CHAIRMAN: JAMES PATTERSON
MEMBERS:WILLIAM OLSEN, JESSE GALLO, KERRY BOLAND&THOMAS McKNIGHT
Alternate: Bryan Barber

VILLAGE OF WARWICK
PLANNING BOARD MEETING
MAY 11, 2021

The monthly meeting of the Village of Warwick Planning Board was held on Tuesday, May 11, 2021. Present were Jim Patterson, Jesse Gallo, Bill Olsen, Tom McKnight, Kerry Boland, Bryan Barber, Village Engineer, Dave Getz and Planning Board attorney, Robert Dickover. Others present were: Kyle Cosmillo, Michael Tzezailidis, John Christison, John Cappello, Keith Woodruff, Joe Irace,, Patrick Gallagher, Gene Bowen, David Gordon, Nancy & Glenn Miller, Ms. Driscoll, Joseph Kelly, Chris Smith, Bryan Kelly, Matthew Sullivan, Neal Ryan, Dan Colicchio, Dorothy Bacon, Steve Meale, Paul Hartigan, Sean Ryan and others.

The meeting was held in the Town Hall.
The Board recited the Pledge of Allegiance.

A MOTION was made by Bill Olsen, seconded by Jesse Gallo, and carried to accept the minutes of April 13, 2021 Planning Board meeting as amended (4 Ayes) {1 Abstention – Kerry Boland}

72 SOUTH ST.	CHANGE IN USE/ SITE PLAN WAIVER	72 SOUTH ST. LLC

The Board reviewed the application to change the use of a former dry-cleaning use to a mini donut, etc./coffee house.

A MOTION was made by Bill Olsen, seconded by Jesse Gallo and carried to approve the change of use at 72 South St. (5 Ayes)

30 MAIN ST.	CHANGE OF USE/ SITE PLAN WAIVER	30 MAIN ST. LLC

The Board reviewed the application to change the use of the former Chase Bank use to a 65-seat restaurant/pub/grill.

A MOTION was made by Bill Olsen, seconded by Jesse Gallo and carried to approve the change of use at 30 Main St. (5 Ayes)

PUBLIC HEARINGS

15 ELM ST.	SITE PLAN APPROVAL	WARWICK FEED & GRAIN, LLC

Mr. Patterson read the public hearing notice.
Mr. Irace – I purchased and am renovating the building for my architecture office and a garage and I will have an apartment on the 2nd and 3rd floor with one bedroom. I went before the Village Board to request a change in the zone from the existing LI (light industry) to CB (central business) to be able to allow my one-bedroom apartment to exist. That request was granted and now I am before this Board for site plan approval.
Mr. Dickover read the OCDP comments with Local Determination.

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

There were no public comments.

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

A MOTION was made by Jesse Gallo, seconded by Bill Olsen and carried to adopt the Resolution for site plan approval prepared and read by the Planning Board attorney. (5 Ayes)

16 ELM ST.	RE-APPLY FOR SITE PLAN APPROVAL	16 ELM ST. LLC

Mr. Patterson read the public hearing notice.
Mr. Cappello – We are before the Board tonight for a public hearing on a re-application. This was a project that had been approved by this Board and as most of you are aware the legal course of business on extensions is to review and grant an extension without any public hearing but because of the code Mr. Christison was issued a Building Permit, commenced construction and the ZBA and the Building Inspector made a determination but we are here as belt and suspenders to make sure we go through the process so everyone knows where we are standing. Before I go too far, I would like to point out for the record that you do have a Board member who was called

to recuse herself, Ms. Boland, who spoke at the public hearing at the original application against this application, which was certainly her right to do, but once you do speak against an application to then appear and be on the Board on a subsequent we believe she is evidence biased against this application and we would request that you recuse yourself.
Mr. Patterson – To date Kerry has not recused herself and we will ask that question now if you would like to.
Mr. Cappello – I put it into the record. I can not make a decision for the Board but she did speak to the comments, she spoke at the hearing, she registered a complaint against my client, against me, against your Board and as far as the director she said " You are plopping this in the middle of a residence" although you heard the last speaker say this is an industrial zone, we could not develop this as a residential it is not permitted but so I believe there was a claim made there that showed biased against this application and I am just putting it on the record.
Mr. Patterson – Just to clarify, the Board member was not on the Board at that time but she is now and we understand your situation and concern and it is not up to this Board, we can not require her to recuse herself. So, Kerry, it is up to you, would you like to stay on or would you like to recuse yourself.
Ms. Boland – I would like to point out that I have not voted on anything yet and that I haven't voted. I would like to think about it. I did have some questions that I had asked you at some point and I still need some more information and some answers but for now I am here.
Mr. Cappello – Well then, we will proceed. As I stated we have been before the Board before and there was a full review of this, a SEQR determination was made which the Board confirmed at your last meeting. The property is located in an LI district. It was previously used pursuant to a Use Variance as an accessory use for storage of an auto facility. The reason it needed a use variance was that auto dealerships were permitted there with a Special permit but there was no real dealership, it was just storage as an accessory use. Auto Dealerships did have a requirement for a buffer as a condition, restaurants do not. A restaurant is an eating and drinking establishment which is a principal permitted use in that zoning district. The bulk tables for that zoning district requires a sideyard of 10ft., that is building to propertyline, a rear-yard of 10ft., building to propertyline. The property has been zoned LI as long as I can remember, and I have been practicing for 30 years. So, it has been zoned and used as such and an eating and drinking establishment is consistent and a permitted use. This is a Village, it is not a town, it is not the suburbs. The purpose of a Village is to have a mixed of uses and a walkable community. Traditional neighborhood design is all you hear about. Every planning perspective in the world says you want your uses close to each other, you want people to be able to live near where they work, where they eat, especially as we experienced during the pandemic when it has been our local businesses that have been available to serve our communities when we have been homebound to our community. On the uses that are permitted in this zoning district are manufacturing, contractor's storage yard, retail strip mall, now the applicant has applied for a restaurant and the footprint is 3,600sq.ft. There is a second floor which has 390 ft. of office space devoted to the restaurant and the rest will be storage. There is a covered porch area that was originally uncovered, and it was covered for a requirement by this Board for noise attenuation after a noise presentation and studied by the engineer Philip Greeley from Maser Consultants who is a noise specialist who provided testimony and a memorandum to support this application. There is also a deck. This application underwent a several month review process. Early in the process the location of the building was discussed because this building is located potentially in

the flood plain, I reiterate the location of the building is a use that meets all codes as far as the location. If the building were to be located in the floodplain, it would create insurance issues, construction issues and if the floodplain was useable given the lot coverage requirements in the LI district a restaurant of about 60,000 sq. ft. would be permitted, a strip mall of about 60,000sq.ft. would be permitted, a manufacturing facility of approximately 60,000 sq. ft. would be permitted pursuant to your development coverage or more. So the fact that the floodplain is there doesn't mean the building should go in a floodplain. If the building could go in a floodplain this property would have been developed 20 or 30 yrs ago with a much larger much more intense use in the LI district instead of a restaurant in a Village in a zone where it is a permitted use. I keep coming back and saying that because it doesn't seem like many people understand, this is a restaurant in a Village where you want a mix of uses in an LI zoning district where it is a permitted use with over 5 times the side and rear yard requirements. There has been questioned raised about whether the project complies with zoning although the decision has already been made. Those arguments have been raised; they were raised in a court proceeding which were resolved in favor of the applicant. Additionally, the Building Inspector issued a Building Permit and construction began, a building per issuance of a Building Permit is evidence of a determination of the Building Inspector that the application complies with the requirements of the zoning code. That building permit was issued in August of 2018, it was part of an Exhibit in the papers, it was part of the application that was submitted before the Board and has never been appealed to the ZBA. Therefore the determination of whether it complies is the determination of the Building Inspector and if you don't agree with that determination you have 60 days to appeal it to the ZBA and that was never done, that is not an issue with this proceeding. Furthermore, the argument he makes to the location of the parking not to the location to the building. Parking could be put in the rear and side of this building but it would substantially take out the substantial buffering that the applicant has proposed as part of the original application and part of the supplement. There has been allegations made that this Board did not evaluate noise and that is somehow a violation of the code, because as part of your conditions in addition to requiring noise attenuation for the HVAC and the units on top which the specs were given to the Board where an analysis by Mr. Greeley was provided along with his noise analysis there was a requirement that service on the deck and the patio that food service stop at 8:00pm and that the patio's outdoor area be vacated by 9:00pm. So, there will be no people outside at 9:00pm and as one of your conditions to attenuate noise there will never be any amplified sounds of any kind, so no loudspeaker calling out names or orders, no music played either live or piped outside, it will all be inside. These are all conditions of your approval to mitigate potential noise outside. In addition to the mitigation measures that you required based upon recommendations of the PhD and noise specialist who has been in that field for about 40 years and in addition to that there would be actual studies completed when the activity is occurring after it is open to make sure that the assumptions were correct, you did more than what is required and you did it because it could turn out that it may be tweaking so the applicant agreed and you made a condition and there will be studies done if the noise exceeds either for mitigation measures that would come before you or the outdoor use would cease. So the comment that noise was not looked at is just disingenuous. You have every right and people can disagree with it and I am sure if you live next door and you had nothing there and now you have something there you would rather have nothing and I understand it but to say that it wasn't studied or wasn't considered is just not correct. To say that this does not comply is not correct, it is located sufficiently on the property

as required by your Board. As far as SEQR review, I have seen a lot of back and forth about the analysis, after this Board did its SEQR review, I looked at the Type 2 action, I looked at the SEQR handbook and there is a legitimate argument that this is a Type 2 action and didn't require any SEQR review at all and that a direct quote from the SEQR handbook that says it is usable space. These are examples in the SEQR handbook written by the DEC, not by John Cappello, not by the applicant or consultants but by the DEC, the agency that wrote the SEQR review rules and one example they did with a Type 2 non-residential is "expansion in a commercial zone of a restaurant where the project involved less than 4,000 sq. ft. exclusive of an outdoor patio for serving patrons in good weather and the final building meets setback requirements" they said exclusive, they also when speaking of the exemption for 4,000 sq.ft. say "the DEC provides clarification, cellar or basement space not used for the main purpose of a non-residential facility is not considered part of the gross square feet area of the facility, however, basements used for sales floor or office space would be included as part of a gross floor area." Here the second floor is used for storage and 300sq.ft. of office space, therefore there is a legitimate argument that is under 4,000sq.ft.by the SEQR handbook. Having said that this Board did not treat this as a Type 2, this Board did a full SEQR review. This Board required a traffic review by Mr. Greeley, PhD, a full SWPPP, a cultural resource analysis stage 1b, a noise study, soil samples and analysis, and a fully engineered plan. This Board did a Part 3 of SEQR that referenced all of these studies that specifically referenced the plans including everything in adopting that Part 3 and your Negative Declaration. I have seen comments that said that because this is not a Type 2 action and I just argued that it could be, it is very close, but I have heard, and seen and anticipated arguments that this should require an EIS. An EIS are assumed to occur for a Type 1, Type 1 thresholds for a Village of this size are 100,000 sq. ft. of gross floor area. You are exempt if you are 4,000 and Type 1 if you are 100,000. Arguably given the most conservative estimate this is about 5,000 and you did a full SEQR analysis as an Unlisted Action. Parking spaces is over 1,000 parking spaces over 100ft. high, those are the Type 1 thresholds. So, any discussion that this should require an EIS because it is a restaurant that may be a Type 2 and maybe it is not, it may be on the threshold because it meets all of the setback requirements and in the Village a restaurant is close to two house, 40ft. from a backyard is not a reason. So all I am saying is that this Board did a full analysis, this Board issued a site plan, that is why the plan approval was challenged in Court, it was challenged in Appellate Court and the applicant prevailed. But because of the timing of litigation because of Covid and how long it took the applicant who started in good faith took a chance and thought he could finish and the bank said "it is great you are winning but until everything is done we will not loan the money". That is why we are here. We are not here because John is delayed or just futzed around, he wants to get this done, he wants to provide the business he has provided for over 30 years with a place people can park, can enjoy themselves now more than ever. When the plan was approved it showed an approved landscaping plan and an area that said " none disturbance area, to retain to the extent that we can" In the area behind the dotted line is the disturbance area, as you can see on the plan and the survey it says the existing pole to be removed, which is back where the truck loading facility is well within the area of disturbance. The area of non-disturbance is out here. It has been claimed that large trees and forested area were illegally thickened out. The photo here is 16 Elm before anything was touched the pole that is within the disturbance area and as you can see the trees are behind that pole, we disclosed to the Board that those trees would be taken down. This is the non-disturbance area and this area from day one was shown on the landscaping plan to include additional buffering. The

issue was raised after John started construction that he took trees down, he spoke to the Building Inspector even though the Building Inspector could not confirm that he did take trees down in the non-disturbance area but to avoid misunderstandings and to attempt to be a good neighbor we offered to supplement that buffer area to include even more additional plantings. Which we still intend to do and we were at the Village Board to discuss that and we hope when the Board approves this we can get pass that we can get to those plantings very soon. This picture is the other area, pre-existing before anything was done and you can see in the middle part of an old basketball pole, once again, you can see the trees are behind that basketball pole. This picture is after construction where you can see the basketball pole and the trees that are still existing behind the pole. There has been no documentation that any tree in that buffer area of any substance whatsoever was taken down. There have been no changes here. That is what we believe and I have provided your attorney, the Board the standard of review and the standard for review we believe whether it is a re-application or an extension is that has anything changed. There are no arguments being made that weren't raised before, no issues before you that you didn't already consider and there is no items done that have changed this whatsoever and that is why we are asking that the Board accept comments and close the hearing.
Mr. Woodruff – As part of the question that was raised to the Building Inspector was there an excess amount of trees removed behind the building in which he agreed that there was not. The applicant has volunteered to add additional plantings of 32 trees which as the approved plan I believe had 8. They are a mix of insidious evergreens with heights of between 10'-12'ft. at time of plantings and they will grow at a high rate about 2ft. per year on average and behind those there will be a 6ft. high privacy fence that will run the entire length of the propertyline along the residential properties. So with the additional plantings and the privacy fence, additional screening will be provided once everything has been built.
Mr. Patterson acknowledged correspondence from Mr. Gallagher and a response from the Building Inspector.

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

Mr. Patterson requested that the public keep their comments to 5 minutes if possible and that the Board does want to hear all of your comments but if the point has been brought up we don't actually need to hear it again. The applicant does need to respond to everything that is said today but he does not have to respond tonight but the Board will give him the opportunity to.
Ms. Nancy Miller -216 Homestead Dr. – I have lived in Warwick for 74 years. I was born in St. Luke's hospital and I was brought home to where Pennings Orchard is right now. My father owned both farms and sold them to Pennings. I think it is a shame what is being done to John, he has lived here and has his business here for 32 years and has never had any trouble in regards to calling the Police to his establishment or anything. He is a very respectable businessman and I just think it is a shame what this Board is doing. They first approved him and then they start backtracking and disapproving him. It is terrible and I think it is awful and you should be ashamed of yourselves.
Mr. Glenn Miller – I am here to help John. He has been here for a long time and everybody loves him in Warwick. He has done nothing wrong that I can see but wanting to extend his business to

a different place. The small place was adequate when he first came up but now trying to get this building spot for over 4 years, it is a damn shame.
Ms. Gedge Driscoll – 14 Van Buren St. – I have lived in my house for 31 years, my husband and I raised our children there and I have no problem with John having a bigger establishment but I do have a problem with how close it is to our houses. My neighbors across the street have lived there for 56 years and you can barely get down their steps before you get onto the property of Yesterdays. The lawyer talked about the trees taken down, those were 81-year-old trees, they were huge, they were beautiful and you can't replace those. Our neighborhood has always been friendly, everybody goes out and talks to everybody and I have a hard time understanding unless this has changed how accommodating 120 seats is called a family restaurant. I just wanted to bring our perspective.
Patrick Gallagher – I will have David Gordon speak for me.
Mr. Gordon submitted his written comments to the Board.
Mr. Gordon – I am the attorney representing members of the neighborhood that are adjacent to the facility. There a number of points to discuss that are covered in my letter. The most important of which relate to the question that the attorney for the applicant raised regarding the removal of the woods. The attorney sort of pointed to some photographs that they took in an attempt to show the bear spaces was somehow outside of the area that was supposed to be protected. The first exhibit, exhibit A, which is the same as that photograph that I had enlarged shows in 2017, less than a year before this Board approved the project in February 2018 and what it shows unequivocally is an unbroken forest canopy stretching from the properties of the neighbors along Van Buren to West and along West St. to the north, to and past the area where the actual restaurant/bar will be constructed and exhibit B shows the exact same photograph with the site plan superimposed on it. The entire area of the building itself plus the entire area from the building to the property line both west and north is completely a canopy covered forest. There is no such thing as clearing this area that does not also clear the area that is supposed to be protected along the property line as well as the areas that were arguably within a building or clearing envelope. Exhibit C show essentially confirmation of the photograph that I sent in with my previous comments where Mr. Cappello also put " this shows the property as it exists today". The view is from the southeast looking west northwest past the foundation that was constructed to essentially the back of the intersection between West and Van Buren so you are looking basically northwest. There are no trees whatsoever left between the foundation and property line. There is a complete clear line of sight from the properties along Van Buren particularly the Burghardt property and essentially the other buildings as well. That is the current situation. The photograph that the applicant's attorney showed of the current situation shows exactly the same thing as the photo I showed back in March. There are no trees left, this was not some sort of accidental taking out of certain trees, they completely wiped out those woods. The fourth thing is pages 8 & 9 of the site plan, 8 is the more pertinent one but they both show the vegetation in the northwest corner and they both show exactly the same thing and in the northwest corner there are a series of circles that come together as a white area that surrounded by semi-circles, those are existing trees. This is the applicant's document that this Board approved, the applicant

represented and this Board approved and relied on to buffer the neighborhood, those existing trees in the northwest corner as well as a series of plantings.
Public – Chairman, he is in excess of 5 minutes.
Mr. Gordon – Mr. Chairman if I may. The applicant spoke for one-half hour and he did not present his case, he point by point refuted all the issues that he thought were going to come up. This is a public hearing, he took one-half hour to refute these arguments.
Ms. Miller – I protest, we are only allowed to speak for 5 minutes.
Mr. Patterson – I will allow you to summarize.
Mr. Gordon – Simply this Board approved and this Board relied on existence of this forested buffer as well as condition of plantings that the applicant proposed and still proposes. The forested plantings that the applicant is proposing for that corner as the previous speaker said do not replace the forest that was there because the buffer has changed and reduced and denuded this Board has before it a different application than it was previously and you no longer can rely on the buffer that existed to protect the neighborhood that you did clearly in 2018. You must re-evaluate completely the issues of the noise impact and the visual impact on this community and it is quite different and the result you will come to is that this project must be moved. The applicant complained that moving this more toward the front of the project would result in insurance issues to the applicant, pay more for insurance and if they paid more to comply with the section of the chapter of the Village Code that deals with floodplain which is allowed, they have transferred those costs to the community and it is the job of this Board to protect that and not to simply allow this cost to be transferred. I will just state for the record that I have comments that would refute the applicants other point of comments that they took when they presented those to you. If you want to take them now I would be happy to submit them to you.
Mr. Patterson – In writing is fine.
Mr. Joseph Kelly – 1450 Rt. 17A – I am a long time Warwickan. John is not responsible for every tree, when the wind blows trees fall down, it happens all of the time. This has already gone through the courts, a ruling has already been made, they ruled in favor of Mr. Christison and his wife. Enough is enough. You should really just stand up for the rule of law and support what the court has already made a determination on. Nobody is asking anymore than support what the court has already determined. We said the Pledge of Allegiance before and the three words at the end are Justice for All and I think in this particular instance there should be justice.
Mr. Chris Smith -30 Maple Ave. – I realize this is a tough decision that you guys have to make, you have people whose homes are being impacted, etc. but there is the right to do what is allowed by law. These has gone through years upon years and it bothers me as a taxpayer for Warwick itself for a few reasons: 1) It has prevented a building from going up that will generate revenue and tax which benefits all of us 2) it also bothers me that we have a situation where money is being spent on lawsuits that the Village has to defend and are limited tax dollars are being spent defending the Village as part of this and for me that money could be spent elsewhere. 3) We are sending a message to potential businesses to come in. I would be pleased to see a couple of businesses say we want to invest in Warwick and to be honest I am a little surprised because the sign right now in Warwick is not "come on in, we welcome your business" it is "you know what we going to make things potentially difficult for you if you come in and invest your money in our Village and our Town" that is not a healthy message. The message should say" Welcome to Warwick where you do the right things, follow the law, follow the rules you will be

allowed to proceed" and instead years later at a significant cost to the taxpayers we are now in a situation where he continues to spin around and around. So I ask you please if John Christison has not done something right then ask him to fix it but please with everything I have heard tonight really indicates that it has been done correctly and enough is enough.
Mr. Bryan Kelly – 1450 Rt. 17A – I have watched this entire proceeding and which was previously mention with the Pledge of Allegiance with liberty and justice for all and that goes in part with not only for John but to the neighboring individuals who have residencies near the business and they went through the judicial system airing their feelings, opinions and what they believe to be the facts. Everyone is entitled to their own set of opinions but they are not entitled to their own set of facts. Factually speaking this was a commercial piece of land that was set for sale for numerous months at a time, no individual purchased it, the only individual who purchased the property was John and it was zoned for business purposes, we went through the entire proceedings, zoning proceedings and as John's attorney has indicated it was approved. As the attorney for the neighboring Village members who are adjacent to the property the zoning issues were all approved. Again, as justice and liberty provide a lawsuit was brought, that lawsuit heard all of the complaints that were made, all of the factual issues were arisen and again they were heard and it was ruled in favor of the applicant. The situation here is rather simple, this has all been approved, I understand the opinions, you are not entitled to your own opinions to outweigh the factual aspects of it. Your opinions can not change the decisions that were previously made, you have to abide by the law, and you have to abide by the prior decisions that have been made and for those reasons there should be no hinderance in making a decision on this issue. John should be entitled to start his project, his construction basically tomorrow because those are the decisions previously made here so long as he abides by those again, concessions that were made. I understand the complaints made by the neighbors who sit there. I think it is short sighted at this moment in time because nothing has arisen to what those complaints allege, they are allegations, there is nothing factual about them at this moment in time. Should there be facts that surround that then those complaints are warranted, and something should be done. However, there is nothing that has demonstrated that at this moment in time and for those reasons it would be malpractice to not move forward with allowing John to develop that land by the end day.
Mr. Matt Sullivan-33 Galloway Rd.- Property rights are the most fundamental aspect of being American, without respect for property rights will do not have an America. I think it is critical that we take a close look at what is going on with the Christison property. First, it has gotten to the Appellate Ct. and it has already been decided in his favor and it seems like we are just carrying on with this debate when there is really no debate left, I agree completely with Mr. Kelly. John should have the right to continue the construction of his property immediately. To hold property comes with a set of rights, the Appellate Ct. has decided that those rights belong to John and for anyone to try and take those rights away I think borders on thievery. I think you really have to consider when you first bought your home next to a commercial piece of property you have to consider that at sometime in the future you may be affected by that. If you didn't take into account that fact, maybe you overpaid for the house or maybe you got a better deal on it. I really do feel sincerely for the people who perhaps miscalculated the possibility this happening in the future, but the fact is it has happened, it was set up to develop for commercial purposes. John has a legal use of that property and to continue this discussion is really absurd. What is happening to this country?

Mr. Neal Ryan-29 Orchard St. – I have been a resident of Warwick for 47 years, retired Warwick Police Officer and I know this property, I know the neighborhood, I live there. I am on the other side of the property and I understand what the property has been over the years, it has been vacant. We finally have someone who wants to do something real. To do what this Board is doing is just slapping the Judicial system right in the face. Mr. Christison will take care of the property, I know that for a fact, I know the man.
Dan Colicchio-15 Elizabeth St.- I grew up in this town and I lived on Orchard St., I now live at 15 Elizabeth St. I got to know John and I know him very well and I see what they do for the community. When I grew up on Orchard St. that piece of property there and I think you will remember used to be Spechts and if you look at it now, there is a CarWash and those vacuums that you can hear and that is in the neighborhood, you have Halligans that is on the corner, in the neighborhood, there are a lot of bars in this town and they are surrounded by neighborhoods. If you look at what John and Peggy are trying to do and you see what they do for the community who wouldn't want them as their neighbor? Whether it is a bar or whatever they are building they never have a problem on Main St. I just don't understand being in this town and seeing what they for their community and for everybody who would not want these people in their backyard. I understand but when you bought your property and that piece of property is a commercial piece of property, you knew that when you bought it, so there was a possibility that it could happen and it did and for this to prolong, it doesn't make any sense. You should think about that.
Dorothy Bacon-7 Welling Ave- I am a 47 year resident of Warwick and I second the arguments made by Dave Gordon.
Steve Mehl-10 Chief's Way, Goshen, NY – I lived in Warwick for 30 years and over those 30 years I frequented Yesterday's family restaurant and I can just reiterate what everyone else has said as far as John's character and his business establishment and I am confidant that the new place will be just as nice and quiet and peaceful as the place is now and I agree that this has gone far enough. Legally he is entitled to build and you can table it this month, next month or 6 months but the bottom line is that it's done, today is the day that you have to make a decision.
Paul Hartigan-239 Bellvale Lakes Rd. – I understand what everyone is dealing with but it is a commercial property and there are a lot of people coming up and trying to move into Warwick and I would rather deal with the devil I know than the devil I don't know. You know as well as I do that there is a BurgerKing or MacDonalds there is a Wendy's within eyesight and we gotta give the property to someone commercial let's give it to the families in Warwick and not have someone else come in and change it. Let's give the business and the commercial business to the people of Warwick, don't let someone else come in and change it all. You talk about 80 year old trees, forget it, it's a floodway, those trees are going to go, the bigger they get the more they will fall, it's part of life, part of nature and I don't want to see them fall on anything or anybody. Peggy and John that represent Warwick very well. How do we give this to CVS, Wendy's or MacDonalds? Not only are the homeowners losing visuals but John is probably going to pay 40 precent more to build with the way things are today to make it the way he said he would make it and I think that is a lot to be said for someone to pay extra to keep it to the code that the Board recommended and I think he is going to do it and I think you should give him a chance.
Sean Ryan-68 The Rise – I been in Warwick for over 40 years and I have know John for 30 of them. The biggest thing is all these trees apparently now. I have been following this from the very beginning. I have been in this room numerous times, I can not believe it has gotten this far.

The social media, it can be a wonderful thing or a horrible thing but I have been following comments on all of these different posts and I would just like to sum up with a comment from someone who summed it up perfectly in my opinion and her response was "I don't mean any disrespect to the neighbors whatsoever as I know none of them personally but I would hardly call them powerless when they have managed to hold up this project for 4 years with lawsuit after lawsuit. If these neighbors have lived there for 40 years or more than it was no surprise that this lot was for sale and zoned commercial. This is not some imminent domain situation where the land is being stolen from the neighbors by the government or some sinister project, John & Peg had a legitimate and legal proposal for the property and it was not until they came along that the neighbors finally seemed to realize, wait, I don't think I like the commercial space behind my house, again, no disrespect to any neighbors directly but the time for them to act on changing the zoning of that property should have been long before Yesterdays went on buying the lot. Had these neighbors put as much effort to change the zoning laws prior to a buyer coming in as they have in holding up John & Peg by any means necessary for the last 4 years, I wouldn't be surprised if they had been successful in getting the space re-zoned but the courts have spoken time and time again, Yesterdays has every right to build on that property and unfortunately the neighbors should have acted a long time ago had they been so concerned about a vacant and for sale lot."
Mr. Patterson – That was the last name on the list. Would anyone else like to speak?
Mr. Gallagher – What is the timeline for submitting additional comments?
Mr. Dickover – There is no timeline, it would be up to the Board. Would you like to close the public hearing and leave it open for receipt of written submissions you could do that.
Mr. Gallagher – I would like to have Mr. Gordon submit additional comments.
Mr. Dickover – Or you could continue the public hearing until next month and take written submissions in that time or proceed as you see fit.
Mr. Patterson – We can close the public hearing and receive written comments.
Mr. Dickover – Yes but receive written comments for additional period of time and you would set the time limit before that.
Mr. Gallagher – To be submitted promptly.
Mr. Cappello – I would like to respond before you close the public hearing tonight. I really would like to hit one point because I don't want you to leave with a thought because you saw one picture of a canopy from overhead. I would like to read the note that is on the plan in the bubble on the trees which is on the landscaping plan not on the site plan. That line that is referred to on the canopy of trees says" approximate proposed treeline. Clearing should only take place as needed to accommodate disturbance when dictated on the projects civil drawing" The civil drawing is what we were referring to and what was pointed out when you were on the site. The trees that were taken out, we taken out in the area that was shown on the plan in the area where trees were going to be taken out. They were not in a no disturbance area. When they were taken out they were 80 year old trees but when you look from overhead the canopy does not potentially connect but you have to look from down on the ground and what that note says is consistent and refers to the civil plans and we have demonstrated and nobody has demonstrated otherwise other than there overall ambiguous statements that trees were taken down outside within the no disturbance area, that is what is on the civil drawings and the landscaping plan. The other thing I would like to reiterate when John was presented with the issue that there was a gap, John

volunteered to plant. We have from the first meeting before this Board hosted a meeting at Yesterdays and reached out to the neighborhood to say" what can we do to plant? What can we do to make headway?" John does not want the neighbors to not be happy, he wants them to walk over, so if filling in a gap or putting in extra trees that has never ever been an issue. The last thing I would like to reiterate is that if you go through the record of these proceedings, during the first public hearing, during the presentations by the attorney, there was not a mention to move that building forward. The building is located where it was because that is the first thing the Planning Board said is "we don't want it in the floodplain". It doesn't make good planning sense to build in a floodplain when you have legal…. The bottom line is they did not take any trees out that weren't permitted on the approved plan. The building is located as applied with law. The Building Permit was issued. What I would ask the Board but I don't see happening is close the hearing and vote tonight as you did on the other extensions before you as in Warwick Commons and all the other extensions that are essentially the same but John satisfied the conditions and began construction versus those that you have granted without a public hearing. We believe we have gone above and beyond. It is your decision and I thank you and I do want to reiterate I know feelings are high on both sides and I appreciate what you go through, I know they are tough decisions so I would just say that we believe in facts and we would hope you make the right decision.
Mr. Patterson – As I understand, we can make a motion to close and accept comments?
Mr. Dickover – If you are going to do that my suggestion would be that you would receive written comments in the next 10 days and if they are received they should immediately be provided to the applicant and the applicant should have a period of time in which to respond to the Board should they chose to do so and give the applicant within 20 days from tonight to respond.

A MOTION was made by Bill Olsen to close the public hearing and hold open the opportunity for getting written comments for 10 days. Motion not seconded; Motion failed.

A MOTION was made by Tom McKnight, seconded by Jesse Gallo to close public hearing.

Dicussion-
Mr. Patterson – Obviously this is a controversial situation, and I don't think that we should finalize it tonight. I think that we should close the public hearing and allow comments to come in based on people may be making comments based on what they heard tonight and to the fact that we have to wait for the applicant to respond anyway it does not slow down the applicant in any way. Mr. Gallo?
Mr. Gallo – I don't think there is anything to persuade my decision. I have already seconded on the motion to close the public hearing.
Ms. Boland – I would like to second Bill, I have served on this committee for 3 years and in every instance when we have had a public hearing we have kept it open for comments for 10 days and that gives the applicant time to respond to any additional written comments and all of the comments that the public took the time to make today. It my few years' experience has there been like a mountain of stuff in 10 days, there hasn't been but of course I can't speak for today.

But that has been the case for the last 3 years that I have been on the Board. You spoke about justice for all, I think equal treatment is for all.
Mr. Dickover – You have two motions at this point, the first failed to get a second and the second motion received a second and I think it is still under discussion. If I understand Kerry's comment she is seconding the first motion which is a little backwards. We have a second motion to close the public hearing and it received a second and you are in the process of discussing that motion. You can call the question but that is the motion on the floor at this point.
Mr. Patterson called for a vote for the motion on the floor to close the public hearing.
The vote was 3 (Bill Olsen, Kerry Boland, Jim Patterson)-2 (Tom McKnight, Jesse Gallo) against; motion failed.

A MOTION was made by Bill Olsen, seconded by Kerry Boland and carried to close the public hearing and leave open 10 days to receive comments. 3 Ayes (Bill Olsen, Kerry Boland, Jim Patterson) 2 Nays (Tom McKnight, Jesse Gallo)

A MOTION was made by Jesse Gallo, seconded by Kerry Boland and carried to adjourn the meeting. (5 Ayes)

Respectfully submitted;

Maureen J. Evans,
Planning Board secretary