

James R. Loeb  
Richard J. Drake, *retired*  
Glen L. Heller\*  
Marianna R. Kennedy  
Gary J. Gogerty  
Stephen J. Gaba  
Adam L. Rodd  
Dominic Cordisco  
Ralph L. Puglielle, Jr.  
Alana R. Bartley\*\*  
Aaron C. Fitch

Judith A. Waye  
Sarah N. Wilson  
Michael J. Barfield \*\*

Jennifer L. Schneider  
Managing Attorney

\*L.L.M. in Taxation

\*\*Member NY & NJ Bar

August 31, 2023

ATTN: MICHAEL NEWHARD, Mayor  
Village Board of Village of Warwick  
Village Hall  
77 Main Street - PO Box 369  
Warwick, New York 10990

Re: 43 Wheeler Ave. - Request for Special Use Permit  
Section 207, Block 5, Lot 1  
Our File No.: 14562-7300003

Dear Mayor Newhard:

The application of Patrick Corcoran for a special use permit to establish a three-family dwelling with a total of six bedrooms at 43 Wheeler Avenue has been referred to this office for review and comment.

**Applicable Zoning:**

The subject property is located in a Central Business District ("CB"). The proposed construction of a three-family residential dwelling constitutes a "Multiple Residence" under the Village Zoning Code. The Table of Use Requirements in the Village Zoning Code lists Multiple Residence as a use permitted in the CB District subject to grant of a special use permit from the Village Board in accordance with Article XVI as well as grant of site plan approval by the Planning Board.

**SEQRA Review:**

Under the SEQRA Regulations (6 NYCRR §617.5(11)) construction of a three-family residence on an approved lot constitutes a Type II (i.e., exempt) Action. Accordingly, this project does not require review under SEQRA except for acknowledging that it is a Type II action.

**General Municipal Law §239-m:**

Pursuant to General Municipal Law §239-m, notice of certain land use applications, including special use permits, must be referred to the County Planning Department for consideration if they meet certain criteria. Among the criteria is location of the subject property within five hundred feet (500') of any boundary of the village or of any county or state roadway.

While Wheeler Avenue is a Village Street, it adjoins Main Street which is NYS Route 94. The Village Board will need to ascertain whether the subject property is within 500' from Main Street or any other state or county road.

**Special Use Permit Procedure & Criteria:**

The procedure for processing an application for grant of a special use permit is set forth in Village Code §145-161. Under the Village Code, an applicant for a Special Use Permit must simultaneously submit the application for a special use permit to the Village Board and the application for site plan approval to the Planning Board. Before the Village Board considers or reviews the special use permit application, the Village Planning Board must refer the site plan application to the Village's Architectural and Historic District Review Board (AHDRB).

After reviewing the application, the AHDRB is to then render a report and recommendations to the Village Planning Board and Village Board.

After it receives the report of the AHDRB (or 30 days elapse following submission to the AHDRB without a report), the Village Board schedules a public hearing on the application. The applicant is required to mail notice of the public hearing via certified mail at least ten (10) days before the hearing and to all property owners within three hundred feet (300') of the property line of the applicant's property. Additionally, notice of the public hearing must be published in the Village's newspaper of record at least five (5) days prior to the hearing.

Further, the Code provides that at least ten (10) days prior to the public hearing, the notice of the hearing must Village Board shall mail notice thereof to the Orange County Planning Board "as required by section 239M of the General Municipal Law." It is unclear to me whether this notice is to be mailed only in cases where a referral is required by General Municipal Law §239-m, or if it must be made even if referral under GML §239-m is not legally required. But my recommendation is to mail the notice even if referral under GML §239-m is not legally required.

For properties lying within 500 feet from a municipal boundary of the Village and the Town of Warwick, notice of the public hearing must be mailed to the Town Planning Board at least ten (10) days prior to the public hearing. But the subject property in this matter is not near any boundary of the Village, so there is no need to send a notice to the Town.

Article XVI does not set forth any criteria for consideration by the Village Board at the public hearing. However, as is discussed below, Article XII of the Village Code sets forth a general criterion for grant of special use permits.

After the public hearing has been held and closed, the Village Board is to render a decision within sixty-two (62) days. However, there is no penalty or default approval if the Village Board fails to act within the prescribed time period. At most, the applicant would be entitled to commence an Article 78 proceeding for a court order directing the Village Board to issue a decision.

Under Village Code §145-20, in considering whether to grant or deny an application for a special use permit, the Village Board needs to make a finding as to whether each of the following criteria has been met:

- A. Whether the location, size and character of the proposed use will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated and not be detrimental to the site or adjacent properties in accordance with the zoning classification of such properties.
- B. Whether the location and size of the proposed use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to access streets shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous.
- C. Whether the location and height of buildings, the location, nature and height of walls and fences and the nature and extent of landscaping on the site shall be such that the use will not hinder or discourage the development and use of adjacent land and buildings; and
- D. Whether the proposed use will not require such additional public facilities or services, or create such fiscal burdens upon the Village greater than those which characterize uses permitted by right.

The Village Board is authorized to impose reasonable conditions to ensure that the above-listed criteria will be met and/or if it deems such conditions necessary or appropriate to promote the public health, safety and welfare and to otherwise implement the intent of the Village Code.

After the Village Board renders its decision on the application, a copy of the decision must be filed with the Village Clerk, the Planning Board Secretary, and the Code Enforcement Officer, with a copy being mailed to the applicant within five (5) business days.

**Status of the Current Application:**

The property owner has submitted an applicant to the Planning Board for site plan approval in addition to submitting his application to the Village Board for a special use permit. It further appears that the Planning Board referred the application to the AHDRB, or at least the applicant submitted the project to the AHDRB. On July 27, 2023, the AHDRB rendered a report stating that it "has no objection or proposes changes to the application, though shutters were discussed."

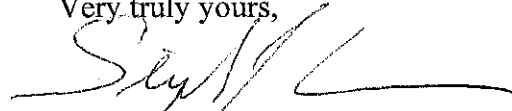
On August 13, 2023, the Village Engineering consultant rendered an initial report to the Village Board.

The application is now ready for the Village Board to schedule a public hearing upon it. The considerations at the public hearing, aside from the issue of providing adequate notice, will not be legal but, rather, will be substantive (i.e., whether the above-listed criteria has been met or not).

Once the public hearing has been closed, the Village Board can act on the application.

If you have any questions or comments just let me know.

Very truly yours,



STEPHEN J. GABA

SJG/ev/1195418

cc: David A. Getz PE