

**TOWNSHIP OF MAHWAH
BOARD OF ADJUSTMENT**

MINUTES

DECEMBER 5, 2018

The combined public/work session meeting of the Board of Adjustment held at the Municipal Building, 475 Corporate Drive, Mahwah, NJ beginning at 7:30 pm was called to order by Mr. Rabolli, with the reading of the opening statement followed by the flag salute. Mr. Rabolli reminded all members of the Board, Legal Counsel and Members of the Public that Board of Adjustment meetings are now being videoed and broadcast live.

These minutes are a synopsis of the meeting. A verbatim audio tape recording is on file with the Board Secretary at the Board of Adjustment Office, 475 Corporate Drive, Mahwah, NJ. Copies of the tapes may be purchased for a fee.

PRESENT: Mr. Almeda Mr. Rabolli
Mr. DeSilva Mr. Straffin
Mr. Kearney (in at 7:31 p.m.) Mr. Whiteman
Mr. Montroy

ABSENT: Mr. Dator Mr. Larson

ATTORNEY: Mr. Ben R. Cascio, Esq.

PROFESSIONALS: Mr. Michael Kelly, PE, Boswell Engineering
Ms. Deborah Lawlor, PP, Maser Consulting

ADMINISTRATIVE OFFICER: Ms. Geraldine Entrup

I. APPROVAL OF BILLS:

None to present.

II. APPROVAL OF MINUTES:

None to present.

III. MEMORIALIZING RESOLUTIONS:

None to present.

IV. OPEN TO THE PUBLIC:

Mr. Rabolli opened the meeting to the Public for general questions or statements. None were received.

V. PUBLIC HEARING(S):

**1. DOCKET #1447-18 – PRESTIGE MANAGEMENT SERVICES /
MSN SERVICES, LLC 73 RAMAPO VALLEY ROAD, BLOCK 41, LOT 1**

Application for a D Variance for the use of a 5,830 square foot building for a Public Auction business for sales of furnishings, equipment and personal property.

Mr. Cascio stated that the notice was in order.

No Counsel representing the Objectors were present.

Mr. Kevin Conway, Esq., 500 Frank W. Burr Blvd, Suite 31, Teaneck, NJ

approached, representing the Applicants, Prestige Management Services, MSN Services and AJ Willner Auction as a joint venture company that works with MSN and Prestige. The application is for an accessory use, utilizing about 5,830 square feet of the existing premises. The AJ Willner Auction portion is for a public auction business for sales of furnishings, equipment and personal property. The Applicant is seeking a Use Variance to enhance the operations that are being conducted by MSN and Prestige. MSN is engaged in services for processing vehicles for corporate clients, i.e., Jaguar, BMW, Mercedes; cars that come off in-house employee leasing. No mechanical work will be done on the cars at the facility; paperwork is generated, cars are kept on premises for a short period of time and then taken to car dealerships for those various companies and sold at those companies to the general public. Cars will not be sold at the site. No one from the public enters the site.

Mr. Conway continued, stating that AJ Willner Auction conducts public auctions for properties seized by the US Marshall Service, the Federal Government, the Local Bergen County Prosecutor's Office, the Postal Service etc. on site to the public; but most are done online. The Applicant proposes to have one to four auctions per year on site on a controlled basis; on a Saturday when other tenants that occupy the industrial site are not there, or during the week so as not to have issues with vehicles coming in and out of the site when

the residential neighbors that border the property would be at home. The Applicant proposes to use a valet service during the week to avoid parking issues with other business tenants. AJ Willner Auction will have one or two employees occupying the 5,830 square feet. MSN will have one or two employees occupying the remainder of the facility. The operation is daytime 9:00 a.m. – 5:00 p.m. Mr. Conway stated that he believes the Board will agree that the continued use is compatible for the client's existing use, from both traffic and safety analysis standpoints. There will be no changes to the footprint. Mr. Conway commented that he would not be completing the proceeding at this meeting as he intends to have an expert witness testify to the use with a Certified Land Use Appraiser's testimony.

Mr. Rabolli stated that parking might be a real issue. If there is an impact, the Board will have to hear from a parking expert regarding cars inside the lot and parking on residential streets in the neighborhood.

Mr. Conway commented that they would appreciate the Board's feedback and any required alterations. Mr. Rabolli suggested to the neighbors that they speak with Mr. Conway in the hallway if they have any questions, suggestions or comments that might eliminate some issues.

Mr. Rabolli added to the record that since he was the Municipal Prosecutor on a case that Mr. Conway was the Defense Attorney, he wanted to make sure there was no conflict. Mr. Conway replied that there is none.

Mr. Peter F. Pulice of 344 Broad Avenue, Leonia, NJ was sworn in, gave his credentials as a Registered Architect and a Registered Professional Planner in the State of New Jersey, as well as his 34 years of practice, and was recognized as an expert witness in the areas of Architecture and Planning by Mr. Rabolli.

Exhibit A-1 Photo copies of Mr. Pulice's Professional Planner License and Architect License.

Being questioned by Mr. Conway, Mr. Pulice stated that he had reviewed the Planning Board Tenant Application #TA04-200 regarding occupancy and use of the building, which was approved by the Board of Adjustment on February 23, 2004. Mr. Pulice went over the Tenant Application conditions and stated that MSN's conditions were similar to those of Prestige.

Mr. Pulice described the site in detail; Mahwah Business Park is in the IP120 Zone, an Industrial Park with 18 structures on over 39 acres of property. The prior use was an occupancy of approximately 30,000 square feet as a motor vehicle reconditioning center with no retail sale of vehicles on or from the leased premises. The building at 73 Ramapo

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Valley Road has 5,830 square feet; 963 square feet of office space on the ground floor and a 4,867 square foot auction area for tagging, display and sorting out of articles. Approximately 20 percent of the space is for the proposed change of use.

Exhibits were displayed on colorized poster boards by Mr. Pulice.

(Sheet #EX1) 1970 Key Plan by Easterbrook, Kirsh & Easterbrook dated August 22, 2018 showing building locations, land formations, brooks, features, multiple parking areas etc., described in detail.

Mr. Pulice described access to the site from Ramapo Valley Road, the parking details and unique characteristics of the site.

No construction or additions are proposed. Possibly some interior construction, complying with the Building Code and ADA compliance.

(Sheet #EX2) 40 Scale Park Plot Plan prepared in August of 2018 by Mr Pulice's office; Exhibit A-4 140 x 230 feet, parking areas, high tension lines, buffer area, R5 Zone adjacent to existing structure bordered by Railroad Avenue, intersecting Ramapo Valley Road with the IP120 area on the other side.

There is a heavy natural buffer in the side yard with 35 feet to the roadway. There is a series of garage doors, a loading dock, a fire sprinkler system, and an access drive fire lane on the West side of the building to gain entry to the rear parking area.

(Sheet #A1) Grade Level Plan, Key Plan & Legend dated August 22, 2018; isolated area in color identifying 20% of the building changing use where obsolete mechanical equipment that is not being used is located. The Application is for the 4,867 square feet for the auction area, the public area of the premises. The office use, which is permitted, will be 963 square feet. The remainder of the building will act as a warehouse.

There is no Use Group or specific definition for the auction area, which is why the Applicant is before the Board.

Mr. Pulice made reference to Mr. Kelly's Boswell review letter dated December 3, 2018, stating that Retail is not permitted in the R5 Zone, Ms. Lawlor's Maser review letter dated November 19, 2018, as well as review reports from Zoning, Construction and Fire Officials. Mr. Pulice commented that the Applicant would provide striping of the defined parking areas of the parking lot, obtain permits for signage, and comply with Zoning Ordinances on proposed signage.

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Mr. Pulice added that there was a concern from the Zoning Officer regarding site plan review and use in a November 2, 2018 letter, and a November 2, 2018 letter from the Construction Official stating that the change of use must comply with a Use Variance.

A report from the Fire Prevention Official stated a Site Plan was required with parking layout and fire lanes with emergency access to the building to be illustrated. Mr. Pulice prepared a Concept Plan.

(Sheet #P1) Existing Survey by Civil Engineer dated December 3, 2018 – a conceptual Exhibit A-2 plan that defines parking and the aisles, addressing the concern of the Fire Official to define fire lanes to create order and emergency building access and emergency vehicles to enter the site.

The proposed plan is a clear 20 foot Fire Lane – No Parking zone; 10 foot striped area to serve as a 10 foot buffer to the building where no vehicles would be allowed other than the two Handicap spots close to the front entrance. The existing loading dock has sufficient room for backup. The lot could accommodate 208 parking spaces if properly striped.

Mr. Cascio requested 14 copies of the Parking Plan (Sheet #P1) for distribution to the Board Members, Township Engineer and Planner.

Mr. Kelly expressed his concern with traffic and requested that a detailed analysis be provided that clearly indicates the different uses and what buildings are utilizing the parking lot, what their needs are, and also commented that in visiting the site, there were no parking spaces available.

Mr. Rabolli stated that there would be more detail at the next meeting; number of employees, what is being eliminated from MSN and how many parking spaces are required. Cars being serviced are on the lot. They will need to be moved. Mr. Rabolli commented that cars parked against the gate would have to be relocated based on Fire Safety concerns. Mr. Rabolli asked if parking is common to all the other buildings that are there and commented that spaces might be counted as available that are being used by other people.

Mr. DeSilva commented that the Board needs to know how much parking is available and asked Mr. Pulice if it was his testimony that whatever is parked on the lot is being staged for work inside the building or just stored. Mr. DeSilva also expressed his concern with the parking, as parking is a monumental part of this Application. Mr. DeSilva also inquired as to how gears were going to be changed one or two or three times a month or four times a year, to accommodate moving the cars, AJ Willner Auction staging an auction and moving back to the other operation as MSN.

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Mr. Kearney also expressed concern with the impact on traffic patterns, ingress/egress at the site, as well as increased traffic flow to the site and to the neighboring area.

Mr. Montroy gave a history of the property, stating that it was originally part of the ABEX Foundry that manufactured railroad breaking shoes (American Breakshoe), and started in the late 1800's. The main foundry burned down about 15-20 years ago. There is one manufacturing operation there now, but it is mostly storage. Shavings were buried by the Department of Environmental Protection in the green area. In the Township of Mahwah every Tenant is required to submit a Tenant Approval. Mr. Montroy commented that to his knowledge A.J. Willner never applied for a Tenant Approval as an auction house.

Ms. Entrup informed the Board Members that a Tenant Application was submitted as a Name Change Only, no additional use was indicated on the application.

Continuing with his testimony, Mr. Pulice stated that he had performed an analysis for the proposed parking requirements; 963 square feet of office space, 4,867 square feet of auction area, a total 5,830 square feet. Referencing the Mahwah Parking Requirements in the Zoning Ordinances, Mr. Pulice commented that 963 square feet for offices would generate 4 spaces at 1 space per 250 square feet of office. The 4,867 square feet of auction area (deemed retail) requires 1 space per 175 square feet of area on any area over 2000 square feet; the requirement would be 28 parking spaces, a total of 32 spaces by Ordinance. MSN/Prestige was documented as 120 spaces. The 208 spaces in the concept plan provide a surplus of 56 spaces.

Mr. Whiteman commented that the spaces taken by the stored vehicles would have to be taken into account as those spaces are not available when filled with cars for the auctions.

Ms. Lawlor commented that a true parking analysis to show other examples of similar auction houses and what the actual parking requirements are has to be presented. Ms. Lawlor continued that on an auction night you could have hundreds of people, especially if the auction items are posted online, with parking spilling out on the street. An understanding of what is going to be sold and how it is going to operate is needed.

Mr. Rabolli opened the meeting to the Public, allowing the neighbors to ask questions and make comments.

Ms. Trish Lucas, 6 Mountain Avenue approached and stated that she and her husband Brian were drawn to Mahwah by how happy her sister and family were to live in this Township for the past twenty-plus years. The Lucas' recently purchased the home at 6

Mountain Avenue. Mrs. Lucas commented that this Board had approved “No Retail on Premises”. Having an auction house come in could result in thousands of parking spaces required. Reminding the Board that the Planner had stated that there would be one or two employees, Mrs. Lucas questioned why valet parking would be necessary. The area is zoned as a commercial park, not for retail use. Her concern is that the value of homes will decrease. Having to pick up garbage is another issue. The letter received from MSN was incomplete. Mrs. Lucas questioned how the Board is addressing the term of “Use” which is not deemed for retail, and stated that if this application is approved, she will put her house up for sale.

Mr. Eric Cadestin, 2 Mountain Avenue approached and stated that he and his wife and three children had just closed on their home in August of 2018. Mr. Cadestin mentioned the existing fully functional lumber yard. He commented that the times of operation were said to be 7:00 a.m. – 5:00 p.m., however, activity starts earlier and dumpster pickups are at 5:00 a.m. Mr. Cadestin also questioned the traffic patterns and the spillover onto North Railroad Avenue and potential to spillover up onto Mountain Avenue. Mr. Pulice responded that he did not know the traffic patterns or the inconveniences the neighbors are experiencing.

Ms. Jean Yim, 91 North Ramapo Avenue approached and commented on the train trestle being hit by car carriers, buses and tractor trailers on a constant basis. She also inquired about parking in her residential area and the availability of a traffic study for the additional traffic coming through for auctions. Mr. Rabolli responded that there is no study at this time, but that Mr. Conway will take her comments under advisement.

Ms. Valentyna Panchishak, 16 North Railroad approached and stated that her home directly faces the Business Park. Her main concern is the noise. There is no Noise Ordinance; dumpster containers have a pickup time of 3:00 a.m. The Tenant hours are supposed to be 7:30 a.m. – 5:00 p.m. on weekdays only. Not every tenant abides by that schedule. Direct Product starts at 6:00 a.m., taking parking besides their designated spots, and other tenants are there at 7:00 a.m. on Saturdays and Sundays. Mrs. Panchishak also asked how additional traffic will be addressed. Mr. Pulice responded that a traffic analysis will need to be done by an expert in parking/traffic.

Mr. Gordon McIntire, 52 North Railroad approached and commented that Prestige had taken down trees, put down gravel, and is using the area for 17 parking spaces. He believes the expansion to that area was never approved and those additional spaces need to be addressed. Mr. McIntire stated that today on AJ Willner Auction’s website it showed that there were already 6 auctions this year, one of which he attended and there were 40-50 people there and nowhere to park. Mr. McIntire inquired, if this use is allowed as retail, what precedent will be set. Mr. Rabolli responded that each application is based on its own merit and will not set precedent.

Mr. Leonard Yim, 91 North Ramapo Avenue approached and stated his concern about what will be auctioned that could potentially cause a serious strain on the neighborhood. Mr. Rabolli responded that the Applicant will testify to what will be auctioned/sold at the next meeting.

Mr. Kelly requested an executive summary of what is being proposed on the site, a traffic impact study, a parking analysis and a PDF of plans/exhibits, 10 days in advance of a meeting. Mr. Kelly stated that he was unaware that the site is currently being utilized as an auction site and asked for a commitment that there would be no more auctions until the matter is resolved.

The Docket was carried to January 23, 2019. No additional Notice is required. Mr. Rabolli advised Mr. Conway that if significant changes are made it will need to be Renoticed.

Mr. Montroy suggested that photographs be taken during weekdays and weekends, both on and offsite to actually see what vehicles are there.

For the understanding of the objectors, Mr. Rabolli went over the procedures and process of a Zoning Board Application.

VI. CLOSED SESSION:

LIGATION – Andrew Boruta, Et als vs. Board of Adjustment of Mahwah, Sean Royle.

A motion was made by Mr. Rabolli, seconded by Mr. Whiteman that the Board consult in private with its Attorney concerning the Board's rights and duties in reference to a specific matter. All voted in favor.

The exact discussion will not be disclosed, however, any action to be taken by the Board as a result of such conference will be taken in Public.

VII. ADJOURNMENT:

The meeting adjourned 9:38 p.m. on a motion made by Mr. Montroy, seconded by Mr. Whiteman. All voted in favor.

These minutes were prepared by Sylvia Gerou, Zoning Board Recording Secretary. The minutes were provided to the Board of Adjustment on March 1, 2019 for approval at the Regular Meeting to be held on March 6, 2019.