

MINUTES
ZONING BOARD OF APPEALS
May 11, 2017

MEMBERS PRESENT: DAN SULLIVAN
MICHAEL BOSCO
JOAN SALOMON
PATRICIA CASTELLI
THOMAS QUINN
LEONARD FEROLDI, ALTERNATE

ABSENT: NONE

ALSO PRESENT: Dennis Michaels, Esq. Deputy Town Attorney
Ann Marie Ambrose, Official Stenographer
Deborah Arbolino, Administrative Aide

This meeting was called to order at 7: 00 P.M. by Mr. Sullivan Chairman.
Hearings on this meeting's agenda, which are made a part of this meeting, were held as noted below:

PUBLISHED ITEM

APPLICANT

DECISIONS

ALUF PLASTICS PERFORMANCE STANDARDS 70.18 / 2 / 15; LI zone	APPROVED	ZBA#17-31
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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 10:10 P.M.

Dated: May 11, 2017

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By 

Deborah Arbolino, Administrative Aide

DISTRIBUTION:
APPLICANT
TOWN ATTORNEY
DEPUTY TOWN ATTORNEY
TOWN BOARD MEMBERS
BUILDING INSPECTOR (Individual Decisions)
Rockland County Planning

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DECISION

PERFORMANCE STANDARDS REVIEW

To: Donald Brenner (Aluf Plastics)
4 Independence Avenue
Tappan, New York 10983

ZBA #17-31
Date: May 3, 2017
May 11, 2017
Permit #46264

FROM: ZONING BOARD OF APPEALS: Town of Orangetown

ZBA #17-31: Application of API Industries, Inc. d/b/a Aluf Plastics requesting the Zoning Board of Appeals' review, and determination, of conformance with the Town of Orangetown Zoning Code's (Orangetown Code Chapter 43) §4.1, Performance Standards, including, but not limited to, §4.164 and §4.182: review of the cumulative operations and equipment being employed at the site, and additional air quality controls, in accordance with NYS Department of Environmental Conservation's requirements. The site is located 2 Glenshaw Street, Orangeburg, Town of Orangetown, Rockland County, New York, and as shown on the Orangetown Tax Map as Section 70.18, Block 2, Lot 15 in the LI zoning district. The May 3, 2017, meeting is for the sole purpose of the Zoning Board of Appeals (ZBA) taking the necessary procedural step of issuance of the ZBA's Notice of Intention to Declare the ZBA Lead Agency under the State Environmental Quality Review Act- very limited testimony, from the applicant and from the public, will be heard at the May 3, 2017, meeting- a more substantive review will be conducted at a subsequent ZBA meeting.

Heard by the Zoning Board of Appeals of the Town of Orangetown at a meetings held on May 3, 2017 and May 11, 2017, at which time the Board made the determination hereinafter set forth.

At the May 3, 2017 hearing, Donald Brenner, Attorney, Ed Roggenkamp, Attorney, and Anthony Lawson, appeared and testified.

The following documents were presented:

1. Full Environmental Assessment Form, not dated or signed.
2. Use Subject to Performance Standards Resume of Operations and Equipment, not dated or signed.
3. Fire Prevention Supplement.
4. Building Ventilation Proposal, dated 02/15/2017 Revised 03/15/2017 (9 pages).
5. Four pages of confidential extrusion and bag machines.
6. New York State Department of Environmental Conservation Facility DEC ID: 3392400190; Permit ID: 3-3924-00190/00006, effective date 01/29/2013 (4 pages)
Page 5: New York State Department of Environmental Conservation DEC General Conditions (22 pages).
7. An e-mail dated March 8, 2017, from Lara Quintiliani Olivieri, Esq. to Ed Roggenkamp, Esq., and George Sweikert, of the DEC.
8. A letter dated May 3, 2017, from Korlipara Engineering to Joseph J. Moran, P.E., Commissioner of the Town Orangetown Department of Environmental Management & Engineering (DEME), signed by Ravi K. Korlipara, Ph.D., P.E. (2 pages).
9. Summary of implementation of additional air emissions controls and remedial actions at Aluf Plastics (4 pages).
10. A memorandum dated May 1, 2017, from the Town of Orangetown Bureau of Fire Prevention (BFP) from Michael B. Bettmann, Chief Fire Inspector. (1 page).
11. A memorandum dated June 1, 2010 and May 1, 2017, from the County of Rockland Department of Planning, stating that the application is not in their jurisdiction.
12. A letter dated March 27, 2017, from the Rockland County Highway Department, signed by Joseph Arena, Senior Engineering Technician.
13. A letter dated April 27, 2017, from Joseph J. Moran, P.E., Commissioner of DEME.
14. A letter dated May 3, 2017 from Joseph J. Moran, P.E., Commissioner of DEME.
15. An e-mail dated May 3, 2017, from Krystof Witek.
16. An e-mail dated May 3, 2017, from Catherine Lamstein-Reiss.

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17. An e-mail from Mavis A. Ronayne, Esq. dated May 3, 2017.
18. An e-mail from Nicole Shuster dated May 3, 2017
19. An e-mail from Chris Day dated May 3, 2017.
20. An e-mail not dated, received by the clerk on May 11, 2017, from Town of Orangetown Councilman Thomas Diviny.
21. A letter dated May 11, 2017, from Anthony Lawson, PMP Corporate Engineering Manager, of Aluf Plastics, to John Giardiello, P.E., Director of the Office of Building, Zoning and Planning Administration and Enforcement, Town of Orangetown (OBZPAE) (2 pages), with attachments (6 pages). Submitted at the May 11, 2017 hearing.

Mr. Sullivan, Chairman, made a motion to open the Public Hearing, which motion was seconded by Ms. Castelli, and carried unanimously.

The Board had legal questions for the Board's legal counsel, Dennis D. Michaels, Deputy Town Attorney, which the Board requested be answered by Mr. Michaels within a private attorney/client confidential/privileged discussion, and the Board left the dais table, with Mr. Michaels outside of the view of the public.

The Board reconvened at the dais table, and Dennis Michaels, Deputy Town Attorney, announced to the public that the public notice for the May 3, 2017 Public Hearing was defective, and announced that the Public Hearing would remain open and continue to May 11, 2017, at 7:00 P.M., in the same meeting room location (Court Room I of Town Hall); and requested that the clerk publish the new date in the Journal News and the Our Town, as soon as possible; and to update the Town Website, and make new posters for the applicant to post at the subject site.

Revised Publication for May 11, 2017:

ZBA #17-31: Application of API Industries, Inc. d/b/a Aluf Plastics requesting the Zoning Board of Appeals' review, and determination, of conformance with the Town of Orangetown Zoning Code's (Orangetown Code Chapter 43) §4.1 Performance Standards including, but not limited to, §4.164 and §4.182: review of the cumulative operations and equipment being employed at the site, and additional air quality controls, in accordance with NYS Department of Environmental Conservation's requirements. The site is located 2 Glenshaw Street, Orangeburg, Town of Orangetown, Rockland County, New York, and as shown on the Orangetown Tax Map as Section 70.18, Block 2, Lot 15 in the LI zoning district.

At the May 11, 2017 hearing Donald Brenner, Attorney, Ed Roggenkamp, Attorney, David Anderson, and Anthony Lawson, appeared and testified.

Anthony Lawson testified that he could go over the plans with the Board, that starting from left to right the layout is retail department, reprocessing department, warehouse area, high density department, and low density east and west departments; that there are 2 air handler units on the roof, that two rows of ducting are blue; that they go through retail IBC exhaust stack repro exhaust stack and carbon filter; that the numbers relate to the process lines; that each yellow block is 30,000 CFM each; that they were exchanging air one time a minute; that they are now adding more air and it is more like an 1/8 of the amount of air leaving the building; that the reprocessing area has been looked at closely by the DEC; that they have the same two units as the smaller rooms with the addition of the building filtered exhaust air duct and filtered exhaust hanging from the ceiling and elbows into the carbon box to the roof for further filtration; that he process equipment filters 60,000 CFM; that the east/west wing has four units filter coming in and dilution and no filter out; that the four rooms process intake air; that the reprocessing department gets more filtration; that high end low density plastic pellets are turned into film for bags, less than reprocessing; that the existing fans did not move enough air and adding filters upped the amount of air by eight and that means everything is diluted by eight and the air can be pushed out to exhaust stacks; that the black dots are different lines for internal bubble pooling exchange, that cooling air exhaust through bubbles collected through the filter separator and carbon filters; that there are seven collectors over the processors; that all of the air coming out of bubble filters is filtered.

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further; that the room air is not filtered; that this plan was approved by the DEC; that the exhaust on the roof, the pink, is horizontal on the roof and will have carbon filtration and those filters will be changed every two weeks; that the carbon on the re-processing room should last longer; and that they should be able to complete all of the proposed work within 6 to 8 weeks depending on the weather.

Ed Roggenkamp, Attorney, testified that they are comfortable with the Town hiring outside engineers to test and be sure that they are in compliance with the performance standards and the DEC and they understand that the testing will be at the applicant's expense; that the DEC has added conditions to the permit, #5 adds a new emission point for the Repro Room exhaust; that they are proposing draft air testing that they just got DEC approval for how to stack test and they will be scheduling for June testing of the existing stacks; that #15, has added signs for the employees to close all loading dock doors when not in use; that #16 states that Aluf will propose permit conditions for frequency of filter replacement and sampling of the carbon in the carbon bed associated with emission from the Repro Room; and #17, Aluf will replace all Repro filter housing once they find a new vendor.

The Board reviewed the Performance Standards and Fire Supplement forms, and found that they were sufficient for a cumulative review of operations and equipment being employed at the site, and additional air quality controls, in accordance with NYS Department of Environmental Conservation's requirements.

Public Comment:

Michael Smith, 65 Hayes Street, Blauvelt, testified that there should be no air leaving the building that has not been filtered; that the applicant just testified that only some rooms in the building are being filtered; that the repro room reprocessing plastic should be explained; that it is a travesty that air quality outside the building is not being improved and that this application should not be approved until all air fans are filtered and he still smells perfume regularly.

Alex Gadd, 8 Murphy Court testified, asking what penalties are in place if the applicant does not complete this in a timely manner; that some penalty should be enforced; that the company says they are posting signs for employees not to prop the doors open; that the plant manager admitted they are responsible for odors, does this change the town's ability to fine them; and there are still scents coming from the building.

Dr. Kathleen Kelly, 18 Van Buren Street, testified that this company has been violating laws for some time now; that they are damaging residents' health; that she was stricken last year with cancer from an environmental cause; that no amount of emissions are safe; that if they contain carcinogens they should shut down to the testing; that the Board should read Chapter 5 #3 and realize that these odors are noxious and clearly cannot be approved.

Suzanne Smith, 65 Hayes Street, testified that she would like to know when the stacks are going to be tested; and when will this be taken care of.

Larry Vail, 389 Kings Highway, Tappan, testified that the Board should listen to the local experts because they are just as valid as those that waive papers around; that he would like clarification on what they are doing and what they are voting on; that the notice should be clarified.

Laurie Seeman, 179 South Mountain Road, New City, testified that she has been following this for a long time; that she was president of the Sparkill Water Alliance before Larry; that she is concerned about this odor producing company; that all the air from the building should be filtered; that all of the concerns should be resolved before this is approved; that someone waving papers shouldn't account for much; that all of the DEC should be complied with; and this company should care about relations with the community and all air should be filtered.

Allyson Sullivan, 42 Arthur Street Blauvelt, testified that it has been documented for decades that Aluf has had odor issues; that in 2010 and 2011 Gregory Dece...

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air quality issues; that she would like to know if they are going to be held responsible; that why not shut down, fix the problem and re-open; that she would like to know what kind of plastic materials are being recycled and what ink is on it; and how mush micro ban is added to the bag and is that cacogenic?

Heather Hurley, 202 Hobart Street, Pearl River, NY, testified that Aluf has not been in compliance since November 2016; that last night at 6 P.M. there was a strong smell on the walking path and Tuesday night around 7 P.M. the smell was very strong at the high school during a Lacrosse game; that they still need to appear before Justice Court; and she questions how the Board can say that they conform; that Kevin O'Connell, Blauvelt Fire Department questioned the amount of disposable diapers that were in the plant; that there is a picture taken on April 11th that shows the Aluf Dumpster full of tires; these things raise additional questions; and she would like to know how the current plan compares to the 2012 carbon filter plan.

Ira Steinberg, 10 Murphy Court, testified that Aluf property touches his property; that he lives on a cul-de-sac with 11 houses and 17 children; that last year the smells got very strong; that they seem to get even stronger in the spring and he would like to know if they ramp up production in Spring because it seems that as the weather gets nicer ad the kids want to play outside the smell is stronger; and that he hopes this finally gets addressed.

Amy Pritchett, 111 South Main Street, Pearl River, testified that she would like to ask the Dennis Michaels if this application is approved tonight, does it impact the court? And is there a connection and would this stay the process?

The applicant requested a five minute recess.

Ed Roggenkamp, Attorney, testified ; that the key issue with dilution ambient air versus filtration odor thresholds can be seen on table 3 best science; given volume of air levels Town Code can smell it, add air drops by ½ after dilution and you cannot smell it; diluting below odor thresholds and added filtration will no longer smell outside of the plant; that Aluf must meet DEC, EPA and OSHA standards inside of the building; that the air canisters outside of the building have not exceeded the health threshold; that the DEC will do stack testing that start up and shut down emissions in Power Plants need a certain temperature; that it is not the case with cyclones Hepa carbon filters; that that #13 is being done under the existing permit; and that a new permit has not been issued yet. Anthony Lawson testified that the Repro Room operations include taking the plastic film or scraps of film and reprocess it through the extruders which chop them up again to reform pellets that can be used again to make plastic bags; that if they do not have a lot of scrap, they will purchase polyurethane in 1,000 lb. boxes to use in extruder lines; that they have never used diapers in their production; that they have purchased recycled material from other factories; that the tires in the dumpster were from someone doing illegal dumping on the property; that they do not change or ramp up production during the Spring; that the Repro Room where the pellets are made were found to have fugitive emissions by the engineer because of leaks in the duct work that have been fixed; that if printed films are used the ink sludge is collected and disposed of; that anti-microbial is added to garbage bags to keep fungus from growing on plastic; that they are not disposing micro bans, that the amount used is so small that it wouldn't be measured, but it is being re-used in the scraps that will be made into pellets; that they added a condition to the DEC permit limiting the amount of ink that can be used; and they are hoping to do the stack testing of the existing stacks in June.

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.

Mr. Sullivan made a motion to close the Public Hearing which motion was seconded by Ms. Castelli and carried unanimously.

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Upon the advice of Dennis Michaels, Deputy Town Attorney, a motion was made by Chairman Sullivan, with regard to Aluf Plastics' application ZBA #17-31, which Application requests that the ZBA find the proposal will result in conformance to the Performance Standards of the Orangetown Zoning Code, that, since this Application entails the ZBA engaging in a review to determine compliance with technical requirements which were enacted to protect the environment, amongst other things, the Application is exempt from environmental review as a Type II Action under the State Environmental Quality Review Act, pursuant to SEQRA Regulation §617.5(c)(28), which determination of Type II status is only applicable to the ZBA's review of Performance Standards, and not to the review of any other municipal board or agency; , which motion was seconded by Ms. Castelli, and carried unanimously.

DECISION: A motion was made by Chairman Sullivan, seconded by Mr. Bosco, and carried unanimously, that, in view of the report to the Zoning Board of Appeals (ZBA), dated May 3, 2017, by Joseph J. Moran, P.E., Commissioner of DEME, and in view of the foregoing and the testimony and documents submitted, the ZBA RESOLVED that the Application of Aluf Plastics, ZBA #17-31, for Performance Standards Conformance, pursuant to Orangetown Zoning Code §4.1 is APPROVED with the following SPECIFIC CONDITIONS.

1. The said report, dated May 3, 2017, by Joseph J. Moran, P.E., and the report to the ZBA dated May 1, 2017, by Michael B. Bettmann, Chief Fire Inspector of the Orangetown Bureau of Fire Prevention (BFP), shall be complied with by the Applicant.
2. Pursuant to Orangetown Zoning Code §4.13, §10.334(c) and §10.335, initial and continued compliance with the Performance Standards shall be required, and any Building Permit or Certificate of Occupancy issued shall be conditioned on, among other things, the Applicant's completed installations, in operation, conforming to the Performance Standards, and the Applicant's paying of the fees, to the Town, for services of the Town's own expert consultant, or consultants, deemed reasonable and necessary by the Orangetown Department of Environmental Management and Engineering (DEME), the Orangetown Office of Building, Zoning and Planning Administration and Enforcement (OBZPAE), and/or the ZBA, for advice as to whether or not the Applicant's completed installations will, in operation, conform, or are conforming, to the Performance Standards, and as prescribed in the following Conditions #3 and #4.
3. The Applicant's initial and continued compliance with the Performance Standards shall include the following:
 - a. All installations shall be completed within 8 weeks of issuance of a Building Permit, which shall be applied for by the Applicant with utmost diligence and without delay.
 - b. Inspections and/or testing, on-site while installations are in operation, by OBZPAE, DEME, and/or the Town- retained expert consultants, to the extent, type and/or degree that OBZPAE, DEME, and/or the Town's expert consultants deem necessary.
 - c. Item #15 of the Town's Use Subject to Performance Standards form shall be updated as to the NYS Department of Environmental Conservation's Air Permit Number.
 - d. Applicant shall comply with item number 6 of the Applicant's Summary of Implementation of Additional Air Emissions Controls and Remedial Actions of Aluf Plastics, which addresses stack air testing Pursuant to NYS Department of Environmental Conservation.
4. DEME and/or OBZPAE shall investigate any alleged violation of Performance Standards by the Applicant, and, if there are reasonable grounds to believe that a violation exists, DEME and/or OBZPAE shall notify the ZBA of the occurrence or existence of a probable violation thereof, and the ZBA shall investigate the alleged violation, and for such investigation may employ qualified expert consultants; and if, after holding a Public Hearing on due notice, including notice to the Applicant

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(except for posting of signs at the subject site, which signs shall not be required), the fees for which Public Hearing shall be paid for by the Applicant, the ZBA finds that a violation occurred or exists, the ZBA may revoke and rescind this approval Decision, and any Building Permit and/or Certificate of Occupancy that has been issued, based upon this approval Decision, shall also be deemed revoked and rescinded; which shall be in addition to any other legal remedies that the Town may pursue.

General Conditions:


- (i). The approval of any variance, Performance Standards 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, Performance Standards or Special Permit by the Board is limited to the specific variance, Performance Standards 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, Performance Standards 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, Performance Standards or Special Permit approval will lapse if any contemplated construction of the project or any use for which the variance, Performance Standards 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 conformance to Performance Standards, with the aforesaid Specific Conditions #1 through #4, was presented and moved by Mr. Sullivan, seconded by Mr. Bosco, and carried as follows: Mr. Quinn, aye; Mr. Salomon, aye; Mr. Bosco, aye; Mr. Sullivan, aye; and Ms. Castelli, aye.

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

DATED: May 11, 2017

ZONING BOARD OF APPEALS
TOWN OF ORANGETOWN

By: 
Deborah Arbolino, Administrative Aide

DISTRIBUTION:

APPLICANT
SUPERVISOR
TOWN BOARD MEMBERS
DEPUTY TOWN ATTORNEY
FILE, ZBA, PB, OBZPAE

TOWN CLERK
HIGHWAY DEPARTMENT
DEPT. of ENVIRONMENTAL MGMT. & ENGINEERING
CHAIRMAN, ZBA, PB, ACABOR

ZBA MEMBERS
ASSESSOR
TOWN ATTORNEY
BUILDING INSPECTOR-M.M.

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