

**TOWNSHIP OF MAHWAH
BOARD OF ADJUSTMENT**

MINUTES

FEBRUARY 7, 2018

The combined public/work session meeting of the Board of Adjustment held at the Municipal Building, 475 Corporate Drive, Mahwah, NJ beginning at 7:33 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.

PRESENT: Mr. Almeda Mr. Kearney
 Mr. Dator Mr. Rabolli

ABSENT: Mr. DeSilva Mr. Straffin
 Mr. Larson Mr. Whiteman
 Mr. Montroy

ATTORNEY: Mr. Ben R. Cascio, Esq.

I. APPROVAL OF BILLS: None to present.

II. APPROVAL OF MINUTES: None to present.

III. RESOLUTIONS AUTHORIZING CONTRACTS FOR PROFESSIONALS:

A. Amended Resolution Authorizing the Award of an Alternate Non-Fair and Open Contract for Professional Legal Services to Ben R. Cascio, Esq. for the Year January 1, 2018 – December 31, 2018.

A motion to approve was made by Mr. Kearney, seconded by Mr. Almeda. A roll call vote revealed 4 aye votes by Mr. Almeda, Mr. Dator, Mr. Kearney and Mr. Rabolli.

B. Amended Resolution Authorizing the Award of an Alternate Non-Fair and Open Contract for Engineering Services to Boswell Engineering for the Year January 1, 2018 – December 31, 2018.

A motion to approve was made by Mr. Kearney, seconded by Mr. Almeda. A roll call vote revealed 4 aye votes by Mr. Almeda, Mr. Dator, Mr. Kearney and Mr. Rabolli.

C. Amended Resolution Authorizing the Award of an Alternate Non-Fair and Open Contract for Planning Services to Maser Consulting, PA for the Year January 1, 2018 – December 31, 2018.

A motion to approve was made by Mr. Kearney, seconded by Mr. Almeda. A roll call vote revealed 4 aye votes by Mr. Almeda, Mr. Dator, Mr. Kearney and Mr. Rabolli.

IV. OPEN TO THE PUBLIC:

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

V. PUBLIC HEARING: None to present.

VI. WORK SESSION:

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

Application for a “D” Variance to permit wholesale and purchase of pre-owned motor vehicles.

Mr. Carl Rizzo of Cole Schotz P.C. approached on behalf of the Applicant. Mr. Cascio referenced the February 1, 2018 letter from Mr. Mitchell Abrahams of Cole Schotz P.C. which details that the Division of Motor Vehicles denied the Applicant’s license application on the basis that the municipality does not allow for retail sales from the proposed location which is in the GI-80 Zone. The DMV Commission does not issue a wholesale dealer’s license; the license issued under N.J.S.A. 39:10-19 is for both retail and wholesale sales. Mr. Rizzo stated that the sales would be for pre-owned vehicles only as was the previous operation located at 73 Ramapo Valley Road for the past fourteen years. The Applicant is seeking an amended resolution to remove the condition prohibiting retail sales of used cars at the property located at 7 Industrial Avenue. Mr. Rabolli suggested that a Deed restriction be requested and the variance be limited to the existing operation with the next tenant being required to come before the Board of Adjustment. Mr. Cascio stated that the Applicant should notice before the next meeting for the amendment to the Resolution and then act on it formally.

The Amended Resolution request on the previously approved use variance for wholesale sale and purchase of pre-owned motor vehicles was carried to be heard as a Public Hearing at the February 21, 2018 meeting when Mr. Abrahams. Esq. will be in attendance.

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

Mr. Bruce Whitaker, Esq. of McDonnell & Whitaker, LLC approached on behalf of the Applicant and referred to his letter of January 30, 2018. He stated that it was discovered that the design by the architect would not accommodate an elevator and is requesting that the Board amend the previously approved Resolution. The original front yard setback for the proposed elevator location was 30.4 feet, where 75 feet is required. The building has an existing front yard setback of 27.8 feet and that does not change. With the modifications to the new elevator area, a portion of the new addition for the elevator would have, at its closest point, a front yard setback of 28.9 feet which is less than the 30.4 feet originally approved, but still greater than the existing front yard setback of 27.8 feet. The parking, building, and lot lines remain the same. Mr. Whitaker is requesting that the Board amend the resolution to 28.9 feet for the elevator only. Mr. Rabolli drew attention to the two drawings; the old proposed plan was 30.4 feet and on the new plan it is still 30.4 feet with a square showing the 28.9 feet. Mr. Whitaker responded that the square indicated where the elevator would be located, an extra 1 ½ feet added to the plan. Mr. Kearney asked if the extra 1 ½ foot addition would cause an issue with parking. Mr. Whitaker replied that it would not. Mr. Kelly added that the parking lot is wide enough and it would not be an issue. Mr. Rabolli asked what the defined set back is. Mr. Kelly replied 75 feet off of Route 17. Mr. Whitaker stated that the existing building is already at 27.8 feet. Mr. Rabolli commented that since they are not providing notice, there would be no Statute of Limitation. He questioned what would be done to protect a future buyer from this encroachment that is not being noticed publicly. Mr. Whitaker responded that it should be put in the Resolution and that the Resolution should be recorded.

Mr. Rabolli summarized the discussion and stated that it appears to be a de minimis matter that would not require public notice and that Mr. Whitaker has proposed that his client will defend and indemnify the Board in any action brought going forward.

A motion to approve to amend the previously approved resolution was made by Mr. Dator, seconded by Mr. Kearney. A roll call vote revealed 4 aye votes by Mr. Almeda, Mr. Dator, Mr. Kearney and Mr. Rabolli.

3. 2017 BOARD OF ADJUSTMENT ANNUAL REPORT

A brief history of the Annual Report was given by Mr. Cascio. Mr. Rabolli stated that items in this report have been seen over the past 5 to 10 years. A lot of issues are not as high a priority as in previous years, ie., burms, sports courts with rubberized matting, only one front yard, plastic car ports. Mr. Rabolli asked the question to the Board Members; for as long as you have been on the Board, is there something in particular that you want to send to the City Council? Mr. Dator stated that we have been doing the same

report for 8 years and suggested that it be given to our Planner and have her send it to the Council and say she has reviewed it and let's be more aggressive in getting recommendations acted upon. Mr. Kelly commented that one of the biggest complaints is that we do this report every year and it goes nowhere. He added that Boswell Engineering and Maser Consulting have been asked to evaluate the Township Zoning Code for the comments in this report to be considered in an overall review of the Township Zoning Code. A discussion was initiated by Mr. Kearny regarding the traffic issues that have come before the Board. Mr. Kelly stated that the membrane structure; item #3, meets the definition of a structure and should be treated as an accessory structure and meet those requirements. Referring to the Indian Field complex, Mr. Kelly stated that if their Board only allows them to extend a deck 2 feet, what the Zoning Officer should be looking at is does it meet the required setback for that zone. He added that most times those condo decks meet the required setbacks.

The discussion is scheduled to be continued at the February 21, 2018 Board of Adjustment Meeting.

Mr. Dator urged all Members to read the quasi guidelines in the publication published by The New Jersey Planning Officials called "The New Jersey Planner", dated November/December 2017 issue.

Mr. Rabolli informed the Members that there is a thought of forming a Zoning Ordinance Committee to discuss the revisions to the Township Zoning Code. He will attend on a regular basis as much as possible. Mr. Dator and Mr. Kearny are both interested. No start date is planned yet and details will follow.

VII. ADJOURNMENT:

A motion to go out of Work Session and to Adjourn was made by Mr. Dator, seconded by Mr. Kearney with all in favor.

The meeting adjourned at 8:19 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.