

**TOWNSHIP OF MAHWAH  
BOARD OF ADJUSTMENT**

**MINUTES**

**FEBRUARY 21, 2018**

The combined public/work session meeting of the Board of Adjustment held at the Municipal Building, 475 Corporate Drive, Mahwah, NJ beginning at 7:34 pm was called to order by Mr. Rabolli, with the reading of the opening statement followed by the flag salute.

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.

<b>PRESENT:</b>	Mr. Almeda	Mr. Rabolli
	Mr. Kearney (in at 7:44 pm)	Mr. Whiteman
	Mr. Montroy	

<b>ABSENT:</b>	Mr. Dator	Mr. Larson
	Mr. DeSilva	Mr. Straffin

**ATTORNEY:** Mr. Ben R. Cascio, Esq.

**I. APPROVAL OF BILLS:**

1/3/18; 1/17/18	\$500.00	Ben R. Cascio, Esq. – Attendance Two meetings
1/17/18	\$200.00	Maser Consulting P.A. – Attendance

A motion to approve all bills was made by Mr. Whiteman, seconded by Mr. Montroy. A roll call vote revealed 4 aye votes by Mr. Almeda, Mr. Montroy, Mr. Rabolli and Mr. Whiteman.

**II. APPROVAL OF MINUTES:** None to present.

**III. MEMORIALIZING RESOLUTIONS:**

**1. DOCKET #1418-17 – WJA ASSOCIATES, LLC  
185 ROUTE 17 NORTH & AVENUE A, BLOCK 53, LOTS 18, 19, 20 & 21**

Amended resolution granting a Use Variance, Subdivision, Bulk Variances and Site Plan approvals.

A motion to approve the amended resolution was made by Mr. Almeda, seconded by Mr. Rabolli. A roll call of eligible voters revealed 2 aye votes by Mr. Almeda and Mr. Rabolli.

**IV. OPEN TO THE PUBLIC:**

Mr. Rabolli opened the meeting to the Public for general questions or statements. **Mr. John Fesen** of 20 Falcon Court, Mahwah, NJ approached. He stated that he is a concerned citizen and wants to be a constructive citizen. Mr. Fesen stated that he believes the current process for the issuance of permits is that they are requested, paid for and issued; that's it. He proposed that when applying for a permit, the Code Official or Building Inspector go to the property and inspect interior and exterior to make sure that it conforms to what is in the Township records. Mr. Rabolli asked him if there was a particular issue that generated his concern. Mr. Fesen commented that the Township has gone through a lot of turmoil because a lot of the ordinances were weak or bad and that we need to make sure they are the best they can be. Mr. Rabolli replied that he would convey his comments to the Township Engineer, Mr. Kelly, who was not present at the meeting. Mr. Fesen also noted that in the Municipal Code for Mahwah, a garage is defined as any structure that could house one vehicle, but a large garage could potentially be turned into a house of worship. Mr. Montroy, former Code Official, brought up two issues; 1) the permit is controlled by the UCC (Uniform Construction Code) and State Law does not give the local Construction Official or Building Inspector the right to go on a piece of property. When a permit is issued, an inspection is required. If something is seen at the time of inspection, it can be dealt with at that time. 2) The example of taking a garage and making it a house of worship, under the UCC, changes the type of construction and changes the use group of the building and requires different construction methods. The code is somewhat limiting. It is a State Law, no one can modify it other than Trenton that deals with all construction. Zoning is a separate issue. A house of worship as described would probably require a variance from the Board Of Adjustment. Zoning is separate from actual building.

**V. PUBLIC HEARING(S):**

**1. DOCKET #1413-16 - SEAN ROYLE  
16 SKYTOP DRIVE, BLOCK 154, LOT 17**

“C” Variance Application for the construction of a single-family home on vacant land without frontage upon a street. Mr. Rabolli announce that DKT. #1413-16, the Sean Royle application, is being adjourned to May 2, 2018. No further notice required.

**2. DOCKET #1430-17 - PRESTIGE PRE-OWNED, LLC  
7 INDUSTRIAL AVENUE, BLOCK 110.02, LOT 1**

Application for an amendment to the Use Variance approval obtained by Resolution of the Board of Adjustment dated December 6, 2017. Mr. Cascio stated that he has reviewed the legal notice from Mr. Abrahams and found it to be in order.

Mr. Mitchell Abrahams, Esq. of Cole Scholtz P.C. approached on behalf of the Applicant. He referenced his letter of February 1, 2018. Summarizing the letter he stated that the Applicant had requested a Use Variance for wholesale sales of pre-owned vehicles. The Applicant had conducted the same business activity at 73 Ramapo Valley Road for 14 years which required a license from the State of New Jersey Division of Motor Vehicles. The application was denied by the DMV on the basis that the State issues one license only for both retail and wholesale sale of motor vehicles. Mr. Abrahams stated that the Applicant has at no time conducted retail sales, and has no intention of conducting retail sales. When explaining this to the Hearing Officer, Mr. Devon Coruthers at the DMV, Mr. Coruthers expressed concern, did not issue the license, and sent them back to this Board for an Amendment to the Resolution to remove any reference of a prohibition of retail sales. Mr. Abrahams assured the Board that they would never engage in retail sales. A deed restriction on the property was prepared and submitted to Mr. Cascio. Mr. Cascio added to the record that he had discussed this at length with Mr. Abrahams and they came up with mutually agreeable wording in both the Resolution and the Declaration. Both were reviewed with Mr. Rabolli. Mr. Cascio stated that he thinks they adequately protect the Township while providing the necessary opening for Mr. Abrahams’ client to obtain his unique license. Mr. Cascio presented a Resolution to be both moved and adopted at this meeting if the Board agrees. Mr. Rabolli asked Mr. Cascio to explain the difference between the approved Resolution and the Amended Resolution. Mr. Cascio stated that they specifically removed the restriction not allowing the Applicant to sell both retail and wholesale cars.

For the record, Mr. Cascio asked Mr. Abrahams to read the Declaration that he is filing and to provide a copy for the evidence file. The Declaration was marked as Exhibit A-1. Mr. Abrahams read Paragraph 1 of the Declaration as follows: The Declarant, which is the owner of the property, Mahwah Industrial, LLC hereby covenants and agrees that the property shall not be used for the retail sale and purchase of preowned motor vehicles, however the purchase and sale of preowned motor vehicles on a wholesale basis is permitted. It also states that the restriction continued shall be a covenant running with the land and it's binding on successors and assigns. For the record, Mr. Rabolli stated that the concept is that wholesale does not involve customers. Mr. Abrahams confirmed and stated that it is more of an office operation conducted out of the existing building with cars being loaded, off-loaded and then reloaded and reconditioned. Everything will be done on site; nothing will be done on the road.

A motion was made by Mr. Whiteman, seconded by Mr. Montroy, to close the Public Hearing of the meeting and move into Work Session. All voted in favor.

## **VI. WORK SESSION:**

### **1. DOCKET #1430-17 - PRESTIGE PRE-OWNED, LLC 7 INDUSTRIAL AVENUE, BLOCK 110.02, LOT 1**

Application for an amendment to the Use Variance approval obtained by Resolution of the Board of Adjustment dated December 6, 2017.

Mr. Rabolli summarized the above stating that the property is located on Industrial Avenue, which is not meant for retail sales or retail traffic. The applicant was aware and intended to conduct wholesale sales of pre-owned vehicles only. The Applicant went to the State of New Jersey to obtain a license and found out there is only one type of license issued for both retail and wholesale sales. He stated that everyone had seen the Resolution previously and that changes to the Resolution have been articulated. In the interest of time and with an expiration date coming up in March, he would like to move this Resolution in the affirmative, it will be signed and adopted and the Applicant can proceed. Mr. Cascio stated that there would be two votes; first the Approval and then for the Adoption.

A motion was to approve the Amended Resolution was made by Mr. Whiteman, seconded by Mr. Montroy. A roll call vote revealed 5 aye votes by Mr. Almeda, Mr. Kearney, Mr. Montroy, Mr. Rabolli and Mr. Whiteman.

A motion to adopt the Amended Resolution was made by Mr. Almeda, seconded by Mr. Kearney. A roll call vote revealed 5 aye votes by Mr. Almenda, Mr. Kearney, Mr. Montroy, Mr. Rabolli and Mr. Whiteman.

**3(a) 2017 BOARD OF ADJUSTMENT ANNUAL REPORT**

Mr. Cascio stated that the Board members had been asked to review and comment on additions or deletions to the Annual Report distributed at a previous meeting.

A motion to approve as is was made by Mr. Rabolli, seconded by Mr. Montroy. A roll call vote revealed 5 aye votes by Mr. Almenda, Mr. Kearney, Mr. Montroy, Mr. Rabolli and Mr. Whiteman.

**VII. ADJOURNMENT:**

A motion to go out of Work Session and to adjourn was made by Mr. Kearney, seconded by Mr. Montroy. All voted in favor.

The meeting adjourned at 7:58 pm.

These minutes were prepared by Sylvia Gerou, Zoning Board Recording Secretary. The minutes were provided to the Board of Adjustment on April 13, 2018 for approval at the Regular Meeting to be held on April 18, 2018.