

**TOWNSHIP OF MAHWAH  
BOARD OF ADJUSTMENT**

**MINUTES**

**NOVEMBER 1, 2017**

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, Chairman, 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. Dator Mr. Rabolli  
Mr. Kearney Mr. Whiteman  
Mr. Larson

Mr. M. Kelly, PE  
Ms. K. Russell, PP

**ABSENT:** Mr. Almeda Mr. Montroy  
Mr. DeSilva Mr. Straffin

**ATTORNEY:** Ms. Sophy Sedarat, Esq.

**I. APPROVAL OF BILLS:**

None to present.

**II. APPROVAL OF MINUTES:**

**A. MINUTES OF SEPTEMBER 6, 2017**

A motion to approve was made by Mr. Whiteman, seconded by Mr. Dator. All eligible members voted in favor.

**III. MEMORIALIZING RESOLUTIONS:**

- 1. DKT.#1411-16 – QUICKCHEK CORPORATION  
280-290 STATE HIGHWAY 17 SOUTH, BLOCK 136, LOTS 5.01 & 5.02**

Resolution, with conditions, granting Conditional Use Variance Approval, Bulk Variance Approval, Preliminary and Final Site Plan Approval, Site Plan Design Exceptions, Checklist Waiver Approvals and Soil Movement Approval.

A motion to approve was made by Mr. Larson, seconded by Mr. Whiteman. A roll call vote revealed 5 aye votes by Mr. Dator, Mr. Kearney, Mr. Larson, Mr. Rabolli and Mr. Whiteman.

**2. DKT.#1429-17 – HIND KESILYAS  
217 AIRMOUNT ROAD, BLOCK 101, LOT 6**

Resolution granting approval to construct a single-family dwelling with a sidewalk, generator, patio, driveway and drainage improvements on a non-conforming lot.

A motion to approve was made by Mr. Whiteman, seconded by Mr. Dator. A roll call vote revealed 3 aye votes by Mr. Dator, Mr. Rabolli and Mr. Whiteman.

**IV. OPEN TO THE PUBLIC:**

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

**V. PUBLIC HEARINGS:**

Mr. Rabolli announced a change in the agenda order. The Board will hear Docket #1430-17, Prestige Pre-Owned, LLC. first and then proceed with Docket #1413-16, Sean Royle.

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

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

Mr. Mitchell Abrahams, Esq., of Cole Schotz, P.C., approached on behalf of the Applicant. Ms. Sedarat indicated all notices were in order. Mr. Abrahams presented a general overview of the application and of Prestige Pre-Owned's business operations. He indicated they are before the Board as the sale of motor vehicles is not permitted in the zone. There will be no change in the physical structure of the building.

Mr. Abrahams called Mr. David West of 7 Industrial Avenue, Mahwah. Mr. West is the General Manager of Prestige Pre-Owned, LLC, and is familiar with the business operations. He was sworn in by Mr. Rabolli. Mr. West described Prestige as a 'holding lot' until cars are sold or auctioned. They are a store facilitator of pre-owned vehicles. There is no mechanical work performed on site, no retail sales and no customers. Upon questioning by Mr. Rabolli, Mr. West confirmed the site will not be utilized as a used-car

dealership. Mr. Kelly requested that the loading of car carriers be done interior to the site and not on the street. The Applicant will comply. There were no questions from the Board or the Public for Mr. West.

Mr. Abrahams called Mr. Peter G. Steck of 80 Maplewood Avenue, Maplewood, NJ. Mr. Steck was sworn in by Mr. Rabolli and accepted as an expert Professional Planner as he has appeared before the Board on numerous occasions.

Mr. Steck has visited the site several times and has also discussed operations with Mr. West. The site is already developed and variances were previously granted for the fence height in front and depth of the lot. There will not be any physical changes to the property. The Applicant is appearing before the Board as the Mahwah Zoning Officer's sign off is needed for a State of New Jersey Certificate for Business License for the sale of used cars although the Applicant's operation is really a holding facility that will support retail stores for the sale of cars. The property is in an industrial area and cannot be seen from Franklin Turnpike. Mr. Steck described the area and noted the property is well maintained. Mr. Steck reiterated again that customers would not be coming to the site. Mr. Steck does not believe there to be any detriment to the surrounding areas. He believes the application can be approved without substantial impairment to the zone plan and zoning ordinance and without any detriment to the public good.

Mr. Larson questioned the use of the building. Mr. Steck replied the building is used for offices and there will be ten employees on site. There were no further questions from the Board or the Public for Mr. Steck.

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

Mr. Rabolli called Docket #1413-16 and moved back into the Public Hearing portion of the meeting.

**2. DKT.#1413-16 – SEAN ROYLE  
16 SKYTOP DRIVE, BLOCK 154, LOT 17**

Application for a "C" Variance to construct a single-family home on vacant land without frontage upon a street.

Mr. James Jaworski, of Wells, Jaworski & Liebman, LLP, approached on behalf of the Applicant. Mr. Rabolli gave an overview of the Board's procedures for the benefit of the many members in the Public audience. During the proceedings, Ms. Sedarat indicated all notices were in order.

Ms. Sue Driscoll, of 25 Stone Fence Road, approached. She questioned the submission of public record documents and Board Member recusal. Mr. Rabolli replied the documents will be addressed when presented. Ms. Driscoll questioned Mr. Dator's prior ownership of the property. After a short discussion, Mr. Dator recused himself from this

application. CD recordings will be sent to absent Board Members to ensure voting eligibility.

Mr. Jaworski introduced the Royle family members in attendance. He described the property of 16 Skytop Drive as Block 154, Lot 17, mentioning that access is via a right-of-way over Lots 18, 19 and 20 in Block 154 and Block 3510, Lot 20 in the town of Ramsey. Mr. Jaworski presented a prepared Exhibit List. For identification only, Mr. Jaworski cited Exhibits A-1 through A-12 (See attached Exhibit List).

Mr. Jaworski stated there are existing non-conforming conditions for both lot area and lot depth. Mr. Jaworski mentioned they will be presenting the 1920 map, the 1962 map and the tax map showing the right-of-way. He referred to Judge DeCordova's decision dated May 8, 1987 vacating the Resolution of Denial dated November 6, 1985. If the 50-foot right-of-way, which was referred to as a "dog-leg," was added to Lot 17, the lot depth and lot area would no longer be deficient; however, Lot 18 would now become deficient in area. Mr. Jaworski stated the Applicant's lot was designed in 1962 as a conforming lot except for the right-of-way. The lot was created via Filed Map No. 5925 entitled "White Birch Estates" filed on April 24, 1962. Mr. Jaworski continued giving the history of the area, the lot, deeds, site plan ordinances, subdivision ordinances and Township Code. Mr. Kelly indicated the original Zoning Code of Mahwah was created in 1946.

As a threshold issue, Mr. Jaworski believes a determination needs to be made by the Board regarding "grandfathering." He requested that CDs be sent to the absent Board Members to give the Applicant a full-Board complement for voting eligibility.

Mr. Rabolli questioned the type easement. Mr. Jaworski replied the filed map shows a 50' right-of-way and the proposed application shows a 16' driveway. Upon questioning by Mr. Kelly, Mr. Jaworski will submit a brief to the Township and Mr. Cascio, the Board's Attorney, for review prior to the next hearing.

The following was discussed in detail: inverse condemnation; fair market value; the hardship of the isolated, undersized lot; grandfathering; right-of-way and easements. Upon questioning by Mr. Kearney, Mr. Jaworski stated the easement is solely for the use and benefit of the Applicant.

Mr. Rabolli called a recess at 8:46 pm.

The meeting reconvened at 8:58 pm.

Mr. Jaworski called Mr. Tibor Latincsics of Conklin Associates, 29 Church Street, Ramsey, NJ. Mr. Latincsics was sworn in by Mr. Rabolli and after presenting his credentials, was accepted as an expert engineer. Mr. Latincsics referred to and described Exhibit A-1 and Exhibit A-3. Mr. Kearney questioned the area background and maps. Mr. Latincsics indicated the 1962 filed map entitled "White Birch Estates" created the subdivision and right-of-way. At this time, Mr. Jaworski presented the following:

Exhibit A-13                      Plot Plan and Soil Movement Application, Skytop Drive, Lot 17,  
Block 154, prepared by Conklin Associates dated May 31, 2016  
with a revision date of March 7, 2017.

Mr. Latincsics described the plans, the proposed driveway and right-of-way in detail. The limit of disturbance of the right-of-way at its widest point would be approximately 26' and contained within the right-of-way. Mr. Latincsics noted that the 50' width is standard for a public roadway under the Residential Site Improvement Standards. Emergency access was discussed and it was mentioned that the proposed access was approved by Mr. Tom Dillon, who was the previous Township Fire Code Official. Water, electricity and sanitary sewer utilities under or adjacent to the driveway were described. Upon questioning by Mr. Jaworski, Mr. Latincsics indicated all Board of Health comments will be addressed. Landscaping was described with tree removal and tree replacement.

Mr. Latincsics continued describing the existing non-conforming issues of lot area and lot depth in detail. Although the lot area is deficient, all setback criteria will be met for the R20 Zone. Dimensions to the existing dwellings on Lots 16, 18 and 19 were given. The hardship of the lack of available vacant land was described. Changes to existing lots would create additional non-conformities. A long discussion ensued regarding the "dog leg," the creation of the right-of-way, the ownership of the right-of-way and the 1962 filed map.

After a brief discussion on scheduling, Mr. Rabolli announced Docket #1413-16 is carried to the December 6, 2017 meeting. Mr. Jaworski consented to the extension of time to January 1, 2018 and no further notice is required.

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

## **VI. WORK SESSION:**

*Note: At this time, Mr. Dator returned to the dais.*

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

*Note: Work Session was held immediately after the Public Hearing for this docket.*

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

A motion to approve was made by Mr. Whiteman, seconded by Mr. Kearney. A roll call vote revealed 5 aye votes by Mr. Dator, Mr. Kearney, Mr. Larson, Mr. Rabolli and Mr. Whiteman.

**2. DKT.#1423-17 – RAMAPOUGH MOUNTAIN INDIANS, INC.  
95 HALIFAX ROAD, BLOCK 1, LOT 131**

Discussion on proposed Resolution for Dismissal. Mr. Cascio was also in attendance and commented on the resolution. The Applicant has requested the application be withdrawn; however, fees were never paid to deem the application complete.

A motion to approve the dismissal of the application, subject to conditions, was made by Mr. Dator, seconded by Mr. Whiteman. A roll call vote revealed 5 aye votes by Mr. Dator, Mr. Kearney, Mr. Larson, Mr. Rabolli and Mr. Whiteman.

**3. 2018 TENTATIVE BOARD OF ADJUSTMENT MEETING DATES**

A motion to approve the 2018 Meeting Dates was made by Mr. Whiteman, seconded by Mr. Kearney. A roll call vote revealed 5 aye votes by Mr. Dator, Mr. Kearney, Mr. Larson, Mr. Rabolli and Mr. Whiteman.

*NOTE:* Mr. Rabolli announced that the November 15, 2017 meeting will be cancelled.

**VII. ADJOURNMENT:**

The meeting adjourned at 9:57 pm on a motion by Mr. Whiteman, seconded by Mr. Kearney.

These minutes were prepared by Geri Entrup, Zoning Board Recording Secretary.

**WELLS, JAWORSKI & LIEBMAN, LLP**  
ATTORNEYS AT LAW

**SEAN ROYLE**  
**TOWNSHIP OF MAHWAH**  
**ZONING BOARD OF ADJUSTMENT**

**APPLICATION FOR PLOT PLAN REVIEW, VARIANCES,  
SOIL MOVEMENT AND RELATED APPROVALS**

**EXHIBIT LIST**

<b>Exhibit</b>	<b>Description</b>	<b>Date ID</b>	<b>Date Evidence</b>
A-1	Filed Map No. 2432 entitled "Ramsey Manor" filed on June 20, 1928	November 1, 2017	
A-2	Filed Map No. 5925 entitled "White Birch Estates" filed on April 24, 1962	November 1, 2017	
A-3	Mahwah Tax Map Sheet #77	November 1, 2017	
A-4	Resolution of Denial Docket No. 642 adopted November 6, 1985	November 1, 2017	
A-5	Transcript of proceedings before Judge DeCordova dated May 8, 1987 vacating Resolution of Denial	November 1, 2017	
A-6	Deed into Sean Royle and Margo Royle covering Block 154, Lot 17, Township of Mahwah recorded on March 18, 2010	November 1, 2017	
A-7	Deed into Sean Royle and Margo Royle covering Block 154, Lot 20, Township of Mahwah and Block 3510, Lot 20, Borough of Ramsey recorded on September 5, 2013 AND Order and Final Judgment recorded July 23, 2015	November 1, 2017	

**WELLS, JAWORSKI & LIEBMAN, LLP**  
ATTORNEYS AT LAW

<b>Exhibit</b>	<b>Description</b>	<b>Date ID</b>	<b>Date Evidence</b>
A-8	Deed into Sean Royle and Margo Royle covering Block 3510, Lot 21, Borough of Ramsey recorded on April 21, 2011	November 1, 2017	ID only
A-9	Driveway Easement Agreement to vacate and replace with a new access Right-of-Way recorded May 22, 2015	November 1, 2017	ID only
A-10	Township of Mahwah Zoning Permit dated May 27, 2010	November 1, 2017	
A-11	Current Tax Assessment "Postcard" showing assessment valuations from 2010 - 2017	November 1, 2017	
A-12	Correspondence from Michael J. Kelly dated March 23, 2016	November 1, 2017	
A-13	Plot Plan prepared by Conklin Associates, dated May 31, 2016 and revised through August 15, 2016	November 1, 2017	
A-14	Architectural plans prepared by Robert M. Moll, AIA, dated July 17, 2015	December 6, 2017	ID only
BOA-1	Correspondence from Boswell McClave Engineering, dated October 26, 2017	December 6, 2017	
BOA-2	Correspondence from Maser Consulting P.A., dated September 27, 2017	December 6, 2017	
BOA-3	Department Head Reports Package a. Fire Prevention b. Chief of Police c. Board of Health d. Department of Public Works e. Construction Official f. Environmental Commission g. Historic Preservation Commission	December 6, 2017	