

MINUTES
ZONING BOARD OF APPEALS
February 6, 2008

MEMBERS PRESENT: WILLIAM MOWERSON
PATRICIA CASTELLI
DANIEL SULLIVAN
NANETTE ALBANESE
JOHN DOHERTY

ABSENT: NONE

ALSO PRESENT: Kevin Mulhearn, Esq. Deputy Town Attorney
Anne Marie Ambrose, Official Stenographer
Deborah Arbolino, Administrative Aide

This meeting was called to order at 7: 00 P.M. by Chairman William Mowerson.

Hearings on this meeting's agenda, which are made a part of this meeting, were held as noted below:

PUBLISHED ITEMS

APPLICANTS

DECISIONS

CONTINUED ITEM:

BYRNE	STREET FRONTAGE FOR LOT #2 APPROVED LOT WIDTH, TOTAL SIDE YARD AND GRAVEL DRIVEWAY VARIANCES APPROVED FOR LOT #1 WITH CONDITIONS	ZBA#07-116
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CONTINUED ITEMS:

CENTER STREET SUBDIVISION 75.05 / 1 / 10; R-22 zone	POSTPONED	ZBA#08-05
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21 EAST CENTRAL AVENUE 68.16 / 6 / 62; CS zone	HEARING RE-OPENED FLOOR ARE RATIO AND PARKING VARIANCES APPROVED WITH CONDITION	ZBA#08-08
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NEW ITEMS:

O'LOUGHLIN 69.18 / 2 / 84; R-15 zone	TOTAL SIDE YARD VARIANCE APPROVED	ZBA#08-10
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GRANT 69.16 / 2 / 15; R-15 zone	CONTINUED	ZBA#08-11
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SMK RELD 69.10 / 2 / 71; R-15 zone	CONTINUED	ZBA#08-12
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PRESTIGE MOTORS 65.18 / 1 / 1.12 & 22 LO zone	PARKING IN REQUIRED YARDS AND OUTDOOR LOADING BERTHS APPROVED	ZBA#08-13
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DEALER TIRE 65.18 / 1 / 1.12; LO zone	PERFORMANCE STANDARDS APPROVED WITH CONDITIONS	ZBA#08-14
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OTHER BUSINESS: DEFERRED DECISION:

BLAUVELT CAR WASH
70.10 / 3 / 16; CC zone

BUILDING INSPECTOR'S
DETERMINATION UPHELD

ZBA#07-106

OTHER BUSINESS:

In response to requests from the Orangetown Planning Board, the Zoning Board of Appeals: RESOLVED, to approve the action of the Chairman executing on behalf of the Board its consent to the Planning Board acting as Lead Agency for SEQRA coordinated environmental review of actions pursuant to the following application: Amendment to Bradley Corporate Park Site Plan building 8, 100 Corporate Drive, Blauvelt, N.Y., Section 65.18, Block 1, Lot 10; LI & LIO zones; Orange & Rockland Utilities, Oak Tree Road, Tappan, N.Y. 77.15/ 1/ 31; LIO zone; and FURTHER RESOLVED, to request to be notified by the Planning Board of SEQRA proceedings, hearings, and determinations with respect to these matters.

The foregoing resolution was presented and moved by Ms. Castelli seconded by Mr. Mowerson, and carried as follows: Mr. Sullivan, aye; Ms. Albanese, aye; Ms. Castelli, aye; Mr. Doherty, aye; and Mr. Mowerson, aye.

THE DECISIONS RELATED TO THE ABOVE HEARINGS are inserted herein and made part of these minutes.

The verbatim minutes, as recorded by the Board's official stenographer for the above hearings, are not transcribed.

There being no further business to come before the Board, on motion duly made, seconded and carried, the meeting was adjourned at 12:45 A.M.

Dated: February 6, 2008

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
ASSESSOR
HIGHWAY DEPARTMENT
SUPERVISOR
TOWN BOARD MEMBERS
BUILDING INSPECTOR (Individual Decisions)
DEPT. of ENVIRONMENTAL MGMT. and ENGINEERING
Rockland County Planning

DECISION

STREET FRONTAGE VARIANCE FOR PROPOSED LOT #2 AND LOT WIDTH, TOTAL SIDE YARD AND GRAVEL DRIVEWAY VARIANCES FOR PROPOSED LOT #1 APPROVED WITH CONDITIONS

To: Donald Brenner (Byrne Subdivision)
4 Independence Avenue
Tappan, New York 10983

ZBA # 07-116
Date: 12/ 5/ 07

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#07-116: Application of Patrick Byrne for a variance from Chapter 43, Section 3.12, R-15 District, Group M, Columns 6 (Lot Width: 100' required, 79.6' proposed for lot #1), 7 (Street Frontage: 75' required, 20' proposed for lot #2), and 10 (Total Side Yard: 50' required, 44.5' proposed) and from Section 6.332 (Driveways: 3' binder mix with a top wearing course of one and one half inches of fine mix asphalt required, gravel existing and proposed for lot #1) for a two-lot subdivision. The site is located at 258 Ehrhardt Road, Pearl River, New York, and are identified on the Orangetown Tax Map as Section 69.05, Block 4, Lot 41; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at meeting held on the following Wednesdays, December 5, 2007 and February 6, 2008 at which time the Board made the determination hereinafter set forth.

Donald Brenner, Attorney, Jay Greenwell, L.S., and Patrick and Anne Byrne appeared and testified.

The following documents were presented:

1. Subdivision plan signed and sealed by Jay Greenwell, L.S. dated 11/28/06 with the latest revision date of 12/07/07.
2. Planning Board Decision #07-25 dated March 14, 2007.
3. A vicinity map showing similar subdivisions in the area.
4. A letter dated November 25, 2007 from Nancy Aufenanger, an abutting property owner against the application (3 pages).
5. A letter dated February 6, 2008 from Michael and Ann O'Meara, 268 Ehrhardt Road, an abutting property owner in opposition to the application.
6. Thirty five pictures of property and sink holes submitted by abutting property owner.

On March 7, 2007 the Board consented to the Planning Board as Lead Agency for SEQRA review purposes with respect to Byrne Subdivision Plan, 258 Ehrhardt Road, Pearl River, N.Y. 69.05 / 4 / 41; R-15 zone. The Planning Board declared itself Lead Agency on March 7, 2007 and made a Negative Declaration on that date.

At the meeting of December 5, 2007 Donald Brenner, Attorney testified that this is a simple subdivision; that it has received a preliminary approval and a negative declaration for SEQRA; that they are before this Board for minor variances; that the map that was just distributed shows how many similar subdivisions there are in the area; that he sympathizes with the neighbor regarding the drainage in the area because of the wetlands but the proper forum for drainage discussion is the Planning Board; that this area was hooked up to the sewer system in 1957; that the Army of Corp of Engineers has jurisdiction to establish the limit of disturbance for this application; the wetland lines extend both north and south of this property; that the Byrne's are subdividing for estate purposes; that the Hansen subdivision was filed in 2006 and the driveways of the Hansen subdivision are abutting each other; and that Orangeburg pipe was used for the sewers in this area.

Jay Greenwell, Land Surveyor testified that there are many similar lots in the area that have access by flag lot or private right-of-way; that flag lots are a norm for this neighborhood; that the rear lot of lot #2 ends at the wetlands; that they are not proposing anything for the wetlands; that they are under the Army Corps. Jurisdiction; that there is 54,000 sq. ft. being split up for the two proposed lots; that the total side yard should be corrected to 44.5 feet; that he drainage is going to be mitigated with the filing of this subdivision; that the Planning Board is requiring an intercepting drain and four catch basins between this property and Ms. Aufenanger's property; that this will convey the driveway run-off onto the street; and that the drainage situation will actually be improved by this.

Patrick Byrne testified that 42, 43 and 44 were subdivided in 1969 or 1970; that he owns #43 and lives there; that #44 belongs to Brennan and he built in 1970; that the

Orangeburg pipe on lot #1 collapsed and he had people come and work a telescope and they discovered that it was collapsed and needed to be replaced; that a trench was dug and the pipe was replaced out to the street; that it rained while this repair was being done and although the pipe was covered up, a depression did occur the next day; that the plumbing contractor came back and said that the ground had to settle a little bit but he added stone and dirt and since then it looks normal.

Public Comment:

Nancy Aufenanger, 264 Ehrhardt Road, testified that she lives in the house next door to lot #1; that there is too much water in this area; that more impervious area will only make a bad situation worse; that she does not want to lose her home; that this proposed construction could flood her out; that the pictures show the condition of the site; and that she requests that the Board walk the property.

At the meeting of February 6, 2008 Patrick and Anne Byrne , Donald Brenner, Attorney, and Jay Greenwell, Land Surveyor, appeared and testified.

Donald Brenner testified that this application received a preliminary approval on March 14, 2007; that the Planning Board granted a negative declaration for SEQRA on the same date; that last time they appeared before the Zoning Board and requested a continuance to include a request for a gravel driveway and to clarify the bulk table; that the exhibit that was passed around last time has been updated to show the lots with wetlands in the area; that the drainage to the north is being installed to mitigate the existing condition; that the O'Meara property is in the wetlands; that Mr. Hansen has a problem with the condition of the property and should go to the Building Department and file a complaint because the new maintenance law would help him; that his client is fixing a problem that someone else caused; that it would not be fair to demand that this be done until the applicant decides to build.

Jay Greenwell, L.S., testified that the bulk table has been clarified; that the gravel driveway has been added to the requested variances; that minor adjustment was made to lot #2 to make the front yard conform; that there are similar lots to the north and south of this lot; that the area of wetlands is shown; that the house was shifted further toward Ehrhardt away from the wetlands; that the chain link fence will be removed; that five field inlets will be added for surface /ground water and sent to the street; that the property drains cross pitch to the north there will be an interceptor drain (French drain) with a four foot differential; the property goes from 278 to 274 in that area; that the perforate pipe will be set in gravel and have filter fabric barrier and will carry the runoff out to the street storm drain; that the new paved driveway on lot #2 will have a macadam swale to direct the water out to the street drain; that the new construction will have properly sized drywell gallery diverted to the roadway; but the drywells will store the overflow from the roof; that the five field inlets and French drain will improve an existing bad situation for the neighbor; that the line of the subdivision was made at less of an angle and the back corner of the house was moved 2'; that the line along the north property line originally went straight to the street but is now more perpendicular; that the interceptor drain along the existing gravel driveway will be directed toward the street; that it will help the existing problem; that it will not completely end the problem but it will take the run-off to the street and will improve Mrs. Aufenanger' problem.

Patrick Byrne testified that he has owned the property since 1984; that he added gravel to the existing driveway within the last 18 months; that he is asking to keep the existing driveway because he does not want to add more impervious surface to the property; that Mr. Hansen has a gripe with him from years ago; that Mr. Hansen sold him the property; that there was a problem with the Title Insurance at the time; that he has moved passed it; and that he and Ann will do everything possible to help the neighbors with the drainage problems.

Public Comment:

Nancy Aufenanger, 264 Ehrhardt Road, an abutting property owner submitted pictures that were taken last week-end. She testified that she is against the granting of any variances for the property; that she submitted a letter dated November 27th that told of her

flooded basement; that she doesn't understand how lot #1 was shortened and the side yard changed when the house was only moved two feet; that she has drainage concerns and does not think that they have been addressed; that she wants to know who she would turn to for help if this house causes more drainage problems for her.

Ann O'Meara, 268 Ehrhardt Road, an abutting property owner stated that she lives adjacent to the proposal and that her lot is useless for a portion of the year and that it will get worse with another house built so close to the wet lands; that she is concerned about what will happen when the vegetation is removed and more impervious surfaces are added; and that she does not see anything on the plans to mitigate the problem.

Rudy Hansen, 240 Ehrhardt Road, testified that the posting was hard to see; that he is opposing the subdivision; that Mr. Byrne is not a good landlord; that he doesn't keep the property in good repair; that he makes no improvements; that he is only concerned with himself; that the short driveway should be improved to drain toward Ehrhardt Road; that if this is about estate planning when would the improvements be made?

The Board members made personal inspections of the premises the week before the meeting and found them to be properly posted and as generally described on the application.

A satisfactory statement in accordance with the provisions of Section 809 of the General Municipal Law of New York was received.

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing the documents presented, the Board found and concluded that:

1. The requested street frontage variance for lot #2 lot width, total side yard and gravel driveway variances for lot #1 as conditioned would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.
2. The requested street frontage variance for lot #2 and lot width, total side yard and gravel driveway variances for lot #1 as conditioned would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
3. The benefits sought cannot be achieved by other means feasible for the applicant other than obtaining variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested street frontage for lot #2 and lot width, total side yard and gravel driveway variances for lot #1 is APPROVED with the following SPECIFIC CONDITION: the drainage plan along the existing gravel driveway on proposed lot #1 shown on page 2 of the plans labeled "Grading, Drainage and Utilities Byrne" dated 11/28/06 with the latest revision date of 12/07/07 shall be implemented and completed no later than within one year of the stamping of this decision; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

(i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.

(ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted

herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.

(iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.

(iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.

(v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown granting any required final approval to such project, whichever is later, but in any event within two years of the filing of this decision. Merely obtaining a Building Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute "substantial implementation" for the purposes hereof.

Mr. Sullivan made a motion to deny the application for the requested street frontage for proposed lot #2 and the lot width, total side yard and gravel driveway variances for proposed lot #1, which motion was seconded by Ms. Albanese and failed to carry.

The foregoing resolution to approve the application for the requested street frontage for proposed lot #2 and lot width, total side yard and gravel driveway variances for proposed lot #1 with specific conditions was presented and moved by Ms. Castelli, seconded by Mr. Doherty, and carried as follows: Mr. Sullivan, nay; Mr. Mowerson, aye; Ms. Castelli, aye; Mr. Doherty, aye; and Ms. Albanese, nay.

The Administrative Aide to the Board is hereby authorized, directed and empowered to sign this decision and file a certified copy thereof in the office of the Town Clerk.

DATED:
February 6, 2008

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR -N.A.

TOWN CLERK
HIGHWAY DEPARTMENT
ASSESSOR
DEPT. of ENVIRONMENTAL
MGMT. and ENGINEERING
FILE,ZBA, PB
CHAIRMAN, ZBA, PB, ACABOR

DECISION

FLOOR AREA RATIO VARIANCE AND PARKING VARIANCE APPROVED WITH CONDITIONS

To: Donald Brenner (21 East Central)
1 Independence Avenue
Tappan, New York 10983

ZBA # 08-08
Date: 1/ 16/ 08

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#08-08: Application of 21 East Central Avenue for variances from Chapter 43, Section 3.12, CS District, Group FF, Column 4 (Floor Area Ratio: 1.00 permitted, 2.98 existing and proposed: note assessors records do not agree with the sq. ft. submission), and from Section 3.11, CS District,, Column 6 # 4 (One parking space per 200 sq. ft. retail/office use , required: 97 spaces ; 0 spaces provided) for retail stores and offices in an existing building. The premises are located at 21 East Central Avenue, Pearl River, New York, and are identified on the Orangetown Tax Map as Section 68.16, Block 6, Lot 62; CS zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, January 16, 2008 at which time the Board made the determination hereinafter set forth.

Ed Lane, James Tanner, Architect, Peggy Connolly, Real Estate Agent and Donald Brenner, Attorney, appeared and testified.

The following documents were presented:

1. Architectural plans dated 11/21/07 signed and sealed by James Tanner, Architect.
2. Print out of the property from the tax assessor's office.
3. A letter dated November 29, 2007 from John Giardiello, P.E., Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown.
4. A letter dated November 16, 2007 from Donald Brenner, Attorney.
- 5.
6. A letter dated October 25, 2007 from John Giardiello, P.E., Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown.
7. Bulk table signed and sealed by James Tanner, Architect.
8. A typed status report from Cheryl Coopersmith, Chief Clerk.
9. Planning Board Decision #07-71 dated September 6, 2007 (7 pages).
10. A letter dated January 16, 2008 from the County of Rockland Department of Planning signed by Salvatore Corallo, Commissioner of Planning.
11. 10. A letter dated January 8, 2008 from the County of Rockland Department of Highways signed by Sonny Lin P.E.
12. Several referrals from the Building Department with the following dates: 4/11/07, 6/29/07 and 12/7/07.
13. Seven pictures of the existing building.
14. Architectural and Community Appearance Board of Review Decision #07-28 dated May 1, 2007.
15. A tax revenue projection prepared by applicant.
16. Estimated cost of improvement to the existing building prepared by applicant.

Donald Brenner, Attorney testified that he would like an interpretation from the Town Attorney on the Rockland County Highway letter dated January 8, 2008 because it contradicts itself; that the Planning Board acknowledged that there are three municipal lots in the area for parking; that this building was formerly a movie theatre; that it operated as a movie theatre since 1929 and ceased operation in 1999; that on November 29, 2004 the applicant attempted to use the building for stores below and senior housing above but it was decided that this proposal would not be an asset to downtown Pearl River; that on March 14, 2007 the applicant applied for a permit for stores/office space and was referred to ACABOR; the applicant was told at that meeting that they did not

want the gable roof and that the building should be used as constructed with a brick façade on the bottom portion and stucco façade on the second and third floor with double hung windows; that the roof line should not be changed; the applicant then proceeded to get the building permit and was told that he had to appear before the Planning Board; the applicant appeared before the Planning Board on September 6, 2007 and in Planning Board Decision #07-71 the applicant received a negative declaration for SEQRA and a preliminary and final approval with conditions; that condition #4 states that "The gross building area is 19,742 sq. ft. and the proposed conversion of the interior space results in a gross building area of 19,742 sq. ft. The area of the building is not being increased."; that this has not changed; that condition #5 states "That the Planning Board voted 5-0 to override condition #2 of the Rockland County Highway letter; that the applicant once again requested his building permit and was told to go the Zoning Board; that the use proposed now is a permitted use and the movie theatre was not a permitted; that the applicant is making a four million dollar investment, has owned the property since 2004 and with the building fully rented at \$15.00 a sq. ft. his return would be 6.9%; that the variance requested is for the existing parameters of the existing building; that the proposed use is a permitted use for the zone, unlike the pre-existing theatre; that this application does not cause an undesirable change to the character of the neighborhood; that this will be the first elevated building in Pearl River; that he request is not substantial considering that the building is not being enlarged; that the existing building has been closed for nine years and the improvements to the façade of the building will be positive for the area; that the parking situation can be accommodated by the municipal lots that are easily within walking distance from the building; that both of the members of the public that spoke own real estate and do not want more competition for rental space; and that the Griffin and Joyce Realty parking lots are under-utilized..

James Tanner, Architect, testified that the requested floor area ratio is 2.98; that there is no change in the size of the building; that the discrepancy between his measurements and the tax assessor might come from the area at which the measurements were taken; that the tax assessor may have measured including the outside balusters; that his measurement did not include them; that the calculations for his floor area ratio formula are based on the first and second floor measuring at 6,445.82 sq. ft., the third floor has 5,342.92 sq. ft. and the fourth floor which is not a full floor has 996.65 sq. ft. for a total square footage of 19,231.21 sq. ft.; that the lot size is 6,454.54; that the requested floor area is 2.98; that the top floor does not go the front of the building; that it is a mezzanine; that cellar exists under the stage and at the rear of the building; that it is not under the whole building; that the basement will not exist after the first floor is leveled; that presently the first floor is sloped; that there is 6' x 12' shed attached to the building in the rear that could house a dumpster; and as you can see from the pictures other building owners have their dumpsters in the rear of the building now.

Ed Lane testified that the fourth floor already exists; that he had planned on making it part of one of the third floor offices and a mezzanine but he would agree to use it for storage only; that the plan calls for five retail stores on the first level and the office space has not been determined yet; that Orange & Rockland has requested a utility room and generator; that he was looking into building a utility room within the building to house garbage but he also has the shed in the rear of the building that could be used for a garbage dumpster

Public Comment:

Jim Amann, 14 North Main Street, testified that he owns the building that Joyce Realty is in; that there is not adequate parking for more stores in the area; that the garbage removal has not been addressed; and that the parking by Joyce Realty is not fully used but it cannot hold an additional 97 cars.

Don Kennedy, owner of 2-6 East Central Ave., testified that he disagrees with the applicant's attorney about how easy it is to find parking in Pearl River; that the Board should do what Nyack does when a business wants to open without parking on-site, sell spaces for \$20,000.00 each; that would be beneficial to the Town of Orangetown; and

that the Board should consider that the offices would need 9-5 parking.

Mr. Mowerson made a motion to re-open the Public Hearing, which motion was seconded by Ms. Castelli and carried as follows: Mr. Sullivan, aye; Ms. Castelli, aye; and Mr. Mowerson, aye.

At the February 6, 2008 meeting Mr. Brenner, Attorney and Ed Lane appeared and testified.

The following items were submitted:

1. Skyview Development Complex Exhibit Showing Proximity to Municipal Parking Lots.
2. Five pictures of parking lots in the area.

Mr. Brenner testified that the Board heard the matter at the last meeting and voted ; that the statute is pretty clear on these matters; that there was no objection to the floor area ratio from the county; that he is providing the Board with a map showing off-site municipal parking in the area; that the Town purchased these properties from Town money supplied from the parking meters; that lot #2 is approximately 300' from the site; that there are metered parking spaces on East Central, South William Street, North William Street, South Main Street, North Main Street and there are two other municipal lots in the area labeled on the map as #11 and #79; that there is a cross walk at East Central and William Streets; that the municipal lots are under utilized; that there is no new work being done at the site; that there will not be any change to drainage and grading profiles; that the sidewalk already exists; that the designated right-of-way is not being changed; that there will not be any exterior construction; that the "Our Town" states that there are 28 parking spaces in lot #2; that lot #19 has 34 permit spaces and 19 two-hour meter spaces; that he does not know how many spaces are in lot #79; that Ms. LoHogan should not influence this Board because the "Zoning Board is a separate independent entity from the Town Board; that she is a liaison to see the operations of the Board; that he has no problem with Mr. Gazzetta's lack of objection to the project; that the neighbor, Mr. Amann is a competitor; that some of the pictures that Mr. Amann submitted are for private lots; that downtown Pearl River needs development; that this will be a four million dollar building; and that the applicant has no problem dedicating the fourth floor for storage by tenants only.

Kevin Mulhearn, Attorney to the Zoning Board stated that the decision from the January 16, 2008 meeting was not stamped and filed; that it is not considered an official decision until such time; and that he would investigate the total number of parking spaces in the three municipal lots.

Public Comment:

Bob Gazzetta testified that he knows a little about Pearl River; that 22 years ago he purchased lots in Pearl River; that he has no objection to Mr. Lane's proposal; that he would like the same consideration if he appears before the Board; and that he has lots haven't sold and have been listed for over a year.

Jim Amann testified that he owns the adjoining building to the north; that he took pictures of the lots; that they are not underutilized as Mr. Brenner has stated; and that lot #79 is a commuter lot.

Nancy LoHogan, testified that she understands that the parking issue is directly connected to the floor area ratio; that the floor area ration should be considered; that by adding floors the floor area ratio is being increased, which is increasing the parking requirements.

The Board members made personal inspections of the premises the week before each meeting and found them to be properly posted and as generally described on the application.

A satisfactory statement in accordance with the provisions of Section 809 of the General Municipal Law of New York was received.

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing the documents presented, the Board found and concluded that:

1. The requested floor area ratio and parking variances would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties.
2. The applicant provided the Board with a location map showing the three municipal parking lots in the area; and is responsible to submit to the Board the number of parking spaces in each lot.
3. The movie theatre never had on-site parking. Under the current zoning requirements, a movie theatre would have required one parking space per 5 seats and since the occupancy of the movie theatre was 650 patrons, it would have required 130 parking spaces. The proposed use, business/commercial, would require one parking space per 200 sq. ft. or total 97 parking spaces. Since the parking requirement for the proposed use does not exceed the parking requirement for the existing use and the building footprint is remaining the same; then the existing parking requirement for the building would not be increased. The parking proposed for the use, moreover, would constitute a reduction of the pre-existing non-conformance regarding parking while the movie theatre was operational.
4. The proposed use of retail/office space is a permitted use in the CS District.
5. The gross building area is 19,742 sq. ft. and the proposed conversion of the interior space results in a gross building area of 19,742 sq. ft. The area of the building is not being increased.
6. The applicant has agreed to limit the use of the 996.65 sq. ft. mezzanine for storage to be used by tenants of the building only.
7. The requested floor area ratio and parking variances would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
8. The benefits sought cannot be achieved by other means feasible for the applicant other than obtaining variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested floor area ratio and parking variances is APPROVED with the SPECIFIC CONDITIONS that: (1) the fourth floor mezzanine space (996.65 sq. ft.) be used for storage only by tenants of the building; (2) the applicant submit the number of parking spaces in each of the municipal lots for review by the Town Attorney; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

(i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.

(ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.

(iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been

submitted to the Board solely for informational and verification purposes relative to any variances being requested.

(iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.

(v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown granting any required final approval to such project, whichever is later, but in any event within two years of the filing of this decision. Merely obtaining a Building Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute "substantial implementation" for the purposes hereof.

The foregoing resolution to approve the application for the requested floor area ratio and parking variances as conditioned was presented and moved by Mr. Mowerson, seconded by Ms. Albanese, and carried as follows: Mr. Sullivan, aye; Mr. Mowerson, aye; Ms. Castelli, aye; Mr. Doherty, aye; and Ms. Albanese, aye.

The Administrative Aide to the Board is hereby authorized, directed and empowered to sign this decision and file a certified copy thereof in the office of the Town Clerk.

DATED: February 6, 2008

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR -L.P.

TOWN CLERK
HIGHWAY DEPARTMENT
ASSESSOR
DEPT. of ENVIRONMENTAL
MGMT. and ENGINEERING
FILE.ZBA, PB
CHAIRMAN, ZBA, PB, ACABOR

DECISION

TOTAL SIDE YARD VARIANCE APPROVED

To: Jane Slavin (O'Loughlin)
25 Greenbush Road
Orangeburg, New York 10962

ZBA # 08-10
Date: 2/ 6/ 08

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#08-10: Application of Joseph and Maureen O'Loughlin for variances from Chapter 43, Section 3.12, R-15 District, Group M, Column 10 (Total Side Yard: 50' required, 46.1' existing) for an existing deck at a single-family residence. The premises is located at 12 Naomi Place, Pearl River, New York, and are identified on the Orangetown Tax Map as Section 69.18, Block 2, Lot 84; R-15 zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, February 6, 2008 at which time the Board made the determination hereinafter set forth.

Joe and Maureen O'Loughlin and Jane Slavin, Architect, appeared and testified.

The following documents were presented:

1. Site plan dated 10/9/07 signed and sealed by Jane Slavin, Architect

On advice of Mr. Mulhearn, Attorney to the Zoning Board of Appeals, Mr. Mowerson moved for a Board determination that the foregoing application is a Type II action under SEQRA regulations which does not require SEQRA environmental review. The motion was seconded by Mr. Sullivan and carried as follows: Mr. Doherty, aye; Mr. Sullivan, aye; Ms. Castelli, aye; Ms. Albanese, aye; and Mr. Mowerson, aye.

Joe O'Loughlin testified that he and his wife purchased the house in 1997; that the deck was there when they bought the house; that they found out that the deck was not legal when they did the addition to the house; and that they are before the Board to bring it into compliance.

Maureen O'Loughlin testified that they have three children aged 9, 7, and 3; and that they have been in the house ten years.

Jane Slavin, Architect, testified that they are asking for a variance of 3.9', submitting pictures of the property; that the pictures show there is a quite a bit of distance between neighbors; that there is no change to the east set back; and that the deck goes from one foot to three feet off the ground.

Public Comment:

No public comment.

The Board members made personal inspections of the premises the week before the meeting and found them to be properly posted and as generally described on the application.

A satisfactory statement in accordance with the provisions of Section 809 of the General Municipal Law of New York was received.

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing the documents presented, the Board found and concluded that:

1. The requested total side yard variance would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. The deck existed when the house was purchased in 1997 and the pictures submitted show that there is a large distance between neighboring houses.

2. The requested total side yard variance would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
3. The benefits sought cannot be achieved by other means feasible for the applicant other than obtaining a variance.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested total side yard variance is APPROVED; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

(i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.

(ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.

(iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.

(iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.

(v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown granting any required final approval to such project, whichever is later, but in any event within two years of the filing of this decision. Merely obtaining a Building Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute "substantial implementation" for the purposes hereof.

The foregoing resolution to approve the application for the requested total side yard variance was presented and moved by Mr. Doherty, seconded by Ms. Castelli, and carried as follows: Mr. Sullivan, aye; Mr. Mowerson, aye; Ms. Castelli, aye; Mr. Doherty, aye; and Ms. Albanese, aye.

The Administrative Aide to the Board is hereby authorized, directed and empowered to sign this decision and file a certified copy thereof in the office of the Town Clerk.

DATED: February 6, 2008

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR -B.vW.

TOWN CLERK
HIGHWAY DEPARTMENT
ASSESSOR
DEPT. of ENVIRONMENTAL
MGMT. and ENGINEERING
FILE.ZBA, PB
CHAIRMAN, ZBA, PB, ACABOR

DECISION

**PARKING IN REQUIRED YARDS AND OUTDOOR LOADING BERTH
VARIANCES APPROVED**

To: Roisin McEnroe (Prestige Bldg. 14)
500 Bradley Hill Road
Blauvelt, New York 10913

ZBA # 08-13
Date: 2/ 6/ 08

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#08-13: Application of Prestige Motors for a variance from Chapter 43, Section 3.11, LO District, Column 7 # 2 (Loading Berths shall be within completely enclosed buildings) and # 3 (Parking in required yards requires Board approval) for the parking of new vehicles outside. The premises are located on the west side of Bradley Parkway, 500 feet west of the intersection of the Conrail railroad racks, also known as Building 14 Bradley Corporate Park, Blauvelt, New York, and are identified on the Orangetown Tax Map as Section 65.18, Block 1, Lot 1.12 and Section 65.18, Block 1, Lot 22; LO zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, February 6, 2008 at which time the Board made the determination hereinafter set forth.

Bert Dorfman, Attorney, Dan Mellin and Joe Corless, P.E. and P.L.S., appeared and testified.

The following documents were presented:

1. Architectural plans dated 12/27/07 signed and sealed by William A. Truss P.E. labeled as follows:
 - A-1 Ground Floor Plan
 - A-2 Elevations
 - S-1 Foundation plan
 - S-2 Roof Framing Plan
 - S-3 Typical Details, Notes & Sections
2. Building layout Plan labeled Bradley Industrial Park Section IV Building 14 signed and sealed by William A. Truss, P.E. dated 12/27/07
3. Site plan labeled Prestige Motors Building 14 dated 12/28/07 signed and sealed by Joseph Corless, P.E.
4. Development plan for Bradley Industrial Park Section IV signed and sealed by Joseph Corless, P.E. dated May 1, 2007.
5. A letter dated February 6, 2008 from the County of Rockland Department of Planning signed by Salvatore Corallo Commissioner of Planning.

Bert Dorfman, Attorney, Dan Mellin and Joseph Corless, P.E. appeared and testified.

Bert Dorfman, Attorney, testified that they are before the Board with an approved signed site plan ; that they are requesting two variances; that the footprint for the building is the same; that it will be an 111,000 sq. ft. building; that they are proposing three loading berths facing the railroad tracks; that that the loading docks will be moved away from the residential property; that they will talk to Jim Dean regarding the requested easement; that they are planning on storing cars for Prestige Motors on the lot; that the approved site plan did not show any screening or fencing; that they are proposing an 8' fence around the entire area that would be 25' away from the residential properties with staggered evergreens planted outside the fence; that previously approved building could have been 50' high but they are proposing a 35' tall building; that the approved building #13 is not being constructed for at least 15 years and that building was approved with 10 exterior loading docks; that the entrance to the lot would be from Bradley Hill Road; that the character of the neighborhood would not be changed by this application because it is an LIO zone; that the previously approved site plan was for a larger building and had approval for parking in yards; and that building #13 is not going to be built right now.

Joe Corless, Engineer, testified that the proposed 8' fence would shield the vehicles from the residential area; that the tallest vehicle is between 5 ½ and 6' high; that the entire area would be fenced and gated; that the lot could hold up to 1400 cars; and that the intensity of this proposal is less than what was approved in the approved site plan.

Bill Berardino, Prestige Motors testified that this facility would be used for storage and prep of the new cars before they are delivered to the stores in Paramus and Ramsey; that they turn around approximately five or six hundred cars a month; that the hours of operations would be from 7A.M. to 6 or 6:30 P.M.; that there would be 11 technicians and a total of twenty employees at the site; that the cars would have the computers set at the site and radio units installed and the tape would be removed and the cars prepped for delivery; the hours of car delivery are between 8:00 A.M. and 4:00 P.M.; and that the cars stored at the facility would be Mercedes, Lexus and Land Rovers.

Public Comment:

Mark Aaron, 2 Harding Place, testified that he would like to know about the clearing and preparation of the road; the hours of delivery of the cars and more information about the screening.

The Board members made personal inspections of the premises the week before the meeting and found them to be properly posted and as generally described on the application.

A satisfactory statement in accordance with the provisions of Section 809 of the General Municipal Law of New York was received.

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing the documents presented, the Board found and concluded that:

1. The requested outdoor loading berth and parking in yards variances would not produce an undesirable change in the character of the neighborhood or a detriment to nearby properties. This proposal is much less intense than the previously approved site plan.
2. The requested outdoor loading berth and parking in yards variance would not have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.
3. The applicant has volunteered an eight foot fence 25' from the residential property with staggered evergreens outside of the fence as added screening.

4. The benefits sought cannot be achieved by other means feasible for the applicant other than obtaining variances.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for the requested outdoor loading berth and parking in yards variances is APPROVED with the following CONDITION: (1) an eight foot fence 25' from the residential property with staggered evergreens outside of the fence as added screening shall be installed as approved by ACABOR; and FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

(i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.

(ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.

(iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.

(iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.

(v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown granting any required final approval to such project, whichever is later, but in any event within two years of the filing of this decision. Merely obtaining a Building Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute "substantial implementation" for the purposes hereof.

The foregoing resolution to approve the application for the requested outdoor loading berth and parking in yards variances was presented and moved by Ms. Castelli, seconded by Mr. Sullivan, and carried as follows: Mr. Doherty, aye; Mr. Sullivan, aye; Mr. Mowerson, aye; Ms. Castelli, aye; and Ms. Albanese, aye.

The Administrative Aide to the Board is hereby authorized, directed and empowered to sign this decision and file a certified copy thereof in the office of the Town Clerk.

DATED: February 6, 2008

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR -L.P.

TOWN CLERK
HIGHWAY DEPARTMENT
ASSESSOR
DEPT. of ENVIRONMENTAL
MGMT. and ENGINEERING
FILE,ZBA, PB
CHAIRMAN, ZBA, PB, ACABOR

DECISION

**PERFORMANCE STANDARDS SECTION 4.12 VARIANCE APPROVED
WITH CONDITIONS**

To: Roisin McEnroe (Dealer Tire)
500 Bradley Hill Road
Blauvelt, New York 10913

ZBA # 08-14
Date: 2/ 6/ 08

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#08-14: Application of Dealer Tire pursuant to Section 4.1 and 10.334 for Use Subject to Performance Standards review with respect to the storage and wholesale distribution of new passenger tires. Premises are located at (Building 16) 500 Bradley Hill Road, Blauvelt, New York and are identified on the Orangetown Tax Map as Section 65.18, Block 1, Lot 1.12; LO zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meeting held on Wednesday, February 6, 2008 at which time the Board made the determination hereinafter set forth.

Dan Mellin and Joe Corless, P.E.AND Frank Meier, Dealer Tire, appeared and testified.

The following documents were presented:

1. Architectural plans dated 9/18/98 signed and sealed by William Truss, P.E. and labeled as follows:
 - A-1 Floor Plan
 - A-2 Elevations
 - S-1 Foundation Plan
 - S-2 Roof Framing Plan
 - S-3 Typical Details & Notes
2. Site Plan Dealer Tire Building 16 dated 12/10/07 signed and sealed by Joseph Corless, P.E.
3. Development Plan Bradley Industrial Park Section IV dated May 1, 2007 signed and sealed by Joseph Corless, P.E.
4. Use Subject to Performance Standards form (3 pages) signed by John Magee dated January 3, 2008.
5. Fire Prevention Supplement
6. A cover letter dated December 26, 2007 signed by Frank Meier, Dealer Tire.
7. A memorandum dated 2/6/08 from James J. Dean, Superintendent of Highways, Town of Orangetown.
8. A memorandum dated January 15, 2008 from Ron C. Delo, P.E., BCCE, Department of Environmental Management and Engineering, Town of Orangetown.
9. A memorandum dated 1/29/08 from Michael B. Bettmann, Chief Bureau of Fire Prevention, Town of Orangetown.

Joe Corless, P.E., testified that he will honor the request from James Dean for easement and will discuss it with him.

Frank Meier testified that Dealer Tire is in the business of supplying passenger car tires to car dealers; that they deal in Michelin, Goodyear and Bridgestone tires; that this facility would be for warehousing tires; that one semi trailer per day would be delivering tires and 6 or 7 vans and/or 10' box trucks would be delivering tires to dealers daily; that between their Lyndhurst location and this one they would be delivering to fifty or sixty dealers; that they do not take used tires into their facility; that recalled tires are sent from the car dealer directly to the recall center; and that new tires do not have an odor.

Public Comment:

Bridget Mc Elligott, 4 Avis Court, testified that she would like to see a buffer of trees added to the north and westerly side of building 16 along the former Rilling property.

The Board members made personal inspections of the premises the week before the meeting and found them to be properly posted and as generally described on the application.

On the advice of Mr. Mulhearn, Attorney to the Zoning Board of Appeals, the Board determined that the proposed action is classified as an "unlisted action" as defined by Section 617.2 (ak) of the New York State Environmental Quality Review Regulations (SEQRR). No agency other than the Orangetown Zoning Board of Appeals will have any significant involvement in the Performance Standards Conformance Review process, pursuant to Section 617.6 of SEQRA. On motion by Mr. Mowerson, seconded by Ms. Castelli, and carried as follows: Mr. Sullivan, aye; Mr. Doherty, aye; Ms. Castelli, aye; Ms. Albanese, aye; and Mr. Mowerson, aye; the Board declared itself as Lead Agency for Performance Standards Conformance Review.

The Orangetown Zoning Board of Appeals, as Lead Agency, determined that the proposed action will not have a significant impact on the environment and a Draft Environmental Impact Statement (DEIS) will not be prepared. The reasons supporting this determination are as follows:

It will not have a significant impact upon the environment and a DEIS will not be prepared because the proposed action does not significantly affect air quality, surface or ground water quality, noise levels, drainage or existing traffic patterns. In addition, it will have no impact upon the aesthetics, agricultural or cultural resources of the neighborhood and no vegetation, fauna or wildlife species will be affected as a result of the proposed construction. The proposed action is consistent with the Town's Master Plan and will not have any adverse economic or social impacts upon the Town of Orangetown.

On motion by Mr. Mowerson, seconded by Ms. Castelli, and carried as follows: Mr. Sullivan, aye; Mr. Mowerson, aye; Ms. Castelli, aye; and Ms. Albanese, aye, the Board made a Negative Declaration.

A satisfactory statement in accordance with the provisions of Section 809 of the General Municipal Law of New York was received.

The Performance Standards Resume of Operations and Equipment, and the Fire Prevention Supplement completed by the applicant were thereupon reviewed in detail.

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing the documents presented, the Board found and concluded that:

1. Based upon the information contained in applicants' Resume of Operations and Equipment, the Fire Prevention Supplement, Short Form Environmental Form, the letter of the Director of the Orangetown Department of Environmental Management and Engineering concluding there is no reasonable doubt as to the likelihood of applicant's conformance, the other documents presented to the Board and the testimony of applicant's representatives, the Board finds and concludes that conformance with the Performance Standards set forth in Code Section 4.1 will result sufficient to warrant the issuance of a Building Permit and/or Certificate of Occupancy, subject to compliance with the orders, rules and regulations of the Building Department and all other departments having jurisdiction of the premises.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: RESOLVED, that the application for Performance Standards Conformance is APPROVED with the SPECIFIC CONDITIONS that the applicant adhere to all of the requirements set forth by the Fire Safety Bureau; the Department of Environmental Management and Engineering, the Highway Department: (The applicant shall provide a turn-around easement, west of the railroad crossing, for the Town of Orangetown Highway Department snow and ice control, as well as other road maintenance responsibilities); and screening between building 16 and the residential area shall be approved by ACABOR; AND FURTHER RESOLVED, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

- (i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.
- (ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.
- (iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.
- (iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.
- (v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown granting any required final approval to such project, whichever is later, but in any event within two years of the filing of this decision.

Merely obtaining a Building Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute "substantial implementation" for the purposes hereof.

The foregoing resolution to approve the application for the requested Performance Standards variance with conditions was presented and moved by Mr. Mowerson, seconded by Ms. Albanese, and carried as follows: Mr. Sullivan, aye; Mr. Mowerson, aye; Ms. Castelli, aye; Mr. Doherty, aye; and Ms. Albanese, aye.

The Administrative Aide to the Board is hereby authorized, directed and empowered to sign this decision and file a certified copy thereof in the office of the Town Clerk.

DATED: February 6, 2008

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
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OBZPAE
BUILDING INSPECTOR -L.P.

TOWN CLERK
HIGHWAY DEPARTMENT
ASSESSOR
DEPT. of ENVIRONMENTAL
MGMT. and ENGINEERING
FILE.ZBA, PB
CHAIRMAN, ZBA, PB, ACABOR

DECISION

BUILDING DEPARTMENT DETERMINATION UPHELD

To: Kevin Conway (Blauvelt Car Wash Inc.) ZBA # 07-106
51 North Broadway Date: 11/ 7/ 07
Nyack, New York 10960 2/6/08

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA#07-106: Application of Blauvelt Car Wash Inc. for an interpretation/appeal of the administrative determination and /or continued usage on premises of the existing hand carwash and auto detailing center and/or in the alternative, a request for variance for the continued usage of same. Premises are located at 585 Route 303. Blauvelt, New York and are identified on the Orangetown Tax Map as Section 70.10, Block 3, Lot 16; CC zone.

Heard by the Zoning Board of Appeals of the Town of Orangetown at meetings held on the following Wednesdays, November 7, 2007 and January 16, 2007 at which time the Board made the determination hereinafter set forth.

Byung Lee Kevin Conway, Attorney, and appeared and testified.

The following documents were presented:

1. Survey dated 8/31/05 by Jay Greenwell, PLS.
2. Drawings for car detailing center by Hess Architects dated 3/8/07.
3. A letter dated August 3, 2007 from John Giardiello, Director, Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown.
4. Criminal Summons dated July 31, 2007 to Mr. Byung Lee.

5. Certificate of Occupancy dated 10/27/2006
6. Certificate of Compliance –Fire Safety dated 10/15/2008.
7. Planning Board Decision 302-127; ACABOR Decision #02-54; Planning Board Decision #02-78.
8. A letter date October 31, 2007 from the County of Rockland Department of Planning signed by Salvatore Corallo, Commissioner.
9. The back page of a building permit application dated 10/23/06.
10. A letter dated September 5, 2007 from the County of Rockland Department of Health signed by Scott McKane, P.E.
11. A letter dated September 26, 2007 from the County of Rockland Drainage Agency signed by Edward F. Devine, Executive Director.
12. A business card advertising \$2.00 hand car wash.
13. Advertisement for Blauvelt Auto Spa with prices for hand car wash without detailing.

Mr. Kevin Conway, Attorney, testified that they are before the Board for an appeal from the determination by the Building Inspector concerning the certificate of occupancy issued August 3, 2007 and for an interpretation of the same; that a further interpretation of the previous certificate of occupancy issued for cars to be hand washed , cleaned waxed and stripped; that Peter Cuomo in 2002 went in front of the Boards for this property and it was changed from a meat packing company to a car detailing site; that in order to detail a car it must be washed and cleaned; that this business subsequently was conveyed to Mr. Lee and alterations were made and a certificate of occupancy was issued which included hand washing; that on August 3, 2007 a new certificate of occupancy was issued without request by Mr. Lee which deleted the hand washing, leaving only car detailing center; that there was no practical reason to remove the hand car wash from the certificate of occupancy; that this is like having a pizza shop facility and because it has an oven labeling it a bakery and stating that it cannot serve pizza; that the hand washing is just one of many services that are offered; that a car cannot be detailed without first being washed; that as part of the ala carte service a customer can come in and get just a hand car wash or his engine steam cleaned; that another facility in the area that offers detailing is a car wash; that this facility complained about this establishment; that it was not within the Director's prevue to change the certificate of occupancy; that the applicant has had lawful approvals and in August gets a letter stating that he cannot "hand wash"; that the detail center cannot operate without hand washing; that it is not a separate operation; that his client would not engage in any more discount offers; and that he would like to request a continuance until the December 5, 2007 meeting.

Public Comment:

Donald Brenner, Attorney testified that Mr. Conway did a nice job but he didn't present al of the facts; that all of the decisions for this property related to "car detailing operation"; that Mr. Coumo, the previous owner of the business, did not have permission to do individual car washing; that on December 6th the applicant installed new blowers for the car wash without a permit; that the Blauvelt Diner is handing out business cards that advertise a free cup of coffee with a car wash; that there is no mention on the advertisement about car detailing; that the code specifically says that carwashes cannot be located within 400' of residences; that the objection from his client is not out of fear of competition; that his client had to go through all of the proper channels to open his car wash; that he et all of the Town's specifications for operating a car wash legally; that this business is operating in violation of the code; that he does not have the right to wash cars; that he wonders where the water goes; that there should be proper water disposal; and this is an illegal operation and the violation is stayed because he has an application before the Zoning Board.

Lloyd Monaco, Wheeler Court, Blauvelt, testified that he is one of the owners of the Our Town Car Wash; that Peter Cuomo was operating in this location for four years and they never had a complaint about it; that there is a difference between hand washing for a detail and machine washing; that he heard through the grapevine that he was adding equipment; that he should have to abide by the same rules as they did; that washing a car and detailing it takes between 3 and 4 hours; that he has added 3 15 hp blowers to his business and did not get approval for that; that a detailing business does not need that

kind of equipment; that this equipment is car wash equipment; and where is the water going?

Anthony Monaco, owner of the Our Town Car Wash, testified that the new sign for this business says "hand car wash"; that when before he could operate his car wash he had to go before the land use boards and get approval; that Mr. Brenner represented the car wash in Pearl River and they too had to get approval from the land use boards before they could operate; that this is not right; and that the procedure should be the same for all.

At the January 16, 2008 meeting Kevin Conway, Attorney testified that he spoke with his client and that they will rest on their previous submission; that they would like to submit additional paper work for the full Board to review that will show other similar businesses that have hand washing as part of their detailing business; that if it is not permitted as an ala carte item they understand; that they would like the hand washing granted in connection to the auto detailing; that there is no violation for the equipment installed; that it is needed for the auto detailing; that the competitor should not tell this business how to operate; and if the Board says that the equipment needs to be removed that would be grounds for an appeal.

Donald Brenner, Attorney, testified that he thought an agreement was reached but as of December 7th the applicant is still advertising hand washing with take-out from the diner; that the applicant should have to remove the equipment that was installed without a permit.

On January 31, 2008 Mr. Kevin Conway submitted a cover letter and four pictures of businesses that do hand wash and auto detailing and a business card for Bridge Hand Car Wash and Detailing in Fort Lee, N.J.

The Board members made personal inspections of the premises the week before the meetings and found them to be properly posted and as generally described on the application.

A satisfactory statement in accordance with the provisions of Section 809 of the General Municipal Law of New York was received.

FINDINGS OF FACT AND CONCLUSIONS:

After personal observation of the property, hearing all the testimony and reviewing the documents presented, the Board found and concluded that:

1. No case was presented for a use variance.

DECISION: In view of the foregoing and the testimony and documents presented, the Board: **RESOLVED**, that the application for an interpretation/appeal of the administrative determination: Building Inspector Determination Upheld ; continued usage on premises of the existing hand carwash and auto detailing center (which shall permit car washing at the premises, provided that it is done in conjunction with vehicle detailing services); Ala Carte Hand Washing (i.e., car washing done independently of any vehicle detailing services) is Denied; Hand wash in Conjunction with Auto Detailing Service is Approved; and **FURTHER RESOLVED**, that such decision and the vote thereon shall become effective and be deemed rendered on the date of adoption by the Board of the minutes of which they are a part.

General Conditions:

- (i) The approval of any variance or Special Permit is granted by the Board in accordance with and subject to those facts shown on the plans submitted and, if applicable, as amended at or prior to this hearing, as hereinabove recited or set forth.

(ii) Any approval of a variance or Special Permit by the Board is limited to the specific variance or Special Permit requested but only to the extent such approval is granted herein and subject to those conditions, if any, upon which such approval was conditioned which are hereinbefore set forth.

(iii) The Board gives no approval of any building plans, including, without limitation, the accuracy and structural integrity thereof, of the applicant, but same have been submitted to the Board solely for informational and verification purposes relative to any variances being requested.

(iv) A building permit as well as any other necessary permits must be obtained within a reasonable period of time following the filing of this decision and prior to undertaking any construction contemplated in this decision. To the extent any variance or Special Permit granted herein is subject to any conditions, the building department shall not be obligated to issue any necessary permits where any such condition imposed should, in the sole judgment of the building department, be first complied with as contemplated hereunder. Occupancy will not be made until, and unless, a Certificate of Occupancy is issued by the Office of Building, Zoning and Planning Administration and Enforcement which legally permits such occupancy.

(v) Any foregoing variance or Special Permit will lapse if any contemplated construction of the project or any use for which the variance or Special Permit is granted is not substantially implemented within one year of the date of filing of this decision or that of any other board of the Town of Orangetown granting any required final approval to such project, whichever is later, but in any event within two years of the filing of this decision. Merely obtaining a Building Permit with respect to construction or a Certificate of Occupancy with respect to use does not constitute "substantial implementation" for the purposes hereof.

The foregoing resolution to approve the application for an interpretation/appeal of the administrative determination: Building Inspector Determination Upheld ; continued usage on premises of the existing hand carwash and auto detailing center (which shall permit hand car washing at the premises, provided that it is done in conjunction with vehicle detailing services) is Approved; Ala Carte Hand Washing (i.e., car washing done independently of any vehicle detailing services) is Denied; was presented and moved by Mr. Mowerson, seconded by Mr. Sullivan, and carried as follows: Mr. Sullivan, aye; Mr. Mowerson, aye; Ms. Castelli, aye; Mr. Doherty, aye; and Ms. Albanese, aye.

The Administrative Aide to the Board is hereby authorized, directed and empowered to sign this decision and file a certified copy thereof in the office of the Town Clerk.

DATED: February 6, 2008

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

Deborah Arbolino
Administrative Aide

DISTRIBUTION:

APPLICANT
ZBA MEMBERS
SUPERVISOR
TOWN BOARD MEMBERS
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
OBZPAE
BUILDING INSPECTOR -L.P.

TOWN CLERK
HIGHWAY DEPARTMENT
ASSESSOR
DEPT. of ENVIRONMENTAL
MGMT. and ENGINEERING
FILE,ZBA, PB
CHAIRMAN, ZBA, PB, ACABOR

