advised my clients to pursue an Article 78 lawsuit against the Planning Board either now, based on the decision to issue a negative declaration, or when the Planning Board votes to approve the proposed project (which it appears poised to do). I am hopeful, though, that the Planning Board will instead rescind the negative declaration, so that the residents of the affected neighborhood aren't forced to expend the effort and expense to use the courts to protect their rights. The Village Planning Board should be acting in the interests of all the residents of the Village, not against them.

Please do not hesitate to call me if you have any questions or wish to further discuss any of the points I have raised.

Respectfully submitted,



Stephen M. Gross  
Principal  
Hudson Highlands Environmental Consulting

# DAVID K. GORDON

*Attorney and Counselor at Law*

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October 19, 2017

Hon. George Aulen, Chairman  
Village of Warwick Planning Board  
77 Main Street  
PO Box 369  
Warwick, NY 10990

Re: 16 Elm Street Site Plan Application

Dear Mr. Aulen and Members of the Board:

This office represents residents of the neighborhood surrounding the proposed restaurant-bar at 16 Elm Street (the "Project"). As discussed in more detail below and in other comments that have been submitted to the Board, the Project will have significant adverse impacts on the neighborhood and the community.

At this juncture the Planning Board ("Board") has already made a number of important missteps regarding the Project, which have compromised the public. The Board's actions so far have been uniformly dismissive and even hostile to the rights of the public, both to be heard and to be protected against the Project's impacts.

Among the Board's missteps has been its refusal to hear from the public until the present juncture. There was no reason to do so, despite the Board's apparent tactical reliance on an incorrect extension of a court case requiring a subdivision to have a public hearing after a SEQRA declaration of significance. This error among the Board's others have limited its ability to review and address the impacts, and badly prejudiced the public.

The site plan is a terrible proposal that would locate the building on the corner of the lot adjacent to the residential neighborhood, and would thereby deliberately saddle the neighbors with nuisances including noise and light among others. We understand that the purpose of the siting was to avoid reviewing and mitigating the impact of developing in the floodplain. However, at best, the proposal trades impact that could easily be mitigated – replacement of floodplain storage – with impacts to the community that the Board has so far shown no interest in mitigating, and could probably not be fully abated.

At this juncture the Board should correct its errors, or failing that, mitigate the impacts through its site plan review of the project.

## 1. Zoning noncompliance

The Project is defective and illegal because it fails to meet the required street frontage in the Zoning Code.

According to the bulk table in the Zoning Code, a restaurant use (Use Group K) may only be located on lots with 50 feet of street frontage. Zoning Code § 145-41. The plans for the project show only 47.8 feet of street frontage. For a restaurant site plan to be legal on a lot with less than 50 feet of road frontage such as 16 Elm Street, the applicant would need an area variance from the ZBA.

Under New York State law, the authority for determining whether a project complies with the zoning code is vested in the building inspector, with appeal to the ZBA, not the planning board.<sup>1</sup> Yet it appears that the Board has illegally taken it on itself to make this determination, so as to facilitate the Project, and has wrongly determined consistency with the zoning based on a three decades old variance for a completely unrelated and dissimilar project.

That variance does not cure this defect in the current application. As we wrote the building inspector on August 27, 2017, while a variance is said to “run with the land”, this means that the variance would transfer to a future owner undertaking the same use, and is not restricted to the original permittee.<sup>2</sup> It does not mean that the dimensional requirements are forever repealed for all future use of the property. In addition to being irrational and failing to reasonably apply the zoning code or protect the community, that interpretation would violate the basic tenet of New York law that a ZBA has no authority to re-legislate the zoning regulations established by the local legislative board.<sup>3</sup>

Additionally, the balancing test required for area variances is obviously project-specific . This includes, among other things, whether the variance would create a substantial or undesirable change in the character of the neighborhood or a detriment to nearby properties; whether the difficulty can be alleviated by some feasible method other than a variance; and whether it would cause adverse aesthetic, environmental or ecological impacts on the property or the neighborhood.<sup>4</sup> The 1990 variance for a car storage lot was simply not granted to allow the proposed restaurant/bar, and depending on the ZBA’s judgment, might not be given the wide difference in impacts and circumstances. Nor could it have possibly been conditioned to protect the adjacent residential neighborhood from the noise, light and other disturbances from the

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<sup>1</sup> *Swaniz v Planning Bd. of Vil. of Cobleskill*, 34 AD3d 1159, 1160 (3d Dept 2006) (“Planning boards are without power to interpret the local zoning law, as that power is vested exclusively in local code enforcement officials and the zoning board of appeals”).

<sup>2</sup> *St. Onge v Donovan*, 71 NY2d 507, 520 (1988); see e.g., *Feneck v Murdock*, 16 Misc 2d 789, 792 (Sup Ct Kings Co 1958).

<sup>3</sup> See *Van Deusen v Jackson*, 35 AD2d 58, 59 (2d Dept 1970), *affd*, 28 NY2d 608 (1971).

<sup>4</sup> See Warwick Code § 145-151; Village Law § 7-712-b.

proposed restaurant/bar. In fact, it was apparently a cursory approval without added conditions. Accordingly, there is no basis for the pretense that the prior area variance governs the current proposal.

Here, the Board is wrong on the substance and procedure, wrong to have considered the application to the present juncture, and wrong to continue. As we wrote the Board on June 15, 2017, the Board should cease review of this site plan application as it cannot be approved with this defect. Instead, the Board must either refer the Project to the building inspector for a zoning determination or counsel the applicant to apply to the ZBA for the necessary variance.

**2. SEQRA responsibility to take a hard look and to mitigate impacts**

The State Environmental Quality Review Act ("SEQRA"; ECL Art. 8) requires all agencies such as the Board to consider the potential adverse environmental impacts of its actions and mitigate them. In particular, SEQRA requires agencies to take a "hard look" at such impacts, and where there is the reasonable possibility of at least one such impact, to require an environmental impact statement to more fully assess and mitigate the potential problem.<sup>5</sup>

The proposed restaurant would be located virtually in the backyards of residences, and would violate the quiet residential character of this part of the village. It would cause significant adverse impacts on the neighborhood, including noise, visual impacts and other nuisances. As detailed below, there are also numerous other conditions on the site itself, including historic uses and toxic contamination from those uses that have not been adequately studied.

As a result, SEQRA required the Board to take a "hard look" by conducting further studies into these impacts. The Board's decision instead to end the SEQRA review by issuing a negative declaration was a dereliction of its responsibility, a violation of the law, and a slap in the face of the public.<sup>6</sup>

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<sup>5</sup> 6 NYCRR § 617.7(a).

<sup>6</sup> The Board's inadequate SEQRA review was made worse by the fact that it refused to hear from the public. Apparently, the Board based its refusal to hear from the public during its SEQRA review on *Kittredge v Planning Board of The Town of Liberty*, 57 AD3d 1336 (3d Dept 2008). However, Nothing in *Kittredge* or anywhere else stops the Board from hearing from the public at any time. *Kittredge* found that it was necessary to have a hearing after a negative declaration, not that it was illegal to begin the hearing before the SEQRA declaration of significance. See 57 AD3d at 1338 ("We also agree with petitioners' contention that the Board improperly failed to hold a public hearing regarding the proposed subdivision after it issued its negative declaration"); *Id.* at 1340-1341 ("Town Law § 276 (5) (d) (i) (1) and Liberty Town

The Board should correct its error by rescinding the negative declaration and taking a hard look at the prospective impacts.<sup>7</sup> Failing that, the Board should fully assess the prospective impact pursuant to its authority to review proposed site plans under the village code, and modify or reject the Project as necessary to prevent those impacts.

### 3. Site plan review

Numerous sections of the village's site plan review code require the Planning Board to ensure that the Project is consistent and compatible with its environment, especially its surrounding neighborhood. *See e.g.* Village Code § 145-91A, B, C, E, H, I. Among the code provisions that require the Board's specific attention and must result in substantial changes to the Project, or its outright rejection, are the following: "The Site Plan elements, including buildings, parking, drainage, pedestrian and vehicle circulation, signs and lighting, *will not adversely affect the potential of adjacent properties or the property under review from its highest and best use.*" Village Code § 145-91B (emphasis added). "All recreation areas, parking and service areas will be reasonably screened from the view of adjacent residential lots and streets in all seasons of the year." Village Code § 145-91E.

The code's focus on protecting adjacent properties is redoubled in paragraph 145-91 I governing the Project's design standards. In particular, the code requires the Board to address conflicts between existing residences and a proposed adjacent non-residential use:

Relationship of Buildings and Site to Adjoining Areas. Site plans involving non-residential uses proposed adjacent to a residential district or residential uses shall be reviewed with regard to the impact of the development on such district or use. The Planning Board shall encourage the use of a combination of landscaping, buffers, berms, screens, visual interruptions, and common building materials to create attractive transitions between buildings of different architectural styles and uses.

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Code § 130-13 (D) (3) (a) (1) require that a public hearing be held after a lead agency has completed its initial review pursuant to SEQRA"). Moreover, *Kittredge* applied to and was based on the state law governing subdivisions, and there is no authority applying it to site plans. The Board here simply refused to do what most municipal boards do on controversial applications: hear the public's concerns prior to making a declaration of significance.

<sup>7</sup> See 6 NYCRR § 617.7(f).

Village Code § 145-91I(2). The section recommends landscaping that will “dominate the site plan” and “facilitate conservation of the environment and preservation of community aesthetic character.” Village Code § 145-91I(8)(a), (b).

As currently proposed, the Project flagrantly violates all of these provisions. The Board must revise the project with conditions that will ensure the protection of the surrounding neighborhood, including but not limited to limiting amplified music, eliminating the outdoor deck, and moving the building away from the area of the site contiguous to the surrounding homes.

#### Visual and Community Character Impacts

The proposed restaurant building is located in the extreme northwest corner of the property, with the patio and walkways only about 30 feet from the property lines of the adjacent residences on West and Van Buren Streets. For years the property was used as a car storage lot, and as was required by the Board as part of the site plan approval in 1993, thick groves of trees were maintained to screen and separate the homes from the commercial use. The current site plan proposes to remove many of those trees, reducing the natural buffering, and the protections granted to the surrounding neighborhood by this same Board for the previous use.

The Village of Warwick Zoning Code (“Zoning Code”) anticipates the need for special scrutiny where, as here residential uses abut commercial. “Site plans involving non-residential uses proposed adjacent to a residential district or residential uses shall be reviewed with regard to the impact of the development on such district or use.” § 145-91 (I)(2). *See also* § 145-91(C), (E), (H). The code specifically calls for thorough visual buffering:

Landscaping shall be used to create boundaries and transitions between areas of differing development intensities as well as to separate areas of incompatible land uses. A buffer zone thickly planted with native trees and shrubs of sufficient width ***to entirely screen a non-residential use from a neighboring residential use shall be required.***

§ 145-91 (I)(8)(e) (emphasis added). The proposal not only does not add a thick buffer of trees to “entirely screen” the restaurant from the adjacent homes, it actually involves removing trees to push the building to the northwest corner of the site.

The Zoning Code also has additional requirements for parking lots, particularly those adjacent to residential neighborhoods. The current site plan proposal shows parking spaces as close as 50 feet to residential property lines. The code specifies:

Buffering of parking lots adjacent to residences (if applicable) shall be accomplished through landscaping sufficient to screen the nuisance characteristics of parking, such as headlights, noise and views of cars.

§ 145-70(A)(11). Again, the site plan proposed does not conform to this requirement and will permanently damage the neighbors’ ability to enjoy their homes.

### Noise Impacts

Noise is a particularly significant concern because of the proposed large outdoor dining areas, featuring amplified music and conversation. The design standards in the Zoning Code require:

Structures shall be located, constructed, and insulated to prevent on-site noise from interfering with the use of adjacent properties . . . . In no case shall off-site noise exceed the standards contained in § 145-104 of the Zoning Law. Procedures for evaluating noise in common usage, such as the US Department of Housing and Urban Development's *The Noise Guidebook* (HUD-953-CPD) shall be used to determine impacts and mitigation.

§ 145-91 (I)(12)(a). This requirement calls for noise levels to be modeled and analyzed before a site plan is approved.

This office submitted the acoustic analysis of Mike Marri on August 14, 2017. In the analysis Mr. Marri calculated that conversation on the deck alone would likely exceed the required levels at the property line. When music is added via the speakers proposed for the outdoor dining area, noise levels would necessarily exceed the levels allowed in § 145-104 of the Zoning Law.

There is no countervailing evidence before the Board and the prospective impacts are amply attested by the neighbors. Under these circumstances it is a flat violation of the code (and SEQRA) to wait until the project is built to ascertain whether noise is a problem. The Board must fully analyze the activity proposed at the site plan review stage and ensure compliance with the standards in the code.

### Toxic Contamination

Before any development of the site is contemplated, the Board must determine if there is any risk of toxic contamination. Dr. Caroline Miller, a groundwater chemist, submitted a letter on September 7 notifying the board of serious deficiencies in the soil and groundwater sampling used in the Environmental Site Assessment. Among other problems, she warned that heavy metal sampling was not properly completed. These issues must be addressed.

### Alternative

Village Code § 145-91I authorizes the Board to "require submission of alternative design and layout proposals based on the standards in this section." Here, it is clear that an alternative design with the building moved farther (approximately 75 feet) to the southeast, so as to be in the center of the site, would mitigate many of the impacts on the community. While this would require further planning to mitigate the potential for flooding, it would provide a far better design value to the community.

### Conclusion

Hon. George Aulen  
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For the above reasons, the Board must cease its review of the Project. The present proposal stands in violation of the Village Code and SEQRA. If the Board nonetheless moves forward it must fully mitigate impacts as required under the Village Code. Finally, an alternative layout would be a far superior and more acceptable project.

Respectfully submitted

David Gordon

Please turn off cell phones

# Sign in Sheet

October 19, 2017 Public Hearing

Name Address

- | Name   | Address                    |
|--|----------------------------|
| 1) Geraldine Driscoll<br><del>Lodge Driscoll</del> | 14 Van Buren St            |
| 2) <del>HAZEL MESSINA</del>                        | <del>(25 WELLING AVE</del> |
| 3) <del>RUDY MESSINA</del>                         | <del>---</del>             |
| 4) MARGARET BOWES                                  | 17 VAN BUREN ST            |
| 5) Edward Sattler                                  | 40 N Lynn St               |
| 6) Patrick Gallagher                               | 57 West St                 |
| 7) Jackie Wright                                   | 65, WEST ST,               |
| 8) RENEUE LORRAN                                   | 13 GRAND ST.               |
| 9) Maggie McNeely                                  | 5 Welling Waveret          |
| 10) DAN MACK                                       | 14 Welling                 |
| 11) TERI MACK                                      | 14 Welling                 |
| 12) John Maxcy                                     | 47 West St.                |
| 13) HARRY CLARK                                    | Kings Estates              |

- ✓ 14) Jack Penning's 109 Hoyt Rd
- ✓ 15) Rachel Berlin Van Buren St.
- ✓ 16) Teri Mack 14 Welling Ave.
- ✓ 17) CAROLINE MARTIN 5 Cottage St Warwick
- ✓ 18) STEPHEN M. GROSS 71 COLONIAL AVE
- ✓ 19) Kerry Boland 15 1/2 Campbell Rd
- ✓ 20) <sup>Ruth</sup> Retna Woods Home West St
- ✓ 21) Marcela Gross Colonial Ave
- 22) FRANK FORNARO 5 ASKE ST WARWICK
- 23) ROGER MOSS 17 DEER POOND Drive, WARWICK
- ✓ 24) DAVID GLOZDOL CATONER NY.
- ✓ 25) DAVE SMITH WEST ST WARWICK NY
- ✓ 26) TOM ANDREAS 7 cottage St warwick NY
- ✓ 27) ROSANNE ANDREAS 7 Cottage St warwick, NY
- ✓ 28) Joel Wadeson/Lauren Buturla 33 Polaski Hwy goshen NY
- ✓ 29) PETER CARRI 14 UPPER HUNTER RD.
- ✓ 30) FRED SCHWIKEM 1630 3/2 Low Top

Name

Address

- ~~31)~~ JAMES CARTON R 9 W MARLBORO
- ~~32)~~ GLEN CARTER 11 VAN BUREN ST
- ~~33)~~ MATT LOCKWOOD 49 FOUR CORNERS RD
- ~~34)~~ Susan Graf 60 WEST STREET WARWICK
- ~~35)~~ CHRISTOPHER SMITH 30 MAPLE WARWICK.
- ~~36)~~ JOHN GALLABHER 387 KINGS HIGHWAY WAR.
- ~~37)~~ CHRISTIE TOOHEY 44 WEST ST
- ~~38)~~ Gail Graf 17 Crosey Warwick
- ~~39)~~ Robert Agnello 14 Oakland CT
- ~~40)~~ Janice Grare 15 Oakland Ct.
- ~~41)~~ JEANNINE DREYHAUPT 44 ORCHARD
- ~~42)~~ JIM SCIARA 10 South Lynn
- ~~43)~~ Judith Dickinson 16 VAN BUREN ST

## Proceedings

1 CHAIRMAN AULEN: Okay. Good evening,  
2 everyone. This is the Village of Warwick  
3 Planning Board meeting for October 19th, 2017.

4 On the agenda are two items. The first  
5 item is the acceptance of the September 21st,  
6 2017 meeting minutes. Does anyone on the board  
7 have any additions or corrections?

8 BOARD MEMBER PATTERSON: No changes.

9 CHAIRMAN AULEN: Okay.

10 BOARD MEMBER DENERLEY: No changes.

11 CHAIRMAN AULEN: Do I have a motion for  
12 approval?

13 BOARD MEMBER PATTERSON: I'll so motion.

14 CHAIRMAN AULEN: Do I have a second?

15 BOARD MEMBER OLSEN: I'll second the  
16 motion.

17 CHAIRMAN AULEN: Motion made in the  
18 second. Any further questions?

19 All in favor?

20 BOARD MEMBERS: Aye.

21 SECRETARY EVANS: There's one abstained.

22 CHAIRMAN AULEN: One abstained? Okay.

23 Next item on the agenda is 16 Elm Street site  
24 plan application. The applicants are sitting  
25 over at the table. We can't see them over

## Proceedings

1           there.  Okay.

2                   The board received a letter dated October  
3           13th from Hudson Highlands Consulting, and it  
4           will be made part of the board's record on this  
5           application.  The board also received a draft  
6           part three reasoned elaboration for the  
7           negative declaration adopted at our last  
8           meeting for our consideration.  Summarized is  
9           the information that was previously discussed  
10          and reviewed.

11                  Have the board members had an opportunity  
12          to review it?

13                  BOARD MEMBER GALLO:  I did.

14                  BOARD MEMBER PATTERSON:  Yes.

15                  BOARD MEMBER OLSEN:  Yes.

16                  BOARD MEMBER DENERLEY:  Yes.

17                  CHAIRMAN AULEN:  Okay.  May I have a  
18          motion to adopt the written elaboration and to  
19          supplement the a AEF with it?

20                  BOARD MEMBER PATTERSON:  I will make that  
21          motion.

22                  CHAIRMAN AULEN:  Do I have a second?

23                  BOARD MEMBER OLSEN:  Second.

24                  CHAIRMAN AULEN:  Any further discussions?  
25          Okay.  Motion made and seconded.  All in favor

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1 say aye.

2 BOARD MEMBERS: Aye.

3 CHAIRMAN AULEN: Closed. Motion been made  
4 and approved.

5 Next item is -- next item is to open the  
6 public hearing, which I will read the notice.  
7 "Planning Board of the Village of Warwick,  
8 notice of public hearing. Notice is hereby  
9 given that pursuant to Section 145-93.C of the  
10 Village of Warwick Zoning Law and Section  
11 7-725-8.8 of the Village Law Site Plan, that  
12 the Planning Board of the Village of Warwick,  
13 New York, hold a public hearing on the 19th day  
14 of October 2017, at 7:30 p.m., or as soon  
15 thereafter the matter can be heard on that day,  
16 at the Town of Warwick Town Hall, 132 Kings  
17 Highway, Warwick, New York, on the application  
18 of 16 Elm Street, LLC, the site plan approval  
19 to allow construction of a new eating and  
20 drinking establishment, grading and paving for  
21 parking, and other improvements, on all land  
22 for 16 Elm Street, for such purposes within  
23 said village and zoned generally on the taxing  
24 map as Section 210 Block 12 Lot 14, and for  
25 such other purposes as may also come before the

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1 board. A copy of the plan is available for  
2 public inspection at the office of the planning  
3 board during regular business hours. All  
4 persons interested are invited to attend. The  
5 meeting is open to the public, dated Warwick,  
6 New York, September 21st, 2017, by order of the  
7 Planning Board, Village of Warwick, George  
8 Aulen, Chairman."

9 Okay. At this time, I'll have a motion to  
10 open the public hearing.

11 BOARD MEMBER PATTERSON: I'll open.

12 CHAIRMAN AULEN: Do I have a second?

13 BOARD MEMBER GALLO: Second.

14 CHAIRMAN AULEN: Motion made in the  
15 second. All in favor?

16 BOARD MEMBERS: Aye.

17 SECRETARY EVANS: I'm sorry. Who  
18 seconded?

19 BOARD MEMBER GALLO: Jesse.

20 CHAIRMAN AULEN: Okay. Before we begin,  
21 let me try to orient -- try to orient all those  
22 present as to the purpose of this public  
23 hearing, what it is about, and just as  
24 importantly, what is it not about.

25 Tonight's hearing is concerned with a site

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1 plan proposal for an eating/drinking  
2 establishment at 16 Elm Street. The site plan  
3 before this board is a specific proposal for  
4 this project, shows the location of the  
5 building, driveways, parking, drainage,  
6 facilities, and the various accessory  
7 infrastructure elements that make up the  
8 proposal. The hearing is designed to hear your  
9 comments on these specifics. We invite any  
10 comments or suggestions that you may have  
11 regarding the site plan for this project. The  
12 board wants your comments. This hearing is  
13 designed to receive your comments. We will  
14 listen carefully. However, there should be,  
15 and there will be, dignity and order to our  
16 proceedings.

17 In a moment, the applicant's consultants  
18 will describe and outline the project. It is  
19 not possible to explain every nuance of what is  
20 proposed. The site plan has been and remains  
21 available for the public inspection at the  
22 office of the planning board. When the  
23 applicant has concluded their presentation, we  
24 will turn to you for your comments.

25 Just as it is not possible to explain

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1 every nuance of the project, it is not possible  
2 to answer every question you may have, at least  
3 not to any great extent. If we spent all night  
4 answering questions, we would never get to the  
5 task at hand. The task is to learn from you  
6 what the board, or its consultants, might not  
7 yet have considered. Therefore, we ask you not  
8 -- we ask you not to ask questions, but rather,  
9 to raise issues. Your questions will not  
10 likely be answered tonight, but we will  
11 consider all your comments and questions, and  
12 consider all of the issues you raise, in our  
13 future proceedings.

14 You're a large crowd, I think. I'm sure  
15 many of you wish to speak. In order to hear  
16 from you in an orderly fashion, please note the  
17 following ground rules. Everyone wishing to  
18 speak must sign in. There's a sign-in sheet  
19 that I now have. Does anyone else want to sign  
20 in?

21 Okay. Before making comment, you must  
22 identify yourself, give your address, and we  
23 ask that you spell your name slowly for our  
24 records, and the reporter's records. The  
25 comment of each person is limited to between

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1 three and five minutes. If time permits, we  
2 may hear from you a second time.

3 Comments, the time of each person belongs  
4 to that person and it may not be assigned or  
5 transferred to any other person. The board is  
6 interested in issues, but is not interested in  
7 the number of people who share interest in each  
8 issue. Therefore, please, if the issue has  
9 already been raised, if the point has already  
10 been made, do not raise it or make it again.  
11 We will deal with each issue brought to us  
12 after the hearing is closed and in the normal  
13 course of the board's proceedings.

14 At this time we'll have the applicant  
15 describe the project.

16 JOHN CAPPELLO, ESQ.: Good evening. Can I  
17 have my technical support here? Better height  
18 wise, but the microphone is not working.

19 Hello. Can can everyone hear me now?

20 PUBLIC MEMBERS: Yes.

21 JOHN CAPPELLO, ESQ.: Good evening. My  
22 name is John Cappello. I'm an attorney with  
23 Jacobowitz & Gubits, and I'm here on behalf of  
24 John Christison, and Yesterdays, and Elm  
25 Street, LLC, the applicants here. I also have

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1 with me tonight, Ross Winglovitz, and Keith  
2 Woodridge, from EPC, Enviromental Consulting &  
3 Engineering, the engineering consultants on  
4 this matter.

5 We're glad to be here before you. I can  
6 tell you, in the process of this application,  
7 Mr. Christison, and all of us, have made the  
8 attempt to be transparent, to offer to meet  
9 with the neighborhood's neighbors, to hear your  
10 concerns, and we're anxious to hear them again  
11 tonight.

12 Mr. Christison has been operating in this  
13 village for over thirty years without incident.  
14 He's been a good neighbor, a good resident of  
15 the village, and he's looking to improve and  
16 expand his business. So, in that process, what  
17 I would like to do is to start off by just  
18 orientating you, I know many of you may know  
19 this, but to the property in question.

20 The property proposed to be developed is  
21 16 Elm Street. It's located here in the light  
22 blue on the map. It is -- formally was used as  
23 a railyard, historically as an industrial use.  
24 That was back in the 1930's. On the other side  
25 of Elm Street, across from the property, is an

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1 area that was historically also used as  
2 industrial, as a grain silo. Over the course  
3 of the years, as this project was used  
4 industrial, the village grew up around the  
5 property, and homes were built, and a  
6 neighborhood was built, as part of the village,  
7 around the existing industrial use.

8 The property remains so, and when the  
9 first zoning ordinance was adopted in this  
10 village back in 1965, this property existed in  
11 the exact shape and form as it exists now. It  
12 exists with the same dimensions as it exists  
13 now. So, it pre-existed prior to the zoning,  
14 as shaped in the same manner as it does, as  
15 impacted by the railroad. That property, at  
16 the time the zoning ordinance was adopted in  
17 1965, was zoned industrial.

18 In 1988, the village codified its zoning  
19 code, and when it codified its zoning code,  
20 that duly elected village board continued to  
21 zone this parcel industrial.

22 In 2009, the village board redid its  
23 comprehensive plan, which it reviewed and  
24 commented on by the planning board, and zoning  
25 was readopted again. This property remained

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1           zoned industrial. The neighborhood surrounding  
2           it remained the same. In -- so, over the  
3           course of, that makes fifty-two years, this  
4           property has remained zoned for commercial and  
5           industrial purposes. That was the will of the  
6           several duly elected village boards of this  
7           village. That will continued. That will  
8           continued among the residents through several  
9           comprehensive planning purposes. So, this  
10          property has always been intended by this  
11          village to be used for commercial and  
12          industrial purposes.

13                 Some of the uses that are permitted now on  
14          this property are public utility facilities,  
15          wireless telecommunication facilities,  
16          manufacturing facilities, car washes, gas  
17          stations, hotels, motels, and eating and  
18          drinking establishments. An eating  
19          establishment, unlike several of the other  
20          uses, which are conditional uses, an eating and  
21          drinking establishment is a permitted use in  
22          the zoning district, has been, always has been,  
23          over the course of those sixty-five years.

24                 The property currently, in its current  
25          non-conforming shape, has been used most

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1 recently as a parking lot for vehicles,  
2 overstorage vehicles for Country Chevy,  
3 Chevrolet. So, there's parking that exists on  
4 this parcel. The parcel has been predominantly  
5 cleared, and cars have been parked on there  
6 pursuant to a use variance. So, the use that  
7 exists today, is not a use that is permitted in  
8 the zoning district to use, and is continuing  
9 by virtue of a use variance. The use that is  
10 being proposed, an eating/drinking  
11 establishment, is a permitted use in this  
12 village, and has always been a permitted use.  
13 So, we are taking a non-conforming use, and  
14 proposing to develop it in a manner that is  
15 permitted, a permitted use, once again, since  
16 1965, in this village.

17 We submitted the application for site plan  
18 in January of this year, approximately nine  
19 months ago. That application was submitted to  
20 the building department. That application  
21 showed the layout of this lot. This  
22 application showed the dimensions of this lot.  
23 This application demonstrated that this  
24 property had been granted an area variance  
25 regarding a certain small variance from the

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1 width of the lot. So, it had existed as a  
2 pre-existing use, and was granted a use  
3 variance for a -- and an area variance for this  
4 approximately two foot dimension in width,  
5 which was noted on that map that was submitted  
6 to the building department and planning board  
7 in January, and sent to the planning board for  
8 site plan review and approval.

9 Now, we -- going, in going through the  
10 nine-month review process with the planning  
11 board, we sought to address several issues.  
12 Now, I know there has been correspondence out  
13 there that talked about environmental impact  
14 statements, and citing case law. Let's say,  
15 put into the record, that those cases cited  
16 were for type one actions under SEQRA. This  
17 action is nowhere close to the threshold for a  
18 type one action. In fact, the recently adopted  
19 type two actions, and existing type two  
20 actions, which aren't even required to comply  
21 with SEQRA, exempt buildings that are four  
22 thousand square feet in size. This building  
23 has a footprint of thirty six hundred feet.  
24 With the second floor, it is marginally over  
25 four thousand square feet. The reason the

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1 state has exempted these facilities from SEQRA,  
2 that they made a determination, based upon the  
3 issuance of negative declarations for the  
4 number of these facilities, that it was the  
5 planning board could handle these through the  
6 site plan review.

7           However, I'm saying that, in recognition  
8 -- that's fine. She kind of made me sound  
9 better. But in recognition of that, we never  
10 made a claim to be exempt, because we are  
11 slightly over four thousand square feet. I'm  
12 just trying to provide you the scope of this  
13 application in context of a lot of what you've  
14 heard.

15           Now, when we came into the planning board,  
16 this was a former railroad yard, so we  
17 submitted with our submissions fairly early, a  
18 phase one environmental testing that had been  
19 done for this site and another site that was  
20 owned by the property owner, Mr. Petrucci, at  
21 the time. Now, in that study, which was done  
22 in 2013, they took an electromagnetic magnet,  
23 went through this site, did certain digs on  
24 this site. We provided the information that  
25 showed that based on the information, the study

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1           which was prepared by William Going, who is an  
2           entity which has prepared hundreds of these  
3           studies, that has undergone -- put studies in  
4           with the New York State Department of  
5           Environmental Conservation, that specializes in  
6           these matters. The reason that this study was  
7           done, is that this information was given to a  
8           bank, because, I don't know if most of us, when  
9           we go to banks to lend money, they don't give  
10          money away easily. So, they required this  
11          information in order to consider financing for  
12          the property. When we submitted it to the  
13          planning board, we had to redact some of the  
14          information that related to another property  
15          that was owned by Mr. Petrucci that didn't  
16          apply to this. There was some confusion  
17          raised, so Mr. Christison then retained  
18          Mr. Going to not only take out the information  
19          from the other property and recharacterize the  
20          study, but also to go in and do additional  
21          testing, to make sure that this property was  
22          clean.

23                 That information demonstrated that there  
24                 was no issues with the property, that there was  
25                 no evidence of any contamination arising above

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1 the levels. That was submitted to the planning  
2 board, to its engineer. It was fully reviewed  
3 by the planning board. They made comments on  
4 it, and there was also comments made by, I  
5 believe a professor, which we took into  
6 account, provided to Mr. Going, who then, on  
7 September 14th, provided a detailed response to  
8 that letter, identifying how that professor was  
9 incorrect in her assumptions, according to  
10 Mr. Going's professional opinion based upon his  
11 years in the field. That was submitted to the  
12 planning board. The conclusions were there.  
13 He explained why her analysis wasn't  
14 technically correct as it related to ground  
15 water versus drinking water, and several other  
16 inconsistencies in his letter. Like I said,  
17 that was submitted to the board. The board got  
18 that when they made their negative declaration  
19 next month -- last month, so -- and once again,  
20 Mr. Christison is buying this property to build  
21 a restaurant on it. I have told him. He has  
22 reviewed it. The banks have reviewed it. The  
23 bank's engineers have reviewed it.  
24 Mr. Christison does not want to buy a property  
25 that is contaminated. Mr. Petrucci wants to

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1 make sure his property is not contaminated,  
2 which is the reason he hired a renowned and  
3 well-known soil scientist and expert to review  
4 this, to make the appropriate determinations,  
5 so the bank can rely on that in providing a  
6 loan for construction of this restaurant. So,  
7 that's the first issue I wanted to address.

8           The second issue relates to storm water.  
9 I know there's been some issues raised by storm  
10 water. Once again, Ross, who is a friend that  
11 I've known now for almost thirty years, who  
12 I've worked hand in hand with, and I've also,  
13 actually, been in this room when Ross was the  
14 engineer for the Town of Warwick on other  
15 applications, and got raked over the coals by  
16 Ross over the course of the years. He's a  
17 professional engineer with experience, who has  
18 designed a great number of small, medium and  
19 very large drainage systems, that provided,  
20 prepared and submitted a full, what they call a  
21 SWIP, which is a storm water pollution  
22 prevention plan. That SWIP was reviewed by  
23 Mr. Getz, who is also a professional engineer.  
24 They both concluded that it met all the  
25 requirements for the New York State DEC

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1 guidelines for treatment and retention of storm  
2 water. In fact, and I know maybe its disputed,  
3 but one of the things we're going to hear  
4 tonight is, it's okay, there are professionals  
5 who disagree. It's the planning board's job to  
6 review all that material and make a decision as  
7 to what their appropriate decision would be.  
8 So, Mr. Winglovitz has prepared that study, and  
9 demonstrated that this is a gravel parking lot  
10 that has existed as a parking lot, where cars  
11 are stored, that has been acknowledged has been  
12 used as a railroad yard since the 1930's, and  
13 determined that, the project, after it's  
14 complete, and you will see the site plan, Ross  
15 is going to present that, but the project,  
16 after complete, will actually have less, less  
17 impervious surface than exists today. So,  
18 there will be a net increase in pervious  
19 surfaces to facilitate drainage on this  
20 property.

21 There was a question, once again, given  
22 the fact that this was a historic railroad yard  
23 in industrial use, where these homes were built  
24 and moved into the village, probably in order  
25 to walk and work at this facility, because

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1 that's what a village is. A village is a place  
2 where you have a mix of uses next to each  
3 other. Towns are places where you have large  
4 lots and big fields. So, as this area  
5 developed around the industrial railyard, there  
6 was issue raised that there might be something  
7 there of archeological significance. So,  
8 Mr. Christison hired a tracker, which is a  
9 company that does archeological studies. They  
10 did a phase 1A and a phase 1B study, and what  
11 that entailed was a review of all the  
12 documentation and paperwork and historical  
13 records as it relates to the operation of this  
14 facility, and then the phase 1B was actual  
15 testing of the site. They dug pits there, and  
16 they dug to see what could be recovered and  
17 whether there was anything there of  
18 archeological significance. That phase 1A and  
19 phase 1B was submitted to this board. This  
20 board, and its consultants, reviewed that.  
21 They questioned the applicant on it, and it was  
22 also submitted to the New York State Department  
23 of Historic Office of Preservation, SHIPO, as  
24 it's known. There are experts there whose job  
25 it is to preserve and protect archeological

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1 resource, reviewed that plan, and they issued a  
2 letter saying that based upon their  
3 determination, there was no need for any  
4 additional work to be done. So, that was  
5 submitted to this board, and this board relied  
6 upon all that information when they made a  
7 determination that there wouldn't be an impact  
8 of archeological significance.

9 So, once again, we have another  
10 professional, people who are -- work in the  
11 field, specifically that relates to the work  
12 they would have done, who had the studies  
13 independently reviewed, determined that there  
14 wouldn't be any issues related to archeological  
15 significance with this development.

16 Another issue that was raised was traffic  
17 impact, because this is a restaurant in an area  
18 that is somewhat residential on Elm Street, but  
19 if you look at Elm Street, you will see this  
20 property is adjacent to the Warwick Car Wash,  
21 which is commercial. There is a multi-family  
22 apartment building located under -- over here.  
23 There's a martial arts center and a parking lot  
24 located here, and there is an existing shopping  
25 mall also located on Elm Street. So, the

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1 character of Elm Street itself is a mix of  
2 commercial and residential uses, as well as  
3 this industrial parcel, which is now, we  
4 propose to be used for commercial. While we  
5 didn't think the traffic could be generated by  
6 a thirty-six hundred square foot eating and  
7 drinking establishment that is pretty much a  
8 neighborhood and local use, would generate a  
9 lot of traffic, we went ahead and we hired Bill  
10 Greely -- well, Mr. Christison hired Bill  
11 Greely, who is a PhD and PE, working for Mazur  
12 Consultants. Mr. Greely has been -- in fact,  
13 he's, don't tell him I said this, he's older  
14 than Ross and I, because he's been doing -- not  
15 much, but he's been doing traffic studies for  
16 well over thirty years. He has conducted most  
17 of the traffic studies, once again, for most of  
18 the large developments, medium developments,  
19 and small developments, that have developed in  
20 this region. Mazur Consulting, his company,  
21 also consults several municipalities in the  
22 area. So, he is a renowned, and probably the  
23 most well-known traffic expert in this region,  
24 who conducted this study. He took traffic  
25 counts. He took the traffic counts between the

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1 June 19th and June 24th, but he also took into  
2 account, the historical traffic patterns, and  
3 read the studies that had been prepared as  
4 related to this area, that has not seen a lot  
5 of growth on this road over the course of the  
6 years, and so based upon that, and his  
7 professional opinion, he submitted a traffic  
8 study to this board, as a professional traffic  
9 engineer, as someone who specializes in this  
10 facility, as someone who has designed these  
11 facilities, someone who has prepared studies,  
12 reviewed studies, and is imminently familiar  
13 with those studies. He prepared those, and he  
14 determined that based upon his counts that he  
15 took on West Street, that there would be no  
16 significant adverse impact associated with  
17 development. He also, in doing that, took into  
18 the historic count, and did an analysis showing  
19 that at peak hour, that's a full hour, peak  
20 hour mid week, peak hour Saturday, that leaving  
21 the site and heading on Elm Street, toward  
22 Orchard Street, there would be fourteen cars  
23 leaving, which is one car every four point --  
24 four and a half minutes, and nineteen cars a  
25 minute.

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1           Now, whenever I do traffic studies,  
2 whenever I get the results, you're not the  
3 first people who chuckle. So, you can continue  
4 to chuckle, and I have seen people get up there  
5 and tell me how dam wrong I was and how wrong  
6 Bill Greely was. I've only seen that at public  
7 hearings, but after the developments were  
8 built, I've never seen anyone come in and prove  
9 that those studies and those analyses were  
10 wrong, and that's because they're based upon  
11 figures, they're based upon history, they're  
12 based upon facts, not what you think traffic  
13 will be, but what the historical counts that  
14 are done on these facilities throughout this  
15 nation and throughout this region has done.  
16 That's why he has stayed in business. That's  
17 why his traffic studies haven't been  
18 challenged. That's why he hasn't lost. That's  
19 why he was hired. So, you can be skeptical  
20 about it, but you can't argue facts. We're in  
21 a world where, you know, facts don't matter  
22 anyway. This is science. The study is there.  
23 It's prepared. He's given a professional  
24 opinion, and his opinion is, that there will be  
25 no adverse traffic impacts associated with this

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1 development, that would degregate any  
2 intersections in this village, that will  
3 require any further studies. Once again, those  
4 studies were reviewed by the planning board and  
5 its consultants, as part of the SEQRA review,  
6 and based upon that, they made their  
7 determination.

8           The final issue that was raised that we  
9 did additional work on, related to noise. Now,  
10 we understand that given the location of where  
11 this site can go, and the only location that  
12 would be adequately located on the site to  
13 ensure the retainment of maximum number of  
14 trees and the least disturbance in the flood  
15 way, will potentially cause some noise impact,  
16 and it's a legitimate question. That's why we  
17 did have a meeting where we invited the public  
18 to attend. The news reporter was there. We  
19 were a little bit disappointed that there were  
20 only a couple people that bothered to show up  
21 to give us any input as to what we could do to  
22 mitigate the noise impacts, but we still went  
23 forward. On the planning board's  
24 recommendation, we made several significant  
25 revisions to the plan, which was including the

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1 porch that we enclosed. We enclosed the porch.

2 ROSS WINGLOVITZ: A portion of the porch.

3 JOHN CAPPELLO, ESQ.: A portion of the  
4 porch, that would dampen any of the noise,  
5 because there will be outside seating, and it  
6 is outside seating at tables for sixty-eight  
7 customers. It's not a beer garden outside.  
8 It's not a bar. You cannot go outside and get  
9 a beer poured. It's not a place where there's  
10 going to be live music. That's all in the  
11 record. We submitted that. If it's approved,  
12 we would consent to it being a condition of any  
13 approval. So, anything you've heard that said  
14 this is going to be a beer garden or a party  
15 place, it's going to be a place where people  
16 could sit at a table and have dinner, and have  
17 a drink outside on a nice evening.

18 Now, we've also, in response to some of  
19 the concerns raised, the facility will be  
20 fenced. There is a full landscaping plan.  
21 Ross will present that, to show where  
22 landscaping has been installed to buffer, to  
23 the extent that we can, any noise leaving the  
24 project. We've also relocated, at the  
25 recommendation of our noise consultant, who is

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1 both the traffic consultant, who does noise  
2 studies and work with the state in buffering  
3 noise from the Thruway and other facilities, he  
4 provided us guidelines and recommendations to  
5 ensure that we enclose the dumpster  
6 appropriately, so that will reduce noise, so  
7 that we locate the HVAC in a manner that will  
8 reduce noise. The outside seating and service  
9 outside will cease at 11 p.m., both weekdays  
10 and weekends, so there will be no outside noise  
11 from there.

12           There will be, right now in the proposal,  
13 table speakers. So, there will not be live  
14 music out there, but there will be music that  
15 can be played at the speakers, and we  
16 acknowledge that that could potentially be an  
17 issue. So, what we have consented to, and part  
18 of the application, is to say that the town  
19 does have -- the village does have a noise  
20 ordinance, that we would comply with the noise  
21 ordinance. Now, I know people, and we've seen,  
22 and this is where I'm going to go to this,  
23 certain interpretations of how the noise  
24 ordinance should be interpreted, because it  
25 really is hinged upon, at least a portion in

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1 the zoning code, is hinged upon background and  
2 ambient noise. So, in the evening, the ambient  
3 noise is less, but if you read that the way one  
4 of the commentors on the plan has read it, all  
5 of your commercial along Main Street, along --  
6 in your entire village, actually, is located  
7 closer than two hundred feet from a residential  
8 district. So, if you read that in the manner  
9 that you're -- the planning board was being  
10 asked to read that, any person who closes a car  
11 door, any facility that had parking, any  
12 facility that had anything at all, because the  
13 ambient noise level in your code is sometimes  
14 exceeded by air. So, you would, if you read it  
15 in that manner, you would be violating it by  
16 virtue of every business in your facility.

17 However, what Mr. Greely has recommended,  
18 and what we have committed to do, is to measure  
19 the noise once we are up and operating. Well,  
20 that's when you measure noise. You measure  
21 noise when it's made. So, you determine --  
22 thank you, but I'll handle it. You measure it  
23 when it's made. So, if it determines that we  
24 are above ambient levels with the speakers  
25 outside, when this facility is opened up, we

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1           have agreed, and it will be in the record, that  
2           those speakers will either be relocated, they  
3           will -- additional buffering will be installed,  
4           or acoustical fencing will buffer that sound,  
5           or the speakers will be removed. So, that is  
6           the best way to address that situation.

7           So, to sum up, all of this information has  
8           been before the board, and once again, I am  
9           going to reiterate, because I know people  
10          sometimes don't like to hear it, but if you  
11          bought a home in an area that was industrial,  
12          that home was built when that area was  
13          industrial, that property has been zoned  
14          commercial since the time each and every person  
15          here has owned the house in that area. This  
16          proposal complies. We want to hear what you  
17          said. If we can make it better, we would love  
18          to make it better. It is a restaurant. It is  
19          a moderately-sized restaurant. Thirty-six  
20          hundred square feet is not a large restaurant.  
21          There will be a max. If every person is  
22          sitting outside, at every one of those outside  
23          seats, the restaurant is full with every seat,  
24          and the additional room that is available is  
25          full with every seat, there would be two

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1 hundred and two patrons in that facility. Most  
2 restaurants do not have every seat filled every  
3 night. So, while there may be some areas, this  
4 will be an eating/drinking establishment, that  
5 will be a restaurant, that will be a restaurant  
6 in an area that has been zoned commercial for  
7 over sixty-five years.

8 We welcome your presentation, but with  
9 that, I'm going to turn it over to Ross, to  
10 present the site plan.

11 ROSS WINGLOVITZ: Good evening. For the  
12 record, Ross Winglovitz, Engineering &  
13 Surveying Properties.

14 John explained the location of the site on  
15 Elm Street, just north of the railroad tracks,  
16 top of West Street. The property itself is  
17 about fifty-one thousand square feet, in a  
18 zoning district that requires five thousand  
19 square feet. So, the property is actually ten  
20 times the minimum required in the zone. So,  
21 it's a rather large property, and significantly  
22 exceeds the zone.

23 The building proposed for the site, as  
24 John said, has a thirty-six hundred square foot  
25 footprint, and there will be forty-five parking

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1 spaces that are proposed to service the  
2 facility, which is in conformance with zoning.

3 There is one driveway in off of Elm  
4 Street, with a loop road. The driveway and the  
5 loop road are going to be built within the  
6 existing parking area primarily. Very small  
7 portions will go outside of that. The area  
8 around that will be landscaped, as part of the  
9 plan.

10 Water and sewer service, I get all the  
11 exciting areas, water and sewer service will  
12 come from Elm Street. There will be two new  
13 service connections to service the site.  
14 There's adequate water and sewer available in  
15 the village to service the project.

16 Lighting for the facility will be night  
17 sky friendly, with shielded lighting, so they  
18 don't have a big light dispersion area, and  
19 they will be pointing down. The maximum pole  
20 height will be about twenty feet around the  
21 parking lot. The site sits down, so in  
22 relation to the neighbors to the north and to  
23 the west, we're about fourteen feet below those  
24 neighbors, on the west side, and fourteen to  
25 four feet below those neighbors on the north

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1 side. So, the poles are actually going to be  
2 lower, virtually, in relation to those  
3 properties, just because the property is much  
4 lower than the adjacent residential properties.

5 As John mentioned, there is going to be  
6 security fencing around the property. There is  
7 an existing fence that is in place, that will  
8 remain in place, for a portion of the property.  
9 That's a chain-link fence. In addition to  
10 that, the applicant is proposing a solid wood  
11 fence around the property, where it abuts the  
12 residential. That was something that was  
13 discussed with the board, and they've  
14 requested, and John was happy to provide. This  
15 is, one, for security, and two, as a mitigation  
16 measure, further mitigation measure for noise  
17 and light.

18 In addition to that fence that's being  
19 provided, there is additional landscaping  
20 that's been proposed. There was a landscape  
21 plan that was prepared a couple of times. It  
22 has been reviewed by the board, and has been  
23 revised several times in response to comments,  
24 that provides additional evergreen screening in  
25 areas where lawns from abutting properties

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1 approach into the lot. So, there is no  
2 existing trees still left there. So, we  
3 provided, not only a fence, but some evergreen  
4 screening, in addition to the fence, to buffer  
5 those properties.

6 Storm water, there's been a complete storm  
7 water pollution prevention plan prepared for  
8 the property. This is a redevelopment project.  
9 There's a whole ordinance in the New York State  
10 DEC design guidelines that speaks to this type  
11 of redevelopment, and just for the record, the  
12 redevelopment and the specific guidelines  
13 regarding impervious surface, impervious  
14 surfaces include, without limitation, paved  
15 and/or gravel road surfaces, parking lots, and  
16 driveways. So, our claim that the existing  
17 gravel driveway is impervious is absolutely  
18 consistent with the regulations. I've provided  
19 a copy of this to David earlier, and I'll give  
20 a copy to Maureen for the files, as well.

21 The site required flood plain permit as  
22 part of the application. The parking area is  
23 entirely within the flood plain, and there's a  
24 small portion of the flood way on the property.  
25 In applying for that permit, we had to

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1 demonstrate to the village that there will be  
2 no net fill, meaning if we were going to fill a  
3 flood plain, we could impact others by pushing  
4 flood waters on other properties. The way we  
5 designed the site is to make sure there is a  
6 net reduction in fill. We provided more room  
7 for flooding on our property, should it occur.

8 Noise, I just want to touch on that again.  
9 That was a concern of the board throughout the  
10 process and during the site inspection, and has  
11 been in my notes, nine items. The solid fence  
12 being provided, the additional evergreen  
13 landscaping being provided near the area where  
14 trees have been removed. We've relocated the  
15 HVAC and generator from the rear of the  
16 building, to the side of the building, where  
17 it's at a lower elevation, and has been  
18 screened with a wooden fence to help absorb  
19 sound. We've relocated the patio. There was  
20 an outdoor patio, which was originally near the  
21 property line. That has been relocated further  
22 towards the parking lot, away from the adjacent  
23 residence. As John mentioned, we enclosed a  
24 portion of the porch to provide further  
25 mitigation, and we moved the dumpster location

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1 forward, further away from the adjacent  
2 residence.

3 The building itself is proposed to about  
4 forty-five to fifty feet from the adjacent  
5 property lines. The zoning code requires ten  
6 feet, so we're four to five times that required  
7 setback to the adjacent properties.

8 Thank you very much.

9 JOHN CAPPELLO, ESQ.: I don't know if John  
10 wanted to say anything, but one thing I  
11 neglected to say, before I turn it back and  
12 thank you to the board for your cooperation and  
13 thank you for the public for listening, we're  
14 anxious to hear what you have to say, and the  
15 last thing I would like to reiterate, that --  
16 not reiterate, I didn't say it before, but John  
17 has run this facility for thirty years. We  
18 have a letter of support from the police chief,  
19 that in those thirty-two years, there have been  
20 no incidents, his place has been run  
21 sufficiently. It's been a good neighbor. It  
22 employees nine full-time people, and five  
23 part-time people, many of those, I believe six  
24 of those, are village, either village or town  
25 residents, or live in the vicinity. This new

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1 facility will take what it is a parking lot,  
2 and will turn it into a tax rateable, that will  
3 generate a fairly significant amount of taxes  
4 for the village, turning what was an empty  
5 parking lot into a viable facility that we  
6 trust that once it's open and operating, many  
7 of you will enjoy and locate and will be able  
8 to have a good meal and a good time in walking  
9 distance or a short distance from the village.

10 So, with that, thank you, and turn it over  
11 to George.

12 CHAIRMAN AULEN: Thank you very much. I  
13 have a question for the village engineer and  
14 village attorney. Do they have any -- anything  
15 they discussed or comments you have?

16 Dave.

17 DAVID GETZ: Just a couple. There was one  
18 new item, or one clarification of an item  
19 tonight. We're going to need some clear notes  
20 on the plan regarding the noise, and the  
21 process that Mr. Cappella mentioned, that it  
22 will be measured, and then what measures will  
23 be taken to mitigate noise, such as additional  
24 acoustical treatment, or moving the speakers,  
25 if necessary. We want to make sure that's

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1 clearly shown on the site plans. And also, the  
2 village will require a bond for the landscaping  
3 that serves for screening, so we can guarantee  
4 that it will stay in place and it will serve  
5 its purpose.

6 CHAIRMAN AULEN: Okay. Rob.

7 ROBERT DICKOVER, ESQ.: No, nothing.

8 CHAIRMAN AULEN: No comments from our  
9 attorney.

10 Okay. I now have the sign-in sheet -- oh,  
11 any of the board members have any questions?

12 BOARD MEMBER DENERLEY: Not at this time.

13 BOARD MEMBER OLSEN: No.

14 CHAIRMAN AULEN: I do have the sign-in  
15 sheet. We have approximately forty people who  
16 wish to speak. Keep that in mind for the  
17 length of the meeting.

18 First person on -- unfortunately, do you  
19 want to get the -- okay. I cannot decipher the  
20 first name, but Driscoll.

21 PUBLIC MEMBERS: Jedge.

22 JUDGE DRISCOLL: I was helping somebody  
23 get up. I don't know if -- but it sounds like  
24 it's not on.

25 Can you hear me now?

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1 PUBLIC MEMBERS: Yes.

2 JUDGE DRISCOLL: Judge Driscoll,  
3 D-R-I-S-C-O-L-L. Good evening, Mr. Chairman  
4 and members of the planning board.

5 CHAIRMAN AULEN: Would you please give  
6 your address, also?

7 JUDGE DRISCOLL: Oh, sorry, 14 Van Buren  
8 Street, Warwick, New York. I have lived in my  
9 house at 14 Van Buren Street for twenty-seven  
10 and a half years. My neighbors across the  
11 street have lived there for fifty-one years.  
12 We raised our children here and watched them  
13 play in the neighborhood, ride bikes and  
14 skateboard in the street and hang out. It has  
15 always been a friendly, accommodating  
16 neighborhood, where people are willing to help  
17 their neighbors and look out for each other.

18 Time moves on, and as you get older, you  
19 don't know how long you will be able to stay in  
20 your house. This is why one of the things I am  
21 concerned about is how the proposed Yesterdays  
22 building will affect my property value. A  
23 friend of mine is trying to sell her house in a  
24 newish development off Route 94. Everyone who  
25 has looked at it has said, I don't want 94 in

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1 my backyard. I can't imagine what people would  
2 say if they could see a huge bar right across  
3 the street from my house. From my front porch,  
4 and all of the windows in the front of my  
5 house, you can easily see the yellow signs that  
6 are hanging on the trees that say, posted,  
7 private property, and the small blue sign in  
8 the ground that says, building corner. This is  
9 where the proposed Yesterdays would be.

10 Added to that, if this proposal goes  
11 through, there will be a huge change in our  
12 quality of life. As you have heard, or will  
13 hear, the increased lighting, the noise, the  
14 traffic, the smells and pollution to air and  
15 water from contaminated soil, will change the  
16 way we live. No amount of bushes, trees or  
17 six-foot fence, will change this.

18 Yesterdays will have a large parking lot  
19 for its customers, but we, who live in the  
20 neighborhood, all know that many people who go  
21 to Halligan's or Fratello's, don't park down  
22 there. They park on our streets, and walk to  
23 their cars, so the police won't see them leave  
24 and suspect them of too much drinking. We  
25 know, because we hear them loudly walking and

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1 talking on the way to their cars at 2 a.m. in  
2 the morning. Everyone knows, when you drink a  
3 lot, you get louder.

4 A few years ago, when there was a big fear  
5 of razorblades and other things put into candy  
6 given out on Halloween, Don Frye created safe  
7 homes for children to safely trick or treat.  
8 Many of the included and surrounding streets  
9 will be affected by the proposed Yesterdays.  
10 With cars and motorcycles going in and out of  
11 the ninety-seat bar, the thirty to sixty seat  
12 dining area, and sixty something seated porch  
13 and patio, the safe homes will be safe no more.

14 Please stop this from happening, not only  
15 for our neighborhood, but for our village. If  
16 it can happen here, it can happen anywhere. It  
17 might become known as Yesterdays, the gateway  
18 bar. This may just be the beginning.

19 Thank you for listening.

20 CHAIRMAN AULEN: Would you please keep  
21 your applause down to the end of the meeting?  
22 Thank you.

23 Okay. We have Lucina -- I guess they were  
24 crossed off. Okay. Margaret Bowes.

25 MARGARET BOWES: Margaret Bowes, 17 Van

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1 Buren Street. The zoning designation for the  
2 property at 16 Elm Street is, I believe,  
3 actually, light industrial, and as such, only  
4 those businesses that would create no nuisance  
5 factor outside an enclosed building would be  
6 permitted, and any business that is  
7 appropriately scaled, nor well suited for a  
8 residential neighborhood, would be permitted.

9 Unfortunatly, Orange County's flood plain  
10 prevents development on all areas of this site,  
11 except that which directly encroaches on the  
12 residential homes surrounding it. An area that  
13 has, for many generations, provided a natural  
14 screen of trees and plants, which lessen, to a  
15 great degree, the impact of this property's use  
16 on these homes.

17 So, now the village planning board is  
18 being asked to approve a site plan for a  
19 business that would not only be too large, and  
20 totally unsuitable for residential  
21 neighborhood, as outlined by the village zoning  
22 laws, but will be contrary to the primary  
23 purpose of zoning laws themselves, which is to  
24 protect homeowners from devaluation, and  
25 prevent new development from interfering with

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1 existing neighborhoods.

2 Our argument is not with Mr. Christison, a  
3 respected business owner, who, though not a  
4 resident of our village, has shown himself to  
5 be a concerned and conscientious member of its  
6 business community, nor is it with the  
7 Yesterdays, that exists today, which has  
8 certainly been an asset to our village for many  
9 years. Our argument is with the proposed new  
10 Yesterdays, and the harm it would inflict on  
11 those homeowners whose property border its  
12 planned site. Homeowners, who would see the  
13 value of their properties, as well as their  
14 right to peaceful enjoyment of it, greatly  
15 diminish. If Mr. Christison's plans are  
16 approved, the Yesterdays that stands in the  
17 heart of downtown, the one which some have come  
18 here tonight to defend, would be no more. In  
19 its place would be a building more than three  
20 times its size, standing within mere feet of  
21 the small backyard of family homes, and a  
22 neighborhood that has stood unspoiled for more  
23 than one hundred years.

24 So, to all those who chose to come here in  
25 support of these plans, I ask two simple

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1 questions. Would you want a thirty-six hundred  
2 square foot bar/restaurant, open until as late  
3 as 2 a.m., in your backyard? And would you be  
4 here defending this plan, if what was being  
5 threatened, was not your favorite place to eat  
6 and drink, but your most important financial  
7 asset, and your right to enjoy the peace and  
8 quiet at the place you call home?

9 And to our planning board members, I ask  
10 each of you to consider carefully all aspects  
11 of this plan before making a decision, to think  
12 long and hard about the negative impact  
13 approval of this plan would have on our  
14 community. For if that should be your  
15 decision, you will need to be prepared to  
16 explain to the residents and the homeowners of  
17 Warwick, how lessening the property values of  
18 more than twenty homes in the center of our  
19 village, could possibly be beneficial to its  
20 future. Thank you.

21 CHAIRMAN AULEN: Okay. Edward Stattler,  
22 Sattler.

23 EDWARD SATTLER: Edward Sattler,  
24 S-A-T-T-L-E-R.

25 PUBLIC MEMBERS: We can't hear.

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1           EDWARD SATTLER: Edward Sattler, 40 North  
2 Lane, Warwick, New York, and that's  
3 S-A-T-T-L-E-R. I have trimmed my comments.  
4 I'll leave this on my way out.

5           The 1990 full EAF for 16 Elm refers twice  
6 to an establishment of a forty-foot buffer  
7 zone. On the page, title, both the  
8 controversy, the 1990 applicant states, quote,  
9 although it is true that the area directly to  
10 the north and west of the property is currently  
11 residential, a buffer area was created in the  
12 zoning map, which includes a forty-foot minimum  
13 residential buffer within the subject property.  
14 There was always a need for a transition zone  
15 between residential and industrial usage, and  
16 the village planners have established this zone  
17 with this forty-foot buffer, end quote.

18           I'm concerned that the currently proposed  
19 structure sited almost entirely within this  
20 buffer, which means those trees come down, and  
21 the place that's protected the neighbors from  
22 that commercial industrial zone, eliminates the  
23 possibility for an effective buffer and  
24 transition zone.

25           The 1990 EAF indicates the water table at

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1 a depth of zero to two feet, while currently,  
2 the 2017 EAF indicates the average depth of the  
3 water table on the site as greater than four  
4 feet. I'm concerned that nowhere in this  
5 application do I find a record of soil borings  
6 adequate developing the applicant's reported  
7 depth of the water table. Neither do I find in  
8 the records of the board's proceedings relevant  
9 to this application, any mention of the  
10 planning board challenging the recorded depth  
11 and congruity, which would have some impact on  
12 storm water retention during the floods.

13 Both the 1990 and 2017 EAF, inadequately  
14 addressed the industrial history of the  
15 property as a railyard. This applicant's  
16 archeology report places the historic railyard  
17 on the south side of the creek, where the car  
18 wash is, and not the north side, where  
19 historically we know where it is -- or where it  
20 was. Such egregious error calls into question  
21 the validity of the entire archeology report.  
22 I'm concerned that the planning board has not  
23 required archeological study by industrial  
24 archeologists with specialty in railroad sites.  
25 And what we have seen thus far, what the

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1 archeology report does no more than mollify the  
2 concerns of the New York State Department of  
3 Parks Recreation & Historic Preservation. I  
4 urge you to revisit Dr. Martin's letter, and  
5 have it reviewed by an unbiased professional for  
6 that independent third-party review.

7 I believe that the traffic study was  
8 narrow in scope, as determined by the  
9 applicant's representative at one of the  
10 planning meetings, and not a study that was  
11 developed and carried out by the professional  
12 earlier mentioned. I'm concerned by the C  
13 rating for the intersection of West and Elm, as  
14 it is now, and agree with those concerns  
15 detailed by Margaret McNeely in her  
16 September 16 letter to the planning board.

17 The placement of the proposed structure is  
18 not keeping with the adjoining neighborhood.  
19 I'm concerned that the planning board has made  
20 no such determination. If you haven't stood in  
21 those backyards, you can't imagine how close  
22 it's going to be. There needs to be  
23 transition. There needs to be buffer, and what  
24 you're going to have is a wall, and there will  
25 be sound. I urge the planning board, again, to

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1 require professional and impartial visual  
2 impact studies, including interactive  
3 computer-generated before and after images from  
4 all aspects, as well as a seven-day balloon  
5 test marking all corners of the main structure,  
6 HVAC, and other improvements at the design  
7 elevation, and I know for projects such as  
8 this, you don't do balloon tests, but a project  
9 this close to those homes, absolutely requires  
10 it.

11 In my mind, the duties of the planning  
12 board, relative to the zoning board, should be  
13 administered with a clinical detachment of a  
14 professional. The applicant's merits have  
15 nothing to do -- I'm sorry, an application's  
16 merits have nothing to do with any applicant,  
17 nor the own ventures, nor their standing in the  
18 community. An application rises and falls on  
19 its own merits, nothing more, nothing less,  
20 nothing other.

21 Mr. Chairman, I'm concerned that some  
22 decisions are being made based upon protection  
23 of personal interests. Your comments that you  
24 won't be able to hear this project from your  
25 house, implies that there will be objectionable

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1 noise, but you won't hear it. I'm also  
2 concerned that the board has indicated that  
3 they don't want to be sued again, and decisions  
4 are being made simply to avoid litigation. I'm  
5 concerned that one planner's desire to review  
6 drainage, at one of your meetings, was  
7 summarily dismissed, told the matter had been  
8 previously discussed, and it would not be  
9 revisited. At the most recent meeting, there  
10 was a board member with a concern about sound,  
11 who was not really even acknowledged.

12 Local Law 145-3, purposes begins, there is  
13 hereby established a zoning law for the village  
14 of Warwick. 145-3(a)(e) lists the basic  
15 tenants of the zoning and land use, to be  
16 seemingly ignored by this board. Just because  
17 a place is zoned commercial industrial doesn't  
18 mean that you can build exactly what it is that  
19 you wish would be there. The buffer zone, all  
20 these edges where the conflict is, and for a  
21 project to sit in what now is the buffer zone,  
22 to me just seems ludicrous.

23 I'm concerned that the impact of this  
24 proposed commercial development on surrounding  
25 residential neighborhoods has not been properly

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1           evaluated, except by the neighbors, and that  
2           any such development of 16 Elm will devalue  
3           property over a wide swath, and hasten  
4           transition from owner-occupied dwellings, to  
5           absentee-owner rental properties. There's  
6           already history in this village of  
7           neighborhoods that have gone this way, and from  
8           them, we can learn.

9           I'm appreciative of the noteworthy  
10          professionalism of the planning board's  
11          secretary and attorney. I appreciate, also,  
12          the likely brilliance and diligence among the  
13          current membership of the planning board that  
14          never gets to see the light of day.

15          Tonight is this board's last opportunity  
16          to renew or resolve the difficult work of  
17          informed and transparent planning. I urge you  
18          not to take the next step closer to Article 78,  
19          and to not be found, in your actions, that  
20          you've been arbitrary and comprecious, an  
21          exercise of abuse of discretion. Thank you.

22          CHAIRMAN AULEN: Patrick Gallagher.

23          PATRICK GALLAGHER: Patrick Gallagher, 57  
24          West Street.

25          CHAIRMAN AULEN: Please spell your name,

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1 sir. Spell your name for the reporter.

2 PATRICK GALLAGHER: Spell my name.

3 Patrick, P-A-T-R-I-C-K, G-A-L-L-A-G-H-E-R.

4 Does that take away from my five minutes?

5 First of all, I don't think that there's  
6 anybody among the people that are objecting to  
7 this, that have any genuine, or have had any  
8 genuine dislike for John Christison or his  
9 operation, or -- you know, the first letter  
10 that I wrote about this, gave respect to John  
11 Christison and to the current owner of the  
12 property, because they both have been good  
13 neighbors. This has nothing to do with how  
14 well run his place is. It has nothing to do  
15 with his personality. Nobody hates the guy.  
16 We don't want a thirty-six hundred square foot  
17 bar in our backyard, with two thousand square  
18 feet of decks, and no one can tell me that  
19 that's not going to be a major impact on our  
20 neighborhood. Just because no one can tell me  
21 that, doesn't mean that I'm right, but I don't  
22 think anyone in this room, really, come on.  
23 Stand in our backyards. We've asked this  
24 planning board, and the village board, time  
25 again, come stand in our backyard, and no one

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1 has done that. Why not? What is the problem?  
2 Do you represent us? I'm going to read some  
3 comments, and I'll quit.

4 The applicant did not anticipate a welcome  
5 wagon, and came to this process with some of  
6 the best legal counsel in the region, but if  
7 the zoning is interpreted with the neighborhood  
8 in mind, it does not support the proposal  
9 you're obligated to do the right thing legally  
10 and morally. This proposal, and handling of it  
11 to date, do not pass muster legally or morally.

12 Part two, page eleven, question eighteen  
13 of the 1990 EAF, will the proposed -- will the  
14 proposal affect the character of the existing  
15 community. In 1990 the question was answered  
16 no. No, no building was there, one light.  
17 Maybe it was right. I don't know. I moved  
18 there in 1992. It was my neighbor already, as  
19 is the car wash. I have never complained about  
20 the Port Newark light lights over there,  
21 because they were there when I was there. I  
22 don't blame you. At the last planning board  
23 meeting, the chairman of the planning board  
24 chose to ramrod the response to the same  
25 question, insisting that the answer regarding

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1 impacts to the neighborhood was, no impact. He  
2 emphatically stated that the answer was no, and  
3 his board followed along.

4 How can a proposal with twenty times the  
5 lighting, and a building three to four times  
6 the size of the residences that surround it on  
7 three sides, not two, three sides, Elm Street,  
8 West Street, Van Buren. You're making an  
9 amphitheater to broadcast into Orchard and  
10 Welling, but that's another point altogether  
11 that's completely ignored. How can a proposal  
12 with twenty times the lighting and a building  
13 three to four times the size of the residences  
14 that surround it on three sides, have no  
15 impact? How can the introduction of a  
16 thirty-six hundred square foot bar and two  
17 thousand square feet of deck for outdoor  
18 dining, have no impact? Walking past any  
19 downtown Warwick Main Street establishment on a  
20 busy night, makes that a foolish statement.  
21 This statement defies reality and implies a  
22 political prejudice or impairment on the part  
23 of the chair.

24 Can any member of this board look me in  
25 the eye, right now look me in the eye, please,

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1 and tell me -- I lost my place. Forgive me.  
2 Very dramatic, very dramatic. I'll start over.  
3 Can any member of this board look me in the  
4 eye, tonight, here, in this public forum, and  
5 state for the record, that this proposal will  
6 have no impact on the neighborhood's community?  
7 Right now, can you look my neighbors in the  
8 eye? Can you look your own families and  
9 children in the eye, and tell any of us, in all  
10 honesty, that you believe that there will be no  
11 impact on the neighborhood if such a proposal  
12 were approved?

13 That's what it takes to get this done.  
14 You have to state for the record that this will  
15 have no impact on the neighborhood, no impact.  
16 Come on, come to our backyards, turn a radio on  
17 in the lot, it's over.

18 Parking of these cars were restricted and  
19 a part three required for a variance in 1990.  
20 They had to have been recently serviced --  
21 pardon me. Would you like to speak? I'm  
22 sorry. I didn't mean to interrupt you.

23 They had to have been recently serviced  
24 prior to the storage on the lot. No leaking  
25 fluids were specifically mandated. In 2017, in

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1 the same lot, next to the same creek, in an  
2 expanded flood zone, every car in the bar lot  
3 will be a potential source of non-point source  
4 pollution in an area adjacent to the  
5 Waywayanda. In the 1990 EAF, under the project  
6 description, page three, section B, part 1G,  
7 the question asked is, what the maximum  
8 vehicular trips generated per hour upon  
9 completion of the project would be, and the  
10 answer is a maximum of ten to twelve car  
11 movements per day, per day. In 2017, you can  
12 easily have, according to the applicant's  
13 proposal, fifty to sixty trips per peak hour,  
14 if the estimate is not understated by the  
15 applicant's engineer, and as he said, there's  
16 also quibbling about that, but he's stating  
17 fifty to sixty. That's what, ten, twelve times  
18 more than what was 1990 approved? Houses are  
19 still there. Mitchell's Corners is in. A lot  
20 more traffic there. A lot more people in the  
21 village.

22 Since that time, Elm Street and  
23 surrounding streets have had traffic increases  
24 as a result of Mitchell's Corner shops, the  
25 martial arts center on West, near Elm, and

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1 Wheeler, and the increased population of the  
2 village. Since that time, Elm Street and  
3 surrounding streets have become ever busier,  
4 and are used to avoid Main Street by many  
5 drivers. The neighborhood has remained stable.  
6 The justification for allowing more traffic and  
7 eliminating parking spaces to accommodate a  
8 business, whose owner stated on News 12 the  
9 other day, that there already is no parking in  
10 the Village of Warwick, is very questionable.  
11 You're going to be eliminating parking on Elm  
12 Street. It's a only a few spaces, but we don't  
13 have enough to go around to begin with.  
14 Everyone knows it. John is not the only one.  
15 Additional traffic will impact Elm, Orchard,  
16 Wheeler, Welling, West, Spring Streets, North  
17 Street, Cottage, McEwen, Campbell and Hamilton,  
18 and traffic will be competing with massive  
19 chlorine tankers on some of these narrow  
20 streets, when they leave Main Street. What  
21 percentage of impaired drivers are you adding  
22 to the mix if you allow this project to  
23 approval?

24 Thank you for listening to me. Please  
25 think long and hard about these things. This

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1 is our neighborhood. I'm going to -- I'm going  
2 to spend everything I've got, because I'm  
3 either going to give it up in property value or  
4 I'm going to have to fight this. It's my home.  
5 You came to my home.

6 CHAIRMAN AULEN: Thank you.

7 PATRICK GALLAGHER: We don't like dislike  
8 John.

9 CHAIRMAN AULEN: Your time is up.

10 PATRICK GALLAGHER: We don't dislike you,  
11 George.

12 CHAIRMAN AULEN: I'm having difficulty  
13 deciphering the next name. Renelle Lorrain, 13  
14 Grand Street.

15 RENELLE LORRAY: Hi. My name is Renelle  
16 Lorrain. First name is Renelle, R-E-N-E-L-L-E,  
17 last name Lorrain, L-O-R-R-A-Y. I live at 13  
18 Grand Street.

19 I was here -- I'm here to address some of  
20 the comments that were made by people that  
21 wrote in, that don't even live here, about  
22 Yesterdays and where it currently is, and how  
23 fine a place it is, and how they brought their  
24 grandchildren, et cetera, and I was always  
25 under the impression that Yesterdays was

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1       supposedly a pub, and a pub by definition, is a  
2       place that serves alcohol and food, and usually  
3       in that order, but because of the size of the  
4       place, the fact that it's enclosed, and the  
5       limited seating capacity, kind of inhibits a  
6       lot of the people that would go to a place like  
7       Halligan's, where they go for a drink or two  
8       after work to relax, or they'll go home and  
9       have dinner after those drinks, or they'll have  
10      dinner elsewhere, and then go there to have fun  
11      and hang out. So, the thought of this type of  
12      establishment now moving to a facility with  
13      outdoor decking, and I was mistakenly under the  
14      impression that the outdoor seating was for the  
15      two hundred people, but that's for everyone,  
16      but still, noise carries at night. I can hear  
17      music coming from Pennings Orchard. I can hear  
18      music coming from Railroad Green. The new --  
19      just listening to what was presented, the new  
20      parking spots on the facility itself, will now  
21      be concentrated, forty-five of them, which is  
22      in addition to wherever they're going to park  
23      on the side streets, and currently, anyone that  
24      drives to Yesterdays in town, has to park at  
25      CVS or down below by the Chase lot, or if

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1 they're lucky, they got a spot on Main Street  
2 in front, but now you'll have concentrated  
3 vehicles right on the site, with exhaust fumes  
4 blasting into the atmosphere and into the  
5 backyards. People have to come out and have to  
6 smoke. So, everyone will have to breathe in  
7 secondhand smoke. Because the place is larger,  
8 I'm sure it will have seating to accommodate  
9 parties that are larger than four to six  
10 people. In that case, most likely a lot of  
11 bikers will come, because they tend to travel  
12 in groups, large groups. They go past my house  
13 all the time, and to have to listen to the  
14 noise of them starting up from the parking lot,  
15 leaving, a mass or whatever, that's very loud.  
16 I can hear them as it is coming along Cherry  
17 Street like it's a drag strip. They head out  
18 on Grand Street, towards Liberty Green, and up  
19 and over the mountain. I can hear that way off  
20 in the distance, and it's very disturbing. The  
21 people in these houses, when they come home at  
22 night, expect to be able to enjoy, you know,  
23 having dinner or watching TV, they shouldn't  
24 have to shut their windows. They should be  
25 able to do that at night.

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1           The other issue, also, is the odors  
2 emanating from the kitchen exhaust. Why the  
3 space has to have open decking, I don't know.  
4 It is probably the first one now proposed  
5 within the entire village. Every other place  
6 is enclosed, so you don't really hear the  
7 noise. If you wonder what it would be like to  
8 live next to this place, you could stand across  
9 the street from Fetch, Eddie's Roadhouse, when  
10 he had those windows open, or any other place,  
11 Halligan's, that people go to have a good time,  
12 you know that when drinks are had, the  
13 inhibitions wash away, and the later the  
14 evening goes on, the louder people get. As a  
15 great example, when I first walked in here, you  
16 could hear everyone talking in this room, and  
17 just imagine how loud that was, and if it was  
18 right next-door to your house.

19           Did I forget anything? I think that's it.  
20 Some people already mentioned the points I was  
21 going to talk about. Thank you.

22           CHAIRMAN AULEN: Dan Mack.

23           DAN MACK: Hello. Can you hear me? No?  
24 All right. It's going to be worth it.

25           First of all, I want to thank the planning

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1 board for your service. This is not easy for  
2 any of us, and you've had to have your feet to  
3 the fire for the last, at least, six months,  
4 and some of you have been here. I've been  
5 reading the minutes for Mitchell's Corners,  
6 when the Dunkin Donuts, and Chairman Aulen was  
7 on the board at that point, some of the people  
8 in this room spoke. So, history sort of  
9 repeats itself, and it's a difficult job you  
10 have.

11 What I've heard mostly here tonight, and  
12 I've heard it at the other meetings, is the  
13 zoning law, there's both letter and the spirit  
14 of the zoning law, and what you're spending a  
15 lot of time on, of course, is the letter of the  
16 law, setbacks, heights of lights. You know,  
17 I've talked about the accommodations many of you  
18 have asked for here and gotten through John and  
19 Ross and John Christison, but there's also a  
20 spirit in the law, and I spent a long time  
21 reading the zoning law of the Village of  
22 Warwick, and I just want to talk about a few of  
23 the terms in that, and it's a harder thing to  
24 sort of -- you can't measure some of these  
25 words, but they're in the law and you have to

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1 sort of dwell on them. There's a, kind of  
2 quiet in the room in general, but the law talks  
3 about excessive dissimilarity in relation to  
4 other structures. So, those are kind of petite  
5 houses on West Street, Van Buren Street,  
6 Cottage Street, and both the height of the  
7 houses, the cubical content, the gross floor  
8 area, the height of the building and the roof  
9 of the -- there's a model on that table, is  
10 quite different than the quality of the houses  
11 surrounding it, and that's in the law. So, if  
12 there's great dissimilarity, you have to take  
13 that into consideration.

14 The idea of shouting or making noise  
15 either inside or outside of a building, motor  
16 vehicles, my wife will talk about that in a  
17 minute. We have a very poignant letter from  
18 someone who lives in the middle of the bar  
19 culture in Warwick, and was not able to speak  
20 tonight, but is a very dramatic letter.

21 The other is the impacts of growth must be  
22 controlled to retain the character of the  
23 village. This is tough. What is the character  
24 of the village? How do we grow? What are the  
25 growing pains we all have to have? Do we want

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1 to keep more business? There's a lot of  
2 difficult questions, but I want to encourage  
3 you to kind of do some soul searching in terms  
4 of what the spirit of the zoning board is and  
5 not just the metrix of it.

6 And also, with all of us here tonight, and  
7 I respect the huge number of people here, and  
8 I've never seen quite this thing happen in  
9 Warwick, a greater role for the public must be  
10 encouraged both at the community level and for  
11 policy implementation. So, here you are, this  
12 is kind of a good example of kind of democracy  
13 in progress, but it's a difficult decision you  
14 have to make. So, I want to really, again,  
15 encourage you to look beyond just the numbers,  
16 and get kind of the spirit of what -- how  
17 Warwick can grow and how Warwick can retain its  
18 nature as a village.

19 One thing that I think a mistake was made  
20 in some of the zoning, that that particular  
21 piece of property should have been designated,  
22 limited office overlay, which was a  
23 designation, if you haven't heard of that, to  
24 protect our residential neighborhoods from  
25 commercial neighborhoods. It's sort of -- it's

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1 another form of the buffer zone, and it has  
2 very, very strict restrictions on how you can  
3 -- what you can do in a limited office overlay.  
4 With those many homes near there, I think that  
5 was a mistake made by the village board when  
6 they rezoned -- or when they looked at the  
7 zoning of that property, and I think we're  
8 having to live with the consequences of that.  
9 And many of my other points were made by other  
10 speakers. Thank you?

11 CHAIRMAN AULEN: Thank you. We have Teri  
12 Mack.

13 TERI MACK: Good evening. My name is --  
14 my name is Teri Mack, and I live at 14 Welling  
15 Avenue, T-E-R-I, M-A-C-K, and I've been asked  
16 to read, read a letter from someone who wasn't  
17 able to be here tonight, who lives on Main  
18 Street, and in the village, and his comments  
19 are -- are relevant to the spirit of the master  
20 plan, where it stated that development should,  
21 one aspect, I don't know if it's D.4, I'm not  
22 as good at that, but that should meet locally  
23 generated need.

24 Dear planning board members, local  
25 officials and Warwick neighbors, thank you for

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1           this opportunity to voice my opinion on this  
2           matter. As a resident of this community, it  
3           deeply troubles me and my family about the way  
4           this village is heading. We rent an apartment  
5           in the middle of the village. We were warned  
6           about the train that comes through at all  
7           different hours. To my surprise, that would be  
8           the least of our noise problems. My wife and I  
9           never thought the village had such a nightlife  
10          and that so much partying was taking place.  
11          Before renting in the village, we had lived in  
12          an area of Warwick outside the village, where  
13          the nightlife was unnoticeable, like it is for  
14          most people in this town.

15                 For the people that live on Elm Street and  
16          the surrounding areas, I feel for you. You  
17          will need to prepare for the following: Loud  
18          talking, cursing, screaming down the block,  
19          fights, arguments, slamming car doors, cars  
20          with loud mufflers, people leaving beer cans  
21          and trash in the street and on your property,  
22          groups of people smoking and being loud. I've  
23          witnessed a group of boys climbing a large  
24          flower pot in the village Railroad Green, and  
25          large packs of young adults that bar crawl

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1 anywhere between 1 and 3:00 in the morning  
2 during most weekends, and during any given  
3 event or holiday. Be prepared to be woken up  
4 at least two times per night. I could go on,  
5 but -- many other examples, but I won't give  
6 them here. We've called the police many times  
7 and notified our landlord, who wasn't aware of  
8 this problem. Our landlord sent the mayor an  
9 email about the problem, but to this day,  
10 nothing has changed.

11 We're not New York City, and we shouldn't  
12 try to be. We're a sleepy, little town, where  
13 we have hard-working people who just want to  
14 raise a family, are entitled to reasonable  
15 peace, or so I thought. Thank you.

16 CHAIRMAN AULEN: John Marcy.

17 JOHN MAXCY: It's John Maxcy, M-A-X-C-Y.  
18 I live at 47 West Street.

19 According to the Village of Warwick's  
20 Zoning Law, article one, title and purpose, I  
21 would direct attention to Section 145-3,  
22 purpose, which states, A, to guide the future  
23 development of the village in accordance with  
24 the comprehensive plan, so that the village may  
25 realize its potential as a place to live and

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1 work, with the most beneficial and convenient  
2 relationships among the residential, commercial  
3 and mixed use areas within the village. Letter  
4 F, a greater role for the public must be  
5 encouraged, both at the community level and for  
6 policy implementation, and at the neighborhood  
7 level, for land use implementation.

8 As early as April 2017, it was brought to  
9 the attention of this planning board, as well  
10 as the village board, the many environmental  
11 concerns and negative impacts this development  
12 would have on our community. On May 1st of  
13 2017, we submitted a review by an environmental  
14 consulting firm, hired by us, to the EAF  
15 submitted to the board, showing numerous  
16 errors, omissions and inaccuracies. As  
17 previously mentioned by Mr. Sattler, during the  
18 May 18, 2017 planning board meeting, the record  
19 shows, when questioned about outdoor speakers,  
20 the applicant's attorneys stated on the record,  
21 that they will have, quote, little speakers on  
22 the porch that only the patrons can hear,  
23 unquote. The response of the chairman of this  
24 board, also on record, was, guarantee, quote, I  
25 won't hear it from my house, unquote.

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1           During the June 15, 2017 planning board  
2 meeting, the record shows, when the issue of a  
3 traffic study was raised, the chairman of the  
4 board stated reluctantly, three of the board  
5 members want a traffic study, so it has to be  
6 done. The attorney for the applicant stated,  
7 quote, the traffic study will show traffic here  
8 will not be sufficient enough to warrant any  
9 mitigation, because it will be a level A, and  
10 traffic conditions will substantially be the  
11 same, unquote. The engineer for the applicant  
12 states, he does not think there is any traffic  
13 concern on the opposite side of the tracks,  
14 then suggests the traffic study be done from  
15 the tracks to the north, on Elm Street, to the  
16 intersection of West Street and Elm Street, to  
17 which this board agreed.

18           This insufficient study ignored the  
19 entrance and exit of the Mitchell shopping  
20 area, and the entrance and exit of the car  
21 wash, both within sixty feet of the entrance to  
22 the proposed development. Also, and more  
23 importantly, the study ignored a residential  
24 neighborhood, with more than seventy  
25 residential homes, south of the tracks, in the

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1 other direction, on Campbell Road, Hamilton  
2 Avenue, Welling Avenue, Oakland Court and  
3 Orchard Street, including an offset four-way  
4 stop sign, at the intersection of Orchard  
5 Street and Elm Street.

6           These are examples of concerns the  
7 residents have with our fair, impartial, and  
8 equal representation to this proposed  
9 development in front of the planning board, and  
10 the interpretation and adherence to existing  
11 zoning laws. Our objective is to bring to the  
12 planning board's attention, the many legitimate  
13 concerns the residents have to this proposed  
14 development at this location. Our objections  
15 are not against the establishment, or its  
16 owners. We are only asking the board to look  
17 carefully at the negative impacts this proposal  
18 will have on our community. This proposal is  
19 out of scale for this location, and violates  
20 the spirit of the village comprehensive plan.  
21 Thank you.

22           CHAIRMAN AULEN: Harry Clarke. Everybody  
23 is leaving when I called his name.

24           PUBLIC MEMBERS: He's gone.

25           CHAIRMAN AULEN: He left? Margaret

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1 McNeely.

2 MARGARET McNEELY: Thank you very much. I  
3 have one chart. I think I'm tall enough here.  
4 I'm Margaret, M-A-R-G-A-R-E-T, McNeely,  
5 M-c-N-E-E-L-Y. Thank you. I live at 5 Welling  
6 Avenue in the village. I'm going to talk about  
7 two things, one very quickly. John covered  
8 most of the issues about the traffic, but I do  
9 want to show, and I'll return to the mic, if I  
10 can do it, what the current traffic pattern is,  
11 and some day you and I can have a cup of coffee  
12 and talk about data generation and data  
13 interpretation. They're different fields, and  
14 I think it's always interesting to look at both  
15 sides.

16 What I did was, I looked at what the  
17 traffic study found, and any of you who went up  
18 and down Elm Street at that time -- thank you.  
19 I need a Vanna. The rubber count was placed  
20 right near the entrance to the bar. So, what  
21 they were picking up were all of the cars that  
22 came down West Street, and some went back, then  
23 other cars went out West Street. So, we have  
24 some phantom cars in here, so I used averages,  
25 but I started at 5 a.m., and that's when a lot

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1 of people start moving in that neighborhood.  
2 They go to the bagel shop. The first bus is  
3 about 5:00. So, if you look, we have a steady  
4 rise, and the weekday is blue, up to, we peak  
5 about noon to 1, then we have some traffic,  
6 with people going to the pizza shop, about 5,  
7 then it totally dissipates. On Saturday, we  
8 have a very similar pattern, again, with the  
9 peak at lunch, with people coming to Mitchell  
10 Corners, car wash, whatever, and then it goes  
11 down, down now, and then, interestingly enough,  
12 it peaks again as people start leaving the  
13 downtown bars. They finish dinner. They  
14 finish their drinks. And as most of us who  
15 live in the village know, it's a whole lot  
16 easier to come Elm Street, to the Welling  
17 Avenue Expressway, and scoot out, that heaven  
18 forbid, get stuck by two lights downtown, and  
19 that's what we're seeing in this spike.

20 If you look at the projections in the  
21 traffic study, it's going to add fifty percent  
22 to each of these. Some say that's not  
23 significant. I walk my dog three times a day  
24 on Elm, Mitchell Corners, Railroad Green,  
25 Welling Avenue. I'm still alive, thank you

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1 very much. Some days I come home questioning  
2 it. Fifty percent traffic is a lot of cars in  
3 that area. So, I would ask that, I thank the  
4 three people who were in favor of the traffic  
5 study, to do a full traffic study, look at  
6 Orchard Street, look at Welling Avenue. In  
7 fact, the traffic study that you commissioned  
8 in 1995, interestingly enough, showed that  
9 there were a hundred and forty cars on Orchard  
10 Street on a Saturday afternoon. That's in  
11 1995. West Street had four hundred and eighty  
12 cars on it. That's 1995. Think about the  
13 change in the village in twenty years, in the  
14 number of cars. We have to look at the  
15 complete traffic pattern for the bar and the  
16 restaurant. You GPS 16 Elm Street, they don't  
17 take you down Main Street, up around down into  
18 Elm. They bring you Campbell, Welling,  
19 Orchard, and in that way. If you're coming  
20 from the south, you're not going to come  
21 through the village. You're going to come that  
22 way. So, I beg of you to finish the traffic  
23 study, do a whole traffic study. Let's look at  
24 the whole picture. Let's know what the real  
25 data are at this point, so we're going to know

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1 what will be the full impact of this bar.

2 Second thing, thank you. Yes, I need  
3 this. This is the landscape. We've talked  
4 about mitigation of the lights for the  
5 landscape. So, what I did was, take the plan  
6 and put the landscaping next to the lights.  
7 So, what you see up here, and the landscape  
8 plan is gorgeous, by the way. Where is John?  
9 It will be beautiful. The spring trees, the  
10 flowers, they're going to be great. To block  
11 the light, we have eight-foot norvick pines  
12 being planted there, and I just learned that  
13 there is a fourteen-foot change. So, take the  
14 fourteen feet, add the eight feet of the  
15 norvick pines, which kind of grow, if they're  
16 doing really well, three feet a year, typically  
17 two feet, it's going to take at least four  
18 years for those trees to get high enough to  
19 block the motion sensor lights that are going  
20 to be at the top of the building. Four years,  
21 the trees don't do that well, it could be as  
22 long as six years. I appreciate the ballards  
23 that were were put there, with the arbovite.  
24 That's great. Look down here in the parking  
25 lot. That yellow rim is what's shooting out.

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1 The lights in the parking lot aren't down.  
2 They're forward. This is going to be daylight  
3 most of the time. These are going to be  
4 flashing on and off. We've got critters in our  
5 neighborhoods. Motion sensors, they're making  
6 us all crazy, and these are going to come right  
7 over to everybody who lives here. The  
8 landscape plan has been improved. It needs  
9 more work. Thank you.

10 CHAIRMAN AULEN: Jack Pennings.

11 JACK PENNINGS: I just wanted to say hello  
12 to everybody. I grew up on West Street,  
13 Warwick. Forty years I've been here. I know  
14 some of you people. I used to trick or treat  
15 in your neighborhoodS. I have. I've stood on  
16 those places and looking out that way. I'm  
17 here for John Christison. I just have a few  
18 things to say.

19 CHAIRMAN AULEN: Jack, would you please  
20 spell your name for the Reporter?

21 JACK PENNINGS: Jack Pennings,  
22 P-E-N-N-I-N-G-S. You got Jack, right?

23 All right. Okay. I'm not a big public  
24 speaker, so I'll try to make this short and  
25 sweet. My father and mother have gone to

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1           Yesterdays for four generations, deep in  
2           Warwick. We go there because we like the  
3           family atmosphere. It's not a bar to me. I  
4           know the signs say, no bar. It doesn't say, no  
5           restaurant. I'm not fighting with you guys.  
6           We're all Warwickians here, right? So, I just  
7           wanted to say -- excuse me, I hurt my back this  
8           week. I grew up on West Street, nice  
9           neighborhood, love the neighborhood, trick or  
10          treated there. My best friends were from West  
11          Street. We sleigh rided off the hill into West  
12          Street for years ago. Cars coming, you know,  
13          that's not what we're all here about. He's  
14          going to do what's right for the town, the  
15          village, everything. I hear music from  
16          Pennings Orchards every night, and I've gotten  
17          used to that, and it's a lot louder out there  
18          than it's going to be in here.

19                 So, I just want to take two sides to every  
20          view. There's two sides to everything. I just  
21          wanted to say, we're not even allowed to have  
22          volume on in his bar on the TV screen right  
23          now, not even allowed to watch the Yankee Game.  
24          So, I don't think you're going to have issues  
25          with volume and stuff.

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1           The other thing was, you've got a train  
2 that runs through their pretty much at night.  
3 I can hear it from my house. I know you guys  
4 can hear it. So, I'm just saying, he'll do  
5 what's right for the neighborhood, for the  
6 village. My mother and father have been there,  
7 my kids. We go to Yesterdays for the family  
8 atmosphere. I can sneak out, go there, and  
9 that's what draws me to Yesterdays. That's  
10 what I think a lot of people go to Yesterdays  
11 for. The character of John, I know that's not  
12 in question, but when my father-in-law was  
13 dying, and my wife and I often visited there  
14 from the hospital, we walked there, and he  
15 brought up the whole ICU food for all the  
16 nurses and stuff. I'm like, I know that he'll  
17 do the right thing for us, and I know that  
18 we'll work together as Warwickians to get it  
19 right.

20           The other thing was -- excuse me. I lost  
21 my place too. I think America is about freedom  
22 of speech, and it's about free enterprise, and  
23 I think we're all here for that reason, and I  
24 think he's been here. He's a hard worker. You  
25 guys are hard workers. Let's get this together

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1 and get him a nice restaurant that everybody  
2 can be happy about.

3 CHAIRMAN AULEN: Rachel Berlin.

4 RACHEL BERLIN: Can you hear me? Rachel  
5 Berlin, 12 Van Buren Street.

6 CHAIRMAN AULEN: Please spell your name.

7 RACHEL BERLIN: R-A-C-H-E-L, B-E-R-L-I-N.

8 A lot of people have already said what I  
9 was planning on saying, but again, this is not  
10 about Yesterdays, or about John Christison.  
11 Actually, as a matter of fact, my son loves the  
12 hamburgers at Yesterdays, and it is not about  
13 that. It's about what doing what's right. If  
14 you're a good neighbor, you won't invade a  
15 quiet, private neighborhood, build an enormous  
16 restaurant and bar, that will remain open to 2  
17 a.m., and 1 a.m. during the week. That's not a  
18 restaurant, that stays open til 2 or 1:00 in  
19 the morning. I don't eat at that hour. I  
20 don't know most people who do. Excuse me.  
21 I'll pass what people have already said. But I  
22 live across the street from the person whose  
23 backyard, their deck is literally within feet  
24 of this new restaurant. They've lived there  
25 for over fifty years. I live across the street

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1 from them. I just cannot even believe that  
2 this planning board, or the village, would  
3 support that, and do that to their neighbors.

4 Yesterday, I was getting ready for work,  
5 and my windows were open. John was there, and  
6 another man was there. I could hear both of  
7 them, the entire conversation, clearly, in my  
8 room. That's two people, two people. Just  
9 because it is zoned industrial, doesn't make it  
10 right.

11 Okay. Again, this is not about  
12 Yesterdays. I wish that my son could continue  
13 to have the hamburgers that he loves, but this  
14 is not the right location. Thank you.

15 CHAIRMAN AULEN: Teri Mack is on again.  
16 You don't want to speak again.

17 TERI MACK: No.

18 CHAIRMAN AULEN: Okay. Caroline Martin.

19 CAROLINE MARTIN: Thank you. Hello, and  
20 thank you for the opportunity to speak. My  
21 name is Caroline Martin, C-A-R-O-L-I-N-E,  
22 M-A-R-T-I-N. I live at 5 Cottage Street, and  
23 contrary to what Mr. Christison's lawyer has  
24 said, I'm not a professor. I never have been.  
25 Maybe he likes to embellish. I do have a PhD

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1 in hydro geochemistry from Saint John's College  
2 at the University of Cambridge, and I have a  
3 full-ride scholarship here in New York, at  
4 Columbia University, where my focus was  
5 environmental geochemistry. I'm an expert in  
6 ground water chemistry, geology, and the  
7 environmental impacts.

8 I recently wrote a letter to the planning  
9 board, summarizing my reading, my own bias  
10 professional reading of the environmental site  
11 investigation/remediation documents compiled by  
12 William L. Going & Associates on behalf of John  
13 -- is your name Christison or Christanson?

14 JOHN CHRISTISON: Christison.

15 CAROLINE MARTIN: Christison. Well, they  
16 misspelled your name in your environmental  
17 report. So, on behalf of John Christison and  
18 his efforts to characterize the environmental  
19 impact of his proposed development on Elm  
20 Street. Despite the errors and oversight in  
21 this document that I alerted the board to, the  
22 environmental impact was deemed by the board to  
23 be none. I'm sorry, but if you dig a hole in  
24 the ground, there is an environmental impact,  
25 and the purpose of an environmental

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1 investigation is merely to assess the degree of  
2 that impact. It should be impartial. It  
3 should be objective. It should be succinct,  
4 yes, perhaps not merely four pages, but it  
5 should be thorough. It should be thorough.  
6 Beyond the instructive introduction, the first  
7 important goal of site investigation report,  
8 should be the characterization of the  
9 environment under question, such basic topics,  
10 and I'm not offering an exhaustive list at all,  
11 but current land use, vehicular access,  
12 railways, electrical supply networks, proximity  
13 to other constructions, the type of nearby  
14 constructions, historical land use, were there  
15 waste facilities, manufacturing plants, the  
16 topography, the slope of the land, the height  
17 above sea level, basic parameters, geology.  
18 What is the bedrock? It wasn't mentioned in  
19 the environmental report. Meteorology, the  
20 weather, simple things, hydrogeology, aquifer  
21 classification, previous work, engineering  
22 difficulties, none of this was in the document  
23 that I read. You're relying on this document  
24 to attest to the environmental condition of the  
25 proposed development.

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1           For the first time in my career, I  
2           encountered an official report concerning  
3           ground water, that fails to specify the depth  
4           at which the ground water was recovered from,  
5           the weather conditions at and preceding the  
6           time of sampling, which greatly affects  
7           parameters like the water table, which is why  
8           there was probably a discrepancy between this  
9           report and others, ground water composition  
10          too, chemistry, is all affected by that. It's  
11          not only that they weren't recorded. They  
12          weren't considered. I mean, it's a very shotty  
13          document.

14                I'm afraid, regarding the environmental  
15                investigation, things got worse. Okay? A  
16                heavy metals test was conducted, and one  
17                sample, in 2013, for a different study. Yet,  
18                the single sample had an arsenic concentration  
19                that was found to be at the threshold of the  
20                World Health Organizations guideline limits,  
21                the Environmental Protection Agency's guideline  
22                limits, which are the same, for drinking water.  
23                Now, there has been mentioned that there's some  
24                distinction between drinking water and ground  
25                water that I'm apparently ignorant of. There's

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1 a continuum in the natural world, whether you  
2 like it or not, between ground water and  
3 surface water, tap water, and it's exacerbated  
4 by excavation. Arsenic is responsible for  
5 unimagineable health defects, when consumed  
6 above this limit, and the main culprit is  
7 contaminated ground water. So, given the known  
8 potential for an arsenic risk, we only know  
9 there's a potential for it, why it was not  
10 deemed necessary to test for heavy metals at  
11 all in the ground water, at varying depths and  
12 locations on the site, during the 2017  
13 investigation, it just defies explanation, and  
14 tons of subsurface matter are going to be  
15 turned up, the river that's deposit, later the  
16 ground water.

17 I could say that I besiege you to properly  
18 and responsibly investigate the environment of  
19 the Elm Street property prior to development,  
20 but dozens of people have been percipherously  
21 doing this already. Instead, I would like to  
22 say, that given your seemingly imposition to do  
23 so at this late date, you should be legally  
24 bound to do so. You may imagine that the  
25 degree of environmental impact in such a case

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1 as Flint, Michigan, or more recently, in  
2 Newburgh, New York, might never occur here, but  
3 if you, the board, fail to have the environment  
4 of the proposed Elm Street lot properly  
5 investigated, the degree of your negligence  
6 would be in alignment with such failures,  
7 regardless of what transpires.

8 It's basic environmental geosciences that  
9 have not been conducted, or at least they  
10 haven't been communicated effectively, and  
11 there's nothing you can't clean up. There's  
12 nothing you can't engineer yourself around, but  
13 you must, even if it's -- it doesn't lead to  
14 anything, you must do it. We know enough about  
15 the environment and how it should be respected  
16 in this day and age to go ahead and do that.  
17 Thank you.

18 CHAIRMAN AULEN: Steven Gross.

19 STEVEN GROSS: George, you should know my  
20 name is Gross, all this time.

21 Steven Gross, spelled as in disgusting. I  
22 live at 71 Colonial Avenue, although I used to  
23 live --

24 CHAIRMAN AULEN: Excuse me. Did you spell  
25 your name?

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1           STEVEN GROSS: I said, as in disgusting.

2           You got it?

3           CHAIRMAN AULEN: I just want to make sure.

4           STEVEN GROSS: Yeah. I used to live at 22  
5           Van Buren Street, so I used to be a member of  
6           this neighborhood. As this board knows, I'm  
7           also a professional environmental planner.  
8           I've been so for the last forty years, and I  
9           also served five years on this very planning  
10          board.

11          I've already submitted a letter to the  
12          board in which I explained why the issuance of  
13          a negative declaration on this project was  
14          wholly improper and in violation of SEQRA. I  
15          implore each of you to read that letter, as I  
16          will not expend my time tonight repeating it.  
17          For now, I will only say that I strongly  
18          recommend that this board rescind the negative  
19          declaration, and require the preparation of an  
20          environmental impact statement that will be  
21          subject to public scrutiny and comment.

22          Tonight, though, I wish to raise another  
23          issue that is even more fundamental than the  
24          SEQRA review. I want to speak about zoning.  
25          Ed Sattler talked about the spirit of zoning

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1 before. I want to actually get into the  
2 letter. Zoning was invented as a way to guide  
3 growth into the most appropriate location, to  
4 separate incompatible uses, and to protect  
5 property values.

6 Now, at first glance, it would seem that  
7 the village zoning code has failed this  
8 neighborhood in that regard. The light  
9 industrial zone borders directly on a  
10 residential zone, and if this out-of-scale,  
11 incompatible project gets built, these homes  
12 will never experience another quiet night, and  
13 their property values will plummet.

14 However, first of all, I'm going to  
15 disagree with my old friend, John Cappella.  
16 The earlier zoning on this property was not  
17 exactly completely light industrial. As is  
18 depicted on the previous approval in 1990 for  
19 the car lot, drawn by Dave's office, there was  
20 a forty-foot residential zone extending into  
21 this property, from the surrounding residential  
22 zone. So, the R2 zone is shown extending forty  
23 feet into there, which would have had a severe  
24 impact on this layout, and probably would have  
25 prevented it from being drawn the way it is

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1 today, but the new zoning map developed in  
2 2009, seems to have eliminated that protection,  
3 unless the new zoning map, is actually drawn in  
4 error, and the zoning district boundaries have,  
5 indeed, remained the same, as they were under  
6 the old zoning code.

7 And Rob, I think you might want to check  
8 into that, before this board proceeds any  
9 further.

10 However, even if the current zoning map is  
11 correct, the fundamental fact is that,  
12 according to the Village of Warwick's zoning  
13 code, this proposed project is a prohibited  
14 use. Now, I'm not saying that a bar and  
15 restaurant is not allowed in a light industrial  
16 zone. It is. But the zoning code also  
17 provides a list of uses that are generally  
18 prohibited in any part of the village. Section  
19 145-23, general district regulations, states  
20 that this list of prohibited uses, has been  
21 included to illustrate by example, some of the  
22 undesirable and incompatible uses, and are  
23 thus prohibited. Take note of that last part,  
24 incompatible uses and thus -- and are thus  
25 prohibited. The list of prohibited uses

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1 include, as paragraph J, any other use that is  
2 not of such a nature as to be detrimental to  
3 neighboring properties, by reason of emission  
4 of odor, noise, there's a laundry list of that,  
5 but odor, noise, or any other factor that is  
6 dangerous to the comfort, peace, enjoyment,  
7 health, of the area or community.

8           Some of the interpretation of this  
9 prohibition is subjective, some is not.  
10 Clearly, this proposed bar and restaurant, in  
11 such extreme proximity to the neighboring  
12 homes, will unavoidably create conditions of  
13 noise, and even odors from the vented kitchen,  
14 that is detrimental to the comfort, peace,  
15 enjoyment, health, of the community. This is  
16 especially true given the insistence of this  
17 use included deck, with outdoor seating, just  
18 feet away from the neighboring backyards.

19           The zoning code further removes any  
20 ambiguity on how to judge whether the noise  
21 will adversely impact the neighboring property.  
22 The general district regulations state, no land  
23 or building should be used in any manner so as  
24 to create any hazard to the public health,  
25 peace or comfort, or to hinder the most

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1 appropriate use of land in the vicinity, and  
2 that all such uses shall conform to the  
3 performance standards described in Section  
4 145-104, for the control of noise. And again,  
5 Section 145-91, objectives in design standards,  
6 also states, structures shall be located,  
7 constructed and insulated, to prevent on-site  
8 noise from interfering with the use of adjacent  
9 properties. In no case, in no case, shall  
10 off-site noise exceed the standards contained  
11 in 145-104 of the zoning law.

12 So, turning to Section 145-104,  
13 performance standards, we find a very detailed  
14 scientific approach in determining precisely  
15 when a use would have an unacceptable noise  
16 impact, something that has to be done before  
17 the project is built, not after, because once  
18 it's built, it's too late. The same section  
19 also sets the maximum permitted noise on  
20 neighboring properties, stating that the noise  
21 level shall not exceed, at any point, on or  
22 beyond any lot line, the maximum decibel level  
23 for the designated octave band as set forth in  
24 the following table. Looking at that table,  
25 using the octave bands for the range of just

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1 human conversation, noise at the property line  
2 is allowed, by the zoning code, to be in the  
3 range of thirty-eight to fifty decibels.  
4 However, where a lot lies within two  
5 hundred feet of a residential district, as it  
6 does here, the zoning code goes even further.  
7 Then, the maximum permitted decibel level is  
8 reduced by another six decibels, yielding a  
9 maximum at the property line, of just  
10 thirty-two to forty-four decibels. It would  
11 seem impossible that a bar with outdoor  
12 seating, with outdoor speakers, can possibly  
13 meet this standard at a mere distance of fifty  
14 feet from the property line, and if it can't  
15 meet this standard, then it is deemed, by  
16 Section 145-33, to be a prohibited use, and  
17 should not even be under consideration by this  
18 planning board.

19 The zoning code was designed to provide  
20 protections to property owners, but it is  
21 wholly dependent on the people appointed to  
22 this board, to understand its provisions, all  
23 of them, in order for it to work. This is the  
24 wrong use in the wrong place. Somewhere else  
25 in the village, and I can identify places I

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1 think it could go, is fine, but this is the  
2 wrong use and the wrong place, and the zoning  
3 code, read properly, confirms it.

4 CHAIRMAN AULEN: Okay. We're going to  
5 have to stop for a few minutes, because she has  
6 to change the tape.

7 (Whereupon, there is a short recess in the  
8 proceedings.)

9 CHAIRMAN AULEN: Everyone, please be  
10 seated again, because we're ready to go.

11 All right. The next person, Kerry Boland.

12 KERRY BOLAND: Hi, I'm Kerry Boland. I  
13 live at --

14 CHAIRMAN AULEN: Spell your name for the  
15 reporter.

16 KERRY BOLAND: Kerry is K-E-R-R-Y. Boland  
17 is B-O-L-A-N-D. I live at 15&1/2 Campbell Road  
18 in the Village of Warwick.

19 Article G, no land or building shall be  
20 used in any manner so as to create any hazard  
21 to public health, peace or comfort, or to  
22 hinder the most appropriate use of land in the  
23 vicinity, and that all such use shall conform  
24 to the performance standards subscribed in  
25 Section 145 for the control of noise.

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1           Vibration, smoke, dust and other atmospheric  
2           pollutents, odor, radiation, fire, explosive  
3           hazard and heat, liquid or solid waste, the  
4           vehicular traffic emissions and use there from.  
5           Based on this passage alone, from the village  
6           planning board committee's guidelines, it would  
7           seem clear that there was no way a bar with  
8           outdoor decks, that sits two hundred people,  
9           would advance past go. Yet, here we are, the  
10          planning board clearly in favor of this  
11          proposal, with no regard to the tax-paying  
12          residents. While you were bulldozing this  
13          proposal through, with no regard to article G,  
14          or the populous that you were meant to serve,  
15          you have destroyed my faith in the process.  
16          You have consulted only the lawyers for  
17          Yesterdays about the proposal, and not the  
18          residents. You have taken their environmental  
19          evaluation at its word. You've rejected a free  
20          offer of a sound study. You have poo-pooed any  
21          mention of wildlife, including the discussion  
22          of clear cutting trees, including those that  
23          house bats. You have determined that  
24          construction starting at 8 a.m. on the site on  
25          weekends, and occurring seven days a week, for

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1 a duration of nearly a year, is appropriate.  
2 When filling out the federal paperwork, you  
3 checked none, to the question, will there be a  
4 noise impact on the immediate neighborhood, and  
5 will there be a visual light impact at night on  
6 the neighborhood. No, you said.

7 What sort of planning committee are you?  
8 Maybe you should be called the, let's wait and  
9 see how it goes committee, or the, whatever, as  
10 long as I don't hear it at my house committee.  
11 Planning is not the right term. Planning  
12 involves thinking of all the factors and  
13 impacts. Planning involves the future.  
14 Planning involves honoring the active  
15 participation of those directly affected.  
16 Planning does not involve sticking a bar in a  
17 middle of a residential neighborhood. That is  
18 poor planning. Planning also involves thinking  
19 about what a huge parking lot, outside a bar,  
20 circled by a fence, could mean for the local  
21 drug trade. Even the Burger King had had the  
22 sense to get rid of the bushes that block the  
23 view of the parking lot from the street, but  
24 we're not allowed to talk about that, right,  
25 because that would involve planning.

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1           John Christison's lawyer insisted at the  
2 last meeting, that they only want the same  
3 consideration given to Barrett's Tavern. I  
4 looked up Barrett's Tavern and learned, it  
5 closes at 11 p.m. During the day there is a  
6 children's park behind it open to the public.  
7 Some of its profits serve the historical  
8 society. It is on Main Street, and there are  
9 no residential properties encircling it. A  
10 planning committee should say, this works for  
11 our village, and a bar at 16 Elm does not, but  
12 I'm not holding out for much anymore.

13           I'm forming my own planning committee, and  
14 anyone is welcome to join. My plan is to come  
15 to every meeting of yours in the future, to  
16 make sure that you don't do to my neighborhood,  
17 and the rest of the Village of Warwick, what  
18 you have done to West and Van Buren Streets.

19 Thank you.

20           CHAIRMAN AULEN: Ruth Woods.

21           RUTH WOODS: My name is Ruth Woods,  
22 R-U-T-H, W-O-O-D-S. I live at 79 West Street.

23           My concerns are about public safety, and  
24 how the Jones chemical truck route is going to  
25 interact with traffic, specifically bar

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1 traffic. The intersection of cars, alcohol,  
2 chemical trucks, and UPS and Google Maps, is a  
3 dangerous situation. All of this occurring in  
4 a residential neighborhood.

5 The traffic study is grossly inaccurate,  
6 mainly because it has not expanded. Several  
7 people talked about that. It has a very  
8 limited location of where the traffic study has  
9 been done. Only one intersection is the  
10 subject of that study, West and Elm. There are  
11 many more intersections that will be impacted.  
12 Those that have been excluded, among many, Elm  
13 and Orchard, Welling and Orchard, Orchard and  
14 Hamilton, Campbell and Oakland, Oakland Court  
15 and Oakland Avenue.

16 The Jones chemical trucks currently go up  
17 Howe Street and down West Street. Originally,  
18 I had not thought of my neighborhood, Howe and  
19 West, as being close enough. However,  
20 regardless of all the other issues with noise,  
21 et cetera, which will affect me, these trucks  
22 contain lethal chemicals. These trucks will be  
23 going, right now, up Howe Street and down West.  
24 They are eventually going to be diverted, when  
25 the bridge is worked on, to go over to the back

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1 of Orchard, around Hamilton, and up Campbell,  
2 to Oakland Avenue and 94.

3 The assumption that bar patrons will only  
4 use one route to get to and leave this bar is  
5 pure negligence. In this digital age, it is  
6 GPS and Google Maps that determine the route  
7 taken. It is highly unlikely that a bar  
8 patron, especially under the influence of  
9 alcohol, will follow their GPS home. What  
10 happens when a child is out playing, or a teen  
11 is riding a bicycle, or an elderly or a  
12 disabled person is going for a walk? What  
13 happens when a driver under the influence of  
14 alcohol follows their GPS into these  
15 residential neighborhoods, and onto either the  
16 new or old chemical truck route, and has a  
17 collision, releasing lethal chemicals onto an  
18 entire residential area? None of this has been  
19 studied. None of this has been considered.

20 A traffic study does not only refer to the  
21 number of cars during a particular time of day.  
22 It is, who are the drivers of these cars, what  
23 type of vehicle. Drivers under the influence  
24 of alcohol, where is that in the traffic study?  
25 Drivers driving trucks full of chemicals, where

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1 is that in the study?

2 I heard earlier, the attorney for  
3 Mr. Christison say, related to the sound study,  
4 we'll measure it when it's made. That cannot  
5 be applied in this case, to considerations,  
6 drunk drivers and GPS's and chemical trucks.  
7 Are you going to wait for a horrible accident,  
8 for the death of a child, or the release of  
9 lethal chemicals onto the streets, causing  
10 untold damage and harm, which will cost the  
11 village greatly? That is negligence. Are you  
12 going to apply that philosophy, wait until it's  
13 built and see if something happens? It's  
14 unacceptable. Thank you.

15 CHAIRMAN AULEN: Marcela Gross.

16 MARCELA GROSS: Marcela, M-A-R-C-E-L-A,  
17 Gross, G-R-O-S-S, good evening, 71 Colonial  
18 Avenue, Warwick. Originally lived on Van Buren  
19 Street, where I know I would have heard the  
20 sound from 16 Elm Street in my home. I  
21 probably will not hear it on Colonial Avenue,  
22 but one never knows.

23 Warwick was a railroad town, and for about  
24 a century, this property served as the railyard  
25 for the Lehigh and Hudson Railroad. As such,

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1       it's an important historic and archeological  
2       site, but that also means, it's a site that is  
3       potentially contaminated by hazardous waste,  
4       which is now at risk of being exposed by the  
5       site development. To date, the only  
6       information regarding the potential presence of  
7       hazardous waste at this site, has been  
8       presented by the very people who have a vested  
9       interest in downplaying the hazard that may be  
10      there, but this is just the type of issue that  
11      this planning board needs to take a hard look  
12      at, and not just accept the applicant's say so.

13             Part of the problem, is that in 2017, we  
14      don't fully understand what kinds of things  
15      happened in a railyard, but coincidentally an  
16      article appeared in my e-mail inbox, two days  
17      ago, about a similar old railyard in Montana.  
18      The parallel between Livingston, Montana, and  
19      Warwick, New York, are vastly amazing, and I  
20      want to share excerpts from that article with  
21      you. As you listen, please remember that the L  
22      & H railyard, amongst these buildings, a  
23      machine shop, a repair shop, a round house, and  
24      most importantly, a paint shop, precisely where  
25      excavations from the pub/restaurant are now

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1 proposed.

2           The title of the article was, the railroad  
3 put this Montana town on the map, but left  
4 behind a toxic Legacy. For twenty-five years,  
5 Bill Phillips, of this town in Montana, toiled  
6 as a machinist in the railyard, and now he  
7 suffers from asmetosis, a scarring of the lungs  
8 caused by inhaling asbestos fibers. For nearly  
9 a century, men dissembled and repaired  
10 locomotives in the repair shops. They chipped  
11 asbestos from the boilers, used nasty chemical  
12 degreasers, and watched the mess swirl into  
13 french drains directly into the ground water.  
14 Nobody gave much thought to the enviornmental  
15 hazards.

16           Decades later produced the necessary storm  
17 into a hub for arts and tourism. Visitors  
18 arrive in droves in summer, for live theaters,  
19 art galleries, quality restaurants, and micro  
20 breweries. Gee, sounds a little bit like our  
21 town. But the remnants of the railroad  
22 industry still lie beneath the idealic surface.  
23 Livingston's industrial past left behind a  
24 plume of diesel fuel and chlorinated solvents,  
25 along with lead, asbestos, and a slew of other

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1 pollutants.

2 Old railroad workers mention track eleven,  
3 the rail furthest from the maintenance shop.  
4 When oil inside the diesel locomotives became  
5 contaminated with water or sand, workers would  
6 typically pump it out and salvage the  
7 lubricant, but on a tight schedule, they would  
8 put the train out on track eleven. Phillips  
9 said, they grab you and say, go down to the  
10 east end down there, and knock the plug out of  
11 that valve, and you ride it back and forth  
12 until it is empty, okay. Phillips once recalls  
13 finding some two hundred gallons of fresh oil  
14 on the ground, but by that point, it had been  
15 dumping violent chemicals for decades.

16 Doug Thompson spent about eleven years  
17 working in the paint shop, where he said men  
18 often passed out from the noxious fumes. When  
19 workers finished stripping down a locomotive,  
20 there would be a mess of chemicals on the  
21 ground, all over the place. Workers would take  
22 a big pressure hose and spray it out the door.  
23 Superintendents often said things like, it will  
24 soak in, or it will evaporate.

25 Dick Murphy said he witnessed many large

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1 diesel spills at the railyard's fueling  
2 station, where the company would often fill  
3 several locomotives at once, and the automatic  
4 shut-off valves didn't work. Murphy said this  
5 happened often, and workers weren't paying  
6 attention. Fuel would overflow. Diesel would  
7 cascade down the length of the yard, back into  
8 the round house, before anyone noticed.

9 I keep waiting for the shoe to drop  
10 Thompson said of his own health. All of the  
11 men he worked with in the paint shop are now  
12 all dead. When you worked in the coal mine,  
13 you knew what you were walking into. When you  
14 were working in that place, you didn't know  
15 what chemicals were probably around.

16 Today, decades after Livingston learned  
17 about the mess the railroad left behind, the  
18 clean up continues. A cinder pile, where the  
19 railroad had discarded burned waists for years,  
20 has been capped, locking in place large amounts  
21 of asbestos. The biggest job left to tackle,  
22 the underground plume of solvents, most  
23 importantly, perchloroethylene, better  
24 known as PCE, a volatile and dangerous chemical  
25 used in degreasers and dry cleaning. Most

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1 people don't give much thought to the railyard  
2 these days. Indeed, many of Livingston's  
3 younger residents seem unaware there was, and  
4 still is, a problem.

5 This article is much longer and paints an  
6 ugly picture of what happened, and the type of  
7 contamination that can be expected at a former  
8 railroad site. The fact is, we don't know what  
9 may be under our old railyard. No one has  
10 truly investigated this former railroad site in  
11 Warwick, for the potential for hazardous  
12 materials, and it may, indeed, be contaminating  
13 our ground water as we speak. An excavation  
14 into the site, especially where something like  
15 the paint house once stood, possesses the very  
16 real risk of re-exposing dangerous hazardous  
17 materials to both residents in the immediate  
18 neighborhood, and to customers who will come to  
19 this site to eat and drink. I don't know about  
20 you, but I don't want to be eating food and  
21 drinking on a hazardous waste site. This needs  
22 to be studied. Thank you.

23 CHAIRMAN AULEN: Frank Bornario. Frank.  
24 Roger Moss.

25 David Gordon. Oh, there you are. Got

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1           you. I didn't mess it up too much.

2                     DAVID GORDON: Good evening. My name is  
3           David Gordon, G-O-R-D-O-N. I'm an  
4           environmental and land use attorney. My office  
5           is in Poughkeepsie, at 42 Katherine Street.  
6           Earlier this evening, we distributed a letter  
7           that I wrote today to the board, comments, my  
8           contact information and address is on the  
9           letter.

10                    Obviously, there's a lot to work through  
11           tonight. Given the length of the meeting, and  
12           your request to keep the comments within five  
13           minutes, I'm going to skip over a lot of what  
14           is in my letter, and just address a couple of  
15           points in it, and a couple of points that were  
16           raised tonight.

17                    Among the points I'm going to skip over,  
18           are my observation that several of the stages  
19           of this project are not consistent with law, in  
20           particular, the zoning, and also, the SEQRA  
21           review that you culminated last month, for the  
22           reasons that are stated wherein. So, I'll move  
23           on to where we're at right now, which is the  
24           stage of the site plan review, and in  
25           particular, I want to address first, comments

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1 that some other folks have addressed, but I  
2 think it's important to focus on a little bit  
3 more, by the applicant's attorney this evening,  
4 to the effect that, when it comes to noise  
5 impacts, it's the sort of thing we measure  
6 later.

7 When it comes to what you folks do,  
8 reviewing a project, reviewing its impacts,  
9 reviewing its impacts for compliance with the  
10 standards, there's a lot of impacts you look  
11 at, depending on the project. It could be  
12 storm water. It could be traffic. When you do  
13 these, you don't say, we're going to build it  
14 first, and then measure it. When it comes to  
15 storm water, you have an engineer, either the  
16 applicant's engineer, your engineer, someone  
17 else's engineer, who presents it to you, model  
18 it. You look at it. You model it. You run it  
19 through a computer program. It reports to you  
20 what the impact is. You do an assessment  
21 before you build it.

22 When it comes to traffic, you do the same  
23 thing. When the applicant hired their  
24 consultant, Mr. Greely, he didn't say, geez,  
25 let's build it and see what happens. He took

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1 the current status, as far as he wanted to, to  
2 assess it out. He looked at estimates of what  
3 a project like this causes. He crunched it,  
4 and he did an estimate for you, that became his  
5 assessment, which you can choose to accept or  
6 not. He did an estimate. He did an  
7 assessment. You don't build it first, and then  
8 try to figure out what happened. It's the same  
9 with habitat. It's the same with fiscal  
10 impacts, to the extent you want to take a look  
11 at that. You don't built it first, and then  
12 count the tax revenue, and count how much it's  
13 going to cost you in terms of your municipal  
14 services. You do an assessment.

15 There is absolutely zero difference when  
16 it comes to noise. Noise is not something that  
17 is incapable of assessment, and I want to, in  
18 particular, quote to you, your code that  
19 relates to site plan review, exactly what  
20 you're doing now, exactly what you have to do  
21 under the law.

22 Site plan review is governed by Section  
23 145-91 of your code. In particular, Section  
24 145-91(I)(12)(a) says, and I quote, structures  
25 shall be located, constructed, and insulated,

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1 to prevent on-site noise from interfering with  
2 the use of adjacent properties. Moving forward  
3 one sentence, and I quote, in no case shall  
4 off-site noise exceed the standards contained  
5 in Section 145-104 of the zoning law. So, even  
6 if Mr. Cappella wanted to argue to you that  
7 those technical standards are really for what  
8 happens after something is built, when you're  
9 trying to figure out if somebody is in  
10 violation, your site plan code, that governs  
11 what you're doing right now, tells you  
12 specifically to use that table. It doesn't  
13 say, build it first and then figure it out.  
14 You need to do it at site plan review. In  
15 fact, it even tells you how to do it in the  
16 next sentence, which I won't read. It tells  
17 you which manual to use. I will tell you that  
18 under SEQRA, you had the exact same  
19 responsibility. You clearly didn't fulfill  
20 that, which is one of the reasons why your  
21 SEQRA review is deficient.

22 I noticed, earlier in the evening, that  
23 your engineer asked the developer for more  
24 specific information with respect to the noise  
25 mitigation measures that will be taken. I

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1 would suggest to you, that it is not possible  
2 to take that hard look at noise impacts, that  
3 you have to do, when you're approving it, if  
4 you don't know what the mitigation measures  
5 are. I'm very eager to see what is in the EAF  
6 part three that you approved this evening, with  
7 regard to that question.

8 I would further note for you, that the  
9 same section of the code, 145-91, says with  
10 respect to visual impact, and especially with  
11 visual impacts of a -- of a commercial use,  
12 next to a residential zone, which is precisely  
13 the case here, a buffer zone thickly planted  
14 with native trees and shrubs of sufficient  
15 width, to entirely screen a non-residential  
16 use, from a neighboring residential use, shall  
17 be required. To entirely screen, that's in  
18 your code, governing what you need to do right  
19 now, and it also governed what you should have  
20 been looking at in your SEQRA review, which you  
21 neg dec'd. That's the job right now.

22 I want to address one other issue that  
23 came up tonight, that's actually very obvious  
24 from the site plan that everybody else can see,  
25 and that I know you've seen numerous times.

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1 This development, this building, is very  
2 clearly, specifically located, in the far  
3 northwest corner of this property, right  
4 adjacent to the residential neighborhood. The  
5 applicant's attorney briefly explained why,  
6 they wanted to avoid the flood plain impacts.  
7 What they've done, clearly, is to exchange one  
8 set of impacts, on a flood plain, for another,  
9 the impact on the neighborhood.

10 The applicant said something this evening  
11 that I do not believe is true, and other people  
12 have repeated it, probably because they've  
13 heard it a lot, he said that, you can't build  
14 in a flood plain. In fact, you can build in a  
15 flood plain, but it requires more study and  
16 more mitigation. What I will challenge the  
17 board to do, what I would specifically ask you  
18 to do, I would like to hear your engineer, at  
19 some point, go ahead and explain what the  
20 specific requirements are to build in a flood  
21 plain, because the absolute assumption that you  
22 cannot do this, is not correct, and we need to  
23 know what presumptions you're using, moving  
24 forward.

25 One final point. Patrick Gallagher, who

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1 spoke a little bit earlier, mentioned that he  
2 wanted you to come and stand in his backyard  
3 and take a look at this, and I did so during  
4 the summer, when we had a little bit of a  
5 picnic, and it's a little bit complicated. You  
6 can see a lot of woods, and you can see in the  
7 distance, and obviously we were concerned about  
8 explaining a lot of things to folks. This  
9 evening, I had the opportunity to stand, not in  
10 his backyard, but he lives at, I believe it's  
11 57 West Street, I was actually in his kitchen,  
12 and I was looking out his back window, and  
13 there's about maybe thirty feet of, you know,  
14 cleared backyard, and then there's the  
15 beginning of woods, and I was looking straight  
16 through the woods, and the benefit of being in  
17 the kitchen, as opposed to being in the  
18 backyard, is that you're elevated, probably  
19 about, maybe ten feet above the ground, I'm not  
20 sure, fifteen feet, you were elevated, and I  
21 was looking through the woods, and I hadn't  
22 seen before what I saw then. What I saw was,  
23 essentially, a patch of asphalt, gray asphalt,  
24 through the trees, stretching from left to  
25 right, across what appeared to be the entire

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1 lot. I said, what's that? He said, that's the  
2 old racetrack. Clearly visible. And on the  
3 near side of the racetrack there was some  
4 grass, and then there was a fence, and then  
5 there were woods, maybe about, maybe fifty feet  
6 of woods or so, and I said, what's the fence.  
7 He said, that's where the previous owner had  
8 essentially limited the extent of the use of  
9 his property, and then there was woods. And  
10 then I said to him, where's the property line,  
11 and he said, it's the -- he said, it's the  
12 stone wall, and I'm looking through the woods  
13 and I'm trying to see, where's the stone wall.  
14 My eyes aren't very good now, and they never  
15 were, and where's the stone wall. He said,  
16 well, come on out with me. I said, I've  
17 actually had kind of a tough week, I got a  
18 littled banged up with a fall. I said, I don't  
19 really want to go outside, just tell me. He  
20 says, I'll go outside and show you. He walks  
21 outside to the edge of his backyard, the  
22 cleared area, before the woods, and he says,  
23 it's right here. He stands there, basically on  
24 his side of the woods. There's a stone wall.  
25 That's the property line.

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1           So, what that indicated to me was, this  
2 project is being built in those woods, past  
3 that fence, essentially, right in his backyard.  
4 I was able to see all the way through the  
5 track. You're taking out, the applicant is  
6 going to take out, probably half of those  
7 woods. It's going to be literally in his  
8 backyard, literally in his backyard. You've  
9 heard everybody say that phrase. It is not --  
10 they're not embellishing anything. It is right  
11 there. And of course, it's not only right  
12 there visually, it's also going to be right  
13 there with their deck, with everything that's  
14 going on, with their compressor, with  
15 everything, and I just need you to understand  
16 that. This is, this is a visceral, physical  
17 intrusion on this living space. There's no  
18 other way around it, and it is specifically  
19 targeted for this part of this property, which  
20 is -- which is well more than an acre, and  
21 could clearly, under any planning principles,  
22 as a lady previously mentioned, be moved to a  
23 different part of the spot.

24           So, what we need you to do, when you take  
25 your hard look, which you've already done with

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1 a couple other aspects, and with respect to  
2 your SEQRA review, and you're culpable parties,  
3 as well, I won't read this provision, we need  
4 you to determine whether the impact on this  
5 neighborhood, all these houses, is more or less  
6 than the impact on that flood plain, and the  
7 measures that the applicant would have to take  
8 to mitigate those impacts. That's your job  
9 going forward, and I would besiege you, to not  
10 look any further. You need to do this right  
11 now, and if you do so, it may actually be able  
12 to mitigate the errors that have been made.  
13 Thank you.

14 CHAIRMAN AULEN: Dave Smith.

15 DAVE SMITH: Hi, Dave Smith, D-A-V-E,  
16 S-M-I-T-H. I've been a resident of the Village  
17 of Warwick for twenty-three years, and I've  
18 been an audio engineer for thirty years. I've  
19 got credentials that go a long way back. I  
20 rushed up here today from New York City, where  
21 I was attending the Audio Engineering Society's  
22 convention for the last two days. I've been to  
23 the Super Bowl four times, working in audio  
24 production. I was in Detroit in 2006, when ABC  
25 broadcast, for the very first time, an HD Super

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1 Bowl. I was there doing surround sound for  
2 that Super Bowl. I've worked for ABC. I've  
3 worked for CBS. I've worked for ESPN. I've  
4 worked for HBO. I eat, sleep and breathe  
5 audio. I've garnered five, five Emmy awards in  
6 my last thirty years. I've got bonafide audio  
7 credentials. My area of expertise is sound for  
8 film and television, and while I may not be an  
9 expert in measuring sound levels for legal  
10 compliance, I do know how to read a sound level  
11 meter in the Village of Warwick sound code.

12 Village of Warwick Zoning Law Section B,  
13 standards, one, noise, method of measuring.  
14 For the purpose of measuring the intensity and  
15 frequencies of sound, sound level meters and  
16 octave band filters shall be employed. Octave  
17 band analyzers calibrated with pre 1960 levels,  
18 as designated by the American Standards  
19 Association, Z-24, then 1953, octave band  
20 filter set, shall be used. Sounds of short  
21 duration which cannot be measured accurately  
22 with a sound level meter, shall be measured  
23 with an impact voice hooker in order to  
24 determine the peak value of the impact.

25 So, sound needs to be measured in octaves,

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1 specific bands, low frequency, mid frequency,  
2 high frequency. It's broken down into about  
3 eight or ten octaves.

4 B, maximum permitted sound pressure  
5 levels. The decibels resulting from any  
6 activity, whether open or enclosed, shall not  
7 exceed at any point, on or beyond any lot line,  
8 the maximum decibel level for the designated  
9 octave band as set forth in the following  
10 table, except that where the lot lies within  
11 two hundred feet of a residence district,  
12 whether within or without the village. The  
13 maximum permitted decibel level at any point on  
14 or beyond the district boundaries, shall be  
15 reduced by six decibels from the maximum  
16 permitted level set forth in the table, and  
17 further, it said that such reduction shall also  
18 apply to any sound emitted between the hours of  
19 9 p.m. and 7 a.m., and all day Sunday.

20 So, this is a very, very strict sound  
21 code, and it's even stricter in residential  
22 areas, and between the hours of 9 p.m. and 7  
23 a.m., and all day Sunday.

24 Now, I can read out the individual octave  
25 bands here, but I've got this meter right here

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1 showing you that.

2 Exemptions, C, the following uses and  
3 activities shall be exempt from the noise  
4 level regulations, noises not directly under  
5 the control of the property user, noises  
6 emanating from construction and maintenance  
7 activities between 8 a.m. and sunset, the  
8 noises of safety signals, warning devices,  
9 emergency warning signals, and transient noises  
10 of moving sources, such as automobiles, trucks,  
11 airplanes and railroads. Yes, car doors  
12 slamming are exempted. Cars driving away are  
13 exempted. Airplanes are exempted. There's  
14 nothing in here about sound pressure levels  
15 above an ambient noise floor. This is about  
16 sound pressure levels, period.

17 This is a realtime analyzer, commonly  
18 referred to as an RTA. It measures the sound  
19 pressure levels in decibels, or octave bands,  
20 as prescribed by the code. I've calibrated  
21 this to match the specifications prescribed in  
22 that code, by the village town code. The red  
23 bars represent those octave bands, and the blue  
24 lines on there represent the maximum  
25 permissible decibel level for that octave band.

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1 Any time any one of those red bars goes beyond  
2 the blue line, the level of the sound code has  
3 been exceeded. Now, while this may not be as  
4 precise as what a noise compliance expert might  
5 use, it's still highly accurate and more than  
6 adequate to demonstrate what our sound level  
7 looks like.

8 I've created an audio CD, Pat, do you want  
9 to hit that, to demonstrate what level of sound  
10 is permissible and in what level that sound is  
11 out of compliance. My AB tech is -- hit power.  
12 Hit play. Give it a second.

13 This is the sound of a restaurant exhaust  
14 fan. Lower the volume so we're within the  
15 specified. We're about fifty feet away. Lower  
16 it more. You can still -- we're still  
17 exceeding. Lower it some more. Play the next  
18 track.

19 This is the sound of about fifteen people  
20 on a patio at an outdoor restaurant, not  
21 sixty-eight. Play the next track.

22 This is some canned music playing through  
23 some tiny, little speakers. Play the next  
24 track.

25 This is all of those three elements

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1 combined into one, at fifty feet away. Play  
2 the next track.

3 This is the sound of a restaurant, with  
4 all of its windows closed, people inside, the  
5 music playing inside, people inside talking,  
6 and exterior exhaust fan running. Right on the  
7 edge. What we're listening to is approximately  
8 fifty feet away from this meter, the same  
9 distance as the proposed structure to the  
10 nearest property line. At this low volume,  
11 we've exceeded the village sound code. These  
12 are not the sounds of a beer garden. It  
13 doesn't take a rowdy crowd, rooting and  
14 hollering, and raising a ruckus. It takes a  
15 little dinner conversation, some light music,  
16 and an exhaust fan fifty feet from the property  
17 line. These are the sounds that the residents  
18 of this neighborhood are going to have to  
19 perpetually endure if this application goes  
20 forward. No more quiet nights and peaceful  
21 enjoyment of their properties.

22 While it's the responsibility of this  
23 board to study this issue thoroughly, and  
24 ascertain whether or not this establishment  
25 could ever be in compliance with the village

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1 sound code, in my professional opinion, I have  
2 absolutely no doubt, that if this bar is built,  
3 it will consistently be in violation of that  
4 code. The addition of trees and fence might  
5 help to mitigate the sound level slightly, but  
6 not enough to matter.

7 I'd like to commend the Village of Warwick  
8 for adopting such a strict sound code. As a  
9 full-time audio engineer, I'm grateful to live  
10 somewhere that I can rest my ears. Now, I call  
11 on this board to use the power vested in them  
12 by the community they serve, and to fulfill  
13 their responsibilities to that community. I  
14 call on this board to observe the sound code  
15 that they've adopted. I call on this board to  
16 reject this application on the grounds that it  
17 would violate that sound code. Thank you. I'm  
18 available, if you have any questions.

19 CHAIRMAN AULEN: Tom Andreas.

20 TOM ANDREAS: Very impressive. My name is  
21 Tom Andreas, A-N-D-R-E-A-S. I live at 7  
22 Cottage Street.

23 A lot of this testimony, or hearing here,  
24 is kind of codified and set in legal terms of  
25 what I know in my heart to be the truth of this

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1 matter. I've lived in Warwick for nearly  
2 twenty years on Cottage Street, about two  
3 blocks from the proposed bar on Elm Street.  
4 Like my neighbors, my home is my most valuable  
5 possession, both emotionally and financially.  
6 I've invested nearly two decades improving my  
7 home, and at the same time, running my business  
8 and raising a child. I have put everything I  
9 have into my home. The lots are small on my  
10 street. They're only fifty feet wide, and I  
11 learned quickly just how important it is to  
12 have good neighbors. A loud and thoughtless  
13 neighbor can single-handedly ruin the quality  
14 of life for everyone on the entire street. On  
15 Cottage Street we know this. We all know each  
16 other and we cooperate and get along.

17 I came to Warwick because it has a  
18 reputation of a peaceful, rural, and yet a  
19 vibrant village life, with a strong sense of  
20 neighborhood and community, a great place to  
21 raise a family, but now this seems to be in  
22 question with the proposed intrusion of a  
23 thirty-six hundred square feet restaurant/bar  
24 in the middle of an established neighborhood, a  
25 neighborhood which is over one hundred years

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1 old. There are dozens of families whose lives  
2 will be changed forever, and whose property  
3 value will be diminished forever if the plan is  
4 approved. It makes me wonder what the village  
5 planners are thinking. What is their plan?  
6 I'm amazed the project is seriously considered.  
7 This is a very large bar with outside seating,  
8 and it will be less than fifty feet from  
9 people's backyards. The advocates of this plan  
10 are telling all these people in this  
11 neighborhood, you don't need peace and quiet in  
12 your backyard. What you need in your backyard  
13 is a big bar, with lots of lights, with  
14 non-stop music, and a bunch of strangers eating  
15 dinner. What is more important for our  
16 village, the quality of life of the people who  
17 live there, or is it is to have as many  
18 restaurants or bars that you can shoehorn into  
19 the small space that we have? Do we truly  
20 value our roots and seek to preserve a great  
21 way of life, or do we want to squeeze in as  
22 much commerce as we can, no matter what the  
23 cost of the lives of the people who live there?  
24 I wonder what the good folks on the planning  
25 board would say about this.

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1           I don't have a problem with commerce in  
2           general, or with Yesterdays in particular.  
3           John Christison has run a nice place and I've  
4           gone there many times, good atmosphere, nice  
5           location, on Main Street, where it belong,  
6           where you can run a restaurant and a bar until  
7           2 a.m. and not ruin a neighborhood. I see the  
8           supporters here with T-shirts, and I bet none  
9           of them live near here on Elm Street, and  
10          probably a lot of them don't even live in  
11          Warwick.

12           The last time the site was considered for  
13          use in 1993, it was considered essential to  
14          maintain the buffer zone, to protect the  
15          adjacent neighborhood. Now the plan is to put  
16          this forty-foot tall building, with outside  
17          dining and outside speakers, right in that  
18          buffer zone. What changed in the village that  
19          it is no longer necessary to protect the homes  
20          adjacent to the site? Is the quality of life  
21          of the villagers no longer important? Do the  
22          people in the area now crave bars more than  
23          they crave tranquility, or does the village  
24          just need a larger tax base? If this  
25          neighborhood is expendable, and it can be

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1 sacrificed so the village can expand its  
2 commercial district, maybe my street, maybe  
3 your street can be sacrificed too.

4 All the other businesses on Elm Street  
5 shut down early in the evening. The people who  
6 live there can enjoy their home in peace and  
7 quiet when they come home after a day of work.  
8 This bar will be in operation until 2 a.m.,  
9 24/7, all yearlong. There will be no escaping  
10 it.

11 This lot, while it is zoned light  
12 commercial, was never used in this way in the  
13 past, and it was never intended for this use.  
14 It's absurd to consider it. I've never seen  
15 anywhere like it anywhere else in the Hudson  
16 Valley. It's ridiculous. This issue really is  
17 a litmus test to see what the village planners  
18 intend for our village and what they think is  
19 more important. Do they want to manage growth  
20 so as to provide safe neighborhoods to raise a  
21 family, and great quality of life for the  
22 people who live in Warwick, or do they consider  
23 it more important to expand this misuse of a  
24 village, and to hell with the families that  
25 suffer the loss of their peace of mind and the

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1 loss of value of their home. If the village  
2 approves this, they should adopt a new slogan,  
3 Warwick, a great place to visit, but you  
4 wouldn't want to live here. Thank you.

5 CHAIRMAN AULEN: Roseanne Andreas.

6 ROSEANNE ANDREAS: Hello, my name is  
7 Roseanne Andreas, R-O-S-E-A-N-N-E,  
8 A-N-D-R-E-A-S. I live at 7 Cottage Street.

9 My husband and I have been Warwick Village  
10 residents for seventeen years, and we fell in  
11 love with the Warwick Village charm and enjoyed  
12 raising our daughter here. We live on Cottage  
13 Street, a few blocks from Elm Street, and we  
14 know the reality of village life in Warwick,  
15 and we do not want Yesterdays to be built here.  
16 People who write to newspapers, or are out of  
17 town visitors say how much they love visiting  
18 Yesterdays on Main Street. The current Main  
19 Street location for Yesterdays, is the right  
20 location, as my husband said, for this type of  
21 business. It's great because it contains all  
22 the sounds, odors, parking. It does not  
23 interfere with neighbors lives. The potential  
24 Elm Street location is a village lot that, with  
25 this proposed three thousand, six hundred

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1 square foot building face to face with many  
2 neighbors right next-door, in addition, with a  
3 three-tier deck, serving people and music until  
4 2 a.m., seven days a week, will affect not just  
5 immediate neighbors from any blocks, but for  
6 many blocks around. It will also affect  
7 traffic safety on many streets, not just for  
8 neighbors, but visitors to our village.

9 I can hear everything. As far as noise  
10 level goes, living on Cottage Street, we hear  
11 sounds all the way from Railroad Avenue. So,  
12 if anyone says to you, you live on Cottage  
13 Street, you will not hear anything from Elm  
14 Street, they're very wrong. I wanted to give  
15 you an idea of the sound level for what we  
16 experience. We hear it all. We do not want to  
17 hear a place like Yesterdays until 2 a.m. from  
18 Elm Street. We also hear Halligan's bar on  
19 West Street. Many people hang outside the bar  
20 all night long, and loud music, partying,  
21 talking, and the traffic of West Street, we can  
22 hear it all. The same type of sounds would be  
23 heard from yesterdays on Elm Street.

24 People -- the driving is really a big  
25 concern, as we've already spoken about, but

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1           there's a lot of times that I hear when people  
2           are coming up Elm Street and going up to West  
3           Street, they floor it, burn rubber. We hear  
4           that kind of stuff all the time with driving.  
5           So, one of my biggest concerns are not also  
6           just for locals, but visitors, people are  
7           trashing West Street. When they're partying,  
8           they start throwing glass things out the  
9           window. So, it becomes dangerous. And also,  
10          I'm glad somebody mentioned Jones chemical  
11          deliveries, and no doubt, there will be  
12          somebody, some people leaving Yesterdays on Elm  
13          Street, with one too many drinks, and God  
14          forbid they have an accident with a Jones  
15          delivery truck carrying tons of chemicals, we  
16          would be toast. So, I'm surprised that that  
17          was only brought up from one other person. So,  
18          I think that's really, really important.

19                 I'm concerned about property values going  
20          down. It wouldn't affect just my street, the  
21          people who live around there, but I'm concerned  
22          about my own street. I feel that it's horrible  
23          for the people there. They -- they can't even  
24          hang out in their own yards there. Their  
25          values of their houses will go down

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1           drastically. The charm of the village life  
2           will come overrun by all the things I  
3           mentioned, and I feel like Warwick will become  
4           party town, no more charming Warwick Village.

5                     So, basically, for these people also  
6           living right around the proposed property, I  
7           mean, how could they even go in their backyards  
8           and enjoy a cup of tea, enjoy time with their  
9           family, visitors, or anyone? It would just be  
10          horrible. I don't think anybody in here would  
11          enjoy having that kind of situation in their  
12          own backyard. So, we're homeowners who pay  
13          taxes and we do not want this restaurant/bar to  
14          be built on Elm Street. I'm sure there could  
15          be a different type of business establishment  
16          there, that both the village homeowners, and  
17          the village, could benefit from and be happy.

18                    Although I really have enjoyed going to  
19          Yesterdays on Main Street with my family and  
20          friends, it's just Elm Street is the wrong  
21          location for Yesterdays. That's it. Thank  
22          you.

23                    CHAIRMAN AULEN: Joel Waitson.

24                    LAUREN BUTURLA: Joel is not herE, because  
25          he wasn't able to come in. There was too many

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1 people --

2 CHAIRMAN AULEN: You're Lauren then.

3 LAUREN BUTURLA: I'm Lauren, yep.

4 CHAIRMAN AULEN: Okay. Just spell your  
5 name for the --

6 LAUREN BUTURLA: Yeah, sure. Lauren,  
7 L-A-U-R-E-N. Last name is Buturla, B, as in  
8 boy, U-T-U-R-L-A. My address is 7 Conklintown  
9 Road in Chester, but I was born and raised in  
10 this town my whole entire life. I left for a  
11 period of four years to take an adventure and I  
12 came back. I have been in John's establishment  
13 from day one. He's treated me nothing but  
14 family, but my brother-in-law's letter is as  
15 stated: "I'm writing this letter in support of  
16 John Christison and his restaurant Yesterdays.  
17 I would like this letter to be read at the  
18 board meeting discussing the new location of  
19 his restaurant. Yesterdays to me is not just a  
20 place where my family gathered -- is and has  
21 been a place where my family gathers to eat and  
22 celebrate occasions. Four generations of my  
23 family, from my grandfather, to my own  
24 children, have enjoyed spending time there. We  
25 know it as a family-friendly restaurant that is

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1 part of our small community. Many of my  
2 friends and their families have grown up eating  
3 there, and continue to go there with their  
4 children. My grandfather especially enjoyed  
5 his dinner out there every Thursday night with  
6 his grandsons.

7 The owner, John, has treated my family  
8 like part of his own. He sits and talks with  
9 us every time we're there, and when my  
10 grandfather was sick and in the hospital, John  
11 would visit him and take him dinner, always  
12 his favorite, English beef stew with extra  
13 potatoes. That really made my grandfather feel  
14 special, that someone, other than family, would  
15 take the time to come see him and sit with him.  
16 When Pop passed away, John came to the wake to  
17 visit with the family. That meant so much to  
18 us, as -- and it is a blessing for a small  
19 community. We enjoy our family time together  
20 at the restaurant, and the company of John and  
21 Peggy. There's -- they're always so excited to  
22 see us with our young children. We look  
23 forward to continuing our family tradition and  
24 celebration at the new Yesterdays when it  
25 opens. I am certain that there are many other

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1 families that feel the same way. We wish John  
2 and the staff nothing but the best. Sincerely  
3 yours, Joel."

4 I, though, as a person, also, besides my  
5 brother-in-law, you know, have always enjoyed  
6 going to John's place, and the main reason I go  
7 to John's place is because you don't have to  
8 listen to the loud noise, and you can go there  
9 and talk and have a conversation with  
10 everybody, and John is always a welcoming  
11 person there. There's never music playing  
12 allowed. I've never been in the bar when there  
13 was ever any kind of problem. I've been to all  
14 of these bars in town, and can guarantee, you  
15 go to every single bar on one night, you're  
16 going to have a problem, but if you walk into  
17 John's bar and you stay there for a month on  
18 end, no one is ever in there with a problem,  
19 because that's not the kind of place it is.  
20 So, I think that everybody's -- yes, I get that  
21 everyone, it's in between their houses, and I  
22 understand that, but John's establishment isn't  
23 that kind of an establishment, and until you've  
24 stepped foot in John's establishment, I don't  
25 think anyone can really judge it for that. He

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1 -- he is a really good person of the community.  
2 He's helped us all out. I know any -- me or  
3 any of my friends or family members would go to  
4 John if we had a problem, he'd be the first one  
5 that would help out.

6 So, John, I wish you luck.

7 JOHN CHRISTISON: Thank you.

8 CHAIRMAN AULEN: The next person I cannot  
9 decipher the first name, but I believe the last  
10 name is Carey, C-A-R-E-Y.

11 TYLER CAREY: That's me. Tyler Carey,  
12 T-Y-L-E-R, C-A-R-E-Y, 14 Upperhill Road,  
13 Warwick.

14 Members of the community, members of the  
15 board, thank you. I've known John and Peg  
16 Christison as neighbors, friends, and as the  
17 proprietors of Yesterdays, since my wife and I  
18 moved to Warwick over thirteen years ago. My  
19 motive for speaking tonight is not to try to  
20 change the dynamic between those who oppose the  
21 new location for their family-friendly  
22 restaurant, and those who support it. The  
23 minds on both sides of this issue seem  
24 resolute, and I want to be respectful in the  
25 face of disagreement.

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1           My only motive for speaking tonight is to  
2           try to debunk the mention of Yesterdays patrons  
3           that has been painted in the media and  
4           discussions, for both future considerations of  
5           Yesterdays and to defend his current  
6           restaurant.

7           My experience at Yesterdays have not  
8           included exposure to the rowdy elements  
9           suggested as the barbarians lurking at the  
10          gates of the new location. The people I know  
11          who frequent Yesterdays include upstanding  
12          members of the community, such as members of  
13          the Knights of Columbus, community volunteers,  
14          teachers, business owners, first responders,  
15          chefs, college professors, and families,  
16          including my own. During the time we've lived  
17          in Warwick, Yesterdays has served as the host  
18          to numerous birthday parties and events for  
19          members of my family young and old. My middle  
20          child is even lobbying hard for her first job  
21          to be as a waitress at Yesterdays ten years  
22          from now, when she can be legally employed.

23          The parents who I know that bring their  
24          children to Yesterdays, would not be doing so  
25          if it was truly were the frat house atmosphere

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1           that's been suggested. It's doubtful that any  
2           of us will part tonight with a different  
3           position than we came in with. I ask that any  
4           decisions be made by the board based upon  
5           objective information, and I ask that we, as a  
6           community, move on from trying to paint those  
7           that we disagree with as monsters. Warwick is  
8           too wonderful of a community to find itself  
9           involved in this offenseive conflict. We need  
10          to return to respectfully disagree.

11                 CHAIRMAN AULEN: Fred Schweikert.

12                 FRED SCHWEIKERT: S-C-H-W-E-I-K-E-R-T.

13                 I don't live in your town. However --

14                 CHAIRMAN AULEN: Welcome to Warwick.

15                 FRED SCHWEIKERT: However, I've been  
16           eating at John's place since I moved to New  
17           York State back in '99. I'm a retired chef.  
18           He used to come to my place, the Duck Cedar  
19           Inn. Thank you. John has had a consistantly  
20           good restaurant. He doesn't have a shot glass  
21           in his restaurant. It isn't that type of  
22           place. It's a family place. He and Peggy run  
23           a real clean restaurant, good food, and a nice  
24           atmosphere.

25                 I heard a lot of talk tonight about

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1 traffic and whatnot. Traffic always settles  
2 itself, as everybody knows. You've driven in  
3 this town. You got traffic. You're going to  
4 deal with it. So, to me that was just idle  
5 talk.

6 There's never been a drunk driving ticket  
7 issued as a result of somebody leaving his  
8 restaurant. You can ask the police department  
9 that. The train stories from out west was  
10 nice, all that stuff. It doesn't apply here.  
11 You guys have a business here. He's rateables.  
12 He's making money for the town. Everybody has  
13 their little aspect, or, oh, he can't built it  
14 in my backyard. What happens when your  
15 neighbor has a loud party? Do you call the  
16 police for that? But nevertheless, that  
17 happens. That's never happened? It's never  
18 happened in your town? That's ridiculous.  
19 That's ridiculous. You're painting a picture  
20 of a loud bar. He doesn't have a loud bar?

21 CHAIRMAN AULEN: Address the board, not  
22 the audience, please.

23 FRED SCHWEIKERT: Forgive me for that,  
24 forgive me for that, and I'll also try to keep  
25 to the five minute thing you also set, and

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1 also, no applause that you also said, and none  
2 of that was taken care of either.

3 The town board, you already zoned it.  
4 It's done. You know, it's -- it's there. As  
5 far as I'm concerned, it's a restraint of  
6 trade. John and Peggy has done a very good  
7 business here. They have done very good work  
8 in the community, and they will continue to do  
9 so. He's an employer, rateables. It's one of  
10 the things that brings people into this lovely  
11 town that you have, and I think it will  
12 continue, as long as everyone cooperates.  
13 That's all. Thank you.

14 CHAIRMAN AULEN: James Carton.

15 PUBLIC MEMBERS: He left.

16 CHAIRMAN AULEN: Glen Carter.

17 GLEN CARTER: Good evening. My name is  
18 Glen Carter, G-L-E-N, one N, as in no, last  
19 name Carter, C-A-R-T-E-R. You'll have to  
20 forgive me if I may appear a little scattered  
21 brain tonight, but I intend to speak  
22 extemporaneously.

23 I've been at every meeting of the planning  
24 board since late winter, as well as the village  
25 board meetings, which, for some of you who

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1 don't live there, may not realize --

2 CHAIRMAN AULEN: Excuse me. Please talk  
3 to the board.

4 GLEN CARTER: I am talking to the board.  
5 I'm talking to the most important people in  
6 this room, which are the citizens of this town.

7 Okay. A couple of things: I never  
8 thought that I would wake up and look up in a  
9 dictionary what the meaning of nibby was, and  
10 you see a picture of my backyard, but I live  
11 within a stone's throw, no more than fifty feet  
12 from the business end of this established  
13 business proposal, and right at the outset, I  
14 would just like to say unequivocally, that I  
15 don't want it in my backyard, and it's not  
16 because I have anything against the applicant  
17 as a man, but that's not the entity that's up  
18 for discussion and comment. It's a legal  
19 fiction, and I would -- I would also like to  
20 bring up the fact that I'm aware that this  
21 property has been around as the railroad yard,  
22 the Lehigh and Hudson River Railway, which was  
23 in business for over a hundred years, and I  
24 happen to know as a fact, although apparently  
25 facts aren't allowed here, that's only science,

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1 but up until 1972, the primary way of clearing  
2 the weeds for the maintenance of way was DET.  
3 There's also a paint shop, where they used  
4 exclusively oil-based paints, and alca-based  
5 paints, lead-based paints, and the -- the  
6 assessment form that was filled out as part of  
7 the application process, whereby they  
8 obstensively did some archeological dig and  
9 looked for the presence of contaminants. Any  
10 reasonable person would know that it's common  
11 knowledge that you will not find what you are  
12 not looking for, and I suggest that this  
13 property, the only reasonable outcome for your  
14 decision of what you should be deciding on, is  
15 whether or not the property should be condemned  
16 and a moratorium placed on this whole entire  
17 project, until such time as the property  
18 owners, which hopefully will be the village,  
19 can establish some sane science to determine  
20 all those -- all those factors.

21 And the other thing I would like to say,  
22 that having attended all the meetings, what I  
23 witnessed, I will reiterate what I said at the  
24 village board meeting, what I witnessed at more  
25 than one occasion on the planning board

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1 meetings, amounted to, in my estimation of  
2 things, a ritualistic reading of documents, one  
3 of which was seventeen pages long. A bunch of  
4 questions were asked, and not once was the --  
5 did anybody consult the people that live in the  
6 immediate vicinity, on all three sides of the  
7 property, living there. Nobody came and asked  
8 me for any input, do you have concerns, do you  
9 have objections, do you have any thoughts on  
10 the matter. The word compromise was never  
11 uttered in any of the proceedings and, indeed,  
12 most of the time we were met with blank stares,  
13 and an admonishment that this is not a question  
14 and answer period.

15 I have a question right now by way of  
16 commenting on the proceedings thus far. Why in  
17 God's name are we having a hearing at the end  
18 of this process, and not all the way along,  
19 from the time the application was first filed?  
20 The day that the planning board filled out the  
21 EAF, that was the day that learning stopped.  
22 You are incapable of receiving anymore new  
23 knowledge that would have bearing on the entire  
24 affair, and again, I respectfully submit that  
25 this has nothing to do personally with John

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1 Christison, the applicant. Okay? I have been  
2 on the receiving end of his -- his, you know,  
3 his generosity, and we all know that he's  
4 appealable. We all know that he's enrolling,  
5 by virtue of how many people showed up to  
6 support him, and we all know that he has a lot  
7 of influence in this town. It has nothing to  
8 do with him personally. My concerns are the  
9 application as it stands, which is the only  
10 thing that can be considered, by virtue of its  
11 title. That thing, that plan, is -- is the  
12 only thing that you can consider, and I would  
13 suggest that you fix the broken process by  
14 which you're trying to arrive at a  
15 determination, and have an ombudsman, you know,  
16 appointed people that can actually intervene  
17 between the people that have objections and the  
18 board, because it just doesn't feel right, and  
19 the controversy that this project has stirred  
20 up is palpable. You can feel it in the air.  
21 Okay? You may not be able to measure it, but  
22 it's palpable, and it doesn't have to be.  
23 There should be no controversy.

24 My main reason for being against this, and  
25 again, I don't want it, and it's not because

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1           it's in my backyard. It's because it doesn't  
2           reflect the highest good of all of the citizens  
3           of this fine town we live in. It benefits one  
4           merchant and his employees, and I humbly submit  
5           that you better pay attention to that.

6                     And the other thing that I would like to  
7           say is, my concern is -- is also in the future,  
8           because if you pass this, I don't want to wake  
9           up one morning and find out and learn from my  
10          neighbors that the failed, bankrupt, or  
11          whatever, out of business Yesterdays bar, is  
12          now the sales office for about twelve  
13          condominiums. Thank you.

14                    CHAIRMAN AULEN: Matt Lockwood.

15                    MATT LOCKWOOD: Matt Lockwood,  
16           L-O-C-K-W-O-O-D. I live at 49 Four Corners  
17           Road.

18                    John asked me to be here today, because  
19           I'm a regular at his place. I have to say that  
20           there is a lack of understanding, on the  
21           opposition side, of what his place is. I have  
22           a feeling that many of them have not even been  
23           there. It is a restaurant. I have seen  
24           families there a million times. It is very  
25           quiet. It is not a place that's going to cause

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1           disruption. This new place is going to be a  
2           new place. It's not going to be new customers.  
3           It's not going to be new patrons. We're the  
4           same people and we have always been quiet.  
5           We're not the rest of the Warwick late night  
6           scene. He's also the earliest bar to close.  
7           He is not the one that's always late. It's  
8           actually, New York State, 4 p.m. -- sorry, 4  
9           a.m. I am exhausted, and thank you, everyone,  
10          but I have to say, John has been there for me  
11          many times over. I had moved to Warwick about  
12          five years ago. In fact, I saw my real estate  
13          person here earlier today. I worked with her  
14          quite a bit, and I feel like this is my new  
15          home. This is my community, and I'm very proud  
16          to be here. There has been so much going on in  
17          Warwick, and I'm happy to see that it's  
18          constantly growing and constantly changing.  
19          Since I've been here, I've seen a gay pride  
20          parade. I've seen Uber come into town.  
21          Everything is amazing up here. I'm happy that  
22          I moved here. I don't want to see this process  
23          get impeded by people who are angry because  
24          their shack is over across the line. I  
25          appreciate everything that John has done for

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1 me, and I promise that I will always be here  
2 for him. I guess that's all.

3 CHAIRMAN AULEN: Okay. Thank you.

4 THE COURT: It looks like G-R-A-F.

5 SUZY GRAF: Good evening. My name is Suzy  
6 Graf, G-R-A-F, and I want to thank you, after  
7 all these months, for the opportunity to speak  
8 finally. Having said that, I find that mostly  
9 -- most of my thoughts have been covered  
10 previously.

11 The one point I will make, as Dan did  
12 earlier, the thing that my mind keeps circling  
13 around is the difference between the spirit and  
14 the letter of the law, and you can say that  
15 this is zoned light industrial, that this is  
16 allowed usage. However, if something is  
17 broken, we teach our children to try to fix it.  
18 In this case, I would say, if the zoning law is  
19 incorrect, and will be a detriment to the  
20 neighborhood surrounding this new proposal, we  
21 should revisit that, which has been my thought  
22 since the beginning. Look at the code, before  
23 we compile the mistakes here.

24 One other comment. As I found it  
25 interesting that the neighborhood was

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1 characterized as growing up around the railroad  
2 line in the 1930's, considering my house was  
3 built in 1815. Thank you.

4 CHAIRMAN AULEN: Christopher Smith.

5 CHRISTOPHER SMITH: Hi, I'm Christopher  
6 Smith. I resides -- S-M-I-T-H. I reside at 30  
7 Maple in Warwick.

8 My family and ourselves, we've been  
9 residents of Warwick Valley for over  
10 twenty-five years, and in that time, we've seen  
11 a lot of progress and change in Warwick. The  
12 Warwick of twenty-five years ago is certainly  
13 not the Warwick that we see today, and we've  
14 gotten to more of a retail, more of a dining  
15 experience, and yes, that has brought people  
16 from the outside. I think also people who had  
17 that experience, have then come and bought  
18 houses in this area. Warwick being a magnet  
19 for people coming in. But also we see there  
20 are buildings that are fully occupied. We see  
21 a tax base and employment which is very  
22 positive. If I look at the property, and it's  
23 unfortunate, I see or hear the points of  
24 everyone here, same time, I look at, as a  
25 resident of Warwick, what could happen if this

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1 property -- if this plan does not go through.  
2 I would think maybe a house to sell condos  
3 would be wonderful. I'm not an expert on  
4 building laws, but I don't think if you have an  
5 industrial property, you can suddenly put  
6 condos on there. I would be more concerned  
7 that there would be some type of industrial  
8 infrastructure that could bring other types of  
9 trucks, other types of issues into Warwick  
10 which we really do not want to have.

11 So, if I look at the reality, if something  
12 is going to go on this property, I would rather  
13 have it be somebody who is a good citizen,  
14 somebody who is really, as I've heard today,  
15 take a number of steps to be able to address  
16 the concerns of those people involved, and for  
17 me, I think that's a key point to say here. I  
18 look at seeing this, it's an empty property  
19 right now. I pay taxes. Village of Warwick  
20 taxes are not low. It would be nice to have an  
21 increased tax base for us to be able to  
22 continue to invest in Warwick, whether it's the  
23 services, supports that we have. So, to have  
24 an empty property that's paying very little in  
25 taxes, suddenly become a new building that's

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1       paying taxes, have additional people being  
2       employed, that are also, you know, helping  
3       support the local community, but let's also  
4       realize that the building that -- the space  
5       that the current place takes, will probably be  
6       filled by another restaurant, and that, in  
7       turn, will generate additional employment.

8               So, I would come back here and support  
9       this initiative, because I look at what could  
10      be the options. We are progressing. We can't  
11      live in the past, and I think that this is a  
12      very positive step, and I appreciate the fact  
13      that steps are being taken to do things in the  
14      right manner.

15              And the last point, I would like to  
16      commend John, because I think he's really been  
17      above board. I think some of the comments that  
18      have been made, have been maybe a little  
19      misrepresenting of what does go on, et cetera,  
20      and I think he's held his head high in this  
21      community, and I think he's tried to make a  
22      great effort to maintain that position and try  
23      to take the higher ground, and for that, I want  
24      to compliment him. I also want to compliment  
25      you guys. It's been a long night for you guys,

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1 a lot of talk back and forth, a lot of complex  
2 issues. I wish you well on this, but again, I  
3 do support this initiative. Thank you.

4 CHAIRMAN AULEN: John Gallagher.

5 PUBLIC MEMBERS: He left.

6 THE COURT: Christie Toohey, T-O-O-H-E-Y.

7 CHRISTIE TOOHEY: My name is Christie  
8 Toohey, T-O-O-H-E-Y. I live at 44 West Street.  
9 I live in the Bermuda Triangle of sounds in  
10 Warwick. I hear everything. I hear everything  
11 from railroad from my porch, as if I was  
12 standing in front of it. I hear Halligan's all  
13 night. I see the body prints of their drunken  
14 play in my garden, in the morning, with my all  
15 my fresh roses, as I try to make Warwick  
16 beautiful. I pick up their glass. I pick up  
17 their trash. I pick up everything that happens  
18 at night in Warwick, in the morning, before I  
19 go to work, and it's not appreciated, but you  
20 have to know, as the people who sit on this  
21 board, that that is the fruit of your labors  
22 past. That is what has been allowed in this  
23 town. It is what has been allowed to continue  
24 in this town, as far as how we expect our  
25 businesses to maintain and how we can preserve

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1       our right to live within the village, within  
2       walking distance of all that we hold dear. I  
3       have nothing but respect and admiration for all  
4       of Main Street. Moving here eight years ago, I  
5       am thrilled with what we have accomplished in  
6       the past eight years here. It's fantastic.  
7       The amount of work that Main Street does in  
8       this village is incredible. I have never seen,  
9       and I have lived in many places, and worked in  
10      many different facets of hospitality, I have  
11      never seen a community band together and work  
12      so hard, in order to create one positive place  
13      and atmosphere for everyone here, but this  
14      process is the first time that I have seen, not  
15      everyone being listened to with any regard  
16      whatsoever. If this goes through, even if all  
17      the flowers are pink and rosey, and the sound  
18      does not disimprove in the Village of Warwick,  
19      I really don't agree with what has been said so  
20      far. If you have a question, not that you've  
21      sat in the backyards, but you're welcome to my  
22      front porch. It's a real big eye-opening  
23      experience. I have personally directed traffic  
24      at three major accidents directly in front of  
25      my house. There's a U-Mack directly across the

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1 street. There's no less than a hundred  
2 children in there every single day. There's a  
3 dance hall behind me. They're just as busy.  
4 Parking is at a premium in Warwick, but traffic  
5 is a problem, as well. So, I fully back all of  
6 my neighbors in their regard about traffic in  
7 the Village of Warwick. I see it all the time.  
8 I live there. I hear it. It's crazy. I  
9 actually kind of laugh at the part where the  
10 train goes by, and school gets out at the same  
11 time, it's kind of hilarious, but it's about  
12 safety for the children that visit U-Mack, and  
13 it's about safety of the children that visit  
14 the dance hall next-door, and it's about our  
15 pedestrian traffic, which we all know is an  
16 issue throughout the entire village, not  
17 particularly at this particular intersection.  
18 The pedestrian walkway at the corner of West  
19 and Wheeler, is not guarded. It does not have  
20 a nice pretty sign like the rest of Warwick  
21 does at every other intersection throughout the  
22 entire village. It's completely disregarded,  
23 very poorly painted, and does not have a  
24 pedestrian walk sign. So, before you go  
25 mucking it all up and putting another couple

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1 hundred cars a day, perhaps, look at what's  
2 already going on at this intersection. I'm not  
3 saying that I really want a stoplight blinking  
4 in front of my bedroom every day. I don't, nor  
5 do I want drunken patrons that walk West Street  
6 or walk Elm Street all night either. That's  
7 not my goal. I'm not -- I'm not in not support  
8 of your project. I love your project. I love  
9 it in any lot, other than this one. If you  
10 change your lot, give me a shirt, I'll wear it  
11 every day.

12 CHAIRMAN AULEN: Excuse me. Please talk  
13 to the board.

14 CHRISTIE TOOHEY: I'll wear his shirt  
15 every day.

16 CHAIRMAN AULEN: You can wear whatever you  
17 want every day, but please talk to the board,  
18 please.

19 CHRISTIE TOOHEY: I'm speaking with regard  
20 to the fact that, as residents, we are not  
21 protected from any of the noise violations  
22 currently occurring in the village. You have a  
23 noise ordinance, and you do not give it enough  
24 teeth. The only point of having an ordinance  
25 and a rule is if it's objectively enforced.

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1           You do not objectively enforce the noise  
2           ordinances currently in place in this village  
3           whatsoever. The bars continue to rant and  
4           blair at night. The bodies continue to roll  
5           out. I have found blood on the sidewalk many  
6           mornings outside of an establishment on the  
7           corner of West and another street below me.  
8           It's abusive. It's abusive to me, and the  
9           other property owners. I'm sad that another  
10          three city blocks of our village are going to  
11          be exposed to that potential, because while I  
12          love John and I love his establishment in our  
13          village, there's no guarantee that we're going  
14          to have John forever. There's no guarantee  
15          that he is going to be the one that maintains  
16          this and takes care of the employees at this  
17          place. There's nothing to say that in the  
18          future, it won't get sold to someone who runs  
19          Newburgh waterfront right now, and that it  
20          wouldn't be run with the established guidelines  
21          of what they consider good practices. It needs  
22          to be kept in consideration, that while we all  
23          love John, that's a threat, and that's a big  
24          point that needs to be made. For all those  
25          that support his -- his amazing work in this

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1 community, just as I do, that needs to be  
2 taking into consideration, not just all us that  
3 we'll have to deal with the noise and all that  
4 during the construction and everything else,  
5 but the fact that we could be welcoming in a  
6 far greater beast than you understand, not  
7 being able to predict the future and not being  
8 able to plan for it accordingly today. Thank  
9 you?

10 CHAIRMAN AULEN: Gail Draf, D-R-A-F, Gail.

11 PUBLIC MEMBERS: She left.

12 CHAIRMAN AULEN: She left. Okay. Robert  
13 Danielle. Sounds close, yeah. 14 Oakland  
14 Court.

15 PUBLIC MEMBERS: He left.

16 CHAIRMAN AULEN: Janice Graven.

17 JANICE GRAVEN: My name is Janice Graven,  
18 J-A-N-I-C-E, G-R-A-V-E-N. I live at 15 Oakland  
19 Court.

20 I didn't plan on speaking tonight, but as  
21 I sat here and listened to everything going on,  
22 it really saddened me. I'm not an  
23 environmental engineer, and I'm not -- I don't  
24 have any professional reports, but I do have  
25 the experience of living in this village for

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1 twenty-two years.

2 I came here from Nyack, New York, and  
3 bought a house here twenty-two years ago, and I  
4 didn't to buy in the village. It wasn't all  
5 that I could afford. I chose to buy in the  
6 village, because I loved old homes and I loved  
7 the leafy streets and the charming houses, and  
8 over the years that I've lived here, I've seen  
9 the neighborhood greatly improve, as the  
10 downtown also has, and it's been a pleasure to  
11 be a part of that.

12 Our block has recently turned over three  
13 or four houses, and the houses have gone for a  
14 very good price. So, people are realizing the  
15 investment of the work that they put in trying  
16 to maintain their properties, and adding to the  
17 charm of our village, because people do come  
18 here to our village, not only for the  
19 establishments, but they come for the beauty of  
20 our village, as well, and part of that beauty  
21 are the downtown streets, and the neighborhoods  
22 that people are regularly moving into.

23 I feel like I've been a really good  
24 neighbor. I frequent the downtown stores,  
25 rather than going to larger establishments, and

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1 big book stores on-line. I'm not really much  
2 of a cook, so I out eat out in the village all  
3 the time. My neighborhood has served the  
4 children of Warwick every Halloween. Upwards  
5 of twelve hundred children come to our doors on  
6 Halloween, and we fit the bill for that candy  
7 out of our own budgets and out of our own  
8 pockets, to make the experience of living here  
9 in Warwick wonderful for the families that live  
10 here.

11 I don't know about the traffic reports  
12 that you've studied, but I know what I  
13 experience. I can barely get out of the top of  
14 my street on a weekend, trying to pull out from  
15 Oakland Court onto Oakland Avenue with the  
16 traffic. I know the traffic has been letting  
17 out with the tie quan do and all that. I don't  
18 have to go over that. I think people have  
19 spoken about that.

20 I worry about the parking, if there's  
21 going to be forty-five spots. This  
22 establishment is a lot bigger than that. We're  
23 is the overspill? Where are those people going  
24 to park? They're going to park on my street.  
25 And when they leave, I'm not saying Yesterdays

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1 has people spilling onto the streets. I've  
2 eaten there. It's a nice establishment, but  
3 the establishment that's being proposed is not  
4 the same establishment that exists. People are  
5 going to be walking into my neighborhood after  
6 drinks. We actually had a neighbor wake up,  
7 because we do live in a village still, probably  
8 where the people shouldn't, but they live with  
9 the doors unlocked at times, they woke up to an  
10 inebriated woman sitting in their kitchen, 2:00  
11 in the morning. She had lost her way and could  
12 not find her way back to her car.

13           Somebody spoke about the noise ordinance  
14 already. It doesn't always get followed. The  
15 vast -- you know, we were talking about common  
16 sense, and that it's not followed. We get  
17 woken up by street cleaners at 4:25 in the  
18 morning, and they're still going at 6:30 a.m.  
19 So, that's not being enforced.

20           You know, this has knowing to do with  
21 about character assassination of -- of an owner  
22 of an establishment in our community. It  
23 really doesn't. I love Warwick. I love it  
24 here, and I'm grateful that I live here, but  
25 one person doesn't get to decide what's right

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1 for a village, and, you know, Jack Pennings had  
2 mentioned that, you know, let's get him a  
3 restaurant. He has a restaurant. We only have  
4 the homes we have. We have our homes as our  
5 investment. We have our neighborhoods where  
6 we're raising our children. There's little  
7 kids that play in the street and yards, and as  
8 it is, we have -- on Oakland Court, we have  
9 cars speeding up those streets, sometimes at  
10 fifty miles an hour, and he has a right to have  
11 a restaurant. I don't feel that it has to be  
12 in that spot, and is his right to have that  
13 restaurant kind of coming at the cost of all of  
14 these neighborhoods. These are some of the  
15 neighborhoods that draw people to our  
16 community. Oakland Street, and Oakland Court,  
17 there's a realtor here, that is a favored  
18 street. When a house goes for sale on that  
19 block, people want in, and we're going to  
20 decimate neighborhoods for one establishment.

21 You know, somebody else mentioned about  
22 having fond memories of gatherings at this  
23 establishment with their families and how much  
24 they appreciate it and loved being there and  
25 the memory, and I get that, but you know what,

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1       some of these families, at least I'm not -- my  
2       backyard doesn't back to it, some of these  
3       families are trying to make those memories in  
4       their own backyards. And as far as the noise,  
5       I live three blocks, approximately, from  
6       Railroad Avenue. I can sit on my porch at  
7       night and I can listen to the concerts. I  
8       don't say anything about that, because it's one  
9       of the draws for our community. So, there's  
10      certain things that you do put up with for your  
11      community as a draw, because we know we have to  
12      make money for specific things. I'm a block  
13      and a half, barely, from a restaurant that  
14      wants to have outdoor seating until who knows  
15      what time at night. Maybe I don't know all the  
16      specifics, but I guess just as a neighbor, and  
17      if you really -- I'm sorry, but I really feel  
18      if you were to search your heart, and that's  
19      not trying to play on your emotion, I would  
20      think that if it were any of you, if you have  
21      young children, if you raise your family in an  
22      area, if it was the investment that you had to  
23      rely on for your retirement, I think you would  
24      choose a different spot for this restaurant as  
25      well. I guess that's all I have to say.

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1 CHAIRMAN AULEN: Jeanine Ritehart.

2 PUBLIC MEMBERS: It's all been said.

3 Thank you.

4 CHAIRMAN AULEN: Thank you very much.

5 That's the last person who wanted to speak.

6 So, at this time --

7 PUBLIC MEMBERS: Can I speak?

8 JIM SCIERRA: Okay. My name is Jim

9 Scierra, S-C-I-E-R-R-A. I don't normally speak

10 to the board or on here, so that's kind of why

11 I waited. I apologize for that. But after

12 hearing everybody, I kind of realized, I've

13 lived in this village, in Warwick, for sixty

14 years, and I may be one of the seniors here.

15 Boy, that was a scary thought.

16 When I purchased my house, and related to

17 the planning board, at 10 South Flynn Street in

18 the Village of Warwick, one of the first things

19 I did, my wife and I, was to analyze what was

20 around us, and what was around us was probably

21 the biggest concern that maybe people

22 overlooked, and that was Jones chemical. It

23 was a tough thing bringing up a family, but I

24 made the decision, when I purchased my house at

25 10 South Flynn Street, knowing that this

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1 factory was basically in my backyard.

2 I speak with heavy heart, because I know  
3 some of these people, and I understand their  
4 hardships, and I'm not here because he's a good  
5 guy, whatever it is. I'm just here because I  
6 want the planning board to do what's right, not  
7 based on your feelings, their feelings, my  
8 feelings. Are the setbacks the proper way? Do  
9 you -- do you feel that the traffic study was  
10 done? You guys are, I'm going to consider, the  
11 professionals. If they were done the right  
12 way, and the environmental was done the right  
13 way, I think you have your facts to make your  
14 decision, and I appreciate what you're doing.

15 It's funny how the sound and the noise, I  
16 -- I -- maybe I listened to the lawyer here  
17 differently than what some other people heard.  
18 I heard him say, they will take care of, if  
19 it's too noisy, we will take care of it. Well,  
20 I -- I appreciate the professionalism of the  
21 sound person, but if there's no noise there  
22 now, how can I take care of what's not there?  
23 How do I assess something that's not there? I  
24 just -- I want -- put it in documents that it  
25 has to be handled, just -- just put it in

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1 documents, and Warwick is a great town, and I  
2 love my village, and I live within sound  
3 distance of Elm Street, walking distance.

4 So, I just ask that you guys, everybody,  
5 do the right thing. You guys know the code,  
6 the setbacks, the lighting, everything. It's  
7 not opinion stuff. It's fact stuff. I'm  
8 sorry. So, thank you for your time. Thanks  
9 for getting me on.

10 CHAIRMAN AULEN: Okay. The last person,  
11 anyone who hasn't spoken wants to?

12 JUDITH DICKINSON: My name is Judith  
13 Dickinson, J-U-D-I-T-H, D-I-C-K-I-N-S-O-N. I  
14 live on 16 Van Buren Street, immediately across  
15 from the restaurant/bar that's going to be  
16 built.

17 I'm concerned, it hasn't been mentioned  
18 about food odor mitigation, french fries, fried  
19 food. What and how? What is planned to  
20 control odors? What are the allowable levels  
21 of odor and how is that measured and enforced?

22 Another practical use for Elm Street  
23 property, a solar farm and public parking lot,  
24 which is very much needed by the village. A  
25 solar farm would help reduce air pollution and

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1 generate energy and revenue for the village.

2           It's generally assumed that once  
3 Yesterdays bar and restaurant is built and  
4 established, that sooner or later it will be  
5 flipped or sold to another owner, manager, and  
6 would change drastically from what has been  
7 promised. What is the definition of a  
8 restaurant? It serves food, and maybe also  
9 drink, in the morning, noon, and evening, until  
10 around 10 p.m. People are usually not eating  
11 dinners. They go home, or they stay and they  
12 continue to drink. The bar serves food for  
13 some at the same hours, except almost  
14 exclusively alcohol is consumed after 10 p.m.  
15 I appreciate all of your time and for  
16 listening.

17           CHAIRMAN AULEN: Excuse me, ma'am, do you  
18 have something additional to add to the  
19 discussion?

20           PUBLIC MEMBERS: I just wanted to pose a  
21 question and make a comment, because -- may I?

22           CHAIRMAN AULEN: Go ahead.

23           RENELLE LORRAY: Renelle Lorray,  
24 L-O-R-R-A-Y. I'm just curious. The current  
25 Yesterdays is -- is characterized as a family

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1 style restaurant, everybody loves to go and  
2 have a good time, but the new place is a  
3 bar/restaurant, where nearly half of the  
4 patrons would be occupied at the bar, and the  
5 rest to eat. Now, I'd like to know, what  
6 family style restaurant is open until 2 in the  
7 morning, that has their children there? It's  
8 more a place where people are going to drink,  
9 and that's the issue.

10 CHAIRMAN AULEN: Okay. Thank you very  
11 much. Okay. That is the last person to speak.

12 STEVE GROSS: I'll be quick. I'll try.  
13 Steve Gross. I just wanted to -- I want to do  
14 a little wrap up.

15 One of the last speakers said to you, if  
16 the environmental studies were done correctly,  
17 then you have your answers. I think what has  
18 been demonstrated tonight by some of the expert  
19 people, is that they were not done right. You  
20 have my letter, as well, where I pointed out  
21 the deficiencies in the SEQRA review. There  
22 are many thresholds where you should have at  
23 least required the part three, and I think this  
24 strong basis for requiring environmental impact  
25 statement, and one of the reasons I would like

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1 to see an environmental impact statement, and  
2 focused on just certain issues, is that you saw  
3 the quality of the people and the credentials  
4 that are right here in Warwick, that if given  
5 the opportunity, presented in an environmental  
6 impact statement, where they have the  
7 opportunity to do review and comment on the  
8 environmental process, which is cannot happen  
9 with the EAF, that you can get some very strong  
10 input on the sound, on the ground water, on  
11 hazardous materials. We're here. We're here  
12 to help this board.

13 I think the first step that this board  
14 should take, and you have the ability to do  
15 this, it's legal, is to rescind the neg dec.  
16 There's been plenty today, and this is actually  
17 a very legal point for you to rescind the neg  
18 dec, because there's been plenty today  
19 presented, to show that you really do have more  
20 to study, and that there really are potential  
21 environmental impacts that need to be examined.

22 So, that's what I'm going to ask for. I'm  
23 going to ask this board to rescind the negative  
24 declaration, reopen SEQRA, do the study, do the  
25 noise study that you're required to do, do a

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1 further investigation into the hazardous  
2 materials, and consider the comments of your  
3 local PhD very seriously, she makes some very  
4 good points, and -- and give deference to the  
5 residents that are really going to be truly  
6 impacted here.

7           One of the fears I have, I invested on Van  
8 Buren Street. I've lived in the Town of  
9 Warwick since 1965. I know some of you don't  
10 realize that. I moved into the Village of  
11 Warwick in 1989, on Van Buren Street. We  
12 invested in our house, our first house. We  
13 restored it. We thought the architecture was  
14 great. We ripped up the carpeting, sanded down  
15 the floors, restored it. That street has a lot  
16 of potential, and somebody else just recently  
17 bought what had been the worst house on the  
18 street, and fully restored that one now, or  
19 renovated it now, that backs up to this  
20 property.

21           When I lived on that street, someone talks  
22 of Halloween, we were inundated, because it's  
23 that kind of street. We saw people coming in  
24 with vans, with Jersey plates, with kids  
25 pouring out. It's that kind of street. What

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1 my fear is now, that especially those houses  
2 that back up to this property, when this  
3 happens, their property values are going to  
4 plummet. The people that will probably be  
5 willing to buy those houses are not going to be  
6 people that want to occupy them. It will  
7 probably be for rental. They'll probably buy  
8 them to rent out, and I think the quality of  
9 the neighborhood is going to go down, and it  
10 won't be that street where the kids are piling  
11 out to go trick or treating.

12 You -- I laid out before, a very, I feel,  
13 strong legal argument that gives you the basis  
14 to turn this thing down. You don't -- you're  
15 not required to approve it. There are strong  
16 legal arguments that you can turn it down, and  
17 stand on them, resist any challenge, any legal  
18 challenge. So, but I think the first step is,  
19 you have to rescind that neg dec, and you have  
20 to do the proper environmental study, and let  
21 these residents do a proper review through the  
22 remainder of the SEQRA process. Thank you.

23 CHAIRMAN AULEN: I would like to call to  
24 close, motion to close the public hearing.

25 BOARD MEMBER PATTERSON: I make that

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1 motion.

2 CHAIRMAN AULEN: A motion has been made.

3 BOARD MEMBER DENERLEY: Second.

4 CHAIRMAN AULEN: Second, a motion has been  
5 made second. Any further discussion? All in  
6 favor, aye.

7 BOARD MEMBERS: Aye.

8 CHAIRMAN AULEN: Closed, public hearing is  
9 now closed.

10 \* \* \* \* \*

11 Certified to be a true and accurate

12  
13 

14 Michael DeCelestino

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