

November 14, 2022

Dan Roemer, Building Inspector
Dobbs Ferry Planning Board
Village Hall - 112 Main Street
Dobbs Ferry, New York 10522

Re: Lombardo's Restaurant

Dear Building Inspector Roemer, Chairman Hunter, and Members of the Planning Board:

This letter is to request that the review of the above referenced application be continued at the December 1, 2022 Planning Board meeting.

At the October 6, 2022 Planning Board meeting, four concerns were expressed. They are addressed in this letter, as well as in previous documents that were submitted to the Planning Board after the October meeting, as referenced in a letter to the Planning Board dated October 20, 2022.

1. Compliance with ADA Accessible Routes Requirements -

The intent is to construct a Pergola in the location of the existing exterior dining area. The concern is that this Pergola will violate ADA requirements by limiting the access from the parking lot that is to the north of the existing restaurant building to the entry of the Urgent Care facility located in the building to the south of the existing restaurant building. The argument is that the ADA access to the Urgent Care facility was designed to be through the area where the existing exterior dining area is located, which is between the west side of the restaurant and the adjacent railing along the plinth on which the restaurant and the Urgent Care buildings are located. The existing exterior dining area and the proposed Pergola use this entire width. A suggestion was made to reduce the size of the proposed Pergola to maintain an access route connecting from the parking lot to the Urgent Care entry.

Currently, while it is not impossible for someone to walk from the parking area to the Urgent Care, to do so requires walking through the exterior dining area. This is not a public sidewalk. The tenant in the restaurant has the permission of the owner of the property to have created this exterior dining area, making it a private space solely for the use of the restaurant. A floor surface has been created for this dining area which may not be compliant with ADA accessibility requirements. Instead of passing through the exterior dining area, it would be easier for someone in a wheelchair to pass through the interior of the restaurant to get from the parking area to the Urgent Care entry. Since the restaurant is a private tenancy that is not always open, there are times when this is not possible.

There is a public sidewalk that is adjacent to Hamilton Street from Danforth Avenue to Lawrence Avenue, extending past both buildings. The parking area on the plinth is at an elevation higher than the street and an existing ADA compliant ramp provides a wheelchair and pedestrian connection between that parking lot and the sidewalk.

While there is also a ramp connecting the parking area to the street for vehicles, this ramp is at a pitch that exceeds ADA requirements. This vehicular ramp is not considered a pedestrian or wheelchair connection between the parking area and the sidewalk.

There is also an existing ADA compliant ramp from the public sidewalk to the entry area in front of the Urgent Care facility. The applicant contends that this ramp would not have been required, if the intent was for the area adjacent to the restaurant to be the access to the Urgent Care facility.

As described above, there is a continuous ADA compliant Accessible Route between the parking lot and the Urgent Care facility as described in the 2010 ADA Standards for Accessible Design, United State Department of Justice, September 15, 2010, eliminating the need for a connection between those two points to be provided through the exterior dining area with or without the proposed Pergola. Most specifically Section 29 CFR 35.151 New Construction and Alterations requires the following:

(4) Path of travel. An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.

(ii) A "path of travel" includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility.

(A) An accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements.

While none of the components currently providing ADA compliant access between the parking lot and the Urgent Care entry are being affected, this section of the applicable law makes it clear that the required "path of travel" must be maintained. Other sections of this law define the pitch, width, railings and similar design requirements for the ramps and sidewalks that are currently in use. Again, none of those components is being changed or otherwise affected.

Since the existing "path of travel" will remain unaltered, the applicant contends that no further consideration of the connection between the parking lot on the plinth and the entry to the Urgent Care is required or necessary.

In discussions with the Building Department, concern has continued that a "path or travel" should be restored on the plinth, obviating the need to use the two ADA complaint ramps and the sidewalk. Part of this concern seems to be a belief that the preferred parking area for the Urgent Care facility is the parking lot on the plinth to the north of the restaurant.

While there is nothing that prevents people going to Urgent Care from using that parking lot, the closest parking spaces to the Urgent Care facility are immediately across the street from the Urgent Care ADA compliant entry ramp. People going to Urgent Care are able to park across the street from the facility and use the existing ADA compliant sidewalks, crosswalks, and ramp to get to the entry.

A map of the various access routes to the Urgent Care has been provided with this letter. Routes A and B show the path from the parking across the street to the Urgent Care entry. Route C shows the path from the parking lot on the plinth to the Urgent Care entry using the existing ramps. Route D shows the path through the exterior dining area at Lombardo's Restaurant.

A copy of the pertinent sections of the 2010 Standards for Public Accommodations and Commercial Facilities: Title III was previously provided with the October 20, 2022 submission to the Planning Board. The most applicable sections of this Law are copied below from 28 CFR part 36, Subpart D - New Construction and Alterations:

§36.401 New construction.

(c) Exception for structural impracticability.

(2) If full compliance with this section would be structurally impracticable, compliance with this section is required to the extent that it is not structurally impracticable. In that case, any portion of the facility that can be made accessible shall be made accessible to the extent that it is not structurally impracticable.

§36.403 Alterations: Path of travel.

(a) General.

(1) An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area and the restrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs, unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration.

(2) If a private entity has constructed or altered required elements of a path of travel at a place of public accommodation or commercial facility in accordance with the specifications in the 1991 Standards, the private entity is not required to retrofit such elements to reflect the incremental changes in the 2010 Standards solely because of an alteration to a primary function area served by that path of travel.

(e) Path of travel.

(1) A "path of travel" includes a continuous, unobstructed way of pedestrian passage by means of which the altered area may be approached, entered, and exited, and which connects the altered area with an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and other parts of the facility.

(2) An accessible path of travel may consist of walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps; clear floor paths through lobbies, corridors, rooms, and other improved areas; parking access aisles; elevators and lifts; or a combination of these elements.

Regarding the suggestion that was mentioned to shorten the Pergola and make it narrower to provide a second ADA compliant "path of travel" from the parking lot on the plinth to the Urgent Care entry, Reducing the width from 15 feet to 11 feet to provide a walkway between the Pergola and the existing railing on the plinth significantly tightens the dining area, compromising the character and function of the space. Whether this would adversely affect the economic viability of the proposal would need to be determined by Lombardo's.

As designed, the proposed Pergola structure is fully ADA compliant.

2. Stormwater Management -

The existing condition is that rainwater landing on the space of the existing exterior dining area flows across the existing concrete surface and drips to the planted area and paved sidewalk below. There are no existing drainage structures in place to collect this water.

The proposed Pergola will be in the same space as the existing exterior dining area. No changes to the existing stormwater flow or collection are proposed. Instead of landing on the concrete surface, the rainwater will land on the Pergola. The Pergola system is specifically designed to collect this water and direct it to the Pergola posts, which have internal pipes to direct the collected water to the base of the Pergola where it will discharge to the concrete surface and flow in the same pattern as currently exists.

The previous concern expressed was that all of the rainwater falling on the Pergola would be collected and discharged in one location, resulting in a concentrated flow. The design of the Pergola system obviates that concern by distributing the runoff over the full area of the Pergola, maintaining the existing stormwater runoff pattern.

3. Compliance with the Energy Code -

While this should not be an issue for the Planning Board under Site Plan Review, a concern has been expressed that a substantially glass structure with retractable roof and exterior wall panels will have a difficult time meeting the requirements of a heated and cooled facility, given the New York State Energy Code, specifically given the fact that Dobbs Ferry has adopted the NYStretch Energy Code.

This will be addressed and the Pergola will be designed to be fully compliant. If the Pergola structure cannot be made energy tight to meet the State Code, that will limit the extent to which it can be heated or cooled.

4. Aesthetics -

Concerns were expressed that the proposed system's design is too stark for this location. The applicant agreed to review this with the designer of the system, who was not able to be in attendance at the October Planning Board meeting. He will be at the December 1, 2022 Planning Board meeting to present his aesthetic intent and to explain the reasons for the specific aesthetics of his system.

During the discussion at the October meeting, there were comments that this system may not be an appropriate fit in the downtown. Rivertowns Square has a very different aesthetic than our traditional downtown and, in the opinion of the applicant, the character of the proposed Pergola works well with the Rivertowns Square aesthetic.

Documents were submitted to the Village on October 20, 2022, but the matter was not on the November 3 Planning Board agenda. That submission should be provided to the members of the Planning Board together with this letter. Those documents include the following:

- A. Six 8.5x11 inch photographs of the Skyfree Pergola system in use. This is to show that the system design itself is the aesthetic. As the designer will confirm, any application of additional materials to conceal the components of the system conflicts with its aesthetic intent to be minimalist and undecorated. The concerns expressed in the September meeting suggested the "decoration" of the system. There may be locations in which this system could seem stark, but the character of this location will work well with this clean lined look.
- B. An enlarged section of the Rivertowns Square Survey previously submitted showing the separate ownerships of the buildings, the location of parking, the location of ADA ramps, the required gate on the concrete deck adjacent to Buildings #8 and #10, and the placement of the proposed Pergola. The four routes from parking to the Urgent Care entry are shown, with the distances noted.
- C. A 34 page PDF of the Skyfree system for the proposed Pergola providing the details of construction, including the integral drainage system.
- D. A 6 page PDF of the Skyfree system providing diagrams as to the way in which the structure manages rainwater.
- E. A screen shot of the available Skyfree finishes.
- F. A copy of the applicant's Letter of Response dated October 20, 2022 to the Memorandum prepared by Anthony Oliveri, P.E. dated August 26, 2022.

Letter to the Dobbs Ferry Planning Board

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It is my understanding that everything else that was requested has been provided. Please let me know if there is anything else that you need.

If there is anything else that you would like us to address or submit, please let me know.

Thanks,

Gotham Design Planning & Development Ltd.

Padriac Steinschneider, President

As Agent for Owner