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January 13, 2025

ATTN: MICHAEL NEWHARD, MAYOR  
Village of Warwick  
Village Hall  
77 Main Street  
PO Box 369  
Warwick, NY 10990

Re: Zoning Change Petition for 42 Orchard Street  
SBL 210-11-5  
Our File No.: 73500

Dear Mayor Newhard:

I have reviewed the petition and supporting documents requesting a zoning change from Residential ("R") to Light Industrial ("LI") for the property located at 42 Orchard Street. Kindly accept this letter as my initial report to the Village Board on the said petition.

### FACTS

Elm Street runs roughly north-south. Elm Street terminates at its intersection with Orchard Street, which runs roughly east-west.

In the area of the intersection of Elm Street and Orchard Street, the lots on the north side of Orchard Street are located in an "R" zoning district. The lots abutting those lots in the north (including those fronting on Elm Street) are zoned "LI". That is to say, this is an area marking a boundary between the R zoning district and the LI zoning district.

Vanessa Mann owns a lot located at 42 Orchard Street (SBL 210-11-5). The lot consists of .289 acre. It fronts on the north side of Orchard Street, is zoned "R", and is improved by a single-family home. The lot is roughly rectangular in shape with its shorter sides running east-west and its longer sides running north-south.

M&L Equity Auto, LLC owns a lot located at 18 Elm Street (SBL 210-11-16.22). The lot consists of 1.6 acres and is zoned LI. It is roughly rectangular in shape, with its longer sides running east-west and its shorter sides running north-south. M&L's lot fronts on the west side of Elm Street and it extends westward until its rear lot line abuts the rear side-yard lot line of Ms. Mann's property at 42 Orchard Street. M&L's lot is improved by an automobile service business called the Warwick Car Wash.

The maps and graphics provided in Keith Woodruff's report letter are very helpful in understanding the locations of 42 Orchard Street, 18 Elm Street, the R District, and the LI District as they relate to each other in this matter.

About one-half of the 42 Orchard Street lot (i.e., the rear yard) is located in the area of the common boundary line between 18 Elm Street and 42 Orchard Street. Apparently, M&L has been using the back yard of the 42 Orchard Street lot for "traffic flow" (i.e., parking) and "snow removal" for some time. M&L's use of the rear yard on the 42 Orchard Street lot for M&L's business violates both the Village's zoning code and M&L's site plan.

In 2024, M&L and Ms. Mann submitted an application to the Village Planning Board to, in effect, convey the rear yard of 42 Orchard Street to the 18 Elm Street property and revise M&L's site plan to incorporate the additional land into M&L's business. This was to be accomplished by subdividing 42 Orchard Street into Lot 1 consisting of .152 acre improved by the single-family home and fronting on Orchard Street, and Lot 2 consisting of .137 acre (i.e., the erstwhile back yard of 42 Orchard Street) which is to be incorporated into the 18 Elm Street lot. The dimensions of Lot No. 2 are approximately 95' x 53' x 130' x 63'.<sup>1</sup>

On September 10, 2024, the Village Planning Board granted conditional final subdivision approval for the project. One of the conditions imposed by the Planning Board was that: "This approval is subject to a zone change by the Village Board of Trustees within 12 months of this approval. In the event such zone change is not granted, M&L Equities shall return to the Village Planning Board for amended site plan approval." On October 2, 2024, M&L and Ms. Mann jointly submitted this petition to change the zoning designation of Lot No. 2 in the subdivision of 42 Orchard Street from R to LI. The "R" zoning designation of Lot No. 1 in the 42 Orchard Street subdivision will remain unchanged.

### **REPORT**

The subdivision and incorporation of Lot No. 2 into the 18 Elm Street property can go forward regardless of whether or not the Town Board grants a zoning change. The significance of the zoning change is that it will allow M&L to legally use Lot No. 2 in its business.

Because the property involved in this petition for a zoning change is located at the boundary of the R and LI zoning districts, granting the petition would not involve creating a new zoning district. Rather, it would merely involve alteration of the existing boundary lines between the LI and the R Districts.

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<sup>1</sup> Under Village Code §145-22(C)(5) when a lot is divided by zoning district lines the regulations of the less-restrictive district apply up to 30' from the zoning district line. However, since Lot No.2 is more than 30' wide, this Code provision will not suffice to allow M&L's proposed LI use to exist on Lot No. 2.

Review of the Village's Comprehensive Plan does not disclose any provisions that would be contravened by grant of the requested zoning change. However, of course, the uses permitted in the LI District are very different from the uses permitted in the R District. In considering the requested zoning change, the Village Board should bear in mind that although the *current* proposed use of Lot No. 2 is merely "traffic flow" and "snow removal" for M&L's business, once the zoning change is granted Lot No. 2 can be put to any use permitted in the LI District. M&L's current use can be quite intrusive, and redevelopment of the 18 Elm Street lot for a different LI use could be much more so. Conduct of LI business on Lot 2 (i.e., in 42 Orchard Street's back yard) might adversely impact use of the single- family home on 42 Orchard Street as a residential dwelling. Accordingly, the Village Board may wish to consider conditioning any grant of a zoning change on imposition of a restrictive covenant limiting use of Lot No. 2 to "traffic flow" and "snow removal" for M&L's car wash business as proposed by the petitioners.

### **PROCESS MOVING FORWARD**

The next step in processing the petition for a zoning change is for the Village Board to decide if it is willing to introduce and consider a local law amending the Village's zoning map to change the zoning district boundaries as requested. If it is willing to do so, the Village Board should adopt a resolution directing the Village Attorney to prepare a draft local law for consideration.

Once the draft local law is prepared, the Village Board must adopt a resolution introducing it and scheduling a public hearing on it. However, Village Code §145-170 provides that prior to holding a public hearing on a proposed zoning amendment, the Village Board must refer the draft local law to the Village Planning Board for review and a report. The public hearing on the draft local law cannot be held until the report from the Planning Board is received or sixty (60) days elapse from the date of the referral to the Planning Board (whichever occurs first). To accommodate this referral requirement, the Village Board has the following options:

- (1.) adopt a resolution merely introducing the local law and making the necessary referrals without setting a public hearing date; or
- (2.) adopt a resolution introducing the local law, making the necessary referrals, and setting a public hearing date at least sixty (60) days from the date of the referral to the Planning Board; or
- (3.) adopt a resolution introducing the local law, making the necessary referrals, and setting a public hearing date less than sixty (60) days from the date of the referral to the Planning Board, with the understanding that if the Planning Board fails to render its report prior to the date of the public hearing, then the public hearing cannot go forward and will have to adjourned.

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Under General Municipal Law §239-m, referral of zoning amendment local laws to the County Planning Department is required when the subject property is located within five hundred (500) feet of, among other things, the right-of-way of any county or state road. Oakland Avenue is a state roadway (NYS Route 17A) in the vicinity of the property for which a zoning change is being requested. Accordingly, the petitioners should verify that Lot No. 2 in the 42 Orchard Street subdivision is not within 500' of Oakland Avenue. Otherwise, a GML §239-m referral will have to be sent to the County Planning Department.

In regard to the public hearing on the draft local law for the zoning change, under Village Code §145-171 notice of the public hearing must be mailed by the petitioners to all owners of real property located within five hundred (500) feet of the property affected by the zoning change (here Lot No. 2 in the 42 Orchard Street subdivision) via Certified Mail Return Receipt Requested not less than seven (7) days before the public hearing date. Prior to holding the public hearing, the petitioner must provide the Village Board with proof that notice of the public hearing was duly mailed to the said property owners.

The Planning Board's resolution states that it conducted an uncoordinated SEQRA review of this project. When an uncoordinated review is conducted, each involved agency must conduct its own individual SEQRA review. Accordingly, if the Village Board decides to move forward with consideration of a local law, the petitioners must submit an Environmental Assessment Form and the Village Board must conduct its own uncoordinated SEQRA review on this project. While the Planning Board's SEQRA determination should be considered and built upon by the Town Board, a separate SEQRA review is still necessary. However, I anticipate that the SEQRA review would consist merely of completing the EAF and adopting a Negative Declaration.

Very truly yours,



STEPHEN J. GABA

SJG/1317599

cc: Engineering & Surveying Properties  
Beattie & Krahulik