

ZBA #18-19: Application by the Office of Building, Zoning and Planning Administration and Enforcement of the Town of Orangetown (the Applicant) for Implementation of Specific Condition 4 of the 05/11/2017 Zoning Board of Appeals Decision #17-31 re API Industries Inc. d/b/a Aluf Plastics' Performance Standards Compliance

Building Permit #46264

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**DECISION**  
**ZBA #18-19, DATED JUNE 19, 2019**  
**BY THE ZONING BOARD OF APPEALS ("ZBA")**  
**OF THE TOWN OF ORANGETOWN ("TOWN" OR "ORANGETOWN")**

**GRANTING/APPROVING APPLICATION BY ORANGETOWN'S OFFICE OF BUILDING, ZONING AND PLANNING ADMINISTRATION AND ENFORCEMENT ("OBZPAE") FOR IMPLEMENTATION OF SPECIFIC CONDITION 4 OF THE 05/11/2017 ZBA DECISION #17-31 REGARDING API INDUSTRIES INC. D/B/A ALUF PLASTICS' ("ALUF") PERFORMANCE STANDARDS COMPLIANCE: ZBA DECISION FINDS THAT VIOLATIONS, BY ALUF, OF THE PERFORMANCE STANDARDS OCCURRED AND/OR EXISTED, THAT ZBA DECISION #17-31 OF 05/11/2017 IS REVOKED AND RESCINDED, AND THAT THE 06/14/2017 BUILDING PERMIT, ISSUED BY OBZPAE TO ALUF BASED ON THE 2017 ZBA DECISION IS ALSO REVOKED AND RESCINDED.**

Dates of Public Hearing: March 26, 2018, April 4, 2018, September 5, 2018, and June 19, 2019

To: JANE SLAVIN, R.A., DIRECTOR  
OFFICE OF BUILDING, ZONING AND PLANNING ADMINISTRATION  
AND ENFORCEMENT (OBZPAE)  
OF THE TOWN OF ORANGETOWN  
20 S. Greenbush Road  
Orangeburg, New York 10962

ZBA #18-19: APPLICATION BY OBZPAE TO IMPLEMENT SPECIFIC CONDITION 4 OF THE 05/11/2017 ZBA DECISION #17-31 ("DECISION #17-31"), REGARDING THE PERFORMANCE STANDARDS APPLICATION OF API INDUSTRIES, INC. D/B/A Aluf PLASTICS ("Aluf"), FOR PREMISES LOCATED AT 2 GLENSHAW STREET, ORANGETOWN, NY ("THE PREMISES"), AS MORE SPECIFICALLY DESCRIBED IN THE 02/16/2018 REPORT TO THE ZBA BY JANE SLAVIN, R.A., DIRECTOR OF OBZPAE, AND MICHAEL MANZARE, BUILDING INSPECTOR OF OBZPAE, WHICH APPLICATION, AND REPORT, BY OBZPAE, IS SUMMARIZED BELOW:

OBZPAE's 02/16/2018 report was submitted to the ZBA as per Specific Condition 4 of Decision #17-31, which Specific Condition 4 states (in relevant part):

"OBZPAE shall investigate any alleged violation of Performance Standards by [Aluf], and, if there are reasonable grounds to believe that a violation exists, ... 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 [Aluf] ... the ZBA finds that a violation occurred or exists, the ZBA may revoke and rescind [approval Decision #17-31], and any Building Permit and/or Certificate of Occupancy that has been issued, based upon [approval Decision #17-31], shall also be deemed revoked and rescinded ... ."

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OBZPAE's 02/16/2018 report to the ZBA also referenced Specific Conditions 2 and 3(b) of Decision #17-31, which said Specific Conditions state (in relevant part):

“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, [Aluf's] completed installations, in operation, conforming to the Performance Standards, and [Aluf's] paying of the fees, to the Town, for services of the Town's own expert consultant, or consultants, deemed reasonable and necessary by ... [OBZPAE], and/or the ZBA, for advice as to whether or not [Aluf'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. [Aluf's] initial and continued compliance with the Performance Standards shall include the following: ... Inspections and/or testing, on-site while installations are in operation, by OBZPAE ... and/or the Town-retained expert consultants, to the extent, type and/or degree that OBZPAE ... and/or the Town's expert consultants deem necessary.”

OBZPAE's 02/16/2018 report to the ZBA also set forth “Personal Observations of OBZPAE Staff,” covering the period of 11/20/2017 through 02/01/2018, which, in summary, formed the factual bases for OBZPAE's determination, decision and/or interpretation, as a result of OBZPAE's investigations, that the observed “facts, information, circumstances, occurrences, incidents and/or situations ... constitute and/or establish reasonable grounds to believe that violations of the Orangetown Zoning Code's Performance Standards, as prescribed in Decision #17-31, have been committed by Aluf.”

Application ZBA #18-19 was heard by the ZBA, by Public Hearing, at meetings held on March 26, 2018, April 4, 2018, September 5, 2018, and June 19, 2019, at which time the ZBA reviewed the documentation and materials, and heard the oral testimony, and described below.

ZBA MEETING OF MARCH 26, 2018

ZBA Members Present:  
Chairman Dan Sullivan  
Tom Quinn  
Mike Bosco  
Lenny Feroldi  
Patricia Castelli

ZBA Members Absent:  
Joan Salomon

Also Present:

Denise Sullivan, Deputy Town Attorney, ZBA attorney  
Dennis Michaels, Deputy Town Attorney, ZBA attorney  
Debbie Arbolino, ZBA clerk/secretary  
Ann Marie Ambrose, court reporter/stenographer

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



Jane Slavin, R.A., Director of OBZPAE (the Applicant), and Michael Manzare, Building Inspector of OBZPAE, appeared and testified on behalf of the Applicant OBZPAE.

The following documents were submitted to, and reviewed by, the ZBA:

1. A letter dated 02/16/2018 from Jane Slavin, R.A., Director of OBZPAE (3 pages).
2. Twenty four photographs of the premises (9 pages).
3. A letter dated 03/21/2018 from Joseph J. Moran, P.E., Director of Orangetown's Department of Environmental Management and Engineering.
4. A memorandum dated 03/07/2018 from Michael B. Bettmann, Chief Fire Inspector of Orangetown's Bureau of Fire Prevention, which refers to his comments from his letter dated 05/01/2017, which is attached.
5. Building ventilation plans that were submitted for the 05/03/2017 meeting, signed and sealed by Bart Rodi, P.E., drawn by A. Lawson dated 02/14/2017 (4 pages).
6. No comment letter (at this time) from the Rockland County Highway Department, signed by Joseph Arena, received 03/02/2018.
7. No comment letter (at this time) from the Rockland County Health Department, signed by Elizabeth Mello, P.E., received 03/02/2018.
8. A memorandum dated 03/26/2018 from Jane Slavin, R.A., Director of OBZPAE (2 pages).
9. A letter dated 03/26/2018, signed by someone (signature is not legible) for Steven Barshov (4 pages).
10. Notice of Inspection Results from the Department of Environmental Conservation of the State of New York ("DEC") (7 pages) dated 12/05/2017, by Alyssa Carbone on 12/08/2017, Andrew P. Chin on 01/12/2018, Alyssa Carbone on 01/22/2018, Andrew P. Chin on 01/23/2018, Andrew P. Chin on 02/16/2018, and Andrew P. Chin on 03/01/2018.

Dennis D. Michaels, Deputy Town Attorney, read the above-listed correspondence into the record, and stated that, under State law and our own Local Law, the ZBA, as a public body, can only function as a body in a Public Hearing, which is the only jurisdictional ability the ZBA has to function as a municipal land use board; so, in order for the ZBA to find that there's reasonable cause to believe that a Performance Standards violation exists, and to initiate an investigation, the ZBA must do so as a body, in other words, the ZBA can't meet in Hogan's or at the new Orangetown Diner – the ZBA must meet at a Public Hearing. At this point, there has been an initiation of an investigation by OBZPAE and, following the procedures in ZBA Decision #17-31, which mirrors the existing Performance Standards procedures with some modifications, OBZPAE reports to the ZBA that OBZPAE believes that there's reasonable grounds or bases, or probable cause, to believe that there was a violation of the Performance Standards, or violations exist, and then the investigation is now carried on by the ZBA; so, now, it is the ZBA's investigation. Mr. Michaels stated that there was a question that the Public Hearing notice was defective, because a public notice was sent to Donald Brenner, Esq., the contact person for Aluf regarding ZBA Decision #17-31, instead of directly to Aluf at the premises; but, Mr. Michaels opined that the notice was not procedurally defective, and cited from Orangetown Code §10.332(b), which prescribes that "Failure of a property owner whose name appears on the affidavit of property owners to receive the notice shall not affect the validity of the public hearing or any action taken thereat by the ZBA."

Jane Slavin, R.A., Director of OBZPAE, on behalf of the Applicant (OBZPAE), testified that:

- In her presentation to the Town Board on December 19, 2017, she provided a summary of an inspection performed on December 8, 2017, by Mike Manzare, Inspector, and two inspectors from the DEC; the results of that inspection of the exterior and roof, on December 8, 2017, showed that there are vent openings on the side of the building that



were still just open vents that do not contain a filter system or mechanical operation, so the air is just freely flowing; and that there was a strong perfume and plastic smell emanating from these locations. All inlet fans located on the roof were in operation. The new mechanical equipment that was installed was running, and a strong perfume and plastic smell was detected being released from the new units. There is a large chiller located on the side of the building which is discharging water and, what looks like, small plastic pellets into the creek. The inspectors requested access to the interior to examine the filters installed on the scrubbers, however, this access was denied by Aluf. On December 11, 2017, our office received a copy of the roof plan as requested, and there were 31 vents indicated on the roof plan; and we were told that all are in operation, however, during the site inspection, Mr. Manzare indicated that he can see clear down into the factory. There are five stacks indicated on the plan, which are governed by the DEC Air Permit, and this was the plan that was presented to the ZBA for the 2017 Performance Standards approval. There are 12 wall-mounted exhaust fans located on the machinery, high bay units on the roof, that do not have any type of filtration. There are 6 wall-mounted exhaust fans located on the exterior walls that do not have any type of filtration, and an additional 3 that have been closed up. As per item number 14 of the Performance Standards' Resume of Operations, applicants are to indicate, on the plan, all chimneys, vents, exhaust openings, and the equipment that they serve, as well as unvented operations that might release any air pollution to the outside atmosphere; and Aluf's Performance Standards application indicated that "No air pollution will be released to outside atmosphere; addition of building ventilation systems and carbon filtration will dilute potential ambient building exhaust emissions to below odor thresholds". At the ZBA Hearing on May 11, 2017, the attorney representing Aluf stated that "diluting below odor thresholds and added filtration will no longer smell outside of the plant; the building ventilation system as proposed in the March 14, 2017 submission by Aluf, the drawing that you are seeing up on the screen indicates that 'a more dilute stream will be insurance against odor issues being emitted from the building'". At our last inspection, the strong perfume and plastic smell was still being emitted from the building; and, as per the ZBA's 2017 Performance Standards' approval Condition number 3, the applicant's initial and continued compliance with the Performance Standards shall include the following: installation completed within 8 weeks of issuance of the Permit (that was not completed in time), and our testing on the site while installations are in operation by OBZPAE, DEME<sup>1</sup> or the Town's own expert as deemed necessary; and Condition number 4 states that DEME or OBZPAE shall investigate any alleged violation of Performance Standards and, if a violation exists, shall notify the ZBA of the occurrence or existence of a probable violation thereof. Due to these findings, the Town Board was advised that OBZPAE would be moving forward with notifying the ZBA of these findings; and our February 16, 2018 report was submitted to the ZBA, as OBZPAE feels that there are reasonable grounds to believe a violation of the 2017 ZBA Decision exists. As per Specific Condition number 4 of the 2017 ZBA Decision #17-31, which Specific Condition 4 states that "DEME and/or OBZPAE shall investigate any alleged violation of Performance Standards by the applicant [Aluf], and, if there are reasonable grounds to believe that a violation exists, 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 to the applicant [Aluf] (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 [Aluf], 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

<sup>1</sup> The Department of Environmental Management and Engineering of the Town of Orangetown.

addition to any other legal remedies that the Town may pursue". The ZBA should also note that Specific Conditions 2 and 3(b) of Decision #17-31 state that "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 [Aluf's] completed installations, in operation, conforming to the Performance Standards, and the applicant's [Aluf's] paying of the fees, to the Town, for services of the Town's own expert consultant, or consultants, deemed reasonable and necessary by OBZPAE, DEME and/or the ZBA, for advice as to whether or not the applicant's [Aluf's] completed installations will, in operation, conform, or are conforming, to the Performance Standards"; and, as described in Specific Conditions numbered 3 and 4, the applicant's [Aluf's] initial and continued compliance with the Performance Standards shall include the following: Inspections and/or testing, on-site, while installations are in full 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".

- Ms. Slavin offered an abbreviated version of the personal observations of OBZPAE staff that odors were detected on November 20, 2017, December 7, 2017, and December 8, 2017. On December 7, 2017 Anthony Lawson, PMP, Corporate Engineering Manager for Aluf, advised OBZPAE, via email, that all of the wall openings were closed; however, that was found to not be true. On December 8, 2017, Michael Manzare, Building Inspector of OBZPAE, along with two DEC inspectors, performed a site inspection at the premises, of the exterior only due to Aluf having denied access to the interior of the premises. A summary of this 12/08/2017 inspection is as follows: (1) vent openings on the side of the building are still open vents, which do not contain a filter system, or mechanical operation, so air is freely flowing in and out of these openings; (2) a strong perfume and plastic smell is emanating from these locations; (3) roof inspection showed that all inlet fans were in operation; (4) a strong perfume and plastic smell is still being released from the newly installed roof top units; (5) access to the interior of the premises, to examine the filters installed, was requested, which request for access was denied by Aluf (as was mentioned earlier) for interior examination of the filters that were installed. On January 16, 2018 Ms. Slavin requested approval from Aluf for the Town's own expert consultant, TRC, to perform testing at the premises to determine whether or not Aluf's completed installations, while in full operation, conform, or are conforming, to the Performance Standards and ZBA Decision #17-31; and, on January 23, 2018 Anthony Lawson, via email, advised me, that "access will not be granted to TRC".
- Ms. Slavin presented photos to the ZBA, and testified that, on February 1, 2018, OBZPAE Building Inspector, Mike Manzare, performed another site inspection at the premises to determine completion of Aluf's installation, as per ZBA Decision #17-31 and Building Permit #46264; and a summary of this inspection is: (1) one of the new air filter units, located over the "repro" room, was not operational; (2) a large number of unused vent stacks, roof fans, vents and ducts still remain open; (3) installation of equipment, under a separate Building Permit #46140, were not installed per approved plans. Ms. Slavin pointed out to the ZBA that, in the ZBA's packet is a number of sheets that show (pointing to a photo) that this unit, which is part of the approved units to be installed for ZBA Decision #17-31, was actually apart on the roof and not in operation, but this unit to the right (pointing to a photo) was in operation, and four new fresh air intakes (pointing to a photo), that were installed as part of the Building Permit #46264 scope of work, are a bit shinier than the other pieces. Pointing to a photo, Ms. Slavin showed the ZBA a very large exhaust system located above the scented bag area, four unfiltered exhaust openings, where a scented odor was being emitted at the time of the site inspection, as observed by Mr. Manzare; and that there are unfiltered wall vents (some non-operational), open vent pipes, a hole (pointing to a photo) in the side of the building (which was probably a previous vent pipe that was removed and the hole was never



closed), unfiltered openings with broken fins (some are non-operational) which are abandoned vents (some are damaged) that are not closed up; in addition to other examples of abandoned vents and flue pipes (pointing to photos), including a stack pipe that is closed with a plastic bag (pointing to a photo). Ms. Slavin pointed out a man (in a photo), to show the ZBA how large these stack pipes actually are; and showed more photos of abandoned and/or damaged pipes, vents, an AC unit, an open wall vent with no fan or filtration system.

- Ultimately, access for TRC to perform the on-site testing was granted by Aluf, after a meeting between Supervisor Day and Susan Rosenberg of Aluf, and the letter that was submitted to the ZBA (today) outlines the following odor observations, which were personal observations made by OBZPAE staff:
  - 11/07/2017, 10:00 a.m., strong smell of burning plastic and perfume along the line from the rails-to-trails location.
  - 11/13/2017, 10:00 a.m., at the corner of Mountain View Avenue and Battan Road, strong smell of burning plastic and perfume.
  - 12/08/2017, at 10:00 a.m., while on an inspection with DEC, inspection of stream on the east side of the rails-to-trails, strong smells of burning plastic and perfume.
  - 12/19/2017, at 4:00 p.m., Ms. Slavin detected a strong perfume smell on East Erie Street between Route 303 and Greenbush Road.
  - 03/01/2018, at 10:00 a.m., during meeting with TRC at site, southwest end of property, strong smell of burning plastic and perfume.
  - 03/19/2018, during a site visit by TRC, Mike Manzare and Dave Majewski, OBZPAE Building Inspectors, and Ms. Slavin, all observed the strong burning plastic smell and perfume smell while on tour with Anthony Lawson, which were the same odors that were detected outside, but was stronger while inside the plant which noticeably made Ms. Slavin's eyes water and her throat a bit scratchy, so they went outside, and these same odors were detected outside of the main entrance at 12:45 p.m. while we were concluding our site visit.
  - 03/20/2018, 9:45 p.m., when Ms. Slavin was departing from Town Hall and in the parking lot, she detected these same smells.
- Personal observations that come from the DEC's reports that were submitted to OBZPAE:
  - 12/05/2018, 11:15 a.m., in response to a complaint at the intersection of South Moison and Hayes Street, detected a pungent lemon fragrance; the DEC conducted a walk-through at Aluf and Aluf was running lemon fragrance which matched the odor; the new filters that are utilized before exhausting the repro room appeared to be dirty and black; upon inspection of the roof, the odor was detected coming from the exhaust fans above the repro room and above the room where the fragrance was being used; the odor was also very strong by the right side of the building leading to the visitors' entrance.
  - 12/08/2017, at 10:00 a.m., site inspection with Mike Manzare; observed some vents were releasing unfiltered air, which gave off an odor on the roof and along the sides of the building.
  - 01/12/2018, at 10:00 a.m., in response to complaints, odors were detected on Moison Street between Arthur Street and Hayes Street; there were two vents on top of where the DEC smelled an odor matching the odors that they detect when responding to complaints; Anthony Lawson stated that the odor was not from the fragrance line because they hadn't ran fragrance since the day before at 6:00 a.m., so the smell was from the repro line; the DEC indicated that every time that they respond to complaints at Aluf it is fairly clear that the odors detected in Orangeburg are due to Aluf's operations.
  - 01/23/2018, at 12:00 p.m., in response to complaint, DEC inspector notices the same odors found coming out of the vents of the repro room along Moison

Street; along, and around, Moison Street seems to be the key areas that get hit with odors; the DEC noticed the odor on one side of the neighboring building downwind of the vent above the repro room; DEC inspector described odor as a sweet soapy smell.

- 02/16/2018, at 7:00 a.m., seems that there were odors going over Route 303, and there were occasional brief moments of the same odor that DEC noticed coming out of the roof vents above the repro line along Route 303; it seemed to have extended between East Erie Street and the Orangetown Animal Hospital.
- 03/01/2018, at 12:00 p.m., the DEC noticed a faint odor that they know from Aluf along Moehring Drive; DEC drove around Aluf and noticed a strong odor upon leaving.
- As per Orangetown Code Chapter 43 (Zoning Code), Section 4.11, Performance Standards, no land or building shall be used or occupied in a manner as to create any noxious or otherwise objectionable odor, in a matter or amount as to adversely affect the surrounding area; and it is the determination, decision and/or interpretation of OBZPAE that the foregoing facts, information, circumstances, occurrences, incidents and/or situations, which were personally observed by OBZPAE Building Inspector Mike Manzare, the DEC and Ms. Slavin (Director of OBZPAE), via their aforesaid investigations, constitute and/or establish reasonable grounds to believe that violations of the Orangetown Zoning Code's Performance Standards, as prescribed in ZBA Decision #17-31, have been committed by Aluf, and OBZPAE requests that the ZBA consider approving the Town's hiring of an independent mechanical engineer, with experience in design and inspection of systems required to reduce odors, and therefore, hopefully, reduce the complaints.

ZBA Chairman Sullivan asked OBZPAE Director Slavin if she has a recommendation on the expert consultants; and Chairman Sullivan asked the ZBA if they have any questions, stating that this is pretty straight forward – at this point, all the ZBA has to do is determine who that expert is, and get the expert report before the ZBA moves forward; that the ZBA does not have enough evidence to move forward on any other decision regarding Aluf; and that the sole purpose of this meeting is to identify, and get additional evidence, or to investigate these complaints; and not until the ZBA receives those reports from the ZBA's consulting engineer will the ZBA be able to move forward. Ms. Slavin replied that she is obtaining a list of three consultant engineers, which she has not yet compiled, but she will email the ZBA when it is received.

Dennis Michaels, ZBA attorney, stated that the ZBA, procedurally, will be engaging the expert consultant, so the ZBA will need to accomplish this in an open public meeting, and hold the meeting on April 4, 2019, or before, and advised the ZBA to ask themselves this question, based upon the information – noting that the ZBA has not heard from anyone else yet, including Aluf – but, based upon the information that the ZBA has in its possession now, and the testimony that the ZBA heard from Ms. Slavin and, perhaps, will hear from Aluf, does the ZBA feel that, without the ZBA's own expert consultant conducting an investigation and reporting back to the ZBA, does the ZBA feel that the ZBA has enough information, this evening, to make a decision on this application?

ZBA Chairman Sullivan stated that he does not, and asked the other ZBA members how they felt; and asked to clarify that the consulting engineer, that OBZPAE is requesting, will be reviewing all air circulation inside the facility, outside the facility, and air being transferred in and out of the facility?

ZBA Member Tom Quinn raised the questions that we have Specific Conditions and general conditions of our Decision last May and, just taking a look at these, Mr. Quinn stated that he can't see how Aluf is following these Specific Conditions: namely, the 8-week completion of

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installations deadline; the answer to the Chief of the Bureau of Fire Prevention, Mike Bettman; and asked whether the installations are totally completed. Aluf mentioned capping off duct work, that's not yet capped off.

Dennis Michaels, ZBA attorney, stated that Aluf may, or may not, agree with that, so that would be a question that the ZBA may want to ask Aluf; and Mr. Michaels asked Ms. Slavin for the DEC reports so that they may be referenced into the record.

ZBA Member Patricia Castelli asked if these DEC reports were the same reports that Ms. Slavin summarized; and asked another question for clarification: "TRC is not the expert consultants that were already hired, so the results are not in? I am not an engineer, so I don't have any of the mechanical pieces behind this, but, regardless of whether the system that was put in, or not put in, correctly, or put in correctly and is not working, regardless of that, isn't the fact that there's all these open vents an issue in itself, wasn't that part of the agreement that everything that was open would be closed; was that not part of our original 2017 Decision?"

OBZPAE Director Slavin testified: Going through the records, I did find a letter that was submitted by Aluf on May 11, 2017, and it's noted as submitted to the ZBA addressed to Mr. Giardiello, who was the Director of OBZPAE at the time, and he does respond to these questions; I just don't think that it was ever sent to Mr. Bettman, so there was a response to those questions. The Town Board already approved TRC to perform odor testing at the openings that I described, as we described as unfiltered openings during our inspection with Mr. Manzare; it was determined that there were twenty outlets to be tested; that testing was completed, and we're waiting for the results; it was completed last week, and we were told it would take a couple of weeks to receive those results. TRC is one of the companies that we would consider recommending; and I sent them an email to find out if they would actually do it, the engineering review as part of their services and I haven't heard back; but I haven't spoken directly and developed the scope of work, however, it seems to myself, Mr. Manzare and the DEC inspectors, that something's not working; basically the proposal was to bring in fresh air in to dilute the air within the building, and the fresh air was brought in, as you can see by these blue lines (showing slides), those are actually fresh air coming into the building, and the idea is that it gets diluted before it exists the building; but the problem is that you're bringing in forced air and now it's getting pushed out all of these openings, and it's not like it's getting pushed up through the two units which are here (pointing to a photo) that have the carbon filters on them, that we have described as being black. The building is broken down into compartments, and we started here, this is the offices, where I observed the smell outside the building, to come into the offices, and then we enter this way (pointing to a plan) and you go through each section: this is warehouse, just storage; then once you get into this section, this is where the smell really kicks in, this is where the perfume smell comes from. So, the idea is that I think it's finding the path of least resistance and maybe the dilution factor is not the right factor; maybe the concept is correct, but something is not working based on the observations that we have and the complaints that are still coming in, both. So, if we hire an engineer that has experience working in this type of facility, and in designing or reviewing system design, they can better answer those questions; at present it is not working and common sense says to me that either the dilution factor is wrong or it's being pushed out of these openings. Yes, it is my understanding that all openings were to be closed and, obviously, it's not completed, although we did receive a letter from Korlipara Engineering saying that it is in compliance; but I do not agree.

ZBA Member Mike Bosco stated that his concern now is the timing; that the ZBA goes through all of this, and the ZBA asked for a lot of things to happen initially, which we questioned some of the dilution factor early on – don't forget the venting – but now we're going to hire another consultant to do this; how long, because it's still happening and what's going to change in the time frame?



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John-Patrick Curran, Esq., attorney with Sive, Paget & Riesel, P.C., representing Aluf, testified that he was not told about this investigation; that they were told that they had three minutes to speak; that they thought the permit for Aluf was going to be revoked; that the notice that they got was regarding revocation of the permit ;that this is somewhat different that he did expect to come to give a basic civic lesson; that the way this system works is that their corporation should be treated as people, due process under law; that this is contravention of their legal rights; that they didn't get the notice; that half of what they just heard is brand new to them; that they were told that they would have three minutes to speak as members of the public; that they were not provided access to the reports and the reports should have made immediately available ; that they did not have time to prepare technical reports ; that if this ZBA decides to hire a mechanical engineer that's fine; if they are given more than a couple of days to respond; that they need time to respond to any reports; that they have invested a half million dollars in the ventilation system; that they are more invested and need ample opportunity to review and report.

OBZPAE Director Slavin responded to Mr. Curran, testifying: I never advised anyone that they would have three minutes to speak; the lawyer misspoke, I am not sure who advised them of that. Aluf's request was made on Monday, March 19, 2018, and I was not present at the time and available to fulfill a FOIL request, and whether or not there was a mistake made within OBZPAE, so be it, but we are trying to streamline the process so, with that said, when I met with Mr. Lawson out in the field and he advised me of it, I said that when I go back to the office I'll take a look, no problem, and we fulfilled his requirement the next day on the 20<sup>th</sup>. Whether or not there was a delay in Mr. Lawson receiving the notice, if Mr. Brenner was down in the records as being the attorney of record for Aluf, which very well may be on some applications, that's where the notice is supposed to go – Mr. Brenner is the contact person; so the delay was not on OBZPAE's part; it was released and noticed officially, as far as Aluf not knowing about this, I just talked about the fact that, at my December 19<sup>th</sup> meeting, I outlined all these issues then, and I know Mr. Lawson watches the meetings, because he said it to Mike Manzare that he watches them, so for Aluf to say they did not know, we have given them punch list after punch list that they have open Building Permits that had expired that they didn't fulfill, so for the attorney to stand up here and say they have lawful rights, that's correct, but we also have rights and we have to enforce the law – we have to enforce the Zoning Code, as well as the life, safety and welfare, not only of Aluf and the occupants of Aluf's building, but the surrounding neighbors and the town itself and that all we're trying to do. Thank you.

The ZBA took a five minute break to ask the ZBA attorney, Dennis Michaels, legal questions, and to hear his responses, within an attorney-client confidential discussion.

ZBA Chairman Sullivan asked OBZPAE Director Slavin to follow up with this at the end of the evening; that we're going to try to push this forward in as fast a way as we can, so we're going to ask you if you can give us a list of experts, as well as the scope of the work, because we'd like to review that before the ZBA actually hires somebody. We're going to try to expedite this decision regarding the hiring of an expert consultant, so we're going to hold a brief ZBA meeting on Thursday, March 29, at 7:00 p.m., assuming this meeting room is available; and we're not going to open it up for public comment, since it is more of a meeting to get together as a ZBA to determine what the scope of the work is, and who the consulting engineer is, so that we can proceed forward.

Dennis Michaels, ZBA attorney, stated that the purpose of the ZBA meeting will be to review OBZPAE Director Slavin's recommended mechanical engineers and/or expert consultants, and for the ZBA to make a motion to choose one, two or three that the ZBA feels would serve the needs to pursue this investigation, which is the subject of this Public Hearing; and, although the public is entitled, and has a right to attend that meeting, it is not the ZBA's intention to allow any public comment, but there will be a continuation of the Public Hearing beyond this Thursday, and, of course, beyond this evening, at which future Public Hearings public comment will be

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received and heard; and this Public Hearing will remain open and continue to this Thursday, March 29, 7:00 p.m., in this meeting room, and by making this announcement it obviates the need for any public notice, whatsoever, that may be required by State and/or Local Law.

Public Comment:

Anthony Lawson, 2 Glenshaw Street, Orangeburg, NY testified that he has been employed by Aluf for the past five years as their corporate engineer manager and he has worked with the Town for a long time now, almost two years trying to give them an understanding of our building and its' operations; I have listened to the presentation tonight and I realize that there still is misunderstandings as to what is negative pressure and positive pressure in the building and what is an opening, what is a vent, and what is an intake, okay things do not move back and forth in the building, they only move in one direction, he will continue to work with the building department so that they understand how our plan works but I don't have enough time to refute all of the things that Ms. Slavin said as far as openings in the building and holes in the building and abandoned components and things like that so I don't want to take up a lot more time without going into great detail as to what the reports are, certainly the ones that we just received tonight we'll need more examination as far as what we were running at the particular time those reports were made, and I am glad that you are going to continue it because we just don't have it tonight and we just cannot make a reasonable decision thank you.; okay so what you need to do first is you need to read what was proposed to the building and somebody that's proposed during the last EP meeting that I appeared for when you when you approved it, someone says that there are additional 20 outlets that were not included in that report all those fans were included in that report so there is nothing, you're right; what I'm telling you okay is that first you need to understand what was proposed and what was approved by the ZBA, okay, let's start there.

ZBA Chairman Sullivan stated that the ZBA is trying to push this along, and that Aluf will be under a microscope, so to speak, right now, because now the ZBA is working with OBZPAE Director Slavin, and their own experts, to make sure that the system that you proposed is adequate and, if it's not, the ZBA is going to make recommendations to ensure that it is – let's not get into any detail talking about negative and positive pressure. Thank you.

Ray Huntington, 1A Route 340, Orangeburg, NY, testified that he is a mechanic and well paid by Aluf and proud of his job, I have a lot of opportunities to learn new things and when it comes to the air quality I've been working with the supervisors they have an open door policy any problems I go to them and we solve them as fast as we can and I change filters there every day, 6 days a week and there's hundreds of them so obviously I can't do them all in one day so everybody on every shift is doing it and we do the best that we can with what we have, sometimes you run out of parts, sometimes you'd have to wait and all I can say is I'm very proud to work with these people they really are trying to solve the problems for the community and I hope it continues , thank you very much.

Rafae Mari, 163 Irvington Avenue, Paterson, NJ; testified that he has worked at Aluf for 14 years; we have three generations work for Aluf, started with my father and me, my older son and my brother as well, and that we were saying that it's not really a safety issue ,if it's not a safe place to work, I'm not going to have my son work there and my father is not going to have me work there; my father has worked there for twenty years, I've been there fourteen years and my son five years, my brother two; I have a big family there as well my uncles, my cousins for 20 ,25 years, which a lot of people work over there related to me to be honest, so we feel safe in Aluf, good to work for and are good to our families ;that they support us and our families; I believe there are more than 350 employees, so we feel comfortable working for Aluf. We have no problems with Aluf and they are trying to find solutions and that I am a maintenance manager so he knows they are spending a lot of money on the ventilations systems, filtration and we try to make everybody happy we want to solve the problem we just get some ideas and the engineering



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saying this is the way to solve a problem there are trying to solve the problem and they went though many many things and they are going to keep going , trying to make everybody happy, our neighborhood and everybody else and I that you guys are not taking any decision right now but we need you to allow Aluf to give the full facts and information about the facility, that 350 employee and if it's going to be the wrong decision or it's not alright so negatively decision for more than 350 employees, so you are going to have more than 350 families without jobs those people have bills and responsibilities and many things as everybody and thank you.

Jasmine Schwaid, 2 Glenshaw Street, Orangeburg, testified that she has worked for Aluf for five years; that the ZBA should take serious consideration on the major economic impact that it would take on Orangetown, that 150 employees from Aluf live in Rockland County; that 50-60 live in Orangetown; that the employees impact the local economy by ordering approximately to meals per shift and they have three shifts; that's a lot of meals that just our employees are ordering; that the company uses local contractors and vendors that employ local Orangetown residents so she would ask that the ZBA get all the facts straight before taking actions against Aluf because it takes negative economic impacts of your decision would have broad reaching impacts on a lot of people; so please take that into consideration.

Fred Hernandez, 45 Hudson, Nyack, NY testified that he has been a dispatcher for Aluf for two years; that he spends a lot of time in Orangetown; that he and his co-workers contribute to the local economy, we go to the local restaurants, partaking in local businesses; we bring a lot to the area; and what you heard here tonight from the building department isn't accurate and we believe you should listen to all and get the facts straight before they decide against Aluf.

Mike Abdelrahim, 118 Haverhill, Woodland Park, NJ.; testified that Aluf moved here to Orangeburg in 1986, that he was employed by Aluf before prior to 1986; that the company is in the bag making business; that many members of his family work for Aluf, even his son; if anything is wrong with the company he would not be working for them; that Orangeburg is a town with many friendly people; that he works as a supervisor in the company and they are trying to do their best to make a god environment , not only for Orangeburg but for the employees also; we are human beings working in this company and we want to see this company succeed; and if you are in the bag business you will probably smell the bags or plastic; if you are in the meat market you will smell the meat, chocolate you will smell the chocolate; but anything poison I would not be working in the company. Thank you.

Harold Mechlovics, 2 Orchard Hill Drive, Monsey, NY, testified that he has been working for Aluf Plastics for 41 years; started with the company in 1977 and in that time period they started out in Edison, NJ with three lines and after a fire we moved to Clifton NJ, where thy expanded and finally to Orangeburg, in the 41 years that he has been working for Aluf, all he has seen is constant improvement on safety, air quality and benefits for the employees and for the environment and the surrounding areas where they have been working; that is basically what he has to say and that a lot of thought has to go into investigating what exactly is the problem with this environment it's perceived as being caused by Aluf Plastics, thank you.

Jessica Smith, 6 Iroquois Avenue, Palisades , NY, testified that as a resident, I don't see anyone that want to take anyone's livelihood away but the residents of this town have rights and the workers have rights, we all a right to breathe air that is not toxic or fowl, there be 350 employees at Aluf, there are many thousand more residents here, my son is one of nine classes of first graders, every single one of those children will be going to school within a very small radius near to Aluf, breathing this are and these children have a right to clean air as well, with regards to the effect on the economy here, I moved here from the city looking for some clean air and a decent school and I used to tell everybody who would listen come up to Orangetown it's fantastic, it's a beautiful place to live the people are lovely, and I don't say that anymore, so that is an effect on our economy too if people don't want to live here, people don't want to pay the taxes here;

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people don't want to send their kids to school here, that has an effect on us as well but the overriding factor for people who work in Aluf or people who live in the town is that we all have right to breathe clean air and that's all I have to say, thank you.

Sal Valenza, 13 Valenza Lane, Blauvelt, NY, testified that first question is what does your address mean, I am confused by that because this woman claims to live in a factory, so if you go to the factory you can find her I guess, the question is whether or not they are answering the question you asked them, you asked what their address was, they gave you the address of where they work, not where they live, there are many people here that were confused, why didn't she answer it with where she lives, I could let her come back up and answer if she wants to give her home address, I'll cede my time if she wants to come give her home address but if you want to use your address for where you work, there are a lot of people so the reason that I am here this evening because I was sitting at home minding my own business and looked on Facebook and that the meeting that was going on to discuss Aluf had been stacked with Aluf employees and that Orangetown residents could not get in the room so what I would say to y'all is I think you are going to need a bigger room next time you do this, it just doesn't seem right to me, I wasn't going to say a word until the fact that we don't care that the woman's address is not her address, you know if we are going to have people come and speak I think if they are going to swear they are telling the truth they need to answer the questions correctly. Thank You

Dimitri Laddis, 31 Liberty Street, Piermont, NY, just listening to some of the comments made by some of the company officials is disheartening because they talk about rectifying problems that they never acknowledged, they've actually put out public statements claiming all sorts of falsehoods about the state and the town and everybody have cleared them of any culpability in the smell and it is the very smell that is the major problem here and you have a building inspector and the director of the buildings who spoke very eloquently and I really appreciate the presentation who told us all it smells and it's the very performance standards that you're reviewing are about smell and other various violations obviously, but we heard the performance standards states you can't smell, you can't have a factory that smells that causes people hard, that causes their property values to drop through their smell and we have the attestation of our town officials stating it smells., it smells, it smells and you have a company that denies the smell it's as simple as that done. Performance Standards failed violations left and right done I appeal what does a professional expert bring to the equation when everybody's nose tells you it smells, all the employees here will tell you that it smells okay we have a hundred or so witnesses here to tell you how badly this place smells and we performance standards that are written into the law that state that you cannot have a factory that stinks up the neighborhood, done we are done and this has been going on like a dance, now you have also a company that tells you they're acting, you know the company has its own rights as a corporation and we have residents telling you that we have rights too, that we deserve for our kids to go to school in clean air; we have students from the college that deserve to breathe clean air, we have all these employees who deserve to breathe clean air; employees who deserve to work in an environment that has clean air and I can tell you that is not clean air, so this is not a company that is acting in good faith, okay and the very fact that they stacked the room in order for us not to be able to sit and to discourage us from speaking is an act of bad faith in my view, now, we also know that the air was measured to toxic beyond levels that are acceptable by New York State and that's a whole other issue but thank you.

Maureen Aitchison, 78 Dutch Hollow, Orangeburg, NY, so just anecdotally this company is talking about how family friendly they are and how unbelievable it is to work for them yet these people haven't been home to see their families today so if there's anyone waiting for them tonight, the kids are probably going to be asleep and so again that to me is a contradiction of being a family friendly company, the other part that they were talking about is economics and yes we all want a good economy, we all want our families to thrive, we all want everyone to have a good job, good paying jobs but what good is a good paying job if you are breathing in who knows what and it's just noxious and it's an assault on your senses as soon as you breathe it



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so to me it's like why would you want to, the equation to having a good economic you know, all these great jobs it doesn't make any sense if you're not going to be breathing quality air and being able to go home to your family at night so to me it just doesn't make any sense and I empathize with all the employees, we are residents here and you are employees for the company, we are all in this together to me we just need to make it better and it's just the length of time it is taking is just unacceptable, so thank you.

Elizabeth Dudley, 250 South Greenbush Road, Orangeburg, NY, I also empathize because these people are working hard and we come here and we work hard too and we want to enjoy our homes and you know I don't want to worry all the time about my kids going to school and breathing it in and then I live down the block and we breathe it in, we can't even have a catch in our front yard sometimes it's so bad and I just want to employ you to really try to be honest and forthcoming with solutions on both sides, we all are just looking for some relief, summers coming I want to have a catch with my son, I want to use the bike path, that's things we can't do it smells all the time, I want to be able to ride with him to school, we can't do that because it smells, so I don't want to play the blame game I know you're working hard; we are not trying to take away jobs, we are not trying to shut down Aluf; we just want a solution to whatever you know this problem is and we want them to take responsibility they haven't done that so far; you sometimes yes sometimes no so let's you, so let's put it out there, thank you.

Alex Gadd, 8 Murphy Court, Blauvelt, NY testified that I have to give my entire address, alright because it is clear that this is a rather intimidating; I came up to speak because I don't want to be intimidated in my own town in my own city hall and I refuse to cede the floor to people who don't have our interests at heart and I respect all the workers but we're not talking to you and I'm sure you're not talking to the workers you're talking to the owners of the company who are not following the rules and it's very important that we know that spending money does not equate to doing things that are of any value if the money is poorly spent so no one gets credit for spending a lot of money if they spend it badly and I think that's very important to have on the record, thank you very much.

Agnes Caniza, 18 Spruce Street, Orangeburg NY, testified that she is concerned. I live on 18 Spruce Street, I live where on a bad wind day I get either the smell of burnt plastic or the floral smell and I know too many people here probably tired of hearing this from every single citizen but this is my day to day life, I also have three young children, 11, 10, and 8 years old, my oldest went to Cottage Lane, my second one is in Cottage Lane and my third one will enter Cottage Lane, a lot of the reports were talking about the air quality being on Erie Street right, that is right next to where Cottage Lane is; I am concerned about my children, I am concerned about being able to have quality of life with my family, my husband is a cancer survivor, so I am concerned about that as well, okay, so it is my livelihood too, I'm sorry it affects other people's livelihood in other ways but I do have to as a high property tax paying citizen in this town be concerned that you know how it is affecting my home and my quality of life so thank you have a good evening.

Dave Rodrigues, 88 13<sup>th</sup> Avenue Elmwood Park NJ, testified that in and out the fresh parkway air to his local home my hometown, Elmwood Park and local areas is the same fresh air that can be found at Aluf Plastic any given time; I've been working here for eight years and whatever force is to determine these thoughts should evaluate whether this is true or not, a single odor has never been smelled by me and they've been talking about health these people have been working here forty years, twenty five years, twenty years, people that I work with personally up in hand with these machines and there's never been such health problems, there's no cancer been found, there's no asthma, these people have still been working till this day; the fresh should continue and still be considered to be fresh air. Aluf Plastics have been working to figure out solutions they spent massive money and to the economic side a lot of businesses have and should still continue to be done on the eastern side of where Aluf Plastics does, we have enormous

business and this would most likely impact economics. Thank you.

Eileen Larkin, Palisades, NY, testified that she would like to ZBA to clarify the meeting on Thursday, they did not quite hear it outside, Thursday night is Holy Thursday, it's a Christian life it's the night before Jesus Christ died and I believe that the meeting should be postponed in reverence to use Christians and have it the following week, please due consideration, I would rather not give my address for security reasons I've had problems, I'm sorry, when I came here tonight at quarter to six I found ample parking in the parking lot, however, when I walked into the building and came into this room the room was filled and first I thought I was at the wrong meeting, then I saw that Aluf had asked their employees to stack the meeting hall tonight, I find that very disrespectful, disrespectful to the people who live here in Orangetown, we came here tonight to hear a presentation and to be able to speak, obviously Aluf has been disrespectful when it comes to complying to our codes, the environmental codes, the building codes, I have listened here to tonight to hear the presentations of both sides so obviously there is a problem over there and hopefully it will be resolved to everybody's benefit but I feel that if Aluf can be disrespectful to me, somebody's who's lived here for over 40 some odd years, I've never seen anything like this in my whole life, and all the years I'm coming to the meetings, why was this done to us, the people who are bringing this issue up are forced to sit outside, I hope the people who came here tonight know that this meeting is televised, you are on television, I hope you're getting paid by Aluf to put in time here, I'm a strong believer in Union and people getting paid for time they're working for their employees and I feel that they are working tonight for their employees for their employer, I do hope they are getting paid in some shape or form and I'm concerned about their health, we don't want to close them down, we want the problems to be corrected, that's all we want.

Heather Hurley, Pearl River NY, testified that she just had a couple of comments to make, first I just wanted on the record to state that an Aluf employee, one of management, did say back in November 3<sup>rd</sup> 2016 regarding odor issues that there are quote "determining how to solve the problem, work on the issue happens every day here at Aluf" and I just wanted that on the record so that their employees do understand that their management is actually acknowledging that there are odor problems, secondly I also wanted to agree with Eileen Larkin that Thursday is holy Thursday and I would also request that meeting be moved, that's one of the high holiest days of the calendar of the Lenten season and I also would request that meeting be moved and just in response to Aluf's attorney earlier tonight, where he was talking about technical responses and providing all these technical responses, I just want to say that no amount of technical responses will dispute the fact that odors continue to plague the surrounding area and adversely impact the quality of life for both the residents and the employees, in the past supervisor has said, who actually did visit the factory that employees are working without masks and that it stunk inside there and the next questions I just wanted to address to the board to please ask Mr. Anthony Lawson if he could please respond tonight was one, has Aluf's carbon filter been changed to a Midas carbon, if yes, when was that done, also has this ...

ZBA Chairman Sullivan interrupted and stated that this Application has nothing to do with Mr. Lawson today – it has to do with the Director of OBZPAE.

Ms. Hurley continued: So, they cannot answer any questions regarding any of the equipment? I would like these two questions on the record regardless; and, number 2, has Aluf changed the carbon filters in the IBC area, and when was the last time, and that's all I have to say, other than that Clean Air For Orangetown continue to advocate for both the community and the employees of Aluf, and we do not want anyone losing any jobs; we want the odor problem fixed.

Krystof Witek, Orangeburg, NY testified that: Chairman Sullivan and members of this ZBA in the brief time allowed I would like to highlight some of the events of the past couple of years, it has now been over two years since this ongoing wave of odor complaints from Aluf has begun,



stating in early 2016 till this day, the community members and Aluf neighbors reported to the town and the DEC over 600 odor complaints it is fair to state that you would all concur that the problem is being vigorously debated and yet still not resolved in 2016 we were told that we were told that we had to be patient as the DEC and the town will address Aluf carbon bed filtration system and that will solve the problem, it did not, in 2017 we were told that we have to be patient as the DEC and the town will address Aluf air ventilation system that it will be upgraded and that it will mitigate odors after months of delays we found out that it didn't now, in the Spring of 2018 we were being told by the DEC that Aluf had switched to a new carbon filter media and it will solve the problem, based on the recent odor reports as recent as this afternoon that also doesn't look good, we're here today, among other reasons, because the town inspector's recently discovered and documented that Aluf factory is full of holes which allow for constant outflow of unfiltered burning plastic other emissions where and when does this end on February 27<sup>th</sup> Aluf trash compactor trailers went on fire an allegedly the fire spread to a nearby dumpster filled with tires, satellite view of Aluf property shows over twenty trailers parked in the back, are all these trailers filled with combustible trash and how does that situation conform with town performance standards, I do recognize that there are continuing efforts and signals of commitment by the town and the DEC to solve this problem, however the members of Orangetown community shouldn't have to be subjects of what appears to be a never ending quest, Mr. Chairman and the ZBA this community has run out of patience, how can you blame us, thank you.

ZBA Chairman Sullivan stated that this Public Hearing will remain open and be continued to April 4, 2018, due to the Catholic holidays, and that the ZBA's intention was to expedite the decision simply to hire a consultant engineer, but, apparently due to the holidays, we have to postpone that until April 4, which will be held at the Greenbush Auditorium, 7:00 p.m.

ZBA MEETING OF APRIL 4, 2018

ZBA Members Present:  
Chairman Dan Sullivan  
Tom Quinn  
Lenny Feroldi  
Joan Salomon  
Mike Bosco

ZBA Members Absent:  
Patricia Castelli

Also Present:  
Denise Sullivan, Deputy Town Attorney, ZBA attorney  
Dennis Michaels, Deputy Town Attorney, ZBA attorney  
Debbie Arbolino, ZBA clerk/secretary  
Ann Marie Ambrose, court reporter/stenographer

The following documents were submitted to, and reviewed by, the ZBA:

1. A letter dated March 28, 2018 from the Rockland County Sewer District #1, signed by Joseph LaFiandra, Engineer II.
2. A memorandum dated April 4, 2018 from Jane Slavin, R.A., Director of OBZPAE.
3. An email dated April 4, 2018 from Chris Day, Orangetown Supervisor.
4. An email dated March 31, 2018 from CleanAir4Orangetown.

ZBA Chairman Sullivan made a motion to move forward with issuing of a request for proposals for a consulting engineer, because of the scope and complexity of the required services to the ZBA; and, in the interest of time, to rely on OBZPAE Director Slavin to prepare the Request for Proposals ("RFP"); which motion was seconded by ZBA Member Salomon; and carried unanimously.

Public Comment:

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Michael Smith, 65 Hayes Street, Blauvelt, testified that this has dragged on a long time and he would like to offer assistance that he works in the industry and is worried about tax payer dollars; that the mechanical additions need evaluations and improvements to address the problems.

Heather Hurley, 202 Hobart Street, Pearl River, asked if Jane Slaving would be consulting with an engineer to choose the company and if so who would that be?

ZBA Chairman Sullivan made a motion to continue this Application until the RFPs come back; which motion was seconded by ZBA Member Bosco; which motion was carried unanimously. The ZBA noted that, since a date, time and place certain is not being announced for the continued Public Hearing, new neighbor notices would be mailed, and the Notice of Public Hearing will be published, and posted on the Town's official website and in Town Hall.

ZBA MEETING OF SEPTEMBER 5, 2018

ZBA Members Present:  
ZBA Chairman Dan Sullivan  
Tom Quinn  
Lenny Feroldi  
Joan Salomon  
Patricia Castelli  
Mike Bosco

ZBA Members Absent:  
None

Also Present:

Denise Sullivan, Deputy Town Attorney, ZBA attorney  
Dennis Michaels, Deputy Town Attorney, ZBA attorney  
Debbie Arbolino, ZBA clerk/secretary  
Ann Marie Ambrose, court reporter/stenographer

The following documents were submitted to, and reviewed by, the ZBA:

1. RFP for professional mechanical engineering consulting services from SAGE Engineering Associated LLP, 121 Western Avenue, Albany NY, with fee proposal.
2. RFP for professional mechanical engineering consulting services from Fellenzer Engineering LLP, 22 Mulberry Street, Suite 2A, Middletown, NY, with fee proposal.

Jane Slavin, Director of OBZPAE, testified, on behalf of the Applicant OBZPAE, that at the last Hearing the ZBA had decided that they wanted to bring in an expert consultant to analyze the system that is in place at Aluf to find out what needs to be done to correct the current problems; that the preliminary fees that were coming in were high, and the ZBA decided that a formal RFP should be issued; that an RFP was written up with the help of the Town Attorney, and two companies responded – Fellenzer Engineering LLP (“Fellenzer”), and Sage Engineering Associates LLP (“Sage”); that the proposals were similar, and both companies stated that they would have to hire a subcontractor to do air modeling, but only Fellenzer included an estimate of that additional fee; that both proposals are acceptable, and the initial analysis from TRC, at actual release points, are available for use in their analysis; that this analysis will be for the overall building, and will include proposed systems to evaluate and improve it; the intent is to review everything, and no Building Permits to do anything new will be issued until our engineers approve it; that there is no set time limit, but the Supervisor and Town Board are eager to get this building into compliance; that both firms are capable of doing the work, and the difference that may influence the decision of the ZBA is that Fellenzer is located in Middletown and Sage is located in Albany; that the Town Board is having a special meeting this Saturday for the budget, and they would like the recommendation prior to the ZBA meeting, so that the Town Board



could vote, to the hire the consultant that the ZBA recommends, on Saturday; that within the ZBA's 2017 Performance Standards approval Decision there are tools for compliance, but the right steps have to be taken for enforcement to happen; that there have been less complaints since the openings in the building have been closed, and, since there were complaints this weekend, the DEC is making Aluf change the air filters, and Aluf is moving forward to comply, and now we are moving in the right direction; that the Orangetown Air Quality Review Committee is following the situation closely, and Peter Duda is on top of all of the complaints.

Dennis Michaels, Deputy Town Attorney, stated that the ZBA will recommend to the Town Board which expert consultant that the ZBA would like hired to investigate the alleged Performance Standards violations, as per ZBA Decision #17-31; that the consultant hired will be responsible for the sub-consultant that will do the computer modeling; and that the ZBA may also include, in their motion, that the fee will not to exceed \$80,000, for example.

Public Comment:

Allison Sullivan, 42 Arthur Street, Blauvelt, NY testified that she would like clarification on who is paying for these consultants and do these firms have a history with Aluf; and what happens if there is no time limit; that his could go on for years and as a homeowner this is frustrating.

ZBA Chairman Sullivan stated that Aluf will not get a Certificate of Occupancy until these issues are corrected and addressed properly.

ZBA Chairman Sullivan made a motion to recommend hiring Fellenzer Engineering LLP to be the ZBA's expert consultant for ZBA #18-19, and to include the cost associated with the cost of CFD modeling as part of their proposal, and that the proposal dated August 3, 2018 will be a binding contract; which motion was seconded by ZBA Member Castelli, and carried unanimously.

The ZBA noted that this Application will be continued to a future date to be announced, and that new public notices of the meeting date, time and place will be mailed, published, posted, etc.

ZBA MEETING OF JUNE 19, 2019

ZBA Members Present:  
Chairman Dan Sullivan  
Tom Quinn  
Leonard Feroldi  
Patricia Castelli  
Mike Bosco

ZBA Members Absent:  
Joan Salomon

Also Present:

Dennis Michaels, Deputy Town Attorney, ZBA attorney  
Debbie Arbolino, ZBA clerk/secretary  
Ann Marie Ambrose, court reporter/stenographer

The following documents were submitted to, and reviewed by, the ZBA:

1. A report entitled "Zoning Board of Appeals Town of Orangetown, NY, Air Quality Odor Review – FE Project No. 18-123," dated January 23, 2019, prepared by John D. Fellenzer, P.E., Principal, Fellenzer Engineering, LLP.
2. TRC letter dated March 21, 2018, and February 21, 2018, signed by Karen M. Vetro, Ph.D., Manager, Risk Assessment and Toxicology (4 pages), with a Statistical Evaluation Output attached (5 pages).
3. TRC Orangetown Sampling Report VOCs in Short-Duration Samples dated December

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- 21, 2017, prepared by TRC; TRC Project No. 267443.1000.0000 (18 pages).
  4. TRC Air Quality Monitoring Report Phase II: VOC Air Sampling & Meteorological Monitoring, cover page dated March 2017, prepared by TRC, Austin Texas, TRC Project No. 267443.1000.0000 March 2018, with attachments (95 pages).
  5. An email dated June 19, 2019 from John W. Petronella, DEC, submitted by Jane Slavin, R.A., Director, Office of Building, Zoning, Planning Administration and Enforcement, Town of Orangetown.
  6. Aluf Photos taken February 1, 2018 submitted by Jane Slavin, R.A., Director, Office of Building Zoning, Planning, Administration and Enforcement, Town of Orangetown.( 9 pages submitted also at a previous meeting)
  7. A letter dated June 19, 2019 from Sive, Paget & Riesel P.C. signed by John –Patrick Curran, Attorney.

Jane Slavin, R.A., Director of OBZPAE, and Michael Manzare, Assistant Building Inspector of OBZPAE, appeared and testified on behalf of the Applicant OBZPAE; and John D. Fellenzer, P.E., Principal of Fellenzer Engineering, LLP, appeared and testified.

ZBA Chairman Sullivan announced as a continued item number ZBA #18-19: Furtherance of implementation of Specific Condition 4 of the May 11, 2017 Zoning Board of Appeals Decision #17-31, regarding the Performance Standards application of API Industries, Inc. d/b/a Aluf Plastics (“Aluf Plastics” or “Aluf”), for premises located at 2 Glenshaw Street, Orangeburg, NY, Tax Map Designation 70.18-2-15, in the LI Zoning District, as more specifically described in the February 16, 2018 report to the ZBA by Jane Slavin, R.A., Director of the Orangetown Office of Building, Zoning, Planning Administration and Enforcement (OBZPAE), and Michael Manzare, Building Inspector of OBZPAE; which furtherance is prompted by the Aluf Plastics odor review, dated January 23, 2019, prepared and submitted to the ZBA by John D. Fellenzer, P.E., of Fellenzer Engineering, LLP, which expert consultant was retained by the ZBA to assist the ZBA in its investigation of Aluf’s alleged Performance Standards violations; and a more detailed description of this Application may be read in the Notice of Continued Public Hearing, copies of which are available on the table on the north side of this meeting room.

Dennis Michaels, ZBA attorney, asked the ZBA clerk/secretary if all public notices required by State and Local Law had been complied with, including the public notices as described in the ZBA Decision #17-31 of May 11, 2017; and the ZBA clerk/secretary answered “Yes.” A motion to open, again, the Public Hearing for Application #18-19 was made by ZBA Chairman Sullivan, and seconded by Tom Quinn, which motion carried by unanimous vote.

Dennis Michaels, ZBA attorney, stated: Chairman Sullivan had asked me to summarize what is exactly the Application that is before the ZBA, Application ZBA #18-19 the Applicant is actually the Office of Building, Zoning, Planning, Administration and Enforcement of the Town of Orangetown, also known as OBZPAE, and I will refer to them as OBZPAE as often as I can, and it is **NOT** an application by Aluf Plastics or Aluf, or API Industries; and there may be some misunderstanding of the application and, again, it is an application by OBZPAE, as Chairman Sullivan read into the record, there was a report from Jane Slavin, R.A., the Director of OBZPAE, and also co-signed by Michael Manzare, Building inspector of OBZPAE, dated February 16, 2018, that is essentially the Application that is before the ZBA, and what that application is asking the ZBA is to find that Aluf is in violation of the Performance Standards, and, more specifically, as was approved by the Zoning Board of Appeals in its May 11, 2017 ZBA Decision #17-31, which had approved a Performance Standards application that was submitted by Aluf Plastics in early 2017; and there also may be a misunderstanding or misconception of what is the end result of this Application, if its approved, again, the Application is by OBZPAE, **NOT** Aluf Plastics. What if OBZPAE’s Application is approved, what does that mean? It does not mean that the Zoning Board of Appeals can compel, mandate, require or force Aluf Plastics to re-design, or to remove or install, any of its odor regulating

equipment, infiltration, infrastructure, everything and anything related to Aluf Plastics: the ZBA, as part of this application, does not have the authority to mandate any physical changes or improvements or re-designs of Aluf Plastics' systems, equipment or infrastructure whatsoever; that could be a separate application by Aluf Plastics itself, making an application to this ZBA for a Performance Standards approval, which it did back in May of 2017, and which 2017 ZBA Decision is now back before this ZBA, but not triggered by Aluf Plastics; but, rather, triggered by this Application by OBZPAE, which asks this ZBA to find, if it approves the Application by OBZPAE, that Aluf Plastics is in violation of the Performance Standards, and therefore, if the ZBA agrees with the Applicant OBZPAE, to rescind and revoke the ZBA's May 11, 2017 Performance Standards approval Decision that was granted to Aluf Plastics; and the ZBA is also empowered, by its May 11, 2017 Decision ZBA #17-31, to find and determine that the Building Permit that was issued on June 14, 2017 is also revoked and rescinded. This is all that the ZBA can do, if it is so inclined, if it should find in favor of the Applicant OBZPAE's request, that is all that the ZBA can do, and it is the end result of this Application by OBZPAE, and all that may be achieved it terms of this specific Application.

Jane Slavin, R.A., Director of OBZPAE, thanked Dennis Michaels for his clarification; and testified: Referring back to the March 26 ZBA Hearing, as per the ZBA Decision #17-31 of 2017's Specific Conditions numbered 2 and 3, personal observations of both Mike Manzare and myself, I did ask the ZBA to approve the consulting engineer, and so we went through the process with an RFP, obtained pricing, which were reviewed and a recommendation for selection of the consulting engineer was made, and on September 5, 2018, the ZBA voted to recommend to the Town Board to accept Fellenzer Engineering as the ZBA's expert consultant in reference to this Application; that the Fellenzer Engineering Report was received on January 24, 2019, and I notified the ZBA clerk of the receipt, and we began to move forward with scheduling the next ZBA meeting, so that Mr. Fellenzer could make his presentation to the ZBA; and I now give to you, John Fellenzer of Fellenzer Engineering, who has spent the time to review Aluf's records, make a site visit, and review the reports from TRC, and he will elaborate on his report and his recommendation.

John Fellenzer, P.E., introduced himself, and testified as follows: He authored the January 24, 2019 report to the ZBA, along with the experts that are included in the study. One of the things that we look at, when we look at odors and complaints thereof, are the requirements that deal with those odors – we look at the town regulations that deal with odors, such as Town of Orangetown Code, Chapter 43 – Zoning, Section 4.11, fourth line down, which addresses odors or other forms of air pollution or disturbances, which mentions objectionable conditions that exist, so odors are very similar to sound, in the sense that certain people are effected by them more than other people are effected by them. Talking about the threshold a little bit, before we talk about a little of the background in terms of threshold detection; odor detection is based on a panel of observers and, more or less, 50% of observers smell it or don't; so, a panel of seven, where three people smell it and four do not, it would be considered unobjectionable, even though a few people would be bothered by it, which is an important thing to know, because what may bother me and a neighbor, but may not bother a third party looking at it. You have to keep that in mind when you are talking about odors and the results; some of the characteristics of odor, and what is an odor, is really a complex mixture of compounds, and some smells are objectionable and some are not objectionable, which is important to understand that a smell could be objectionable to some people, and there will be others that it does not bother them. So, they talk about values and threshold values, and they also talk about the concentration of odor being emitted and how they get diluted in the air; then, when they finally get to an area that can be sensitive, they are fully diluted or diluted enough so that you can smell it, or you can't smell it (or it becomes an unobjectionable odor). In reviewing this, we used that background information to determine what may be available, what the people are sensing, where they are sensing it and how that is transmitted, how that is removed from the point of disturbance. It is a fairly complex process of receivership that you have to go through, and the challenge is that it is something that



you can't see – it's very easy to go to a blue building and you can see, the color is physical and is actual and you can see it; but standing outside and smelling something is very different, which is very difficult, because not everyone notices smells, and it is very difficult to have an ironclad answer. In addition to that, you have the environmental conditions, and we'll start with the operational conditions: someday a factory may produce a certain product that has a certain odor to it, or produces a certain chemical compound that causes an odor, but the next day they are producing a different product with a different chemical compound – one may be more objectionable to one person, and the next one may be more objectionable to another person and it may be objectionable to the person that was not bothered by the odor the day before. So, we are dealing with something that is invisible in this particular case, and you are relying on the presence of the individual at the time of the occurrence to do a test to see if it actually exists through the test that the Town has available, and that can be a little spotty; and, in addition to that, there are environmental conditions that need to be considered: when the wind blows to the north, the lack of air for somebody to the south is not going to smell it, and that same discharge is close to zero to the south, but not to the north; the person to the south, in this instance, might think the problem is fixed, but the wind pattern shifted which moved the smell to a different area. All of these things are not terrible, but it is difficult and makes the problem more complex to address, and it also makes the fact that it exists a little more negative in terms of dealing with the presence of it, and how it can be dealt with technically, which is one of the challenges with dealing with smells – all of these factors come into play, and it is a challenging and difficult item to deal with, and in most cases you have to start with, what we call, best case practices in developing a way to mitigate these, and you mitigate them potentially to 100%, but, generally, not, because there are, generally, conditions that you can't predict, that you couldn't address no matter what the plant is producing. To be able to fully remove those odors from the area; if you capture all of the odors before they got out of the building, and you treated all of those odors, and if you maintain that 100% of the time, seven days a week, you would have to have primary, secondary and tertiary systems, and you can't open the front door because the air flow dynamic in building changes, and you would need to capture that; so, this is very, very complex, and there is a point of diminishing return when we talk about addressing the process of capturing odors, treating them, then discharging relatively odor free air compared to what was captured. I think, in 2017, Aluf put in an application for structural work at Aluf for this particular case, and a lot of that work was supply fans into the building that diluted the air inside the building that impacted the indoor air quality very significantly – the ventilation improvements that were done in the 2017 project primarily addressed, not totally, but primarily addressed, indoor air quality; a number of indoor/outdoor fans that supply air to the space were added that allows a nice fresh air ventilation to the inside, and they exhausted a lot of that air, and a lot of the existing fans were either re-invigorated, or new fans were put into the building; and they also included, as a part of the treatment system, a capture in the hood system. There is a certain amount of exhaust air inside the facility. I want to talk about the orientation of the building (pointing to a plan with an overview of the building): lower page south, upper page north, left is west and right is east; the predominate winds in the northeast centered from the south, those are predominate winds that are not present all the time – the winds can churn up in any direction, at any time, but predominately 75% to 80% of the time weather patterns track this way, west to the northeast, which I'll call them prevailing westerlies, because they come from the west, but they don't come directly from the west at the ground: at an altitude they come directly from the west; close to the ground there is the Coriolis effect, which changes from the west to the southwest and, obviously, you get hills and trees and buildings that also will shape that, but, in general, your wind is south and moving to the north. So, any discharges that are coming from the back of this building are generally going to move in a northerly or northeasterly direction. Mr. Fellenzer pointed to a graphic of the building to show where the discharges were coming from, and stated; yellow are discharges with less odor in them, less measured odors; red ones show slightly more; the graphic is east-west, and the building is north-south. Mr. Fellenzer turned the graphic to show the north side of the building has some areas that generate odors, and the north side of the building has some areas that generate odor discharges; some horizontal discharges, and the way that they

are oriented toward the building, both toward the south and the west and, in this particular case, towards the west on the north side of it, and its important to note that, because as much as pollution should be captured at the source, if it can be, there is always going to be a discharge off of the fan that you can't capture at all, it's just impossible; so, there is sort of a slang term: "the solution for pollution is pollution," and it's not a fair thing to say – it's not a good thing to say, but it is something that you consider when you're dealing with pollution and, in this case, odors. There is a report that indicates that these smells are not toxic – and that's a good thing – but the more that you are able to dilute that air – and that's why we talk about dilution and dilution ratios – the more you're able to dilute the air, the less likely you and I are going to be able to smell that or be bothered by that. So, if I'm not diluting the air, but exhausting to the west, in this particular case, horizontally, that won't be as effective as having exhaust fans that, in addition to exhausting vertically, but also throw the air fifteen feet vertically up. Also, they make those types where you use them principally on chemical fume hoods and other areas, like that where you're removing roughly 11,000 cfm from the building and you include in that another 20,000 cfm of air, you have already mixed that and reduced that concentration very significantly, and then you push it up into the atmosphere a little bit higher, so that you get it out of the breathing zone – ideally you'd want to capture all of those odors before they got into the fan, so that's part of the process. And there is a re-processing source that is, here, a carbon bed, where they have in this particular area capturing those exhaust fumes from the process itself, right in through the carbon bed, and they are exhausting vertically right outside the building; so, relatively speaking, this treatment system, in this particular case, is working and is reducing that particular aspect of the odors that are emitted, but you still have a number of other areas that are not dealt with to the best of industry standards. So, the recommendation in our report – and this is sort of an executive summary – ideally, item number one is that, in the plant process, capture the exhaust and odors coming off of, or through, the air filtration treatment system, and use scrubbers or other DEC approved devices to first treat that air as best you can. It will never be 100%, no matter what you do: you treat the air the best that you can before it gets discharged; and then, using the vertical exhaust systems – the air and treatments mixing – you then dilute that air, and you try to get it above the breathing zone – above the capture zone and above the occupancy within the plant – and, of course, outside the plant, for both the commercial and residential areas. The way to start a process like this is to really get a solid system modeling – a complete computer-based modeling system – based on certain techniques that you intend, to see what the results are on the computer model; and we find those by what it didn't do, what we thought it was going to do; add more water treatment, add more capture; and then it's sort of an iterative process in doing that, to get down to where you can predict, and then these are predictable, and then three people out of seven would not find them objectionable, four people out of seven would not find them objectionable; and then that can then be looked at and reviewed through the building process that approved and implemented. Again, the predictive measures are not absolute; you see it all the time in standard building design, for example, when we talk about lighting: the light fixture produces a certain number of lumens, and we take the reflection off the walls, and we come up that it should be producing 50 lumens, but, when it's all done and some of the paint is slightly different and a little dingy on the lenses, now we have 47 lumens instead of 51 – it is not exact, but it's pretty darn close; and you got to start with computer models, otherwise you're just sort of guessing at what you're going to hope works, and that always gets people frustrated, because there's no real basis to start. So, I think that one of the things in the 2017 work did a significant job improving the indoor air quality; but I don't know that it did enough to address the outside air quality, I'm not sure: based on the drawings that I saw, there really wasn't a lot addressing the outside air quality, but they did do a lot to address the indoor air quality – I was not looking at the set before the 2017 submission, and that sort of concludes my presentation.

Jane Slavin, R.A., Director of OBZPAE (the Applicant), testified: I agree with John's assessment, in that it doesn't seem that Aluf's previous submission for the Performance Standards that was approved actually addressed the complaints that the neighbors were putting

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forth and experiencing; and, because we are still getting those complaints – I myself have observed the odors, and so has Mike Manzare, Building Inspector, and the Inspector from DEME. Again, they are hard for us to capture and find, because, by the time we're notified, and we do have other jobs to do, we're going there, but when we do see them, they are documented, and there are issued violations and summonses, which I think everyone's aware, and those are being processed through our court system at this time. So, obviously, it is affecting the neighborhood, and based upon Mr. Fellenzer's report, I don't think Aluf achieved what they said they were going to achieve back in 2017.

ZBA Member Mike Bosco stated that it seems that what Aluf wanted to achieve, back in 2017, wasn't the entire opening; that there were multiple locations outside of that that have an issue; so, is it safe to say, based on the drawings and knowing what we approved back then.

OBZPAE Director Slavin responded that that was the initial presentation that she made to the ZBA – showing all the different fans, and how it doesn't seem that all that different stuff can bring fresh air in, is not necessarily doing what it needs to do when it is released from the building; that seems to be an issue, and is one of the reasons that we knew that something was not accounted for. So, it seems to me, again, based on the minutes of that meeting, Aluf's experts were saying that there would be no more odors – they are the ones that testified to that – they didn't say that we may be able to get rid of some of them and there would be no more complaints; however that has not happened.

ZBA Chairman Sullivan asked what has been the response from Aluf, regarding this, especially the Fellenzer report.

OBZPAE Director Slavin responded that OBZPAE has not received a response, and that the Fellenzer report was made public a week prior to the last scheduled meeting of April 3, 2019, and there was no comment.

ZBA Member Lenny Feroldi asked in all the tests that have been performed, has there ever been tests where extreme heat burning off the odor, do you know of any? When you put air through a burner, a high intensity burner, thousand degrees will that change the consistency of the air after it goes through the burning process?

John Fellenzer, P.E., replied: I don't know of any tests that were done like that; all those treatment systems exist, but I don't know how that would affect what is currently being discharged or how that would address it, but I think what we are looking at, in this particular building, is that there is one significant area that there is capture of those odors in the building, and they treat those odors and they discharge them; but there are other areas in the building where they are just discharging in the air, and some, in certain cases, are discharging it vertically, so that may have an evolution affect; that in other areas they are discharging horizontally, which has a lower component, or a lower ability to effectively clear the air, before it becomes a non-threshold event, and that's where I'm looking at from sort of a 30,000 foot view. What's the good, what's the bad, what's the indifference: the good is that there are areas that are treated; the bad is that all the horizontal discharges are discharging very similar air; that there is no such thing as 100% capture; that some are being discharged horizontally, and then some of the indifference is that you have areas in the building that are remote from where the odors are being developed and are they being exhausted? In fact, I have a couple of those areas shown that have no coverage, because they are inconsequential discharge odors discharged through the building; discharges that have to be through mushroom fans, but they don't know if they have a negative effect on the surrounding area. So, what's the most significant elements, and what's the least, and then you start addressing them; and, again, it has to start with the computer-based model, and looking at that, because it's not just what you discharge, it's how you discharge it, and how do the environmental conditions in the prevailing area effects – and every day is different – so, you



choose a couple different, significant, normal prevailing westerlies, you look at that, wind direction is an environmental conditions; hot day or a cold day is just the opposite – on a warm day humidity will effect it – and these, again, are all predicted results, and the goal is to get that prediction down to as low as you can, but you will never get it to zero. I learned from an attorney that said if you go to an attorney and he says “Don’t worry, I will win the case,” he’s lying to you, because they can’t guarantee that because a jury is the one that makes that decision, not the attorney. I can’t tell you that it would be zero at the end of any project that you did; so, anybody that promises zero odors, like the lights, everything else would have to be exactly the same to give you that exact number; but you can ask to give a prediction, within a certain range, that you can effectively say, “well, you’ve had 100 complaints last month, if we do this we know the amount of treatment systems and we add exhaust systems, we know those complaints will address this by 70% faster, and those complaints go from 100 to 30, that is a step in the right direction, then you see what it takes to get the number down.

OBZPAE Director Slavin testified: TRC did testing right at the release points last year; the test that Mr. Feroldi is talking about would have to be done inside the facility, and I don’t know if we would be offered the opportunity to have a test like that done, because that would have to be done in the facility and our Code is at the property line where the violations occur for the nuisance odors; so, the fact that we were able to obtain the odors at the release points was very helpful in determining what was going on, and where the odors were coming from – the test that Mr. Feroldi is speaking about would be very difficult for us to do.

John Fellenzer, P.E., stated that the typical process in government is that you normally set a standard which the applicant has to meet – whether it is a building, parking lot, or odors or objectionable noise or those type of things; you set that standard. How they deal with that is how the applicant wants to deal with it; as, in this case, the person may be violating an ordinance and has to deal with it – if there is one way to deal with it, great; if they want to put a filter on it, if they want to dilute and that deals with it, great – all of those processes are out there on the table to implement; they are all out there to consider, and they should be done very professionally and then they should be reviewed by the ZBA; and then the ZBA can say ok here is what is being said, is there anything that is being missed? And that’s a very typical process, particularly on the Planning Board side, where an applicant comes in – they have a parking lot, they have setbacks and they have all of those things that they talk about, grading, parking, paving and storm water management. Then it comes to the ZBA, and the ZBA hands it to the engineering consultant, and the consultant comes back with 75 comments, then the guy that submitted those says I think everything is right, otherwise I wouldn’t submit it; and the ZBA says, “but look at the 75 comments: I want a couple more trees here, the setback isn’t quite right here, the road sight distance for turnoff needs a second lane, a third lane for slow down;” which refers to Aluf that is submitting their solutions and, again, in 2017, Aluf said there would be no more smells; and I am telling you that is impossible; then there were return comments and there was going to be a meeting of the minds, and everyone was going to be on the same page and understand that we all believe that this will work, and we can predict the results and we can be much more assured that we can come up with a solution. And so, to your point, yes that is a possible solution.

ZBA Member Feroldi stated that he would like to make a point, and state that the high heat test should be done.

ZBA Member Castelli asked a question: Going back to 2017, there was discussion about exhaust air filtration systems, eliminating the problem, so they were put in, but it was more internal? And nothing has changed since then?

John Fellenzer, P.E., stated that he would have to go back and look at it, but I think some put in, whatever was on the plans were put in; I don’t think they deviated from the plan, but I can tell you that all of the exhaust fans that I am showing that aren’t filtered are there, they are

exhausting air, but they are not filtered, so they are coming from areas not directly next to where there are high odors areas of production, but they are coming from areas within the building, so some of that might migrate to other areas of the building – there are over twenty fans, and there are some that are filtered, in the report it talks about air pressurization, air differential, supplier, so I think they are doing a very fine job of getting fresh air into the building, improving interior air quality, but whatever is inside the building is being exhausted and some of it is going through the carbon filter bed and being treated as exhausted air.

OBZPAE Director Slavin submitted twenty photographs of air intake, filters, exhaust system fans, stack pipes, open vents and abandoned air conditioning units and vents.

Dennis Michaels, ZBA attorney, asked Mr. Fellenzer if he is a New York State Licensed Professional Engineer; and Mr. Fellenzer answered “yes,” that he is a New York State Licensed Professional Engineer.

OBZPAE Director Slavin stated, as a follow-up to Mr. Fellenzer’s comments, that when and if Aluf decides to come back for Performance Standards to hopefully remedy the situation, to have Mr. Fellenzer as part of the RFP process that OBZPAE puts out, if he’ll do those reviews; that is the next step, so he would review them and offer comments back as often as many times as it takes to hopefully get to a point of compliance.

ZBA Member Bosco asked if they do a few days model for aerial review.

John Fellenzer, P.E., stated that it’s really every exhaust point, because that is technically where the holes in the side of the building should be covered; you have to make sure the computer model covers everything; the challenge is, you have openings to the building that you can’t model under pressure, so you have to make a certain level of assumptions. Of course, no building is ever air tight – if you have a gaping hole, then you have to cover that and other odor and transmission points – but when you’re talking about exhausting 300,000 CFM, and then you’ve got a 4’ x 4’ window opening, it’s inconsequential to 300,000 CFM, and that’s true if you only have one small hole, but there used to be some factories that had multiple small windows and they are all broken, then that is absolutely consequential; so you would have to fix that as part of being able to generate a computer model.

Dennis Michaels, ZBA attorney, asked OBZPAE Director Slavin if she is a New York State Licensed or Registered Architect; and Ms. Slavin answered “yes,” that she is a New York State Licensed or Registered Architect.

ZBA Chairman Sullivan asked OBZPAE Director Slavin if the decision that she is asking the ZBA to make tonight is essentially to revoke the 2017 ZBA Decision, because Aluf is in violation of the Performance Standards; and she replied that is correct.

Dennis Michaels, ZBA attorney, asked Mr. Fellenzer: “Based upon your review of the documentation that was provided to you, and I think that you did an on-site inspection as well of Aluf Plastics’ facility, and any other materials that were provided to you for your review of the Performance Standards of the Orangetown Zoning Code Chapter 43, in your Professional Engineer’s opinion, is what you observed at Aluf in violation of the Performance Standards; in other words, not in compliance with the regulatory scheme of the Performance standards?”

John Fellenzer, P.E., replied to Mr. Michaels: “In the sense that the odors are being sensed by areas across the property line?”

Mr. Michaels answered Mr. Fellenzer: “Well, you read the Performance Standards, and it says that the infrastructure, mechanical equipment, etc., of whoever the operator of a particular

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commercial business that is subject to Performance Standards, which Aluf Plastics is, is what is currently installed, what you observed, what is reflected in your report, in compliance with those Performance Standards; is it meeting the regulatory requirements of the Performance Standards?

Mr. Fellenzer replied to Mr. Michaels: "Yeah, so the Performance Standards don't, the answer is that they are not meeting the Performance Standards; I wouldn't say, I can't tell, that the exhaust fan that is blowing horizontally doesn't meet the Performance Standards, because that is just a component of the whole issue associated with the level of contaminants or level of odors in the space and how that gets out and across the property line, and how it is sensed by the people. In the Performance Standards sense that you can't have objectionable odors across the property line, the equipment that was installed, designed and installed in 2017, was installed, as best as I can tell: I don't think in doing that work that they have met the Performance Standards, although I think that was their goal, but I wouldn't say remove the equipment, if that's the question being asked.

Mr. Michaels responded to Mr. Fellenzer: "That is definitely not my question. I'll ask it a different way: If this design came before the ZBA as an application for Performance Standards approval, as it did back in 2017, and you had been the expert consultant that was retained by the Zoning Board of Appeals to review the application and submissions and opined to the ZBA whether or not it is in compliance with the Performance Standards, what would your determination be? What would your recommendations be?"

Mr. Fellenzer answered Mr. Michaels: I would make a number of different recommendations to the way the design was presented and what I saw on the plans, addressing how the exhaust area was treated, where it's treated, what's being treated, how it's being exhausted from the building, and how that exhaust is being diluted as it is exhausted from the building. It really goes down to my recommendations in this report, which is, simply, some of it is being treated and some of it is not, so you have to treat all of it, capture and treat all of it, and you have to dilute that closer to the source, so that it doesn't migrate, in relatively light concentrations, undiluted. Obviously, it dilutes as it migrates, but, if it starts as a diluted source, by the time it migrates it's not as polluted as it would be if it started as an undiluted source. So, in answer to your question, I would have made a lot of recommendations to the applicant on how the design was done, and, again, looking at the design and the way it was done, I think they did a great job in dealing with the indoor air quality, but I don't believe it addressed the outdoor air quality and what is being exhausted in any significant portion – it may have a treated a portion of it significantly, but it didn't treat all of it significantly; hence the issues. You look at the report, and other areas and how they are being discharged, and it makes sense why they are still having some issues: Did that answer your question?

Mr. Michaels replied: "I think so."

ZBA Chairman Sullivan asked Mr. Fellenzer: There's a part of the Performance Standards form that says "Will any of the operations get odors?" And the other item number that says "What are your control measures to control this?" They identified them, and said these would control those odors; which it doesn't. Therefore, they are not in conformance with our Performance Standards, does that sound reasonable to you?

Mr. Fellenzer answered Chairman Sullivan that this sounds reasonable.

OBZPAE Director Slavin stated that she has the form that the applicant filed with the town of the May 11, 2017 application, and they took time to review it.

Mr. Fellenzer stated that item #13 asks "What smoke, odor, fly ash, fumes, gases, vapors and other potential air pollution producing equipment and operations are contemplated?" and their



response is "Any air emissions will be controlled pursuant to NYSDEC air permit," and they give the number with existing physical filters and carbon filtration, current application requests permits for installation of additional building ventilation systems and carbon filtration on an exhaust system in the reprocessing room to further dilute potential ambient building exhaust emissions to below odor thresholds; and they may very well have addressed that in that particular area in the reprocessing room, and I believe that they did that, but how bad is the rest of the 300,000 square foot building? So, how they address the other is the question that I would have to Dennis' point: their answer addresses just the reprocessing room; it doesn't even discuss the other areas. I am not an expert at the process, nor do I pretend to be; I don't know what further processes are in the building, per se.

OBZPAE Director Slavin asked if she could elaborate on that: they specifically reference the DEC permit, and we received an email this evening, at 6:00 p.m., and they're still not in compliance with that; and she read the email: "Thank you for reaching out. DEC continues to require Aluf to implement an effective solution to address odors. As you are aware, the Department is currently in a permit hearing process with Aluf to ensure this happens." That is from the acting Regional Director.

ZBA Member Bosco stated: The document that Mr. Fellenzer looked at had at least 30 openings that weren't fans, so that's documented. Is that part of the 30 exhaust fans? (OBZPAE Director Slavin answered "no"). So, you understand where I was going before, there weren't just holes, 30 spots – whether they were vent pipes or grilles that are broken, whatever the case – whether there is negative pressure, or not, air is escaping, and smells and odors are escaping; besides the 20 exhaust fans that are not filtered. Let's be very clear, because that becomes 53 locations in that building that do not have filters on them and/or closed-off intakes, it doesn't matter. John Fellenzer stated that the best way to explain his answer is that you are much more challenged than the computer model to deal with exhausting here, and having an opening there, so, to your point, that opening needs to be closed before you, as part of the computer model, I'm going to close this vent opening, or whatever it happens to be, and treat all 53 exhausts; and, again, you have to capture, treat and exhaust, and you can't do that if you have 30 openings, and you can't include that in your computer modeling; so, I guess I might have misunderstood the question.

Patricia Castelli asked if that is part of the DEC permit, all these openings, are they part of the DEC application?

OBZPAE Director Slavin responded that OBZPAE has not seen the DEC's requirements, or their reports – they are technically independent of us – however, we tried to coordinate our efforts, obviously, so that duplicate work is not being done, so that the DEC is having them install a system, and we are having them install something else – that wouldn't make sense – but, other than that, we haven't seen anything from them.

ZBA Chairman Sullivan opened for public comment, and swore-in all the members of the public who wished to speak.

Michael Smith, 65 Hayes Street, Blauvelt, NY testified that the engineers report is accurate, it's not rocket science the smells are effecting everyone, the reason they did the last improvement because they had OSHA issues, they had odor and air quality issues that their own workers reported; so the intent was never really to resolve the problem about the odors going to the town, it was to address their OSHA concerns; there really should be no air coming out of the facility that is not treated; the fact that they have holes in the building is ridiculous, they are making 100 million dollars a year in revenue, after all their expenses are covered they are still making 10 million dollars a year; they should make a one- time 3,4 or 5 million dollar expenditure to resolve this issue; and they have been dragging their feet for last 15 years.



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Tim Toolen, 121 Irving Street, Midland Park, New Jersey, I've worked in Rockland County in many of the businesses for 25 or 30 years now; I appreciate everything that the engineer said but I've been in and out of every one of the businesses here, I've seen them come and go and I have worked at Aluf now for about three years and I have never been in the facility that I have been faced with objectionable odors; perhaps I'm part of the 50% that can't smell objectionable odors but I can say my neighbor next door to me dryer vent has an objectionable odor and perhaps I should go to the Planning board in my town and complain.

James Ross, 86 North Midland Avenue, Nyack, testified that he is a member of the Orangetown Air Quality Review Committee; we hope that you find that Aluf is not meeting their Performance Standards; it is obvious that odors continue to come from the facility; I don't live near the plant but I have been there and smelled the air by the college and on Spruce Street, the air quality committee would like to see scrubbers and carbon filters and not just dilution.

Allyson Sullivan, 42 Arthur Street, Blauvelt, NY, testified that she went through the odor report system on the Town website and in April 2018 sixty odor reports, April 2019 59 odor reports; May 2018 there were 33 odor reports, this year there were 44; in June 2018 up to the 19<sup>th</sup> there were five and this year there were ten; dealing with this for over three years; appreciate report, youngest son three years left in school please do whatever you can do to give us some relief.

Menachen Polter, 11 Route 340, Orangeburg, NY testified that he saw the engineers report and moved into his new home in December; that he got a letter from a law firm in Michigan and seven months in house and he does not sense any smells.

Maureen Aitchison, 78 Dutch Hollow Drive, across from TZ High School and the smell is an assault on their senses; walk out of Casey Hall and it smells; it is not being addressed, I have been in contact with Jane something needs to be done to address it; it is an assault.

Denise Maguire, 31 Arthur Street, Blauvelt, NY, I have been reporting on Aluf for eight years, the smell in my yard is horrific and you can taste it; members from Aluf have shown up at my front door; the community is being taken down by this company and if there is anything anybody can do to correct this please do it.

Vicki Markiet, 11 Beechwood Road, Blauvelt, NY, on May 16 this year my son was getting ready to walk our dog and the smell was so awful we ran into the house and closed all the windows and I went on social network to see if other community members of the community were affected by it and other members of the public also stated that they felt sick also; I was heartbroken in my own home, and I'm in dismay that it is going on, and I needed to be heard tonight.

Ed Coffey, 33 Heritage Drive, New City, NY, contracted for Aluf for the last 25 years; I've spent countless hours there and none of his employees have ever complained about odors or sickness; that Aluf has always been pro-active with safety.

Pete Stempkowski, 78 Wierimus Lane, Hillsdale, NJ, testified that his business is on Route 59 he does process chemistry; I work with Aluf to reduce their carbon footprint and they are always embracing projects.

John-Patrick Curran, Esq., of Sive, Paget & Riesel P.C., attorney representing API Industries Inc. d/b/a Aluf Plastics, submitted a letter to the ZBA dated June 19, 2019, and stated: To be clear, the Town called for this Hearing in order to shut Aluf down and, while I am sure there are many, including a lot of people in this room, that would consider that shutting down Aluf would be a little bit of a smudge on a corporate balance sheet; so let's put a face on it: Aluf employees nearly 400 people,



those nearly 400 employees have families, they have husbands, they have wives, they have sons, they have daughters – Aluf is the source of livelihood for literally dozens of hard working families; so I would like somebody, if this company is shut down, to be the one to explain to these people and their children why mom's not going to work or why dad lost his job.

ZBA Chairman Sullivan stated that we are not in a blame situation here – you jumped to a conclusion that Aluf is getting shut down; that makes this even more concerning.

John Curran, Esq., continued: The reason that I am saying that it is going to be shut down is because, if you revoke the Permit, they can't operate their ventilation system.

ZBA Chairman Sullivan continued: We are not getting into a legal battle now – this case has been going on for a number of years, and we are not going to get into the legal stuff – Aluf has not worked with the Town, with Jane or with the Inspectors.

John Curran, Esq. continued: You're making assumptions; read my letter; jumping to conclusions. Let's talk about the Fellenzer report – Mr. Fellenzer didn't do any of his own studies; he based his conclusions upon data that's more than a year old, about observations, lay observations, that were made by the Building Department officials more than a year ago; he was tasked, from what I understand, to make a conclusion, based on his own study, as to whether Aluf is in violation of Performance Standards, but, instead, he jumps immediately to the assumption that they are in violation of the Performance Standards; and then based all of his conclusions and recommendations from that assumption. You read his report; he states clearly that there were all these complaints, so, obviously, there are smells: How is that scientific? So, I implore the ZBA, read my letter – I think if this ZBA makes a decision on what's before it right now, based on this report, and based on the report from the Building Department, it would be the very definition of a capricious. Thank you.

Heather Hurley, 202 Hobart Street, Pearl River, NY, I just have a question for the Aluf Attorney and Dan Sullivan interrupted and told Ms. Hurley that we are not in a dialogue with the person that just spoke; and she continued: O-k so I will ask the ZBA if they can ask Ms. Slaving when was the last time she was allowed into the facility by Aluf to do any inspections and that includes the Building Department, any building inspectors the DEC and she has that information and why is that not being released, when was the last time Aluf themselves allowed the Town into the building to inspect and when do they allow the DEC in to inspect, or any of the other people making reports. Thank you.

OBZPAE Director Slavin testified: First, it is not the intent of anyone in the Town to shut down Aluf; what we would like to see is compliance, and that has always been very clear; every report, every comment, that has come out of my Department, is that we need compliance; that is our job. With that said, to make things clear, the Performance Standards review and Decision from May 11, 2017, the application before the ZBA, clearly stated that it was a review of the cumulative operations and equipment being employed at the site, and additional air quality controls in accordance with the New York State DEC requirements. I think we've shown that that has not happened. As part of the comments during that matter, the attorney's comments, who was representing Aluf at the time, Ed Roggencamp, Esq., stated: "Diluting below other thresholds and added filtration will no longer smell outside the plant" – that's their comments. It's not working. Yes, Mr. Fellenzer used reports that were made available to him; reports don't expire. As far as inspections, there have been times when they denied us inspections and the attorneys handled that situation. Mike Manzare is the Inspector assigned to the project: Mike, can you comment, do you remember the last time that you did an inspection?

Mike Manzare, OBZPAE Building Inspector, answered that it's probably been at least a year since his last inspection.



OBZPAE Director Slavin continued that there are other inspections that they do on the site for other open Permits that they have, that have nothing to do with the air quality and the air filtration system, this report and the study that was done. Mr. Fellenzer did make a site visit; he is a qualified Engineer with, I do believe, over 30 years of experience in buildings of this type and manufacturing plants. I believe that, based on the evidence presented to you, the reports and our studies, our analysis is clear – they are not in compliance, and that is all that we want to do is get them into compliance. Our Department has been working a lot with DEME to follow the complaints, and a lot of effort into this; filing the complaints, issuing the summonses, and the instruments in the court, was very time consuming – we're in this for the long haul; we have to make them comply; that is our job; so, with that, it is still my opinion that they are not in compliance.

ZBA Chairman Sullivan asked the ZBA Members if they have any further questions, and they did not; and he asked to speak with Dennis Michaels, Deputy Town Attorney (ZBA attorney), within an attorney-client privileged legal discussion; and Mr. Michaels asked the ZBA if they had legal questions for him, and if they would like to hear his counsel as an attorney-client privileged confidential discussion; and the ZBA answered “yes.”

The ZBA returned from the attorney-client privileged confidential discussion.

Mr. Michaels stated: In my legal opinion, this is a Type II action of the State Environmental Quality Review Act, which means that the New York State Department of Environmental Conservation has already determined for us, and for the rest of the State, that certain types of applications before the Zoning Board of Appeals, and other land use boards, are exempt from environmental review because the New York State DEC has determined that they pose no potential significant adverse environmental impact. I remind everybody, especially the ZBA, that this application is by the Office of Building, Zoning and Planning Administration and Enforcement, by OBZPAE – this is not an application by Aluf for Performance Standards approval. Based upon this application, it is my legal opinion that it is a Type II Action, and I am basing it on SEQRA Regulations §617.5, paragraph C, sub-paragraphs 24, 27, 30, 33, 34 and/or 35, and I will just read those; but, arguably, sub-paragraphs 24, 27, 30 and/or 33 would also be applicable to make this a Type II exempt application. Sub-paragraph 34 reads “engaging in a review of any part of an application to determine compliance with technical requirements, provided that no such determination entitles or permits the project sponsor to commence the action unless and until all of the requirements of this part have been fulfilled.” In this particular application, the project sponsor is OBZPAE; not Aluf. Sub-paragraph 35 reads “civil or criminal enforcement proceedings whether administrative or judicial, including a particular course of action specifically required to be undertaken pursuant to a judgement or order or the exercise of prosecutorial discretion.” And the judgment or order, in my legal opinion, would be this ZBA's Decision of May 11, 2017, that's ZBA Decision #17-31, which is the very subject of this Application. That is my legal opinion, which any Member of the ZBA may adopt, as a motion, if you wish. ZBA Chairman Sullivan so moved; ZBA Member Castelli, seconded; and Chairman Sullivan asked for ZBA comments, then, hearing none, the motion carried as follows: Ms. Castelli, aye; Chairman Sullivan, aye; Mr. Quinn, aye; Mr. Bosco, aye; Mr. Feroldi, aye; none opposed.

ZBA Chairman Sullivan made a motion to **APPROVE** Application ZBA #18-19, and stated:

- This is an Application of Orangetown OBZPAE, the Office of Building, Zoning and Planning Administration and Enforcement, which Application requests implementation of Specific Condition number 4 from the May 11, 2017 ZBA Decision #17-31, in which the ZBA approved the Orangetown Zoning Code Performance Standards Application of API Industries, Inc., d/b/a Aluf Plastics for the premises located at 2 Glenshaw Street, Orangeburg, Tax Map Designation 70.18-2-15. I am also further moving to approve ZBA

#18-19 as this Application is more specifically described in the ZBA's Notice of a Continued Public Hearing for this Application #18-19, which Notices are incorporated by reference into my motion.

- This motion also finds and determines that the following reports, submitted to the ZBA pursuant to Specific Conditions numbered 2, 3(b) and/or 4 of the 2017 ZBA Decision, are credible, reliable and convincing, and prepared by qualified experts: (1) the February 16, 2018 report to the ZBA prepared by Jane Slavin, Director of OBZPAE, and Michael Manzare, Building Inspector of OBZPAE; and (2) the Aluf Plastics Odor Review, dated January 23, 2019, prepared, and submitted to the ZBA, by John D. Fellenzer of Fellenzer Engineering, which expert consultant was retained by the ZBA to assist the ZBA in its verification of Aluf's violations of the Performance Standards, which report was requested by the ZBA in furtherance of the implementation of Specific Condition number 4 of the 2017 ZBA Decision.
- This motion is also made on the bases of Aluf not conforming to the New York State DEC permit application; Aluf's incomplete answers provided in its 2017 Performance Standards' Resume of Operations, in which Aluf only focused on one area of production and not the entire building; and Aluf not being in compliance with the control measures that are in place in Aluf's Performance Standards' Resume of Operations.
- This motion further finds and determines, based on the said OBZPAE report of February 16, 2018, and said Fellenzer Engineering report of January 23, 2019, that violations by Aluf of the Performance Standards have occurred and/or existed, and, as per Specific Condition 4 of the 2017 ZBA Decision, my motion is also for the ZBA to revoke and rescind its 2017 ZBA Decision, and to also revoke and rescind the June 14, 2017 Building Permit that was issued by OBZPAE to Aluf based on that 2017 ZBA Decision.

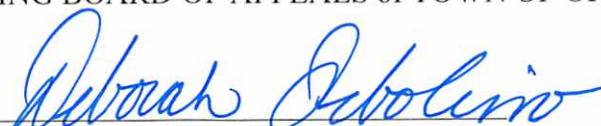
ZBA Member Castelli asked ZBA Chairman Sullivan if that was his motion, and Chairman Sullivan answered in the affirmative ("that is my motion"); and ZBA Member Castelli seconded the motion. Chairman Sullivan asked the ZBA if there is any discussion, then called the vote on his motion: "All in favor?" ZBA Member Castelli, aye; Chairman Sullivan, aye; ZBA Member Quinn, aye; ZBA Member Bosco, aye; ZBA Member Feroldi, aye; and none were opposed.

ZBA Chairman Sullivan made a motion to close the Public Hearing, which motion was seconded by ZBA Member Castelli, and was carried unanimously.

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

DATED: June 19, 2019

ZONING BOARD OF APPEALS of TOWN OF ORANGETOWN

By:   
Deborah Arbolino, Administrative Aide

DISTRIBUTION:

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|---|----------------------|
| APPLICANT (Jane Slavin, R.A., OBZPAE Director)  | TOWN CLERK           |
| ZBA MEMBERS   | TOWN SUPERVISOR      |
| TOWN ASSESSOR   | TOWN BOARD           |
| TOWN ATTORNEY   | DEPUTY TOWN ATTORNEY |
| FILE – ZBA, and TOWN PLANNING BOARD ("PB")  | TOWN HIGHWAY DEPART. |
| CHAIRMEN OF ZBA, PB, and TOWN'S ARCHITECTURE AND COMMUNITY APPEARANCE BOARD OF REVIEW | TOWN OF ORANGETOWN   |
| OBZPAE BUILDING INSPECTOR (M.M.)  |                      |
| TOWN'S DEPARTMENT OF ENVIRONMENTAL MANAGEMENT AND ENGINEERING                         |                      |