

MEMORANDUM

TO: Stephen D. Puleo, Town Planner, Town of Windham

FROM: Jim Katsiaficas

DATE: March 28, 2024

RE: 868 302, LLC Site Plan Application/Easement Analysis

Applicant 868 302, LLC has before the Windham Planning Board an application for Site Plan approval for change of use of the remainder of its building on property (Lot 50E, the “Lewis Property”) at 868 Roosevelt Trail from retail use to retail/wholesale bakery and private warehousing uses. As part of this project, Applicant proposes to relocate four existing parking spaces from within the right of way of Route 302, with two to be located in front of the building and two to the rear of the building. Three additional parking spaces are proposed to be created to the rear of the building. This will provide a total of nine parking spaces in front of the building and five parking spaces in the rear. Access to the back of the building will be from Trails’ End Road over two adjoining properties – Lot 50F (the “Babb Property”) and Lot 50G (the “Sebago Diner Property”).

With its application, Applicant has submitted a legal analysis by Thomas B. Federle, Esq. of Archipelago regarding Applicant’s ability to use access and parking easements to provide the proposed parking in front of and to the rear of the building, and the access to the rear of the building. The Archipelago memo observes that in 1983, all three adjoining lots – 50 E, F and G –were owned by one person – Charles Dorr (Cumberland County Registry of Deeds Book 2820, Page 143 (“CCRD 2820/143”). Since then, Charles Dorr and his family have deeded these lots through several transactions:

1983 - Dorr to Foster (CCRD 6311/53) conveyed Lewis Property, Lot 50E with right to access existing roadway (presumably Trails End Road) for access to rear of building so long as used for carpet retail, and granting and reserving reciprocal easements for vehicle parking and foot traffic over the land of Dorr (Lots 50 F and G);

1985 - Foster to Hanson (CCRD 6870/160) conveyed same Lewis Property, Lot 50E with reciprocal easements vehicle parking and foot traffic over the land of Dorr (Lots 50 F and G), but without right to access existing roadway for access to rear of building;

1991 - Dorr to Hanson (CCRD 9486/1) conveyed Babb Property, Lot 50F with reciprocal easements for vehicular and pedestrian traffic in common with others over the existing parking areas and driveways in front of buildings shown on 1991 Plan of Property for the Estate of Charles A Dorr (Lots 50 E, F and G) and over the land of Hanson (Lot 50 E) and a right of way in common with others over the Basin View Road (presumably now the Trails End Road); and

1991 - Dorr to Miller (CCRD 9463/1) conveyed Sebago Diner Property, Lot 50G with cross easements for vehicular and pedestrian traffic in common with others over the existing parking areas and driveways in front of buildings shown on 1991 Plan of Property for the Estate of Charles A Dorr (Lots 50 E, F and G) and over the land of Hanson (Lot 50 E) and a right of way in common with others over the Basin View

Road (presumably now the Trails End Road).

Atty. Federle opines that the reciprocal easements for vehicular and pedestrian traffic in common with others over the existing parking areas and driveways are limited to the parking area **at the front of the buildings**, and create no reciprocal or shared rights to parking behind the buildings. I agree with that assessment.

Atty. Federle also opines that the deeds to the Babb Property and the Sebago Diner Property establish these lots have the benefit of and are subject to a 25' wide easement for vehicular and pedestrian traffic in common with others 143' west of and parallel to Roosevelt Trail, and that the Lewis Property has the benefit of this access. Since that easement for vehicular and pedestrian traffic is in common with others and ends at the Lewis Property line, I agree that the Lewis Property has the benefit of that 25' wide driveway so that the Applicant may use that easement to reach the rear of the Lewis Property and to travel to and from Trails' End Road. However, neither the Babb Property nor the Sebago Diner Property owners have any rights of vehicular and pedestrian access over the rear of the Lewis Property. (I also agree with Atty. Federle that the easement for access to the rear of the buildings does not provide any cross-easements for parking on each other's lots **behind** their buildings.)

Please let me know if I can provide any further assistance in this matter.