

**BOARD OF TRUSTEES  
VILLAGE OF WARWICK  
AUGUST 25, 2021  
SPECIAL MEETING AGENDA**

**VILLAGE HALL  
77 MAIN STREET, WARWICK, NY 10990  
9:30 A.M.**

**Call to Order  
Pledge of Allegiance  
Roll Call**

1. Introduction by Mayor Newhard.

**Motions**

1. **RESOLUTION APPROVING SETTLEMENT OF LAWSUIT CHALLENGING  
LAND USE APPROVALS ISSUED IN REGARD TO 16 ELM STREET.**

WHEREAS, 16 Elm Street Realty, LLC has applied to the Village of Warwick for land use approvals to develop certain real property located in the Village at 16 Elm Street as a restaurant/bar; and

WHEREAS, on or about April 21, 2021, a lawsuit was commenced in New York State Supreme Court, Orange County (Index No. EF-002598-2021) challenging a decision of the Village of Warwick Building Inspector and the Village of Warwick Zoning Board of Appeals ("ZBA") regarding the land use approvals for the said development; and

WHEREAS, on or about July 8, 2021, an amended petition was filed in the said lawsuit adding the Village of Warwick Planning Board as a party and challenging a determination of the Planning Board in regard to site plan approval for the said development; and

WHEREAS, 16 Elm Street Realty, LLC and the Petitioner in the said lawsuit have reached an agreement for settlement of the said litigation as set forth in the proposed Stipulation of Settlement attached hereto; and

WHEREAS, it is necessary for the Village Board to approve the said settlement in order to finalize its terms and terminate the said litigation;

NOW, THEREFORE, BE IT RESOLVED as follows:

1. That the Village Board hereby accepts and approves the proposed Stipulation of Settlement; and

2. That the Mayor, ZBA Chairman, Planning Board Chairman, and Village Building Inspector are authorized to execute the same and any documents necessary to carry out the terms thereof.

\_\_\_\_\_ presented the foregoing resolution which was seconded by \_\_\_\_\_,

The vote on the foregoing resolution was as follows:

Barry Cheney, Trustee, voting \_\_\_\_\_

William Lindberg, Trustee, voting \_\_\_\_\_

George McManus, Trustee, voting \_\_\_\_\_

Corey Bachman, Trustee, voting \_\_\_\_\_

Michael Newhard, Mayor, voting \_\_\_\_\_

2. **MOTION** to approve and accept DASNY SAM Grant #15548 in the amount of \$75,000 for the 'Creation of an ADA Accessible Playground' and to authorize the Mayor to sign the Grant Disbursement Agreement and all documents necessary to carry out the terms thereof.

The vote on the foregoing **motion** was as follows:

Trustee Cheney \_\_\_\_ Trustee Lindberg \_\_\_\_ Trustee Bachman \_\_\_\_

Trustee McManus \_\_\_\_ Mayor Newhard \_\_\_\_

3. **MOTION** to grant permission to Wickham Works, Inc. to use Stanley-Deming Park for an Earth Fest event on Saturday, April 30, 2022, from 10:00 a.m. to 5:00 p.m., with setup to begin at 6:00 a.m. and breakdown to be completed by 7:30 p.m., with a rain date of Sunday, May 1, 2022, per their map and letter dated August 20, 2021. Request includes use restrooms, ten parking cones, six garbage cans, four tables, twenty chairs, water fountain access and use of electricity. All activities must be in accordance with NYS and Orange County Departments of Health. Completed park permit, proof of proper insurance, and security deposit have been received.

The vote on the foregoing **motion** was as follows:

Trustee Cheney \_\_\_\_ Trustee Lindberg \_\_\_\_ Trustee Bachman \_\_\_\_

Trustee McManus \_\_\_\_ Mayor Newhard \_\_\_\_

**Executive Session, if applicable**

**Adjournment**

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

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Application of

PATRICK GALLAGHER,  
Petitioner

Index No.:EF002598-2021

**STIPULATION OF  
SETTLEMENT**

For a judgment pursuant to CPLR Article 78

-against-

ZONING BOARD OF APPEALS OF THE VILLAGE OF  
WARWICK, 16 ELM STREET REALTY, LLC., BORIS  
RUDZINSKI in his capacity as BUILDING INSPECTOR  
OF THE VILLAGE OF WARWICK, FRANK D.  
PETRUCCI, LYNN CRANE AND GLENN PETRUCCI

Respondents.

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WHEREAS, on February 15, 2018 the Planning Board of the Village of Warwick (the Planning Board) granted site plan approval authorizing construction of a restaurant establishment on a +/- 3.6 acres property located on 16 Elm Street, Village Tax Map Parcel Section 210 Block 12 lot 14 pursuant to a site plan entitled "SITE PLAN ELM STREET RESTAURANT VILLAGE OF WARWICK ORANGE COUNTY, NEW YORK" first dated 1/05/16 as last revised 12/18/17 ("the project") which site plan was signed by the Planning Board Chair upon satisfaction of all conditions of the site plan approval on May 24, 2018; and

WHEREAS, an Article 78 proceeding, Index # 2018-002552 was filed on March 5, 2018 seeking to overturn the site plan approval which was dismissed by order of the Orange County Supreme Court Slobod, J. dated August 6, 2018 which dismissal was thereafter affirmed by the Appellate Division Second Department, by order dated December 20, 2020; and

WHEREAS, on April 21, 2021 Petitioner, commenced this proceeding seeking to annul a determination of the Zoning Board of Appeals of the Village of Warwick upholding a determination by the Respondent Village of Warwick Building Inspector Rudzinski that a prior site plan approval granted for this project by Respondent Planning Board in February 2018 was valid and not expired due to a tolling of time caused by pending litigation; and

WHEREAS on June 8, 2021, the Planning Board of the Village of Warwick adopted a resolution confirming its SEQRA determination and reapproving the site plan pursuant to site plan set referred to in the first WHEREAS clause herein together with a revised landscaping plan depicted on a plan dated March 8, 2019 which included additional plantings to supplement the original landscape plan; and

WHEREAS on July 6, 2021, Petitioner filed an amendment to this proceeding seeking a judicial declaration that the June 8, 2021 resolution of the Planning Board of the Village of Warwick reapproving the site plan for 16 Elm Street LLC, (hereinafter "16 Elm Street") filed in the Village Clerk and Village Planning Board Office on June 9, 2021, be null and void; and

WHEREAS all proceedings stem from Petitioner's concerns relating to the alleged impact associated with construction of a restaurant with covered porch and outdoor seating area and the location of said project in relation to Petitioner's property; and

WHEREAS Respondent, 16 Elm Street, has agreed, in addition to the plantings shown on the approved site plan to plant an additional staggered double-row of evergreen trees along an approximately six-hundred and ninety (690) linear foot line running along the shared property lines to provide additional screening to and from Petitioner's, and other neighbors' properties; and

WHEREAS all parties desire to settle all claims raised by Petitioner against Respondents in all pending proceedings and to resolve and settle all pending proceedings pursuant to this Stipulation of Settlement; and

WHEREAS, the Parties mutually request that the court So Order this Stipulation and retain jurisdiction over the terms thereof and the parties for enforcement purposes.

THEREFORE, IT IS HEREBY STIPULATED, AGREED AND ORDERED as follows:

1. Each WHEREAS clause is hereby deemed incorporated by reference at length and verbatim in this section of the Stipulation such that every WHEREAS provision is a binding obligation upon the parties with no distinction between WHEREAS clauses and the terms set forth below.
2. All parties acknowledge and affirm that the above referenced proceeding under Index No. EF002598-2021 is the only lawsuit challenging the site plan reapproval that was filed within the thirty (30) day statute of limitation, which expired on July 9, 2021 thirty days after filing of the latest resolution of site plan approval.
3. Upon so ordering of the Stipulation of Settlement, Respondents hereby agree not to contest, and waive any procedural objection to, Petitioner's amendment of the petition to challenge the grant of 16 Elm's June 8, 2021 site plan approval, or service thereof.
4. Respondent 16 Elm Street agrees to plant, in addition to the landscaping and plantings depicted on the approved June 8, 2021 site plan an additional double staggered row of evergreens, a minimum of five (5') - six (6') feet in height planted ten (10) feet apart along Respondent, 16 Elm Street, property line starting from a few homes past the property now formerly owned by Burghardts on Van Buren Street to the rear of the Mensch property and then across the line behind property now or formerly Haynes to property now formerly O'Neil (collectively, 11-23 Van Buren Street and 51-65 West Street), approximately six-hundred and ninety (690) feet in length along said shared property line as more particularly described in the attached letter dated August 13, 2021 from Richard Valentino, Valentino Lawn Care, Inc and as depicted on the attached landscape plan. ~~(Will include the name and date of plan when received per)~~ Prepared by Engineering & Surveying Properties dated August 4, 2021 as last revised August 13, 2021 entitled "Supplemental Planting Plan Elm Street Restaurant Village of Warwick Orange New York".

5. Respondent 16 Elm Street, shall either plant or bond the cost of planting of these additional evergreen trees, prior to issuance of a Certificate of Occupancy (CO) for the restaurant. The plantings of these additional evergreen trees shall occur at a time of year most conducive to their survival. Bonding shall only be acceptable if the CO is issued before April 1<sup>st</sup> of the year in which issued and if so bonded said plantings shall take place prior to June 1<sup>st</sup> next ensuing the date of the CO. Failure to undertake the plantings under this Stipulation shall be grounds for revocation of the CO.
6. The parties agree that the attached landscaping plan shall be signed by the Planning Board Chair and become a part of the approved site plan set for the project. However, the parties explicitly acknowledge and agree that such additional plantings do not substantially modify the approved site plan and do not cause a potential adverse environmental impact, since they are in addition to the already approved plantings and therefore no modification of the site plan approval or further Planning Board review or public discussion is warranted or permitted. The parties also agree that the attached landscaping plan being a part of the overall approved site plan shall be enforceable by the Village of Warwick in the same manner as all other required elements of the approved site plan.
7. Respondent, 16 Elm Street Realty, LLC agrees that in accordance with original approved site plan there will be no cutting of trees beyond the demarcated "no disturbance line" unless they are dead or diseased as confirmed by the Village Building Department after consultation with the Village Shade Tree Commissioner.
- 6.8. Respondent, 16 Elm Street Realty, LLC agrees to flag the no disturbance line in the field the location of which shall be verified by the Building Inspector prior to the commencement of any further construction on the site.

~~7.9.~~ Petitioner agrees that upon signing of this Stipulation the pending proceedings shall be deemed immediately withdrawn with prejudice, that Petitioner and his attorney shall immediately take all actions necessary to cause such withdrawal of record and that Petitioner shall take no actions to delay Respondent 16 Elm Street, LLC, its affiliates or principals from closing title on the property, construction financing and construction of the project.

~~8.10.~~ This Stipulation represents the entire agreement entered into between the Parties and neither party is relying upon any oral representations made by any other party in entering into this Stipulation.

~~9.11.~~ This Stipulation shall be enforceable as an order of the Court and the Court shall maintain continuing jurisdiction over enforcement of this Stipulation until a final certificate of occupancy is issued to the project after the planting of the trees required in paragraph 3 above.

~~10.12.~~ The Parties may seek enforcement of this Stipulation by motion to the Court. In any motion or proceeding to enforce the terms of this Stipulation, the prevailing party shall be entitled to recoup its reasonable attorney's fees and expenses from the other party along with any other monetary damages and injunctive relief to which it may be entitled.

~~11.13.~~ New York Law shall govern and control the terms and conditions of this Stipulation.

~~12.14.~~ This Stipulation is a settlement of disputed claims. By entering into this Stipulation the parties are not admitting any liability or wrong action.

~~13.15.~~ This Stipulation may be signed in counterparts. ~~WE CAN CONSIDER ADDING THE ABILITY OFR EMAIL SIGNATURES IF STILL AUTHORIZED~~



PATRICK GALLAGHER, Petitioner

DAVID K. GORDON, ESQ.  
Attorney for Petitioner

VILLAGE OF WARWICK PLANNING BOARD  
By: James Patterson, Chair

ROBERT DICKOVER, ESQ.  
Attorney for Respondent Planning  
Board

BORIS RUDZINSKI, Building Inspector

STEVEN GABA, ESQ., Village of  
Warwick Attorney

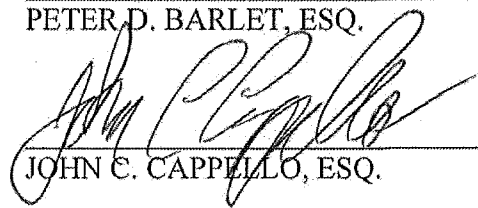
FRANK D. PETRUCCI

LYNN CRANE

GLENN PETRUCCI

PETER D. BARLET, ESQ.

16 ELM STREET, LLC  
By: John Christison, Member

  
JOHN C. CAPPELLO, ESQ.

VILLAGE OF WARWICK ZONING BOARD  
OF APPEALS  
By: John Graney, Chair

STEVEN GABA, ESQ.  
Attorney for Respondent Zoning  
Board of Appeals

So Ordered:

Hon.

PATRICK GALLAGHER, Petitioner

DAVID K. GORDON, ESQ.  
Attorney for Petitioner

VILLAGE OF WARWICK PLANNING BOARD  
By: James Patterson, Chair

ROBERT DICKOVER, ESQ.  
Attorney for Respondent Planning  
Board

BORIS RUDZINSKI, Building Inspector


STEVEN GABA, ESQ., Village of  
Warwick Attorney

FRANK D. PETRUCCI

LYNN CRANE

GLENN PETRUCCI

PETER D. BARLETT, ESQ.

  
136 FLM STREET, LLC  
By: John Christison, Member

JOHN C. CAPPELLO, ESQ.

VILLAGE OF WARWICK ZONING BOARD  
OF APPEALS  
By: John Graney, Chair

STEVEN GABA, ESQ.  
Attorney for Respondent Zoning  
Board of Appeals

So Ordered:

\_\_\_\_\_  
Hon.

Valentino Lawn care, INC.  
84 Dekay Road  
Warwick, NY 10990  
(845) 986-2011  
Valentinlawns@gmail.com

13  
August 3, 2021

Yesterday's  
16 Elm Street  
Warwick, Ny 10990

This letter details the additional planting screening to be installed at 16 Elm Street adjacent to fence installation. The plant screening will be installed on the property of Yesterdays and will cover an estimated 690 linear feet on center, as more particularly depicted on the attached supplemental plant plan. The plan depicts the following plant materials.

<u>Plant Material Common Name</u>	<u>Botanical Name</u>	<u>Quantity/Size</u>
Green Giant Arborvitae	Thuja plicata	+/- <del>84</del> / 5/6' 28
Norway Spruce	Picea abies	+/- <del>30</del> / 5/6' 28
Serbian Spruce	Picea omorika	+/- <del>30</del> / 5/6' 28

The total amount of plants to be installed will total 140 specimens consisting of evergreens such Green Giant Arborvitae, Norway Spruce, Serbian Spruce or equal vent. The plant size will be 5/6 feet in height. Please note per proposed quantity and mix noted above for all plant specimens may vary +/- 15% from proposed quantity and mix; however when installation is complete the total quantity of evergreens planted will be 140.

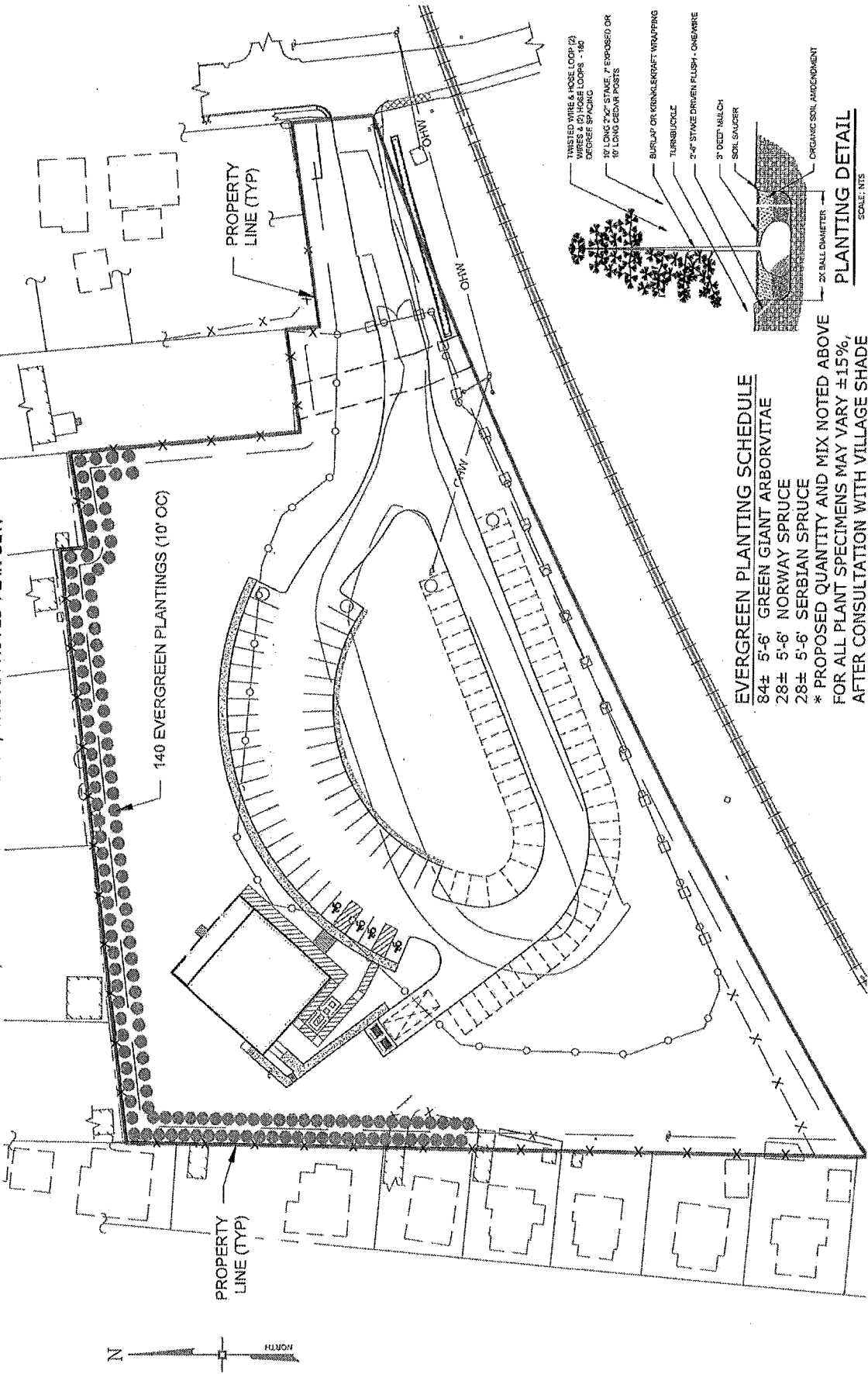
All plants installed with organic soil amendments as depicted on the plan and will have a 2-year replacement warranty from date of installation.

8,4  
except for the <sup>Green</sup> Giant Arborvitae which will be a minimum of 84

Respectfully Submitted,

Richard Valentino  
Valentino Lawn Care, INC.  
Warwick, NY 10990

NOTE: PLANTINGS SHOWN HEREON ARE A SUPPLEMENT AND ADDITION TO THE APPROVED LANDSCAPE DESIGN FOR THIS APPROVED PROJECT, PROVIDED PURSUANT TO SETTLEMENT OF LITIGATION. THIS SUPPLEMENTAL PLANTING PLAN IS TO BE ADDED TO, AND INCORPORATED INTO, THE APPROVED PLAN SET.



### EVERGREEN PLANTING SCHEDULE

84± 5'-6" GREEN GIANT ARBORVITAE  
 28± 5'-6" NORWAY SPRUCE  
 28± 5'-6" SERBIAN SPRUCE  
 \* PROPOSED QUANTITY AND MIX NOTED ABOVE  
 FOR ALL PLANT SPECIMENS MAY VARY ±15%,  
 AFTER CONSULTATION WITH VILLAGE SHADE  
 TREE COMMISSION, EXCEPT FOR ARBORVITAE

### PLANTING DETAIL

SCALE: NTS

SUPPLEMENTAL PLANTING PLAN	ELM STREET RESTAURANT ELM STREET VILLAGE OF WARWICK ORANGE COUNTY, NEW YORK	DATE:	08/13/21	JOB #	1175.01	<div>ENGINEERING &amp; SURVEYING PROPERTIES</div> <div>Achieving Successful Results with Innovative Designs</div>
		SCALE:	1" = 80'	SHEET #	F-1	

71 CLINTON STREET  
MONTGOMERY, NY 12549  
Ph: (845) 457-7727  
Fx: (845) 457-1899





## WICKHAM WORKS

EXCHANGE. SHARE. MAKE.

Wickham Works  
3 Forester Ave., Unit 8  
Warwick, NY 10990

To: The Warwick Village Board of Trustees

August 20<sup>th</sup>, 2021

Wickham Works would like to ask permission to host the 3rd Earth Fest public art event at Stanley Deming Park on Saturday, April 30<sup>th</sup>, 10AM-5PM, with a rain date of Sunday May 1<sup>st</sup>, 2022. Set-up and breakdown time is 6AM, breakdown until 7.30PM, Saturday April 30th.

Earth Fest includes an art exhibit, art workshops for all ages, a puppet show and the Love Local Maker Market. The theme for Earth Fest 2022 is Regeneration: Everything Old is New Again. We will commission four Orange County artists to create freestanding artworks using upcycled material to display at Earth Fest. Each artist also conducts a free public workshop during the event to work with children and adults on creating their own mini artworks from recycled material. There will also be performances by the Bozo Brothers puppet show from Modern Times Theatre. Events would be located under the pavilion, gazebo and on the lawns adjacent to them, with access to the bathroom area. The area will be fenced in with plastic barrier to allow access to the playground for those who do not wish to attend the event.

We would also like to ask permission to use the lawn area in front of the mural and basketball courts on the opposite side of the stream as a staging area for the event.

Wickham Works will apply to Park Avenue school for permission to use their parking lot.

We would like to request the following from the Village:

- use of Gazebo, Pavilion, and adjacent lawn areas extending to the restrooms,
- use of lawn area between the mural and the river (beside basketball court)
- 10 parking cones for loading and unloading areas near entrance
- 4 garbage cans for gazebo and pavilion and lawn area. 2 garbage cans for Mural lawn area
- use of 4 tables and 20 chairs from the Village DPW for the day.
- access to water fountains, bathrooms, and power out from Saturday morning through Sunday evening.

Yours sincerely,

Melissa Shaw-Smith  
Creative Director

RECEIVED

AUG 20 2021

VILLAGE OF WARWICK  
VILLAGE CLERKS OFFICE

77 Main Street  
Post Office Box 369  
Warwick, NY 10990  
www.villageofwarwick.org



(845) 986-2031  
FAX (845) 986-6884  
mayor@villageofwarwick.org  
clerk@villageofwarwick.org

## VILLAGE OF WARWICK

INCORPORATED 1867

### FACILITY USE REQUEST

Today's Date: Aug 19 2021

Set Up Time: 7 AM 4/30/22

Date(s) Requested: 2022 April 30, May 1

Time of Event: 10-5 pm  
Break Down Time: 7:30 5/1/22 4/30/22 Rain Date: May 1, 2022

Village Park/Facility Requested: STANLEY DEMING PARK

\*Please use attached map to indicate areas to be used.

Name of Event (Purpose of Use): EARTH FEST + SPRING LOVE LOCAL MAKER MARKET

Name of Organization or Individual: WICKHAM WORKS, INC.

Check one: ☐ Non-Profit ☒ 501(c)3 ☐ For Profit ☐ Private Event

Proof of Residency: ✓

Designated Contact: MELISSA SHAW-SMITH

Mailing Address: 3 FORESTER AVE., UNIT 8, WARWICK Email: mshawsmith@wickham  
works.org

Telephone Day: 917-922-0943 Evening: \_\_\_\_\_

Cell: 917-922-0943

Total Participants Expected: Adults: 500 each day Children: \_\_\_\_\_

Village of Warwick Participants (Number): 300 Non-Resident Participants (Number): 200

How will event be advertised? Local papers + Social Media, Posters, Banner.

Is material or equipment required from the Village of Warwick? ☒ Yes ☐ No

If needed, state type and for what purpose: Garbage cans, parking cones

Is admission fee charged? ☐ Yes ☐ No EARTH FEST IS FREE

If so, what will proceeds be used for? MARKET IS \$13/person - Project expenses.

Will food be served? ☐ Yes ☒ No

If yes, please give details: \_\_\_\_\_

The undersigned is over 21 years of age and has read this form and attached regulations and agrees to comply with them. He/she agrees to be responsible to the Village of Warwick for the use and care of the facilities. He/she, on behalf of Wickham Works Inc. (Name of Organization) does hereby covenant and agree to defend, indemnify and hold harmless the Village of Warwick from and against any and all liability, loss, damages, claims, or actions (including costs and attorneys' fees) for bodily injury and/or property damage, to the extent permissible by law, arising out of or in connection with the actual or proposed use of Village's property, facilities and/or services by Wickham Works Inc. (Name Organization).

[Signature]

Signature of Organization's Representative (Must be a Village of Warwick Resident)

Address: 41 Gordon Terr. Warwick 10990 Telephone: 845-987-0481

Clerk Use Only: Security deposit check # 283

Certificate of Insurance \_\_\_\_\_

Police approval (if applicable) \_\_\_\_\_

\*Items on file in the Clerk's office

RECEIVED

AUG 19 2021

VILLAGE OF WARWICK  
VILLAGE CLERKS OFFICE

01.22.2021

22. In the event of an accident, please notify the Village Clerk before the end of the next business day.

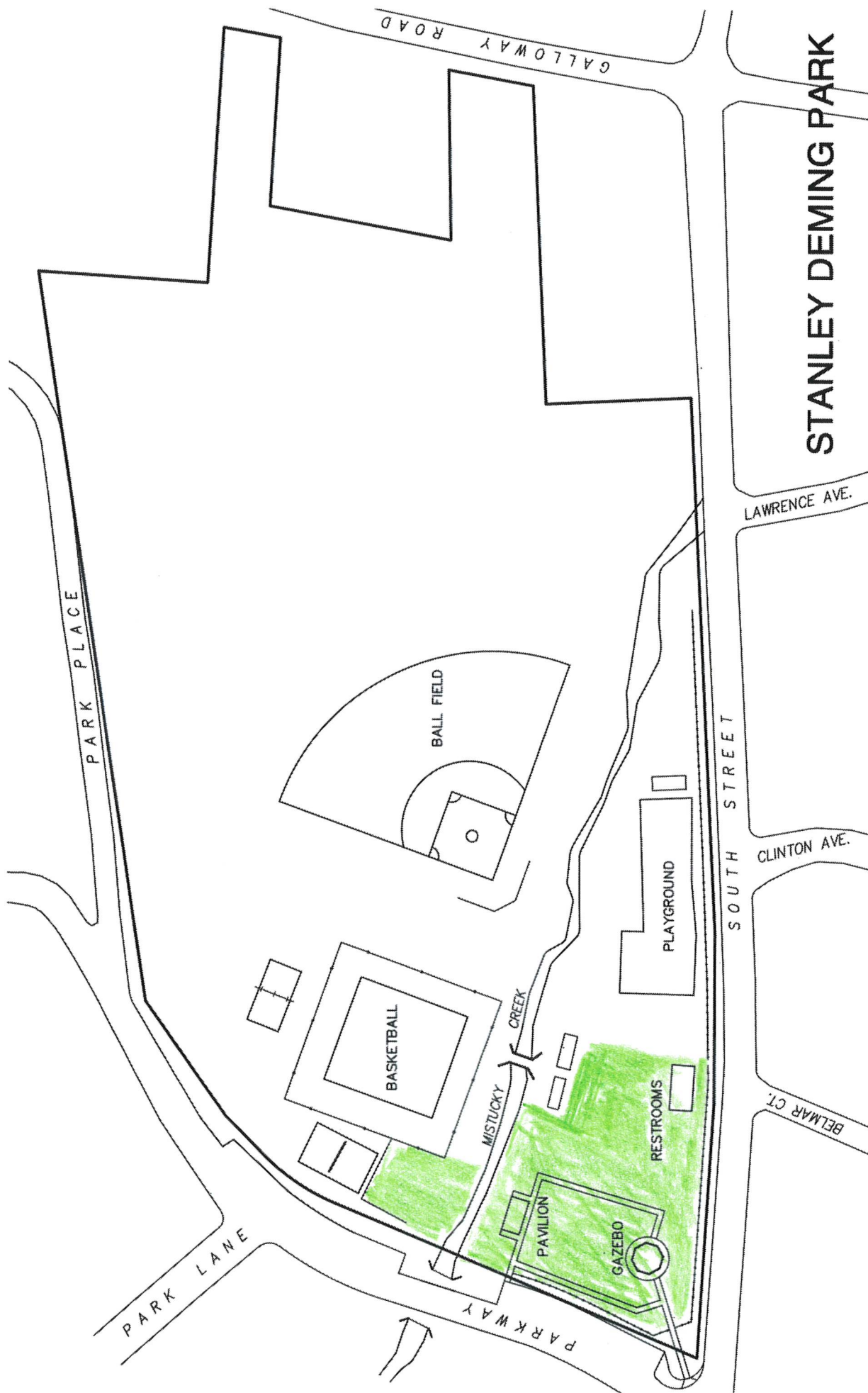
**FACILITY USER** does hereby covenant and agree to defend, indemnify and hold harmless the Village of Warwick from and against any and all liability, loss, damages, claims, or actions (including costs and attorneys' fees) for bodily injury and/or property damage, to the extent permissible by law, arising out of or in connection with the actual or proposed use of the Village of Warwick property, facilities and/or services.

**I have read the Facilities Use Requirements**

M. SwSnt  
Signature

8/29/21  
Date





# STANLEY DEMING PARK