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October 12, 2020

COPY BY EMAIL

Jeffrey A. Zenn, Esq.
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433 Hackensack Avenue
Hackensack, New Jersey 07601

Re: Application of William Warren Group
to the Tenaflly Planning Board
22 Jersey Avenue (Block 1305, Lot 5)
Tenaflly, New Jersey
Docket No. PB 1-20-02
Hearing Date: October 14, 2020

Dear Mr. Zenn:

I represent Payraudeau 95, LLC, the owner of property located at 137 Piermont Road (Block 1304, Lot 1), Tenaflly, New Jersey. My client's property is located directly across the street from the above referenced premises (the "Site"), which are the subject of an Application filed by William Warren Group (the "Applicant") to the Tenaflly Planning Board (the "Board"). As such, my client is an interested party as defined under the *New Jersey Municipal Land Use Law*, N.J.S.A. 40:55D-1, et seq. (the "MLUL") with respect to the Application.

My client received a Notice of Hearing in this matter last week and has retained my services. I have spoken earlier today with Matthew G. Capizzi, Esq., the Applicant's attorney, with respect to the issues raised herein, and out of fairness to the Applicant and Board, I wish to formally address same prior to the commencement of the public hearing of the Application (which is currently scheduled for October 14, 2020). It is my understanding that you are the attorney for the Board and that correspondence should be directed to you. I tried to reach you by phone but the reception message indicated that your office is closed today.

It is my client's position that there are defects and deficiencies in the application forms, plans and notice issued and published by the Applicant with respect to the Application, which require remedial action before the public hearing can commence. Most notably, the application, plans and notice omit required variance relief that must be sought and identified as a jurisdictional requirement for a public hearing in this matter. In addition, the plans must be revised in other respects in order to conform to the requirements of the Borough of Tenaflly Development Regulations (Chapter 35).

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Required “D” Variances. As an initial matter, it shall be the position of my client that the Application requires variance relief pursuant to N.J.S.A. 40:55D-70(d) and that jurisdiction over the application as presently constituted is reserved to the Tenaflly Zoning Board of Adjustment, for the following reasons:

1. Variances from Conditions Affecting Self-Storage Uses. There are specific standards imposed by the Tenaflly Zoning Ordinance with respect to the development of self-storage uses in the SR/B Zone District in which the Applicant’s Site is located. Section 35-802.22 of the Zoning Ordinance states that “[s]elf-storage facilities shall adhere to the minimum area, yard and building requirements of the particular district where permitted and to the following . . . “referring to a list of special use and development criteria that constitute conditions of development of this particular use. The imposition of these criteria as requirements for the development of the proposed self-storage use (as distinguished from other bulk standards that are applied generally to permitted uses in the zone district), effectively establishes conditions of a principal use that must be met by the Applicant. It is my client’s position that any deviation from these requirements can be granted only by the Tenaflly Zoning Board of Adjustment pursuant to N.J.S.A. 40:55D-70(D)(3). In this respect, please note that the proposal fails to comply with any of the following requirements of the Zoning Ordinance:
 - a. The proposed self-storage facility does not conform to the following requirements of the SR/B Zone district as set forth in Section 35-801.4b (Schedule B, Zoning Requirements, Schedule of Area and Bulk Regulations)¹:
 - i. Minimum Lot Size - Commercial Uses: 30,000 square feet required;
25,000 square feet existing/proposed;

¹ It should be noted that the only standard set forth in Schedule B with which the Application complies is Minimum Lot Width (100 feet required at street line, 150 feet required at setback line; 250 feet existing/proposed in both locations).

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- ii. Minimum Front Yard Setback: 27.5 feet from right of way line of Jersey Avenue required; minus 0.5 feet proposed (see discussion, *infra*);
 - iii. Minimum Rear Yard: 25 feet required; less than 3 feet proposed;
 - iv. Minimum Side Yard (north side): 15 feet required; 3 feet proposed;
 - v. Minimum Side Yard (south side): 15 feet required; 10 feet proposed;
 - vi. Maximum Principal Building Height: 40 feet allowed; 43.71 feet proposed (see discussion of this calculation, *infra*);
 - vii. Maximum Principal Building Height: 3 stories allowed; 4 stories proposed;
 - viii. Maximum Coverage by Buildings: 40 percent allowed; 87.5 percent proposed; and
 - ix. Maximum Coverage by Impervious Surfaces: 70 percent allowed; 89.2 percent proposed (see discussion of this calculation, *infra*).
- b. The proposed self-storage facility does not conform to the following requirements set forth in Section 35-801.22 of the Zoning Ordinance²:
- i. No part of the parking lot is permitted within the required front yard area (per subpart a. of this ordinance section); the parking area is proposed less than eight (8) feet from the right of way line of Jersey Avenue (see discussion of this requirement, as well as discussion of the notice, *infra*);
 - ii. A minimum landscape buffer area of 10 feet along the property lines shall be provided, consisting of the types and sizes of plantings set forth in subpart b.

² The only standards applicable to self-storage uses with which the proposal apparently complies relate to the design of building facades and outdoor lighting, and the screening of trash receptacles and dumpsters.

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of this section. The Applicant fails to provide any buffer along the west (front), north side, east (rear) or south side property lines of the site (see discussion of notice, *infra*); and

- iii. No self-storage unit doors shall be constructed to open to a public street, pursuant to subpart e. of this section. There are self-storage unit doors that open to and shall be visible from the public right of way of Jersey Avenue (see discussion of notice, *infra*).

As noted above, development of the proposed self-storage facility at the Applicant's Site will not conform to any of these standards, rendering the proposed use and improvements housing same to be wholly nonconforming to the ordinance requirements for the development of this particular use. As a result, variance relief pursuant to either N.J.S.A. 40:55D-70(D)(1) or N.J.S.A. 40:55D-70(D)(3), is required for any approval of the Applicant's plans as presently constituted, relief which can only be granted by the Tenaflly Zoning Board of Adjustment.

2. Principal Building Height Variances. My client respectfully contends that the Application and design of the principal building shown on the Applicant's plans require variance relief pursuant to N.J.S.A. 40:55D-70(D)(6), based on its failure to conform with the requirements of Section 35-801.4b (Schedule B). As in the case of other "d" variances, can be granted only by the Tenaflly Zoning Board of Adjustment. This position is supported by the following facts:

- a. The Applicant's calculations of principal building height indicate that the proposed structure will measure 43 feet 11 inches in height from the ground floor to the top of the roof, and 45 feet 0 inches from the ground floor to the top of the parapet wall. The Applicant does not provide a calculation of principal building height above "average grade" at the Site (based on existing conditions), measured to the highest point of all structures constituting the "principal building," all as required by Section 35-801.4b (Schedule B), Section 35-802.8e, and the definitions contained in Section 35-201 of the Development Regulations. However, it should be noted that HVAC units and other utility elements on the roof are not shown on the Applicant's plans, and must be included in the measurement of principal building height pursuant

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to Section 35-802e. If those structures project above the high point of the roof surface indicated on the plans, the principal building height will exceed by ten (10%) percent or more the maximum height permitted in the district for a principal structure (i.e., 40 feet), thereby requiring “d” variance relief; and

- b. In addition, the proposed building contains four (4) stories in a zone that permits principal structures that contain only three (3) stories. As such, it exceeds by more than 33 percent the permitted height in terms of number of stories (3 stories allowed, 4 stories proposed). As a result, “d” variance relief is required for principal building height based on the proposal to exceed the permitted number of stories by 10% or more of the ordinance limitation.

Bulk Variance Calculation Errors. In addition to the foregoing, my client respectfully contends that several calculations of variance relief requested by the Applicant as set forth in the application, plans and notice are incorrect and have a significant impact upon the nature and extent of variance relief required as well as the interests of the public in the subject Application. These significant errors consist of the following:

1. Front Yard Setback. The Applicant seeks variance relief from the required front yard setback, apparently by reference to Section 35-801.4b (Schedule B) (25 feet required, 2 feet proposed, according to the Applicant). However, Section 35-802.12a states that “[o]n streets less than 50 feet in width, the required front yard shall be increased by 1/2 the difference between the width of the street and 50 feet.” According to the Applicant’s plans, Jersey Avenue has a width of 45 feet. Based on the foregoing, the front yard setback required along Jersey Avenue is 50 feet from the centerline of the street, or 27.5 feet from the right-of-way line, not the 25 feet setback distance indicated in the application, plans and notices of the hearing. Most important, the proposed self-storage building is located only 29.5 feet from the centerline of the street, a distance of only 2 feet from the right of way line - meaning that it would actually encroach upon (and thus preclude) any widening of Jersey Avenue to a conforming street width.³ The significance

³ The existing cartway of this street, which is developed on both sides with commercial uses, and has parking along one side, is only approximately 30 feet.

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of this proposed condition, on a lot that is presently developed with a principal structure set back 32.2 feet from the existing street line, cannot be overstated. The variance relief that is required for this proposal must be accurately set forth in the application, plans and notice (see discussion of additional variances based on this calculation, *infra*).

2. Impervious Coverage. The Applicant's application, plans and notice state that the proposal requires a variance from the maximum Impervious Coverage permitted at the Site, apparently by reference to Section 35-801.4b (Schedule B) (70 percent coverage allowed, 89.2 percent proposed, according to the Applicant). It should be noted for purposes of this issue that the proposed coverage by buildings (as calculated by the Applicant) is 87.5 percent (which also deviates from the zoning ordinance). A review of the Applicant's plans indicates that it has calculated the Coverage by Buildings as 21,883 square feet and the Impervious Coverage as 22,307 square feet, in computing the referenced percentages. However, it is clear that the calculation of impervious surfaces at the site other than buildings (only 424 square feet) does not include large areas of impervious surfaces shown between the proposed building and property lines. Please note that the definition of "impervious coverage" in Section 35-201 of the Development Regulations states that it includes not only buildings and paved surfaces, but also "hard surfaces and other impervious materials." Most notably, Section 35-1004 states that "gravel" and "crushed stone" are considered impervious areas under the ordinance. The gravel and stone areas shown on the plans, which were apparently excluded from the Applicant's calculations, must be added to the impervious coverage of the Site and variance relief from this corrected (and significantly larger) total area must be sought and included in the application, notice and plans filed with the Borough.

Bulk Variance Misstatements and Omissions. In addition to the foregoing items, the Applicant has failed to identify several variances that are required for the proposed development, with respect to the design and location of parking areas, parking spaces and loading berths or spaces at the Site. Section 35-804.1 of the Zoning Ordinance requires "off-street parking and off-street loading facilities" to be provided as specified in Schedule C to the Zoning Ordinance and other subsections of Section 35-804. Those provisions of Zoning Ordinance incorporate by reference and necessarily include the definitions and other standards set forth in Section 35-201, Section 35-723.2 and Section 35-802.7 of the Development Regulations. It is respectfully submitted that, for parking spaces or loading berths/spaces to be included in any count set forth

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on a plan, they must conform to the standards of the ordinances as noted herein. The proposed development fails to comply with these requirements, as follows:

1. Parking Area within Front Yard. Pursuant to Section 35-802.22a, “[n]o part of the parking lot” is permitted in the required front yard; in addition, Section 35-804.4a2 states that “[r]equired off-street parking facilities shall not be located in any front yard.” It be further noted that Section 35-201 of the Development Regulations defines “Parking Area” to include “access drives and aisles.” As a result, variance relief is required from these sections of the Zoning Ordinance to permit the parking area and any elements thereof located within the required front yard, which should be depicted accurately on the plans, at a distance of 27.5 feet from the right-of-way line of Jersey Avenue;
2. Loading Berths/Spaces adjacent to Building. Section 35-804.2c of the Zoning Ordinance states that [o]ff-street loading spaces shall not be located . . . within 10 feet of any stairway, doorway, elevator or other general means of entry to or 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“ A review of the plans reveals that the two loading berths or spaces shown on the plans are located only three (3’) feet from a required point of public ingress to and egress from the building, and interfere with pedestrian access, in violation of this section of the ordinance. Interestingly, the application form filed with the Board listed this variance, but it was omitted from the notice of the October 14th hearing;
3. Loading Berths/Spaces within Front Yard. In addition, Section 35-804.2b of the zoning ordinance states that loading spaces “shall not be located in any required front yard.” The modified front yard setback line must be shown on the plans to permit an accurate assessment of same on the location of all principal and accessory uses and structures, including loading berths or spaces. If required to conform to the ten feet separation requirement referenced hereinabove, the loading berths shall encroach upon the required setback distance. Notwithstanding same, it is the position of my client that the proposed loading berths, which shall be adjacent to Jersey Avenue and visible therefrom, violate the standards relating to the location of loading facilities and that variance relief is therefore required;

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4. Parking Spaces adjacent to Building. Required off-street parking spaces may not be located closer than five feet to any building, pursuant to subsection (i) of Section 35-723.2 (Requirements for Off-Street Parking). A review of the plans filed by the Applicant reveals that all of the parking stalls that are not ADA compliant shall directly abut the proposed building, and the parking of vehicles in those spaces shall interfere with access to the exterior self-storage units (which can only be accessed from the parking area), in violation of the ordinance. Variance relief is required for these proposed conditions; and
5. Required Separation Distance between Driveways. The Applicants' plans depict two driveways serving the Site which are separated by a distance of only 60 feet. Pursuant to Section 35-804.4a2 of the Zoning Ordinance, "[t]here shall be a minimum distance between driveway openings on the same lot of 75 feet." A variance is required for this proposed condition.

The foregoing issues have been identified as a courtesy to the Board and Applicant and without prejudice to my client's rights in this matter. It is respectfully submitted that the nature and full extent of the variance relief required for the proposed development require this matter to be heard and decided by the Tenafly Zoning Board of Adjustment, and that no hearings can proceed until a jurisdictional determination may be made. My client respectfully requests further review of the proposal by the Administrative Officer of the municipality based on the issues raised herein, a formal determination of the nature and extent of variance relief required therefor, and the subsequent referral of the Application to the land use agency of the municipality possessing jurisdiction over same.

Notice Defects. As noted above, the Applicant's plans omit required variance relief and contain significant miscalculations affecting the extent of variance relief that were included but misstated in the application. Most important, the notice of the October 14th hearing has either completely omitted the foregoing required variances or described them in a manner that is inaccurate (with respect to the proposed front yard setback and impervious coverage), or otherwise incomplete or misleading, and therefore fails to reasonably apprise the recipients of said notice regarding the

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nature and extent of variance relief required for the project.⁴ Proper notice of the subject matter of the Application is a jurisdictional requirement for any public hearing, and the defects in the notice as outlined above must be corrected before any proceedings can commence.

My client also objects to the form of the notice which describes procedures for the conduct by the Board of a “remote” or “virtual” hearing through the use of computer technology or audio conference call systems. Based on the limitations that such procedures may impose, my client and I also respectfully object to the use of such procedures in lieu of a public hearing at which time the public may appear in person, view and examine plans, exhibits and other evidence, engage in cross-examination of witnesses, present relevant testimony of witnesses and evidence, and otherwise participate in the hearing as fully as individual members of the Board and the Applicant, their respective consultants and attorneys, are permitted.

Required Plan Revisions. Clearly, the Applicant’s plans must also be revised and/or the design of structures shown thereon amended to correctly state and identify, or eliminate thought redesign (as the case may be) the variance relief that is required as set forth above. In addition, the plans do not conform to the checklist items and other site plan standards set forth in the Development Regulations, most notably with respect to the omission of existing structures and other conditions of development on lots located within 200 feet from the Applicant’s Site. The plans must be revised to show the conditions of my client’s property as well as lots that directly abut the Site (including but not limited to the locations of driveways and parking areas) in order to permit the Board hearing the Application to assess the impact of the development of the Site on its environs. Based on the extent of the defects and deficiencies in the plans, the hearing cannot proceed until the plans have been revised and completed in accordance with the Zoning Ordinance and checklists, filed with the appropriate Board, evaluated by municipal professional consultants and officials, and notice of a new hearing that complies with the MLUL is published and served on all interested parties.

⁴ For example, the Applicant’s notice indicates that variance relief is requested to permit “one [parking] space” within the required front yard, which will undoubtedly affect the public’s perception of the extent of variance relief required for the project, which proposes at least 2,900 square feet of “parking area” within the required front yard.

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Conclusion. The application forms, plans and notice of hearing do not accurately describe the application, variance relief and other approvals required for the proposed development for which approval is sought by the Applicant. The defects in the form of the notice, including but not limited to inaccuracies and lack of clarity with respect to the subject matter of the hearing, render same invalid. The notice does not fairly apprise all interested parties and other persons that may be affected by the application and are entitled to such notice. The application and plans must be revised to address these issues.

For all of the reasons set forth herein, it is respectfully asserted that the Board cannot exercise jurisdiction over the Application and that the October 14, 2020 hearing must be adjourned. If this Board determines that it shall conduct a public hearing of the Application on October 14th and the Applicant seeks to proceed at that time, notwithstanding the information, objection and argument herein contained, it is respectfully requested that an opportunity be provided to the undersigned, as attorney for Payraudeau 95, LLC, to address these issues to the full Board for its consideration on the record of this matter, at the outset of the meeting. It is further requested that my client, its legal counsel and expert witnesses be permitted to participate in the public hearing to the same extent as the Applicant and its representatives, without restriction.

My client appreciates the Board's consideration of the foregoing issues in advance of the scheduled hearing. If there is anything further required from me or my client, please advise me of same immediately. Thank you for your courtesies.

Respectfully yours,



Robert J. Inglima, Jr.

cc (by email):

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