

November 5, 2024

MEMO

TO: Village of Warwick Planning Board
Applicant

CC: Kristin Bialosky, Planning Board Clerk
Keith Woodruff, Village Engineer

FROM: Elizabeth K. Cassidy, Esq.

RE: Attorney comments on application of John Peruso
24 Wheeler Avenue
207-2-24

I have reviewed the application of John Peruso for the creation of a 1-bedroom accessory apartment within an existing 3 bedroom house. I offer the following comments:

Comment	Status
1. The Property is located in the Limited Office Overlay (LO)	For Information
2. Applicant to verify distance to Route 94 & 17A to determine whether GML 239 applies. The project appears to be within 500 feet of Route 94 & 17A triggering the requirements for 239 review.	
3. Accessory Apartments are a conditional use and subject to site plan review. Accessory apartments fall under use group "b". See §§ 145-31 and 145-90 (4); See also Article XI of the Zoning Code	For Information
4. Application is subject to a public hearing. See § 145-112. The Planning Board shall require the applicant to mail notice by certified mail of said hearing to applicant at least ten days before such hearing and to all property owners	For Information

<p>within three hundred feet (300') of the property line of the applicant's property and shall give public notice of said hearing in a newspaper of general circulation in the Village at least five days prior to the hearing.</p>	
<p>5. I note the comment memorandum of Keith Woodruff, dated November 5, 2024.</p>	
<p>6. Application Comments</p> <ul style="list-style-type: none"> • Title appears in two names; both record owners to sign application and/or proxy. • Recommend the applicant provide a written narrative describing the project and the scope of construction. The plans do not identify how large the proposed accessory apartment will be other than to say it will fall within the relevant range. 	
<p>7. Accessory Apartments are governed by § 145-120.4. Some of the key provisions are copied below.</p> <p>The owner(s) of the one-family residence in which the accessory apartment is to be located shall occupy at least one (1) of such units on the premises. The owner shall have been a resident on the premises for at least twelve (12) consecutive months immediately preceding submission of the accessory apartment application. Should the owner have a place of residence other than the premises for a period of more than six (6) months, the conditional use permit shall become null and void, and the premises shall revert to its original permitted use which existed immediately prior to the issuance of the permit. Accessory apartments shall be clearly incidental and subordinate to the principal structure and shall not change the single-family residential character of the neighborhood.</p> <p>Adding an accessory apartment is considered a change in use to the property</p> <p>The maximum floor area for the accessory apartment whether in main dwelling or in an accessory structure shall be eight hundred (800) square feet and the minimum floor area of the accessory apartment shall be four hundred (400) square feet and as such shall not exceed the size of the primary residence. If the accessory apartment is proposed within the main</p>	<p>For Information</p>

<p>dwelling, the primary residence shall not be reduced below one thousand (1000) square feet. These areas shall be exclusive of porches or basements. There shall be no more than one (1) bedroom per accessory apartment.</p> <p>Off-street parking spaces shall be provided for each dwelling unit in accordance with § 145-70 of this Zoning Law but in no case shall the parking space be located in the front yard, in the driveway forward of the front building line of the dwelling unit or in the 1st layer as defined herein.</p>	
<p>8. SEQR: Applicant has provided a short form environmental assessment form dated September 10, 2024. The proposed action appears to be an unlisted action.</p> <ul style="list-style-type: none"> • Applicant to address yes answer to question 12(b) • Applicant to address yes answer to question 20. • Applicant to address impacts of stream shown on Plan. 	
<p>9. The current site is a pre-existing non-conforming site with respect to virtually all required setback dimensions. The applicant should be referred to the Zoning Board of Appeals pursuant to § 145-131 (E). Although § 145-131(E)(3) provides for reduction in yards for lots less than 100 feet wide, the lot in question fails to meet even these reduced standards.</p>	
<p>10. The property card identifies the existing house as having 2,113 sq feet with 1,183 square feet on the first story and 930 square feet as a finished basement. The primary residence shall not be reduced below 1000 square feet exclusive of basements. Accessory apartments Even if the minimum apartment is constructed at 400 square feet, it appears that the remaining area for the primary use would fall below the required 1000 square feet. Applicant to demonstrate compliance with § 145-120.4 (D).</p>	
<p>11. Proposed parking is located in the front yard in violation 145-120.4(E).</p>	

These comments represent a preliminary analysis of the materials submitted. Additional comments may arise with future submissions.