

# CAPIZZI LAW OFFICES

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December 30, 2020

**Via Email**

Chairwoman Mary Beth Wilmit and Members of the Board  
Planning Board of the Borough of Tenafly  
100 Riveredge Road  
Tenafly, NJ 07670

Re: William Warren Group- Tenafly PB (the “Applicant”)  
22 Jersey Avenue; 1305, Lot 5 (the “Property”)

Dear Chairwoman Wilmit and Members of the Board:

As the Board is aware, by letter dated October 12, 2020, Robert Inglema, Esq., on behalf of interested party Payraudeau 95, LLC, raised certain objections to the application of William Warren Group (the “Inglema Letter”).

As the Board is also aware, on October 23, 2020, William Warren Group (the “Applicant”) responded to certain issues raised in the Inglema Letter by way of filing the following materials:

- Revised Planning Board Application;
- Traffic and Parking Assessment Report prepared by Stonefield Engineering and Design dated October 21, 2020;
- Stormwater Management Summary prepared by Langan Engineering and Environmental Services, Inc., dated October 20, 2020;
- Engineering Plans prepared by Langan Engineering and Environmental Services, Inc., dated May 15, 2020 and last revised as of October 20, 2020 consisting of thirteen (13) sheets; and
- Architectural Plans prepared by Perry M. Petrillo Architects PC dated September 28, 2020 consisting of six (6) sheets.

All of the above is collectively referred to as the “Revised Submittal”.

The Applicant, out of abundance of caution, also amended its Public Notice in response to the Inglima Letter to request additional variance relief even though the Applicant is of the opinion that most of the variances cited by Inglima are not required. The amended Public Notice was published on October 23, 2020, November 28, 2020 and December 23, 2020.

The Board Engineer, David Hals, by letter dated October 30, 2020, deemed the Application complete.

Given the break in time since the Inglima Letter, the Applicant's Revised Submittal and to assist the Board in moving through issues on January 6, 2021, I thought it helpful to summarize the Application, issues raised by Inglima and the Applicant's response to same.

A. Nature of the Application

This Application concerns the Applicant's request for Site Plan and Bulk Variance Approval to redevelop the Property with a four (4) story self-storage building with nine (9) garage level parking spaces and two garage level loading spaces and other ancillary improvements (the "Building").

The Property is in the Borough's SR/B Zone, which permits self-storage as a permitted use.

<b>Zone</b>	<b>Principal Permitted Uses</b>	<b>Conditional Uses (§ 35-805)</b>	<b>Accessory Uses</b>
<b>SR/B</b>	<ol style="list-style-type: none"><li>Any B-1, B-2 and C principal permitted use under the same conditions as prescribed herein.</li><li>Laboratories for scientific research, design and analysis only.</li><li>Self-storage facilities.</li><li>Warehousing.</li><li>Public and private academic Schools.</li><li>Age-restricted housing.</li><li>Assisted living and/or congregate care housing.</li><li>Nursing homes.</li><li>Home for developmentally disabled, subject to the same limitations per the R-10 District.</li></ol>	<ol style="list-style-type: none"><li>Automobile/vehicle repair facility. (7,8)</li></ol>	<ol style="list-style-type: none"><li>Off-street parking facilities.</li><li>Fences and walls, as regulated in other residential zones.</li><li>Signs.</li><li>Solid waste and recycling enclosures.</li><li>Other uses customarily incidental to a permitted use. (12)</li></ol>

B. The Variances.

1. Use.

Schedule “A” to the Borough’s Land Use Ordinance itemizes the uses which are permitted in the various zones throughout the Borough. Schedule “A” clearly and unequivocally calls out “self-storage facilities” as a permitted use in the SR/B Zone.

In addition to the bulk regulations applicable to properties located within the SR/B Zone, Self-Storage facilities are also subject to certain design criterion set forth in Section 35-802.22.

Section 35-802.22, provides:

Self-storage facilities shall adhere to the minimum area, yard and building requirements of the particular district where permitted and to the following:

- a) No part of the parking lot is permitted within the required front yard area or within 25 feet of any adjoining residential lot and/or residential zone.
- b) A minimum landscape buffer area of 10 feet along the property lines shall be provided. Such buffer shall consist of a landscaped planted area with shrubs, evergreen trees not less than six feet high when planted, and shade trees at a maximum spacing of 30 feet from each other.
- c) Facades of all structures facing public streets or visible from public streets and residential uses within 500 feet shall be constructed of materials which will be compatible with the uses in the area.
- d) All outdoor lighting shall be shielded to direct light and glare only onto the premises and shall be of sufficient intensity to discourage vandalism and theft.
- e) No self-storage unit doors shall be constructed to open to a public street.
- f) Trash receptacles and dumpsters shall be screened from public streets and adjacent residential uses utilizing masonry material similar to the facade of the building. Screening walls shall be of a masonry material that is compatible with the character of the building material facade.

The Application does not comply with Section 35-802.22(b). As will be discussed below, Mr. Inglima argues that we do not comply with other sections of 35-802.22, positions with which the Applicant disagrees.

Mr. Inglima argues that 35-802.22 causes Self-Storage Facilities to be conditional uses in the SR/B Zone and, as such, the failure to meet all of the conditions requires the Applicant to seek a D(3) variance from the Zoning Board of Adjustment of the Borough of Tenafly. The Applicant disagrees.

Self Storage Facilities are clearly listed under the “Principal Permitted Uses” section of Schedule “A”. Schedule “A” also contains a “Conditional Uses” section which, for the SR/B Zone, lists “Automobile/vehicle repair facility” subject to footnotes 7 and 8 and refers the reader to Section 35-805.2 (Conditional Uses) of the Ordinance for the specific conditions applicable to the conditional uses. Section 35-805.2 enumerates all the uses in the Ordinance which are considered conditional uses. Self Storage Facilities are not listed under Section 35-805.2.

Therefore, no variance relief is required as to the “use” of the Property as a self-storage facility.

## 2. Building Height.

The Applicant’s Building will provide a height of 43.44 feet where the maximum allowed is forty (40) feet. Mr. Inglima inquired whether the mechanicals for the Building will increase the Applicant’s variance request as to Building Height.

It is the Applicant’s position that building mechanicals are excluded under Section 35-802.13 (Height Exceptions) of the Ordinance. Although Section 35-802.13 does not specifically call out mechanicals as being excluded, and despite the language of Section 35-802.8 (Principal Building), it is the Applicant’s understanding that the Board has historically determined that building mechanicals are excluded from calculating building height, predicated upon compliance with the limiting factors set forth in Section 35-802.13. The Applicant requests the Board continue this interpretation of the Ordinance.

In the event the Board, or a reviewing court, should determine that mechanicals are not excluded, the Applicant will amend the design of its plans accordingly so as not to exceed a building height of 43.44 feet.

## 3. Number of Stories.

The Applicant’s Building will also provide four (4) stories where a maximum of three (3) stories is permitted. Mr. Inglima asserts that the additional story creates the need for a D(6) height variance. The Applicant disagrees.

The Municipal Land Use Law (MLUL) at Section 40:55D-70(D)(6) regulates building **height**, not number of stories. Section 40:55D-70(D)(6) provides:

“A height of a principal structure which exceeds by 10 feet or 10% the maximum height permitted in the district for a principal structure.”

Whether the Applicant is proposing four stories or more, the critical inquiry is the height of the Building. That is why Section 40:55D-70(D)(6) regulates height and not number of stories. Where an applicant seeks to exceed the maximum allowable number of stories, a “c” or “bulk variance” is the relief such an applicant is required to seek. The same reasoning applies here. The Applicant’s Building requires a “C” variance to exceed maximum number of stories.

#### 4. Parking and Loading Spaces.

The Applicant’s Building will provide nine (9) parking spaces and two (2) loading spaces, all of which are contained within the Building. Mr. Inglima, in his October letter, states these parking and loading spaces need variance relief as follows:

- i. Parking Area and Parking Spaces Location (Not Permitted In Front Yard v. Portion of Parking Area and A Parking Space Proposed In Front Yard).

Mr. Inglima argues the Application requires variance relief from Section 35-802.22. The Applicant disagrees.

Section 35-802.22 provides, in pertinent part,

No part of the parking lot is permitted within the required front yard or within 25 feet of any adjoining residential lot and/or residential zone.

Section 35-201, defines “Front Yard” as:

Shall mean the area between the building and any lot line fronting on a street is a front yard. For corner lots the area of such lot facing each of the street sides shall be considered a front yard. See Sketches 13-16 attached to this chapter.

No portion of the parking area or parking/loading spaces are in the Front Yard. As noted above, all of these elements are contained within the Building. Out of abundance of caution, should the Board disagree with the Applicant’s position, the Applicant requested this relief in its Application, Plan Set and Public Notice.

- ii. Location of Loading Space to Building Entry and/or Pedestrian Path (10' Minimum Separation Required v. Less than 10' Proposed),

Mr. Inglima argues the Application requires variance relief from Section 804.2(c). The Applicant disagrees.

Section 804.2(c), provides:

Off-street loading spaces shall not be located within any fire prevention zone, within 25 feet of any fire hydrant or within 10 feet of any stairway, doorway, elevator or other general means of entry to and from a building for the general public, nor shall it block, or in any way interfere, with the free flow of pedestrians from any means of ingress or egress nor shall it interfere with the free flow of pedestrians or vehicles. All such loading spaces shall be appropriately indicated by a sign or other visual communication as to said location.

A pedestrian door opens to the loading/parking area. This door is not the primary means of access to the Building. A truck parked in the loading area does not obstruct the main entrance, nor vehicular circulation within the parking area. Moreover, the Building is not open to the public, but only to those who rent a storage unit at the Building. Variance relief from this section is not required. Out of abundance of caution, should the Board disagree with the Applicant's position, the Applicant requested this relief in its Application, Plan Set and Public Notice.

- iii. Driveway Separation (75' Minimum Required v. 60' Proposed)

Mr. Inglima argues the Application requires variance relief from Section 35-804.4(b). The Applicant disagrees.

Section 35-804.4(b) provides:

Required off-street parking facilities shall not be located in any front yard, except that in residence districts, the off-street parking space required for **single- and two-family** dwellings may be located in a private driveway or accessory garage. Parking areas and driveways accessory to **single- and two-family** dwellings shall not occupy more than 30% of the front yard area and shall not be located closer to a side or rear property line than 15 feet in the R-40 zone, 10 feet in the R-20 zone, five feet in the R-10 zone and three feet in the R-9 and R-7.5 zones. There shall be only one driveway opening to a street, which shall have a minimum width of 10 feet and a maximum width of 20 feet, unless the lot has a frontage of at least 120 feet, in which case there may be no more than two such openings. **There shall be a minimum distance between driveway openings on the**

**same lot of 75 feet.** A two-family attached dwelling (side-by-side) may have one driveway opening per unit, not exceeding 12 feet in width with a minimum distance of 20 feet between driveway openings.

This section pertains to single/two family developments. Therefore, the requirements for driveway openings on the same lot to be more than 75' apart is not applicable to this commercial/retail project. Out of abundance of caution, should the Board disagree with the Applicant's position, the Applicant requested this relief in its Application, Plan Set and Public Notice.

- iv. Self-Storage Doors (Not to Open to Public Street v. Certain Storage Unit Doors Will Open to the Covered Parking Area),

Mr. Inglima argues the Application requires variance relief from Section 35-802.22(e). The Applicant disagrees.

Section 35-802.22(e) provides:

No self-storage unit doors shall be constructed to open to a public street.

The garage level contains nine (9) parking spaces, two (2) loading spaces and eight (8) storage units. The storage unit doors open to the garage parking area with each unit door located approximately forty-three (43) feet within the Building. Every unit is entirely contained within the Building. Again, out of abundance of caution, should the Board disagree with the Applicant's position, the Applicant requested this relief in its Application, Plan Set and Public Notice.

- v. Parking Space Curbing Separation from Building (5' Minimum Separation Required from Building v. Less than 5' Proposed).

Mr. Inglima argues the Application requires variance relief from 35-723.2(i). The Applicant disagrees.

Section 35-723.2(i) provides:

The entire perimeter of all parking areas and the edges of all entrance and exits shall be enclosed with a granite block curbing at least six inches above the paving surface. Curbing shall not be less than five feet from any building. Where minimum distances from parking areas to property lines, to buildings and to zone boundary lines, as set forth in required conditions under the particular zone regulations differ from five feet, the curbing shall be at the distance prescribed under the particular zone's required conditions.

This section applies to exterior parking areas. This Application proposes a parking area located entirely within the Building. Therefore, this section does not apply to this Application. Out of abundance of caution, should the Board disagree with the Applicant's position, the Applicant requested this relief in its Application, Plan Set and Public Notice.

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In sum, the Applicant's Application was deemed complete and the Applicant's Public Notice is in order. We look forward to resolving any remaining procedural/legal issues so that we may move onto testimony from the Applicant's witnesses.

Respectfully Submitted,

Matthew G. Capizzi, Esq.

MGC/hs

cc: (Via Email)

Jeffrey Zenn, Esq.- Board Attorney;

David Novak, P.P. - Board Planner;

David Hals, P.E. - Board Engineer;

Jordan Yuelys, Esq. - Attorney for Interested Party Tenafly Elite Group;

Carl Rizzo, Esq. - Attorney for Interested Party Dheeraj Lohana/Tenafly Self Storage;

Marc Liebman, Esq. - Attorney for Interested Party 141 Piermont Self Storage, LLC; and

Robert Inghima, Esq. - Attorney for Interested Party Payraudeau 95, LLC