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October 2, 2024
Revised December 10, 2024

MEMO

TO: Village of Warwick Planning Board
Applicant

CC: Kristin Bialosky, Planning Board Clerk
Jason Pitingaro, Village Conflict Engineer

FROM: Elizabeth K. Cassidy, Esq.

RE: Attorney comments on application of
16 Elm Street Realty, LLC
210-12-14

I have reviewed the application of 16 Elm Street Realty LLC for changes to the existing site plan for Yesterday's Restaurant. The applicant last appeared at the Board's October 10, 2024 meeting at which the applicant indicated it would eliminate the proposed storage containers. The applicant has submitted a response to comments of Pitingaro and Doestch together with a revised site plan (revision date November 14, 2024). Updates to my previous memorandum are found in bold.

Comment	Status
1. The Property is located in the LI zoning district	For Information
2. Application is not subject to GML.	For Information
3. The Planning Board to evaluate whether a public hearing should be held on the amendments pursuant to § 145-96.	
4. SEQR: This is an unlisted action pursuant to SEQR.	
5. The Application to be referred to the Architectural Review Board pursuant to § 5-4 of the Village Code.	Comment satisfied. Revised plans remove structures subject to architectural review.

6. The property is not located in the Historic District. It does not appear the project is subject to review by the AHDRB pursuant to § 145-24.	For Information
7. I note the memorandum of Pitingaro & Doetsche, dated December 10, 2024	
<p>8. The site has been approved as an eating and drinking establishment subject to Use Group K on the bulk table. See below. Any use not identified in the Use Table shall be deemed prohibited. See § 145-32 (D). An accessory use is a building, structure or use which is clearly incidental or subordinate to and customarily used in connection with, the principal building, structure or use and which is located on the same lot with the principal building, structure or use. See 145-181.</p> <p>I also note that § 145-91 (I)(8)(h) provides that outdoor storage shall be prohibited.¹ The Building Inspector should issue a determine as to whether the proposed storage is outdoor storage prohibited under the code.</p> <p>In the event, the Application is determined not to be prohibited outdoor storage, the Applicant to demonstrate that proposed storage is incidental to the eating and drinking principal use already on the lot.</p>	Applicant has removed the proposed storage containers from the amended site plan. Comment satisfied.
9. The code specifically finds that portable temporary storage containers shall not be considered temporary structures. See § 145-181 (“Structure, Temporary”) STRUCTURE, TEMPORARY – Structures without any foundation or footing and that are removed when the designated time period, activity, or use for which the temporary structure was erected has ceased. For the purposes of this definition, motor vehicles and portable temporary storage containers, as defined herein, shall not be considered temporary structures. ²	For Information.

¹ The code does permit a contractor’s storage yard as a conditional use, but it must be part and parcel of a landscaping or construction business. See Definition of Contractor’s Storage Yard; See also Use Table.

² No definitions of motor vehicles or portable temporary storage containers was defined else where in the zoning code.

<p>10. Applicant to address screening requirements for the proposed storage units. I draw the Board's attention to the following provisions of the code:</p> <p>145-70 (C) (3) - 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.</p> <p>145-91 (I) (2) - Site plans involving nonresidential 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.</p> <p>See also 145-91(I) (8)(e) - 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.</p>	<p>Comment satisfied. Storage containers are removed from the proposal.</p>
<p>11. Two of the storage units appear to be located in the front yard. This appears to be in violation of § 145-50 and § 145-51 as it is not an accessory use which is permitted in the front yard.</p>	<p>Comment satisfied. Storage containers are removed from the proposal.</p>
<p>12. 100-year Floodplain - The instant application is subject to a permit pursuant to Chapter 69, Section 4.2. I refer the Board to Sections 5.1-2, 5.2, and 5.4 for construction standards. I defer to your engineer as to whether the proposal conforms to the standards. I do not believe it does.</p> <p>12-3-2024 – Engineer to advise as to the impact of revisions to pavement on need for Floodplain permit.</p>	
<p>13. 12-3-2024 - Applicant to address encroachments located at entrance drive. Sign to be relocated.</p>	

A railroad tie planter is a pre-existing encroachment. Any approval shall contain a notation that such approval does not approve any encroachments.	
14. Planning Board to address relocation of dumpster facilities and necessary screening.	
15. The fire access road appears to have been shifted from that as originally approved. Applicant to address impact of such location on land banked parking.	
16. Parking totals between original approval and what has been installed differ dramatically. Applicant to address consistency with previous approvals including impacts on stormwater and drainage.	
17. Most recent site plan references a revised stormwater management and landscape plan revised June 5, 2024 but such plan has not been submitted to the Planning Board.	
18. Applicant to address removal of gate shown on the original site plan.	
19. The Planning Board's prior approval specifically conditioned the issuance of a certificate of occupancy on completion of all on-site improvements in conformity with the site plan. Village of Warwick Village Code § 145-94(B)(3) provides "A partial Certificate of Occupancy or Use for a period of ninety (90) days, but not more than one (1) year in the aggregate, for a building, structure or part thereof may be issued before all the on-site improvements are complete; provided nonetheless, that such portion or portions of the site improvements as are necessary to permit the site to be occupied safely without endangering life or the public welfare have been completed. The Village Engineer shall require cash deposit or letter of credit to ensure and guarantee the completion of the on-site improvements. The Code Enforcement Officer shall determine the sum of such deposit or letter or credit." See also 145-149 (A)(3) which has similar language.	

It is my understanding that although a temporary certificate of occupancy has been issued, no deposit or letter of credit has been provided by the applicant. I recommend a cash deposit or letter of credit be provided until such time as the on-site improvements are completed in conformity with the approved site plan to be in conformity with the code.

The Applicant is advised that the current Temporary Certificate of Occupancy expires on February 8, 2025 and may not be extended per code.