



TOWN OF BEDFORD
www.bedfordny.gov

AGENDA

BEDFORD ZONING BOARD OF APPEALS
425 Cherry Street, 2nd Floor Conference Room
Bedford Hills, New York 10507
WEDNESDAY, May 4, 2016

7:30 P.M.

MINUTES: April 6, 2016

CARRYOVER APPLICATION:

7:30 P.M. – 7:45 P.M.

Adoption of Resolution

1. Michael Richman and Ruth Toporoff (Appellants), 12 Alice Road, Bedford Corners, NY 10549 for property owned by: Stefano and Suzanne Galli, 341 Succabone Road, Bedford Corners, NY 10549. Section 83.11 Block 2 Lot 2, R-4 Acre Zoning District. The appellants hereby seek an Appeal as requested by a letter dated November 23, 2015 from Ruth Toporoff, RA, representing Michael Richman and Ruth Toporoff, from (1) the Town of Bedford Building Inspector's September 29, 2015 determination that the plan last submitted by the Galli's—namely, the Keane Coppelman Gregory Plot Plan, last revised September 18, 2015 ("September Plan") meets the conditions of the Zoning Board of Appeals; and (2) any building permit issued to the Gallis concerning the proposed improvements depicted in the September Plan. Said appeal is filed with the Zoning Board of Appeals pursuant to Article XII Section 125-129 (C) (1) (b) of the Code of the Town of Bedford. Public Hearing is closed.

NEW APPLICATIONS:

7:45 P.M. – 8:00 P.M.

1. Padden, Christopher and Alexandre, 2 Middle Patent Road, Bedford, NY 10506. Section 84.12 Block 2 Lot 1, R-1 Acre Zoning District. The applicants request variances of Article V Section 125-50 and Article III Section 125-11 of the Town of Bedford Zoning Ordinance to permit the demolition of an existing rear yard deck attached to a pre-existing, non-conforming single family residence and the construction of new and expanded deck resulting in a side-front yard setback of 25.2 feet where 35 feet is required in the Residential 1 Acre Zoning District.

8:00 P.M. – 8:15 P.M.

2. Lawrence and Daisy Lee, 43 Linden lane, Bedford Corners, NY 10549. Section 83.9 Block 1 Lot 16, R-4 Acre Zoning District. The applicants request a variance of Article V Section 125-50 and Article III Section 125-11 of the Town of Bedford Zoning Ordinance to permit additions and alterations to an existing single family residence including the construction of a front entrance deck "bridge" and foyer resulting in a front yard setback of 49.07 feet where 75 feet is required in the Residential 4 Acre Zoning District where the existing front yard setback for the residence is existing, non-conforming at 59.6 feet where 75 feet is required in the R Acre Zoning District.

BEDFORD ZONING BOARD OF APPEALS

Wednesday, May 4, 2016

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8:15 P.M. – 8:30 P.M.

3. Lawrence and Daisy Lee, 43 Linden lane, Bedford Corners, NY 10549. Section 83.9 Block 1 Lot 16, R-4 Acre Zoning District. The applicants request a variance of Article V Section 125-50 of the Town of Bedford Zoning Ordinance to permit the construction of a detached 3-car garage resulting in a front yard setback of 45.34 feet where 75 feet is required in the Residential 4 Acre Zoning District; and a side yard setback of 32.25 feet where 50 feet is required in the Residential 4 Acre Zoning District.

8:30 – 8:45 P.M.

4. Curco Operating Company, c/o Veneruso, Curto, Schwartz & Curto LLP (Owner) and 748 North Bedford Road, Bedford Property Associates, LLC, c/o Open Road Auto Group, 748 Bedford Road, Bedford Hills, NY 10507. Section 71.12 Block 2 Lot 12, RB Zoning District. The applicants request a Special Use Permit in accordance with Article VIII Section 125-68 of the Town of Bedford Zoning Ordinance to permit the operation of a motor vehicle sales and service facility which such uses are classified as “public garages” under the Town of Bedford Zoning Code.

8:45 P. M. – 9:00 P.M.

5. Curco Operating Company, c/o Veneruso, Curto, Schwartz & Curto LLP (Owner) and 748 North Bedford Road, Bedford Property Associates, LLC, c/o Open Road Auto Group, 748 Bedford Road, Bedford Hills, NY 10507. Section 71.12 Block 2 Lot 12, RB Zoning District. The applicants request a variance of Article X Section 125-102 Parking Requirements of the Town of Bedford Zoning ordinance to permit the operation of a motor vehicle sales and service facility with 54 off-street parking spaces where 82 spaces are required.

Supporting documentation for all items on this agenda is available at the Town of Bedford website www.bedfordny.gov. Town Government –Boards--Zoning Board of Appeals-Calendar of Meetings.
Larger documents and plans are available at the office of the Board of Appeals

ZONING BOARD OF APPEALS
Town of Bedford
Westchester County, New York

Resolution #05-16 One

Michael Richman and Ruth Toporoff (Appellants)
Stefano and Suzanne Galli (Owners)

Appeal of the Building Inspector's Determination that the Keane Coppelman Gregory Plot Plan Meets the Conditions of ZBA Resolution #04-14-Six

WHEREAS, on November 25, 2015 Michael Richman and Ruth Toporoff (the Appellants) appealed a certain September 29, 2015 interpretation by the Town of Bedford Building Inspector, Steve Fraietta, as to the conformity of the revised plan prepared by Peter Gregory, PE, dated September 18, 2015 and submitted to the Building Inspector on September 21, 2015 with the July 10, 2014 variance issued to Stefano and Suzanne Galli. Appellants do not believe that such map conforms with the requirements set forth in Amended Resolution No 04-14 Six of the Zoning Board of Appeals of the Town of Bedford, mainly Condition No. 13 of the July 10, 2014 zoning variance which reads as follows:

13. The access gate shall be pulled back 20 feet into the applicants' property; or if in the opinion of Kevin Winn, the Commissioner of Public Works, 20 feet cannot be achieved, the access gate shall be pulled back a minimum of 10 feet to achieve greater conformity so that trucks coming and going have room to pull in and partially open the gate before proceeding into the property, thereby limiting obstruction of Alice Road.

WHEREAS, a public hearing was held to hear the appeal on January 6, 2016 and was postponed at the request of the Appellants; and the appeal was heard at the next meeting held on February 3, 2016 at which time all those present wishing to speak were given an opportunity to be heard; and

WHEREAS, all members of the Board of Appeals have had the opportunity to inspect the site; and

WHEREAS, there being no additional public comment or correspondence, Mr. Michaelis made a motion to close the public hearing and keep the public record open for two weeks to receive written submissions. Ms. Black seconded the motion and a vote in favor was unanimous. The public hearing was closed; and

WHEREAS, on February 3, 2016, the Board acknowledged receipt of a letter from Steven Fraietta, Building Inspector; and

WHEREAS, on February 11, 2016, the Board acknowledged receipt of a letter from Kevin Winn, Commissioner of Public Works; and

WHEREAS, on February 2, 2016 and March 13, 2016, the Board acknowledged receipt of a letters from Suzanne Galli, the owner of 341 Succabone Road, Bedford Corners; and

WHEREAS, thereafter on or about March 4, 2016, the Appellants submitted additional documents to the Zoning Board of Appeals in support of their appeal.

Resolution #05-14 One

Michael Richman and Ruth Toporoff (Appellants)

Stefano and Suzanne Galli (Owners)

Appeal of the Building Inspector's Determination that the Keane Coppelman Gregory Plot Plan Meets the Conditions of ZBA Resolution #04-14-Six

Page Two

WHEREAS, on March 18, 2016, a revised plan prepared by Peter Gregory, PE, dated 3/15/16 was submitted which addressed the concerns of the **Appellants**, a copy of which revised plan was transmitted to **the Appellants**; and

WHEREAS, on April 1, 2016, the Appellants submitted a request to the Bedford Town Attorney for an adjournment of the appeal scheduled for the April 6, 2016 meeting of the Board of Appeals; and

WHEREAS, at the April 6, 2016 meeting, the Appellants requested an adjournment due to the fact that all five members of the board were not in attendance; and

WHEREAS, at its meeting held on April 6, 2016, the Chairman of the Board of Appeals polled the Board members, who unanimously voted to grant the adjournment to the May 4, 2016 meeting due to the fact that only four of the five board members were in attendance; and

NOW THEREFORE, on a motion by _____, seconded by _____, it is

RESOLVED, that the Zoning Board of Appeals upholds the Building Inspector's determination that the plan entitled "Plot Plan, Galli Residence Manure Dumpster, 341 Succabone Road, Town of Bedford, Westchester County, New York," prepared by Peter Gregory, PE, dated 2/5/2015, revised 8/6/15, 9/18/15 and 3/15/16.

AND BE IT FURTHER RESOLVED, the other claims raised by the Appellants in the appeal are found to be without merit. Accordingly, the above-referenced appeal is dismissed.

Vote taken on the foregoing motion was as follows:

Ayes – Mr. Petschek, Ms. Black, Ms. Schaefer, Mrs. Spano, Mr. Michaelis

Nays – None

Peter Michaelis, Chair

The foregoing is certified to be a true copy of a Resolution of the Zoning Board of Appeals of the Town of Bedford that was filed in the Office of the Clerk of the Town of Bedford on _____, 2016.

Alexandra J. Costello, Secretary
Zoning Board of Appeals

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that the Board of Appeals of the Town of Bedford will hold a public hearing on the following:

Request of: **Christopher and Alexandre Padden**
2 Middle Patent Road
Bedford, NY 10506

for a variance of the Town of Bedford Zoning Ordinance to permit:

The demolition of a an existing rear yard deck attached to a pre-existing, non-conforming single family residence and the construction of a new expanded deck resulting in a side-front yard setback of 25.2 feet where 35 feet is required in the Residential 1 Acre Zoning District. This request requires a variance of Article V Section 125-50 and Article III Section 125-11 for property owned by the applicants and located on:

2 Middle Patent Road
Bedford, NY 10506

designated as Section 84.12 Block 2 Lot 1 on the Tax Map of the Town of Bedford in an R-1 Acre Zoning District. Said hearing will take place on **Wednesday, the 4th day of May 2016**, at the Town House Offices, 2nd Floor, 425 Cherry Street, Bedford Hills, New York, at **7:30 P.M.** At this hearing all persons appearing in favor of or in opposition to the above application will be heard. Attendance at said hearing is not required. Applicants or their representative must be present. NOTE: All presentations from all Applicants will be limited to 15 minutes. Others wishing to speak can have 5 minutes but can also submit written comments. The Applicants can then have 5 minutes of rebuttal.

DATED: April 11, 2016

Peter Michaelis, Chair
Town of Bedford Zoning Board of Appeals

Inquiry may be directed to:
Alexandra J. Costello, Secretary
Town of Bedford Zoning Board of Appeals
425 Cherry Street
Bedford Hills, NY 10507
(914) 666-4585; FAX: (914) 666-2026
acostello@bedfordny.gov
www.bedfordny.gov



ZONING BOARD OF APPEALS

Town of Bedford, Westchester County, New York
425 Cherry Street, Bedford Hills, New York 10507
Alexandra J. Costello, Secretary
914-666-4585; 914-666-2026 FAX
acostello@bedfordny.gov

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BEDFORD ZONING BOARD OF APPEALS

APPLICATION FOR A VARIANCE

1. Name of Owner: Christopher & Alexandre Padden
Address: 2 Middle Patent Road, Bedford / 400 WEST 63RD Apt 905 NYC 10069
Telephone/Email: 516 . 236 . 3790 ALEXANDRE.PADDEN@GMAIL.COM

2. Name of Applicant, if other than Owner: Mary F Scott
Address: see below
Telephone/Email: ↓

3. Name of Professional (New York State Licensed Architect, Engineer, Land Surveyor, Landscape Architect):
Mary Faithorn Scott, Architect
Address: 33 Fairways Dr Mt Kisco NY 10549
Telephone/Email: 914 241 6262 mfscoattarch@gmail.com

4. Identification Property:
Street Address: 2 MIDDLE PATENT RD BEDFORD
Tax ID: 84.12-2-1 Zoning District: R-1A Total Land Area: 2.0 A
Age of the Building 116 yrs ±
Is the property located in a designated Historic District? no
% of Building Coverage: 2746 = 3% % of Impervious Surface 7143 8%
Property Abuts a State or County highway, parkway, thruway or park: Yes No
Property is within 500 feet of the boundary of the Town of Bedford: Yes: No:
Property is on the SOUTH side of BEDFORD/ROUND RIDGE RD within the unincorporated area of the Town of Bedford.

ZONING BOARD OF APPEALS
APPLICATION FOR A VARIANCE

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MAR 29 2016

5. Request:

The applicant requests that the Board approve the issuance of a Variance under the following section of the Code of the Town Bedford:

Article: III Section: 125-11

To Permit: REDUCTION IN FRONT YARD SETBACK FROM 35' TO 25.2' - VARIANCE OF 9.8 FT
CONSTRUCTION OF A NEW DECK 25.2' FROM NORTH PROPERTY LINE
FACING BEDFORD ROAD. EXISTING DECK IS STRUCTURALLY UNSOUND.
NEW DECK WOULD ALLOW ACCESS INTO RENOVATED MUD ROOM.
DECK RAILINGS & DETAILS WILL BE IN KEEPING WITH THE ARCHITECTURE
OF THE HOUSE. DECK WILL BE SHIELDED FROM BEDFORD ROAD BY
AN EXISTING FENCE AND WILL NOT BE VISIBLE FROM MIDDLE
PATENT ROAD. DECK WILL NOT CHANGE NON-CONFORMING SETBACKS
THAT EXIST ON NORTH SIDE

6. Plans required:

Include six copies of survey, site plan, building elevations and floor plans.

7. Public Notice:

Notice of the public hearing shall be published at least 10 days prior to the hearing in the Town newspaper and shall be mailed by the applicant at least 10 days prior to the hearing to all owners of property within 500 feet of the perimeter of the subject lot. The expense of publishing and mailing any notice shall be paid by the applicant, who shall file an affidavit of mailing with the Board Secretary prior to the hearing.

8. Fees: (make checks payable to the Town of Bedford)

Variance

(As required by Fee Schedule Town of Bedford Code)

Residential: \$350.00

Commercial: \$550.00

Alexandre Padelu

Signature of Owner

3/19/16

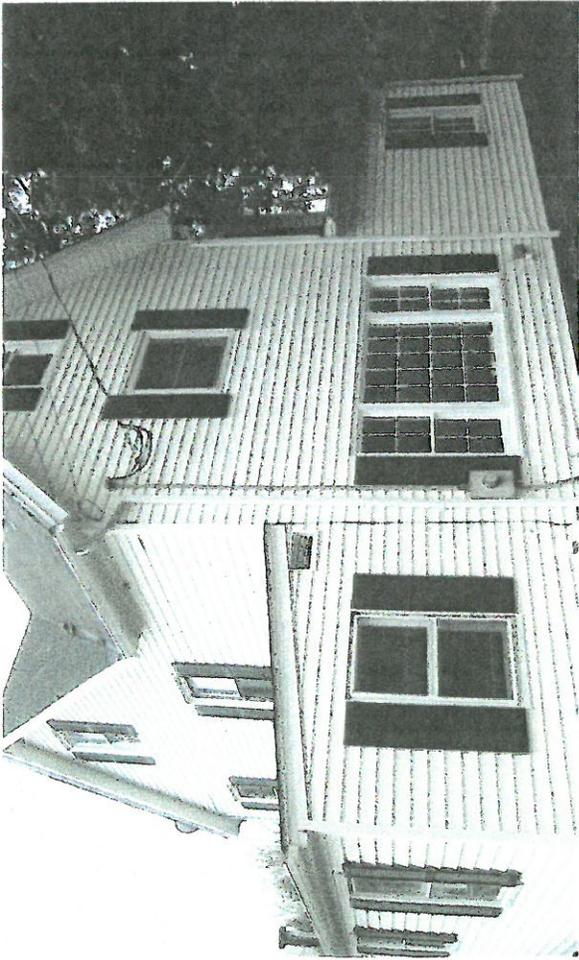
Date

Mary Scott

Signature of Applicant

3.23.16

Date



NORTH ELEY. - BEDFORD ROAD



EAST ELEY.



EAST ELEY. - DECK ~~WAS~~ TO BE REMOVED



WEST-FRONT ELEY. ON MIDDLE PATENT RD

2 MIDDLE FAIRBANK ROAD



EXISTING DECK & SHED



EXISTING DECK



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MAR 29 2016

BEDFORD BUILDING
DEPARTMENT

Town of Bedford
Building & Code Enforcement

425 Cherry Street, Bedford Hills, New York 10507

914-666-8040; FAX 914-666-2026

buildinginsp@bedfordny.info

www.bedfordny.gov

REQUEST FOR REVISED BUILDING PERMIT
(ZBA)

Permit No. 24323 Plan Date of Revision Request: 3/24/16

Revised Construction Cost: + 3000 (affidavit must be completed by Design Professional if the revised cost is \$20,000 or more OR for Legalizations) Additional Building Permit Fee: _____

Check No. _____ Receipt No. _____ ORIG PERMIT # 24323

Property Information: Section: 84.12 Block: 2 Lot: 1 Zoning District: 1 Acre

Property Location: 2 Middle Patent Rd

Property Owner: Padden Telephone: 516 236 3790 Email: _____

Mailing Address (if different from property location): SAME ALEXANDRE.PADDEN@GMAIL.COM

Applicant: Mary F Scott Telephone: 241 626 2 Email: MFSCOTTARCH@GMAIL.COM

Mailing Address: 33 Fairways Dr Mt Kisco NY

Signature of Applicant: Mary F Scott Date: 3.29.16

Signature of Owner: Alexandre Padden Date: 3.26.16

Description of Revision: ADD SMALL DECK

(To be completed by Building Department)

- Ridgelines and Steep Slopes (Pursuant to Section 102 of the Town Code):
- Wetlands (Pursuant to Section 122 of the Town Code):
- Stormwater Management (Pursuant to Section 103 of the Town Code):
- Zoning, Planning, Wetlands Compliance:
- Comments:

Steven Fraietta, Building Inspector Date
Rev. 8/26/11

J. Osterman, Director of Planning Date

BEDFORD WETLANDS CONTROL COMMISSION
SITE INSPECTION REQUEST

Section 84.12 Block 2 Lot 1
Zoning R-1A

Owner(s): Christopher and Alexandre Padden
Location: 2 Middle Patent Rd. Bedford, NY 10506
Project: DECK

Date of Request: 4/11/16 Requested By: Padden / J. Osterman

Would like to be present during inspection

Office Use Only - Escrow Account: [\$300 minimum balance required to schedule inspection]
Escrow Account # _____ Balance as of ___/___/___ = \$ _____
\$ _____ received on ___/___/___ Ck. # _____ dated ___/___/___ from: _____

I - TYPE OF INSPECTION:

- Administrative Permit Eligibility
- Building Permit Application
- Confirmation of Wetlands Delineation
- Complaint
- Compliance Inspection for C/C or C/O
- Consultation Requested
- Inquiry
- Possible Wetlands Violation
- Other: _____

- WCC Permit Resolution No. _____
- Erosion and Sediment Control Inspection
 - Monumentation Installation
 - Plant Installation Inspection
 - Plant Viability Inspection for Release of Security
 - Resolution Compliance Inspection
 - Status
 - Other: _____

Comments: _____

II - SITE INSPECTION:

Site inspection performed by: B. Evans Date: 4/14/2016
Comments: No wetlands or watercourses w/in 100' of proposed deck. No wetland permit required.

III - DECISION:

- No Permit Required
- Administrative Permit Required
- Full Wetlands Permit Required - Documentation Required
- Other: _____

Wetlands Secretary Notes: _____

LETTER OF PERMIT DENIAL



Town of Bedford
Building Dept.
425 Cherry St.
914-666-8040

Application #:

Date: 4/11/2016

Parcel ID: 84.12-2-1

Owner Information

Padden, Christopher & Padden, Alexandre

Applicant Information

Padden, Christopher & Padden, Ale
2 Middle Patent Rd

Bedford NY 10506

Location: 2 Middle Patent Rd

Parcel ID: 84.12-2-1

Permit Type: Additions & Alterations

Work Description: Demolition of an existing rear yard deck and the construction of a new expanded deck. Interior renovations to kitchen, powder room and 2 bathrooms.

Dear Resident,

Regarding the application for a Building Permit on the property referenced above, the following facts are noted. This property is located in R-1A Zoning District. The requirements of the Zoning Ordinance of the Town of Bedford in comparison to your proposal are listed as follows:

The demolition of an existing rear yard deck and the construction of a new expanded deck will result in a front-side yard setback of 25.2 feet where 35 feet is required in the R-1 Acre Zoning District. The existing residence has a pre-existing, non-conforming side-front yard setback of 25.2 feet where 35 feet is required. A variance of Article III Section 125-11 and Article V Section 125-50 from the Board of Appeals is required. The Town Environmental Consultant shall site inspect the property to determine if a permit from the Wetlands Control Commission is required.

Because your project does not meet the requirements of the Town of Bedford Zoning Ordinance, your application for a building permit is DENIED. If you wish to proceed with your request, you may, within sixty days of this letter, apply to the of the above provisions

Very truly yours,

Ralph Tarchine, Jr.
Building Inspector

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that the Board of Appeals of the Town of Bedford will hold a public hearing on the following:

Request of: **Lawrence and Daisy Lee**
43 Linden Lane
Bedford Corners, NY 10549

for a variance of the Town of Bedford Zoning Ordinance to permit:

Additions and alterations to an existing single family residence including the construction of a front entrance deck “bridge” and foyer resulting in a front yard setback of 49.07 feet where 75 feet is required in the Residential 4 Acre Zoning District where the existing front yard setback for the residence is existing, non-conforming at 59.6 feet where 75 feet is required in the 4 Acre Zoning District. This request requires a variance of Article V Section 125-50 and Article III Section 125-11 for property owned by the applicants and located on:

43 Linden Lane
Bedford Corners, NY 10549

designated as Section 83.9 Block 1 Lot 16 on the Tax Map of the Town of Bedford in an R-4 Acre Zoning District.

Said hearing will take place on **Wednesday, the 4th day of May 2016**, at the Town House Offices, 2nd Floor, 425 Cherry Street, Bedford Hills, New York, at **7:30 P.M.** At this hearing all persons appearing in favor of or in opposition to the above application will be heard. Attendance at said hearing is not required. Applicants or their representative must be present. NOTE: All presentations from all Applicants will be limited to 15 minutes. Others wishing to speak can have 5 minutes but can also submit written comments. The Applicants can then have 5 minutes of rebuttal.

DATED: April 11, 2016

Peter Michaelis, Chair
Town of Bedford Zoning Board of Appeals

Inquiry may be directed to:
Alexandra J. Costello, Secretary
Town of Bedford Zoning Board of Appeals
425 Cherry Street
Bedford Hills, NY 10507
(914) 666-4585; FAX: (914) 666-2026
acostello@bedfordny.gov
www.bedfordny.gov

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that the Board of Appeals of the Town of Bedford will hold a public hearing on the following:

Request of: **Lawrence and Daisy Lee**
43 Linden Lane
Bedford Corners, NY 10549

for a variance of the Town of Bedford Zoning Ordinance to permit:

The construction of a detached 3-car garage resulting in a front yard setback of 45.34 feet where 75 feet is required in the Residential 4 Acre Zoning District; and a side yard setback of 32.25 feet where 50 feet is required in the Residential 4 Acre Zoning District. This request requires a variance of Article V Section 125-50 for property owned by the applicants and located on:

43 Linden Lane
Bedford Corners, NY 10549

designated as Section 83.9 Block 1 Lot 16 on the Tax Map of the Town of Bedford in an R-4 Acre Zoning District.

Said hearing will take place on **Wednesday, the 4th day of May 2016**, at the Town House Offices, 2nd Floor, 425 Cherry Street, Bedford Hills, New York, at **7:30 P.M.** At this hearing all persons appearing in favor of or in opposition to the above application will be heard. Attendance at said hearing is not required. Applicants or their representative must be present. NOTE: All presentations from all Applicants will be limited to 15 minutes. Others wishing to speak can have 5 minutes but can also submit written comments. The Applicants can then have 5 minutes of rebuttal.

DATED: April 11, 2016

Peter Michaelis, Chair
Town of Bedford Zoning Board of Appeals

Inquiry may be directed to:
Alexandra J. Costello, Secretary
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425 Cherry Street
Bedford Hills, NY 10507
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LOT 16
Block 1

ZONING BOARD OF APPEALS

Town of Bedford, Westchester County, New York
425 Cherry Street, Bedford Hills, New York 10507
Alexandra J. Costello, Secretary
914-666-4585; 914-666-2026 FAX
acostello@bedfordny.gov

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BEDFORD ZONING
BOARD OF APPEALS

APPLICATION FOR A VARIANCE

- Name of Owner: Daisy and Larry Lee
Address: 43 Linden Lane, Bedford Corners, N.Y. 10549
Telephone/Email: 914-494-4534 Gymgirlrun68@aol.com
- Name of Applicant, if other than Owner: _____
Address: _____
Telephone/Email: _____
- Name of Professional (New York State Licensed Architect, Engineer, Land Surveyor, Landscape Architect):
Eric Baker
Address: 129 Long Close Road, Stamford, CT 06902
Telephone/Email: 973-216-2585 Eric@ericbakerarchitects.c
- Identification Property:
Street Address: 43 Linden Lane
Tax ID: 83.9-1-16 Zoning District: 4A Total Land Area: 4.201
Age of the Building 1981
Is the property located in a designated Historic District? No
% of Building Coverage: 1.5 % of Impervious Surface 5.7
Property Abuts a State or County highway, parkway, thruway or park: Yes _____ No X
Property is within 500 feet of the boundary of the Town of Bedford: Yes: _____ No: X
Property is on the _____ side of _____ within the unincorporated area of the Town of Bedford.

**ZONING BOARD OF APPEALS
APPLICATION FOR A VARIANCE**

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BEDFORD ZONING
BOARD OF APPEALS

5. Request:

The applicant requests that the Board approve the issuance of a Variance under the following section of the Code of the Town Bedford:

Article: 111

Section: ~~85.9~~ 125-11

To Permit:

Article V

125-50

- ① Detached 3 car garage resulting in a front yard setback of 45.34 ft where 75 ft is required and side yard where 50 ft is required
- ② front of bridge to existing main residence of 49.07 where 75 ft is required where existing residence is nonconforming @ 59.6 feet where 75 feet is required

6. Plans required:

Include six copies of survey, site plan, building elevations and floor plans.

7. Public Notice:

Notice of the public hearing shall be published at least 10 days prior to the hearing in the Town newspaper and shall be mailed by the applicant at least 10 days prior to the hearing to all owners of property within 500 feet of the perimeter of the subject lot. The expense of publishing and mailing any notice shall be paid by the applicant, who shall file an affidavit of mailing with the Board Secretary prior to the hearing.

8. Fees: (make checks payable to the Town of Bedford)

Variance

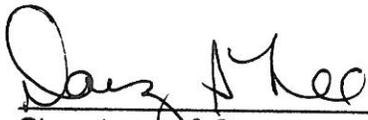
(As required by Fee Schedule Town of Bedford Code)

Residential:

\$350.00

Commercial:

\$550.00



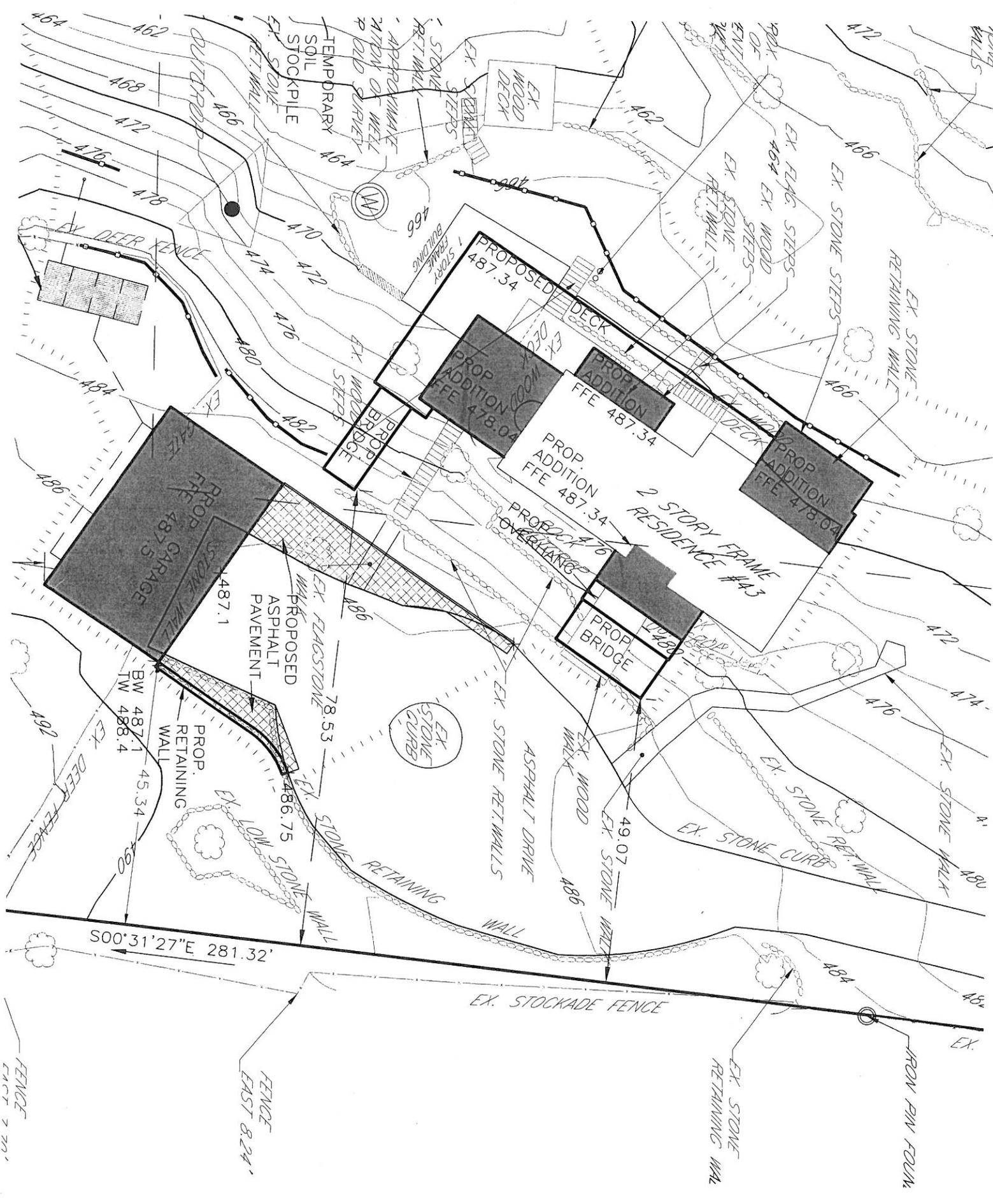
Signature of Owner

4/7/16

Date

Signature of Applicant

Date



S00°31'27"E 281.32'

FENCE EAST 8.24'

FENCE EAST 7.70'

EX. STOCKADE FENCE

EX. STONE RETAINING WALL

IRON PIN FOUR

BW 487.1
TW 488.4

PROP. RETAINING WALL

PROPOSED ASPHALT PAVEMENT

EX. FLAGSTONE

78.53

EX. STONE CURB

EX. STONE RET. WALL

ASPHALT DRIVE

EX. WALK WOOD

EX. STONE WALK

49.07

EX. STONE CURB

EX. STONE RET. WALL

EX. STONE WALK

480

EX. STONE WALK

476

EX. STONE WALK

474

EX. STONE WALK

472

PROP GARAGE
FFE 487.5

PROP BRIDGE
FFE 487.34

PROP ADDITION
FFE 478.04

PROP ADDITION
FFE 487.34

PROP ADDITION
FFE 487.34

PROP ADDITION
FFE 478.04

PROP BRIDGE
FFE 487.34

PROP WOOD DECK
FFE 487.34

PROP ADDITION
FFE 478.04

PROP ADDITION
FFE 478.04

PROP ADDITION
FFE 478.04

PROP ADDITION
FFE 478.04

EX. DEER FENCE

EX. STONE WALK

LETTER OF PERMIT DENIAL



Town of Bedford
Building Dept.
425 Cherry St.
914-666-8040

Application #:

Date: 4/8/2016

Parcel ID: 83.9-1-16

Owner Information

Lee, Lawrence & Lee, Daisy

Applicant Information

Lee, Lawrence & Lee, Daisy
43 Linden Ln

Bedford Corners NY 10549

Location: 43 Linden Ln

Parcel ID: 83.9-1-16

Permit Type: Additions & Alterations

Work Description: Additions & alterations to include renovations for larger kitchen; new decks, addition of bedroom at upper level, entryway bridge

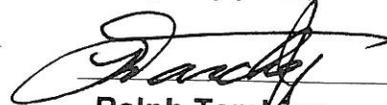
Dear Resident,

Regarding the application for a Building Permit on the property referenced above, the following facts are noted. This property is located in R-4A Zoning District. The requirements of the Zoning Ordinance of the Town of Bedford in comparison to your proposal are listed as follows:

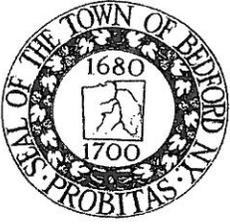
The addition to an existing single family residence including the construction of a front entrance deck "bridge" and foyer will result in a front yard setback of 49.07 feet where 75 feet is required in the Residential 4 Acre Zoning District where the existing front yard setback for the residence is existing, non-conforming 59.6 feet. A variance from the Board of Appeals of Article III Section 125-11 and Article V Section 125-50 of the Town Code is required.

Because your project does not meet the requirements of the Town of Bedford Zoning Ordinance, your application for a building permit is DENIED. If you wish to proceed with your request, you may, within sixty days of this letter, apply to the of the above provisions

Very truly yours,


Ralph Tarchine
Building Inspector

LETTER OF PERMIT DENIAL



Town of Bedford
Building Dept.
425 Cherry St.
914-666-8040

Application #:

Date: 4/8/2016

Parcel ID: 83.9-1-16

Owner Information

Lee, Lawrence & Lee, Daisy

Applicant Information

Lee, Lawrence & Lee, Daisy
43 Linden Ln

Bedford Corners NY 10549

Location: 43 Linden Ln

Parcel ID: 83.9-1-16

Permit Type: Accessory Building

Work Description: Detached 3-car garage

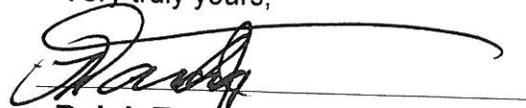
Dear Resident,

Regarding the application for a Building Permit on the property referenced above, the following facts are noted. This property is located in R-4A Zoning District. The requirements of the Zoning Ordinance of the Town of Bedford in comparison to your proposal are listed as follows:

The construction of a detached 3-car garage will result in a front yard setback of 45.34 feet where 75 feet is required in the Residential 4 Acre Zoning District; and a side yard setback 32.25 feet where 50 feet is required in the Residential 4 Acre Zoning District. A variance from the Board of Appeals of Article V Section 125-50 of the Town Code is required.

Because your project does not meet the requirements of the Town of Bedford Zoning Ordinance, your application for a building permit is DENIED. If you wish to proceed with your request, you may, within sixty days of this letter, apply to the of the above provisions

Very truly yours,


Ralph Tarchine
Building Inspector

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that the Board of Appeals of the Town of Bedford will hold a public hearing on the following:

Request of: **Curco Operating Company**
 c/o Veneruso, Curto, Schwartz & Curto LLP
 35 Grassy Sprain Road, Suite 400
 Yonkers, NY 10710

748 North Bedford Road, Bedford Property Associates, LLC
c/o Open Road Auto Group
1120 Route 22
Bridgewater, NJ 08807

For a Special Use Permit in accordance with Article VIII Section 125-68 of the Town of Bedford Zoning Ordinance to permit the operation of a motor vehicle sales and service facility which such uses are classified as "public garages" under the Town of Bedford Zoning Code on property owned by the applicants and located on:

748 Bedford Road
Bedford Hills, NY 10507

Designated as Section 71.12 Block 2 Lot 12 on the Tax Map of the Town of Bedford in the RB Zoning District. Said hearing will take place on **Wednesday, the 4th day of May 2016** at the Town House Offices, 425 Cherry Street, Bedford Hills, New York, at **7:30 P.M.** At this hearing all persons appearing in favor of or in opposition to the above application will be heard. Attendance at said hearing is not required. Applicants or their representative must be present. NOTE: All presentations from all Applicants will be limited to 15 minutes. Others wishing to speak can have 5 minutes but can also submit written comments. The Applicants can then have 5 minutes of rebuttal.

DATED: April 11, 2016

Peter Michaelis, Chair
Town of Bedford Zoning Board of Appeals

Inquiry may be directed to:
Alexandra J. Costello, Secretary
Town of Bedford Zoning Board of Appeals
425 Cherry Street
Bedford Hills, NY 10507
(914) 666-4585; (914) 666-2026
acostello@bedfordny.gov
www.bedfordny.gov

PUBLIC NOTICE

NOTICE IS HEREBY GIVEN, that the Board of Appeals of the Town of Bedford will hold a public hearing on the following:

Request of: **Curco Operating Company**
c/o Veneruso, Curto, Schwartz & Curto LLP
35 Grassy Sprain Road, Suite 400
Yonkers, NY 10710

748 North Bedford Road, Bedford Property Associates, LLC
c/o Open Road Auto Group
1120 Route 22
Bridgewater, NJ 08807

for a variance of the Town of Bedford Zoning Ordinance to permit:

The operation of a motor vehicle sales and service facility with 54 off-street parking spaces where 82 spaces are required by Article X Section 125-102 Parking Requirements of the Code of the Town of Bedford for property located on:

748 Bedford Road
Bedford Hills, New York 10507

designated as Section 71.12 Block 2 Lot 12 on the Tax Map of the Town of Bedford in an RB Zoning District.

Said hearing will take place on **Wednesday, the 4th day of May 2016** at the Town House Offices, 425 Cherry Street, Bedford Hills, New York, at **7:30 P.M.** At this hearing all persons appearing in favor of or in opposition to the above application will be heard. Attendance at said hearing is not required. Applicants or their representative must be present. NOTE: All presentations from all Applicants will be limited to 15 minutes. Others wishing to speak can have 5 minutes but can also submit written comments. The Applicants can then have 5 minutes of rebuttal.

DATED: April 11, 2016

Peter Michaelis, Chair
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Inquiry may be directed to:
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425 Cherry Street, Bedford Hills, NY 10507
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acostello@bedfordny.gov
www.bedfordny.gov



ZONING BOARD OF APPEALS

Town of Bedford, Westchester County, New York
425 Cherry Street, Bedford Hills, New York 10507
Alexandra J. Costello, Secretary
914-666-4585; 914-666-2026 FAX
acostello@bedfordny.gov

RECEIVED

APR 4 2016

APPLICATION FOR A SPECIAL PERMIT

BEDFORD ZONING
BOARD OF APPEALS

- Name of Owner: Curco Operating Company
Address: c/o Veneruso, Curto, Schwartz & Curto LLP, 35 E. Grassy Sprain Road, Suite 400, Yonkers, New York 10710
Telephone/Email: 914-779-1100 Michael Curto MCurto @vcsclaw.com
- Name of Applicant, if other than Owner: 748 North Bedford Road, Bedford Property Associates, LLC
Address: c/o Open Road Auto Group, 1120 Route 22, Bridgewater, New Jersey 08807
Telephone/Email: 973-214-1366; michael.morais@openroad.com
- Name of Professional (New York State Licensed Architect, Engineer, Land Surveyor, Landscape Architect):
Insite Engineering, Surveying & Landscape Architecture, P.C.
Address: 3 Garrett Place Carmel, New York, 10512
Telephone/Email: (845) 225-9690 Scott Blakely SBlakely@insite-eng.com
- Identification Property:
Street Address: 748 North Bedford Road, Bedford Hills, New York 10507
Tax ID: 71.12-2-12 Zoning District: RB Total Land Area: 1.394 acres
(Roadside Business)
Age of the Building circa 50 years
Is the property located in a designated Historic District? No
% of Building Coverage: 23% % of Impervious Surface 74%
(pre-existing is 24%)
Property Abuts a State or County highway, parkway, thruway or park: Yes X No _____
Property is within 500 feet of the boundary of the Town of Bedford: Yes: _____ No: X
Property is on the east side of North Bedford Road within the unincorporated area of the Town of Bedford.

ZONING BOARD OF APPEALS
APPLICATION FOR A SPECIAL PERMIT
 Page 2

5. Request:

The applicant requests that the Board approve the issuance of a Special Permit under the following section of the Code of the Town Bedford:

Article: VII I Section: 125-68

The applicant proposes the following Special Permit:

MOTOR VEHICLE SALES AND SERVICE	(public garage)

6. Plans required:

Include six copies of a narrative, survey, site plan, building elevations and floor plans.

7. Public Notice:

Notice of the public hearing shall be published at least 10 days prior to the hearing in the Town newspaper and shall be mailed by the applicant at least 10 days prior to the hearing to all owners of property within 500 feet of the perimeter of the subject lot. The expense of publishing and mailing any notice shall be paid by the applicant, who shall file an affidavit of mailing with the Board Secretary prior to the hearing.

8. Site Plan:

Include a Preliminary Site Plan Application form, fee, and ten (10) copies of a Preliminary Site Plan complying with all requirements of Article IX, Section 125-88 of the Code of the Town of Bedford.

9. Fees: (make checks payable to the Town of Bedford)

Special Permit Application	\$350.00
Preliminary Site Plan: (As required by Fee Schedule Town of Bedford Code)	\$ _____
Total:	\$ _____

Signature of Owner

Date



Signature of Applicant

4-7-16

Date



RECEIVED

APR 4 2016

BEDFORD ZONING
BOARD OF APPEALS

ZONING BOARD OF APPEALS

Town of Bedford, Westchester County, New York
425 Cherry Street, Bedford Hills, New York 10507
Alexandra 1 Costello, Secretary
914-666-4585; 914-666-2026 FAX
acostello@bedfordny.gov

APPLICATION FOR A VARIANCE

1. Name of Owner: Curco Operating Company

Address: c/o Veneruso, Curto, Schwartz & Curto LLP, 35 E. Grassy Sprain Road, Suite 400, Yonkers New York 10710

Telephone/Email: 914-779-1100 Michael Curto MCurto@vcsclaw.com

2. Name of Applicant, if other than Owner: 748 North Bedford Road, Bedford Property Associates, LLC

Address: c/o Open Road Auto Group, 1120 Route 22, Bridgewater, New Jersey 08807

Telephone/Email: 973-214-1366; michael.morais@openroad.com

3. Name of Professional (New York State Licensed Architect, Engineer, Land Surveyor, Landscape Architect):

Insite Engineering, Surveying & Landscape Architecture, P.C.

Address: 3 Garrett Place Carmel, New York 10512

Telephone/Email: (845) 225-9690 Scott Blakely SBlakely@insite-eng.com

4. Identification Property:

Street Address: 748 North Bedford Road, Bedford Hills, New York 10507

Tax ID: 71.12-2-12 Zoning District: RB (Roadside Business) Total Land Area: 1.394 acres

Age of the Building circa 50 years

Is the property located in a designated Historic District? No

% of Building Coverage: 23% (pre-existing is 24%) % of Impervious Surface 74%

Property Abuts a State or County highway, parkway, thruway or park: Yes No

Property is within 500 feet of the boundary of the Town of Bedford: Yes: No:

Property is on the east side of North Bedford Road within the unincorporated area of the Town of Bedford

RECEIVED
APR 4 2016
BEDFORD ZONING
BOARD

5. Request:

The applicant requests that the Board approve the issuance of a Variance under the following section of the Code of the Town Bedford:

Article: X Section: 125-102

To Permit:

The operation of a motor vehicle sales and service facility with 54 off-street parking spaces where 82 spaces are required under the Code.

6. Plans required

Include six copies of survey, site plan, building elevations and floor plans.

7. Public Notice:

Notice of the public hearing shall be published at least 10 days prior to the hearing in the Town newspaper and shall be mailed by the applicant at least 10 days prior to the hearing to all owners of property within 500 feet of the perimeter of the subject lot. The expense of publishing and mailing any notice shall be paid by the applicant, who shall file an affidavit of mailing with the Board Secretary prior to the hearing.

8. Fees: (make checks payable to the Town of Bedford)

Variance

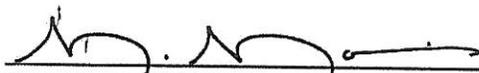
(As required by Fee Schedule Town of Bedford Code)

Commercial:

\$550.00

Signature of Applicant

Date: 4-7-16



748 North Bedford Road, Bedford Property Associates LLC

By: Michael Morais, Manager

LETTER OF PERMIT DENIAL



Town of Bedford
Building Dept.
425 Cherry St.
914-666-8040

Application #:

Date: 4/7/2016

Parcel ID: 71.12-2-12

Owner Information

Curco Operating Company

Applicant Information

Curco Operating Company
27 Pine St

New Canaan CT 06840

Location: 748 Bedford Rd

Parcel ID: 71.12-2-12

Permit Type: Commercial Renovation

Work Description: Renovations to an existing commercial building for use as a motor vehicle sales and service facility

Dear Resident,

Regarding the application for a Building Permit on the property referenced above, the following facts are noted. This property is located in RB Zoning District. The requirements of the Zoning Ordinance of the Town of Bedford in comparison to your proposal are listed as follows:

The motor vehicle sales and service facility will require a Special Use Permit from the Board of Appeals in accordance with Article VIII Section 125-68 of the Town of Bedford Zoning Ordinance to permit a "public garage" use. The facility will have require a variance from the Board of Appeals to permit 54 parking spaces where 82 spaces are required by Article X, Section 125 -102 (A) Parking Requirements of the Code of the Town of Bedford.

Because your project does not meet the requirements of the Town of Bedford Zoning Ordinance, your application for a building permit is DENIED. If you wish to proceed with your request, you may, within sixty days of this letter, apply to the of the above provisions

Very truly yours,

Steven Fraietta

Building Inspector

MEMORANDUM

TO: Bedford Zoning Board of Appeals

FROM: Bedford Planning Board

DATE: April 29, 2016

SUBJECT: Preliminary Site Plan Approval
Motor Vehicle Sales and Service Facility
Section 71.12 Block 2 Lot 12, RB Zone
748 Bedford Road, Bedford Hills
Owner: Curco Operating Company
Applicant: 748 Bedford Road,
Bedford Property Associates, LLC, Contract Vendee

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APR 29 2016

BEDFORD ZONING
BOARD OF APPEALS

In accordance with the requirements of Section 125-59 of the Zoning Law, the Planning Board has reviewed the proposal for an automotive dealership (motor vehicle sales and service) to be located at 748 North Bedford Road. The proposal is shown on a site plan titled "Preliminary Site Plan," prepared by Insite Engineering, Surveying & Landscape Architecture, P.C., dated 4/4/16.

The Planning Board recommends approval of the proposed special permit use subject to compliance with the following conditions:

1. The easements affecting the property should be supplied and should be shown to have no influence on the proposal.
2. The four parking spaces shown in the front of the building should be deleted and replaced with additional planting.
3. The ability of the proposed car carriers to maneuver around the site should be demonstrated.
4. Valet parking should be supplied for the service area.
5. The off-site vehicle storage alternatives described in Mr. Martabano's 4/18/16 letter should be demonstrated to the satisfaction of the Planning Board and the Zoning Board of Appeals.
6. Final site plan approval by the Planning Board will be required. The board has not completed its review of the site plan and may modify various features of the plan during its review.

There appears to be a tenant issue affecting the property. The Zoning Board of Appeals may wish to discuss this matter with the Town Attorney.

cc: Charles V. Martabano

CHARLES V. MARTABANO
Attorney at Law

9 Mekeel Street
Katonah, New York 10536
cmartabano@gmail.com
(914) 242-6200 Telephone
(914) 242-3291 Facsimile
(914) 760-9241 Cell

April 28, 2016

VIA EMAIL DELIVERY

Alexandra J. Costello
Town Of Bedford
Secretary, Zoning Board of Appeals
425 Cherry Street
Bedford Hills, NY 10507

RECEIVED

APR 28 2016

BEDFORD ZONING
BOARD OF APPEALS

Re: Application of Curco Operating Company (property owner) and 748
North Bedford Road, Bedford Property Associates, LLC (Open Road Auto
Group-Dealership Owner Operator)
748 North Bedford Road Tax ID: 71.12-2-12
Application for Variance and Special Permit to Enable Applicant to
Reduce Size of Existing Retail Building and Convert to Motor Vehicle
Sales and Service

Dear Alex:

In my submission to the Zoning Board of Appeals dated April 25, 2016 I identified applicant 748 North Bedford Road, Bedford Property Associates, LLC as the contract vendee in connection with the property which was the subject matter of the variance. Notwithstanding the foregoing, I understand that someone has made inquiry of you as to how it could be verified that the applicant was actually authorized to make the application on behalf of the property owner, Curco Operating Company.

For the avoidance of doubt, please be advised as follows: as indicated in the submission, applicant 748 North Bedford Road, Bedford Property Associates, LLC is the contract vendee as the named purchaser in a contract of sale for the purchase of 748 North Bedford Road, Bedford Hills, New York with Curco Operating Company as the named seller. Pursuant to paragraph 47 of such contract of sale, the applicant is specifically authorized to make application to the Zoning Board of Appeals of the Town of Bedford. Such paragraph states in pertinent part as follows: “[t]he execution of this Contract by Seller shall authorize Purchaser to make applications to all relevant approval authorities to obtain the approvals referenced above...” Please note that a copy of this letter is being forwarded to counsel for the property owner who has advised me that he shall, if required, provide any independent verification of the applicant’s authorization should you so desire.

I trust that the foregoing provide provides the necessary specificity pertaining to the authorization of the applicant. If you require any further information or confirmation regarding the foregoing, please do not hesitate to contact me or counsel for the property owner.

Yours very truly,



Charles V. Martabano

cc: Open Road Auto Group
Craig Heller, Esq.
Michael Curto, Esq.
Curco Operating Company

CHARLES V. MARTABANO
Attorney at Law

9 Mekeel Street
Katonah, New York 10536
cmartabano@gmail.com
(914) 242-6200 Telephone
(914) 242-3291 Facsimile
(914) 760-9241 Cell

April 25, 2016

VIA HAND DELIVERY

Chairman Peter Michaelis and
Members of the Zoning Board of Appeals
Town of Bedford
425 Cherry Street
Bedford Hills, New York 10507

RECEIVED
APR 26 2016
BEDFORD ZONING
BOARD OF APPEALS

Re: Application of Curco Operating Company (property owner) and 748 North Bedford Road, Bedford Property Associates, LLC (Open Road Auto Group-Dealership Owner Operator)
748 North Bedford Road Tax ID: 71.12-2-12
Application for Variance and Special Permit to Enable Applicant to Reduce Size of Existing Retail Building and Convert to Motor Vehicle Sales and Service

Dear Chairman Michaelis and Members of the Zoning Board of Appeals:

I am pleased to present for your Board's review the application of Curco Operating Company (property owner) and 748 North Bedford Road, Bedford Property Associates, LLC (contract vendee) relating to the property known as 748 North Bedford Road. The subject property consists of approximately 1.4 acres located in the RB Roadside Business zoning district. This property was, prior to 1981, originally an automotive service station (a form of public garage) and subsequently the location of the former Bedford Chrysler Plymouth dealership which was also franchised to sell Peugeot automobiles (another form of public garage). Said property is presently improved, as it has been since 1981, with a retail building consisting of approximately 13,500 SF. The contract vendee seeks to reduce the size of the existing retail structure and to renovate the existing structure and convert the use of the structure and property for the purpose of operating a low volume "boutique" (see below) motor vehicle sales and service facility for Cadillac motor vehicles to be operated by Open Road Auto Group. As part of its business plan Open Road proposes to convert approximately 18% of the interior building space to an enclosed drive-through for customer vehicle drop-off. An application for amended site plan approval has been submitted to the Planning Board. However, certain threshold determinations must be made by your Board before the site plan approval process can be completed.

Relief Requested from Your Board

As members of your Board are well aware, motor vehicles sales and service facilities are classified as public garages under the Bedford Town Code (hereinafter "Code"). Public garages are expressly permitted in the zoning district in which this property is located (RB-Roadside Business), subject to issuance of a special permit from your Board. Upon application first being made, the Building Inspector reviewed the proposed amended site plan and determined that, pursuant to the Code, 82 parking spaces are required. As the proposed amended site plan provides for 54 off-street parking spaces (exclusive of spaces inside the building), approval of the application will also require issuance of a parking variance from your Board. As your Board is further aware, pursuant to the Code, issuance of a special permit for a public garage by your Board is subject to prior review of such application by the Planning Board so as to obtain a recommendation to your Board. The applicant's first appearance before the Planning Board is scheduled for April 26, 2016 and it is therefore anticipated that your Board will receive a recommendation from the Planning Board prior to the public hearing.

Open Road Auto Group

Given the nature of this application, most particularly in connection with its need for a variance in connection with required parking spaces, it is imperative for your Board to assess the representations made to your Board by the applicant as same pertain to factors to be considered in connection with the granting of the requested variance (see standards below) as well as in connection with the request for issuance of the special permit. In my opinion such assessment requires both evaluation of the appropriateness of such representations in an operational context and an evaluation of the ability of the applicant to follow through with respect to such representations once the use is established. As someone who has practiced before your Board and the Planning Board in connection with multiple applications relating to motor vehicle sales and service and other forms of public garages, I have had the benefit of understanding the factors that your Board takes into consideration in connection with the granting of the requested relief as well as the concerns that the Planning Board has expressed in connection with various aspects of such uses. It is for this reason that I am particularly pleased to present an application to your Board by an applicant who has been advised of the concerns of the involved Bedford Boards in advance and has demonstrated to me and will demonstrate to the members of the Board that this applicant has carefully considered and provided mitigating measures and is uniquely capable of following through on the representations made below relating to operational characteristics so as to adequately address the factors to be considered by your Board in connection with the granting of the requested relief.

In terms of future operations of the planned motor vehicle sales and service facility, the applicant in issue is a real estate holding company owned by principals of Open Road Auto Group (hereinafter "Open Road"). Open Road has 40 years of automotive retail experience in the New York and New Jersey market. If convenient, before the meeting, I invite members of the Board to visit Open Road's website at www.openroad.com so as to obtain an understanding of the strength and capability of Open Road, as well as Open Road's technology-based

orientation with respect to Internet transactions¹ in recognition of the changing nature of automobile sales². As can be seen by reference to Open Road's website, at present, Open Road presently owns 16 automobile dealerships located in New York and New Jersey. Open Road represents many brands of motor vehicles, including (in alphabetical order) Acura, Audi, BMW, Cadillac, Honda, Mazda, Mercedes, Smart and Volkswagen. Significantly as same pertains to this application, some of these dealership facilities are located in areas which represent significant challenges in terms of parking and vehicle storage, such as is the case with Open Road's dealership facilities for Audi and Volkswagen (separate facilities) located in Manhattan. Open Road has demonstrated an ability to function in an extraordinary fashion despite physical constraints applicable to such facilities. A clear indicator of Open Road's unique abilities in an operational context is demonstrated by the fact that Open Road consistently receives manufacturers' awards for excellence, not merely in terms of sales performance, but in terms of customer satisfaction, indicative of the fact that Open Road elevates customer satisfaction to the highest possible level as a corporate mission. Open Road has also been noted for its charitable giving as it is a fundamental belief of the organization that giving back to the host community is very important. Understanding the significance of Open Road's first initiative in the Northern Westchester marketplace, Open Road's President, Michael Morais, will be present at the meeting before your Board to confirm representations made on behalf of Open Road as well as to respond to any questions that members of the Board might have. The manager of the proposed Bedford facility, Rob Singh, will also appear before your Board.

Applicable Standards of Review Variance

As stated above, as a threshold matter this applicant requires issuance of a variance for parking spaces because the applicant is proposing to provide approximately 66% of the required parking. The courts of the State of New York have determined that a request for a parking variance is a request for an area variance (see e.g. Colin Realty Co., LLC v. Town of North Hempstead, 107 A.D. 3rd 708, 966 N.Y.S. 2d 501 (2d Dept., 2013)). As your Board knows, the granting of area variances is governed by Section 267-b of the Town law which provides as follows:

“3. Area variances. (a) The zoning board of appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

(b) In making its determination, the zoning board of appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the board shall also

¹ Through Open Road's website, customers can view any vehicle in inventory among any of the 16 dealerships; make service appointments etc.

² See e.g. the article entitled "Death of a Car Salesman" in The Economist, August 22, 2015 indicating how the Internet is changing the traditional car purchase transaction.

consider: (1) whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance; (2) whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance; (3) whether the requested area variance is substantial; (4) whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and (5) whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

(c) The board of appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

Section 125-129 C (2) (b) of the Bedford Town Code similarly provides:

(b) Area variances.

(1) The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.

(2) In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board shall also consider whether:

(a) An undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;

(b) The benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;

(c) The requested area variance is substantial;

(d) The proposed variance will have will an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and

(e) The alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.

As the factors to be considered by your Board include, in the general context, consideration as to whether granting the application will cause a detriment to the public health safety or welfare or bring about an undesirable change in the character of the neighborhood or a detriment to nearby properties, it is appropriate for your Board to make inquiry regarding the specific operational characteristics of the proposed dealership. As indicated above, Open Road will utilize 748 North Bedford Road as what can best be described as a “boutique” auto sales and service facility. Open Road will use this facility as the new home of Cadillac sales and service in the area. In this regard and for reference purposes, I respectfully refer the members of the Board to the article which appeared in the January 22, 2015 edition of Automotive News, the preeminent industry trade publication. A copy of this article is attached hereto as Exhibit A. As can be seen by reference thereto, the article makes specific reference to the business plan announced by Cadillac where 700 existing Cadillac dealerships, “many of which are paired with Chevrolet or other brands, will be asked to convert to ‘smaller, boutique locations’”. The article states in pertinent part that “[t]he boutique concept would feature exclusive Cadillac consumer touch points, highly trained sales and service staff and luxury amenities” including reference to interactive digital displays which would allow customers to configure their own vehicles. Cadillac’s new President, previously the CEO of Audi, stated that Cadillac now embraces “a concept where we can have a small footprint, boutique-like store that is very premium in its expression and size-appropriate.

As specifically referred to in the article, Cadillac is presently represented in this market by Arroway Chevrolet Cadillac in Mount Kisco. Cadillac presently has no separate sales or service facilities at such location and average monthly unit sales are between 20 and 25 units. To understand the automakers preference to establish boutique auto sales and service facilities with smaller footprints and an emphasis on exclusivity and a premium experience, your Board should take into consideration relevant sales and market share statistics relating to Cadillac and other brands which already have motor vehicle sales and service facilities located on North Bedford Road. Cadillac’s market share³ for the US market for December 2015 was 1.3%. For comparative purposes:

- Ford’s market share was 13.8%
- Chrysler Dodge Jeep Ram’s market share was 13.1%
- Toyota’s market share was 11.7%
- Chevrolet’s market share was 11.5%
- Honda’s market share was 8.2%
- Nissan’s market share was 7.6%
- Buick GMC’s market share was 5%

³ These market share figures are based on national sales and it is to be expected that sales in Northern Westchester might be somewhat different. Northern Westchester has a very high percentage of what is referred to as an import penetration rate with the result that, generally speaking, Northern Westchester sales figures show larger market shares for imported vehicles such as Honda, Toyota, BMW etc.

While these figures can, of course, vary on a regional basis, the point is that Cadillac's market share is very small as compared to other brands and, as confirmed by Cadillac's President, Cadillac's new management philosophy is such as to further enhance the concept of a high end boutique facility for sales and service focusing on the quality and exclusivity of the product and enhancement of the customer experience. While this might not necessarily result in high volume sales as evidenced by the 2015 market share figures referenced above (and may, in fact, result in fewer sales of higher end product), it is anticipated that Cadillac's image and quality of product will continue to increase while possibly attracting a slightly different market segment of purchasers with a focus on exclusivity as well as high-performance.

In addition to anticipated low volume of the exclusive Cadillac sales and service facility based on market share and manufacturer philosophy on a go forward basis, Open Road is prepared to address the practical considerations applicable to motor vehicle sales and service operations at this location with the planned parking facilities. As members of the Board are well aware, traditionally the vast majority of parking spaces required and utilized in connection with motor vehicle sales and service are not customer or employee parking spaces but are instead utilized for motor vehicle display/inventory storage for new and used vehicles. As I am certain that members of the Board will recognize, where, as here, projected sales volume is low, resultant inventory levels are correspondingly low. Inventories are also deliberately maintained at lower levels where, as here, per unit cost of vehicles is high as compared with less expensive high-volume brands. As members of the Board are also aware, numerous other existing dealership facilities utilize off-site storage for their new vehicles as a practical reality, given the size and cost of properties located on North Bedford Road. Your Board has taken all of these factors into account and has authorized significant parking variances where applicants have shown the availability of off-site storage (see below). Indeed, your Board and the Planning Board were instrumental in approving a public garage application, the specific purpose of which was to provide for off-site delivery and storage of motor vehicles (the Vail facility on Adams Street) separate and apart from dealership sales and service facilities.

As indicated above, Open Road has 16 dealership facilities in New York and New Jersey. As might be expected from an auto group of this magnitude, Open Road owns a huge off-site vehicle storage facility located in North Bergen, New Jersey. At this location Open Road maintains a more than 60,000 SF warehouse facility for the purpose of vehicle storage and this location alone has **storage capacity for more than 400 vehicles**. With the sales volume and unit cost applicable to Cadillac vehicles as referenced above, inventory requirements are minimal and necessary off-site vehicle storage at the Bergen warehouse can easily be accommodated.

Moreover, as indicated above, Open Road currently operates a Cadillac dealership which is located at 334 Columbia Turnpike, Florham Park, NJ 07932. This facility, in terms of its building size and associated parking areas, is much larger (10 acres) than the currently proposed facility and, as a consequence, its parking and storage areas are **significantly** underutilized. Off-site storage of Cadillac inventory for the Bedford facility can **easily** be accommodated at this

facility⁴ and viewed remotely from the website. Finally, in terms of customer convenience at the North Bedford Road facility, Open Road will demonstrate to your Board a system that Open Road has developed to enable any customer at the dealership to, on any given day, view a specific make, model and color of a vehicle in inventory in yet another manner (other than through the Open Road website). Open Road staffs its warehouse and maintains within the warehouse video facilities which allow remote viewing of stored inventory. Accordingly, if a customer would like to see a particular car in inventory which is stored off-site, Open Road has a video stage upon which the vehicle can be driven at the warehouse and a full video presentation be given to the customer on a remote basis. This is yet another way that Open Road will enhance the customer experience without the necessity for a significant number of vehicles being stored on-site.

As can be seen from the foregoing, Open Road has the ability to provide off-site storage at *two* locations presently owned by Open Road. In addition thereto and solely as a matter of convenience, Open Road has made contact with the owners of the Vail facility to explore the possibility of renting a significant portion of the Vail facility for drop off and vehicle storage⁵. Open Road is most willing to accept a condition to be imposed upon approval of its special permit, parking variance and site plan relating to an obligation on the part of Open Road to demonstrate the existence of sufficient off-site vehicle storage in an amount equal to 100% of the parking shortfall (28 vehicles).

In my discussions with Open Road I made Mr. Morais aware of the Planning Board's concern regarding car carrier traffic on North Bedford Road, a subject matter that was also discussed with your Board during the public hearing on the Vail application. As you might expect, simply by reference to existing site constraints, Mr. Morais understood the significance of addressing this issue to the satisfaction of the Planning Board and your Board. By reason of the foregoing, the applicant will represent to the Planning Board and your Board that in terms of vehicle deliveries (which will be minimal by reason of the sales volume as aforesaid):

- to the extent vehicle deliveries are made to the facility by any car carrier, such deliveries will be made by ***vehicles owned and/or controlled by Open Road*** so that the applicant can be held directly responsible and the Planning Board will not hear, as it has in the past, that the car carrier deliveries are not subject to control by Open Road. Such deliveries will be

⁴ As you can see from the website, Open Road provides access to inventory at all locations from its website. Customers could identify a vehicle that they desire from inventory of other locations and transfer between facilities is readily accommodated.

⁵ As previously discussed with your Board and the ZBA, there may also be the possibility of utilizing the Vail facility solely for car carrier vehicle deliveries if this is deemed necessary, although it is unlikely that this would be necessary as a consequence of the specialized delivery procedures referenced herein.

controlled by Open Road and they will be in vehicles owned and/or controlled by Open Road and driven by Open Road employees⁶;

- to the extent that vehicle deliveries are made to the facility by any car carrier, such ***carrier shall be of the pickup-type vehicle with a maximum capacity of three vehicles*** so that it will be accommodated by the on-site loading area shown on the site plan;
- to the extent that vehicle deliveries are made to the facility by any car carrier, ***such deliveries will be off-hours*** so as to not pose the possibility of on-site conflicts with customer vehicles as well as to traverse North Bedford Road at times when traffic is at a minimum;
- if Open Road is successful in obtaining local off-site storage, such as would be accommodated by the Vail facility if feasible, all car carrier deliveries would be made to the off-site location and vehicles driven to the sales and service facility.

Obviously, Open Road anticipates and voluntarily offers the imposition of conditions based upon the aforementioned representations and restrictions.

In considering the variance factors as well as the factors relating to issuance of the requested special permit, your Board should be made aware of the proposed modifications to the site consistent with Cadillac's boutique dealership philosophy and intended to enhance the customer's experience and to minimize impacts on the surrounding properties. For the purpose of supporting the motor vehicle sales and service use as proposed by Open Road, please note the following modifications, all of which have been made to facilitate the property's use as a motor vehicle sales and service facility:

1. The overall building size is being reduced, as the applicant desires to cut back the southern portion of the building so as to allow for the creation of a customer drop off/drive-through which allows customers to drive into the building to drop off their cars. While this significantly reduces the amount of square footage dedicated to active sales or service efforts, it eliminates the need for customers to park their vehicles and traverse an active driveway to arrange for the servicing of their vehicles. This enhances customer convenience and customer safety and promotes far better and safer traffic circulation around the site;
2. One way traffic circulation originating from the southbound access is maintained but, in an effort to cut down vehicle ingress and egress onto North Bedford Road, southbound one way return access is provided across the front of the building together with the addition of four (4) customer parking spaces directly in front of the building. Again, this has the benefit

⁶ Open Road Auto Group presently has 1400 employees and five (5) small vehicle carriers.

of facilitating safe customer access to the sales and service facilities as well as improving traffic circulation and traffic safety;

3. A separate loading access area has been created contiguous to the southern portion of the building which allows the specialized (see below) delivery vehicles to be utilized by Open Road at this location to access the site in such a manner so as to eliminate any potential impediment to on-site or off-site traffic circulation. While this will, it is believed, not be accessed at any time during normal business hours (see below), it is nevertheless proposed to be installed in the manner shown on the proposed amended site plan simply to ensure no impediment to traffic circulation;
4. new curbing plans have been developed to enhance both traffic circulation and overall appearance;
5. a new landscaping plan has been designed to enhance overall appearance.

As can be seen from the foregoing modifications, a significant amount of what could otherwise be classified as active motor vehicle sales and service space has been eliminated to facilitate both customer access and convenience and overall site functionality.

Prior Determinations by the ZBA on Requested Parking Variances

When seeking to determine the manner in which to ascertain the burden of proof imposed upon applicants who seek variance relief from a zoning board of appeals, it is appropriate to obtain guidance from the prior actions of the involved zoning board of appeals in connection with applicants simply situated. In this regard we are fortunate to have the ability to refer to ***two recent decisions by this Board dealing specifically with the issue of the propriety of granting the variances for automobile dealerships located on North Bedford Road.*** Both of these recent decisions relate to a specific property (531 North Bedford Road) which is located in very close proximity to the subject site in which was (A) previously the site of the Acura dealership; (B) subsequently the proposed site of a Jaguar Land Rover dealership; and (C) subsequently (and currently) the site of the new Chrysler Jeep Dodge Ram dealership. In point of fact, with respect to the Chrysler Jeep Dodge Ram dealership, I represented the owner of 531 North Bedford Road in connection with its application to your Board for certain lot and bulk variances as well as in connection with its application for a parking variance.

What is most relevant regarding the two variance applications with respect to 531 North Bedford Road is that, in each case, this Board granted significant parking variances, one of which was far greater in significance than as pertains to this applicant and one which is very close in magnitude to the variance requested by this applicant. As set forth above, this applicant proposes to provide 66% of required parking, representing a shortfall of approximately 28 spaces. In connection with the Jaguar Land Rover application, records maintained by your Board confirm that in March 2008 your Board issued Resolution #01-08-Two which permitted the applicant to construct a new and very significantly sized Jaguar Land Rover car dealership

while providing 97 parking spaces where a combined total of 179 parking spaces were required by reason of the building size, a shortfall of 82 spaces. This represented a variance to allow this dealership to provide only 54% of the required parking. In your decision, which was unanimous, you recited the fact that it did not consider the variance to be substantial because the applicant offered to provide off-site car storage which would mitigate the impacts of granting the relief. A copy of your decision in this case is attached hereto for your review as Exhibit B. In connection with the Chrysler Jeep Dodge Ram dealership at the same location Resolution # 03-12- One confirms that your Board unanimously authorized a parking variance whereby the applicant would provide 105 parking spaces where 150 parking spaces were required, a shortfall of 45 parking spaces i.e. where the proposal was to provide 70% of the required parking. In my letter to your Board in connection with such application I set forth the following in support of the requested parking variance:

“With respect to the requested parking variance, it is to be understood that the instant application requests a variance of far lesser magnitude than the variance previously granted by your Board in connection with the Jaguar/Land Rover application. In the Jaguar/Land Rover application, a variance was requested in connection with a shortfall of 82 parking spaces whereas in the instant application the corresponding shortfall is 45 parking spaces. We believe that the on-site parking/storage facilities, at the 105 vehicles proposed to be provided, are indeed adequate in view of the fact that the trend in connection with the operation of automobile dealerships has been to reduce vehicle inventories in an effort to minimize financing charges to be incurred by dealers. Additionally, the principal of this dealership owns or has control of other nearby properties with legally permitted storage for motor vehicles and will, if necessary, utilize these other facilities for storage of "excess" motor vehicles if this was ever to become an issue.”

A copy of your decision in the Chrysler Jeep Dodge Ram application is also attached for your review as Exhibit C.

As set forth above, in connection with both of these prior applications, the approval resolutions were unanimously adopted. In both resolutions your Board determined that the benefit sought by the applicant could not be achieved by any other means feasible for the applicants to pursue due to the constraints of the existing site, a circumstance that applies to the instant application as well. In each instance your Board determined that there would be no undesirable change to the neighborhood or nearby properties because the applicant would be renovating and upgrading an existing building, exactly the same circumstance that exists with respect to this application. In each instance your Board determined that the request would not have an adverse physical or environmental effect, most likely in recognition of surrounding uses and the general nature of the RB Zoning District. With respect to the issue of the magnitude of the requested variances, despite the magnitude of the variance requested in connection with the Jaguar Land Rover dealership (where the applicant proposed to provide 54% of the required parking) your Board determined that it was not a substantial request due to the fact that the building was located in two zoning districts (this was in reference to the side yard setback variance and not with respect to the parking requirements which did not vary by district) and that

“the parking for car storage will be off site which mitigates the impacts of the dealership”. With respect to the Chrysler Jeep Dodge Ram dealership, as that application required five variances, the decision indicated only that “even though the variance requests are substantial in several categories this is only [one] of the factors to be considered by the Board in making its decision and is not determinative”. The decision went on to state that “even though the alleged difficulty is self-created, the proposal is a realistic plan in terms of other automobile dealerships in the area and this is only one of the factors to be considered by the Board in making its decision”.

Comparison of the instant application to the two applications previously reviewed and approved by your Board must result in a determination by your Board that this application clearly meets the standards as interpreted by your Board as appropriate for the granting of relief. Indeed, I believe that the instant application can be viewed as clearly warranting the granting of relief if the same standards are to be applied. As noted above, this application relates to a single particular car brand which, as contrasted to Chrysler Jeep Dodge Ram (13.1% market share nationwide) has a market share of only 1.3%. As directly related to an argument advanced in connection with the Chrysler Jeep Dodge Ram application (reduced inventories) where sales average 20 to 25 units per month and model ranges are so limited, inventory requirements are reduced accordingly. As was the case in connection with both of the previously approved applications, this applicant has demonstrated that this applicant has the ability to store vehicles at two separately ***owned and controlled*** storage locations. In terms of mitigation of dealership impacts as same pertain to car carrier traffic, this applicant has offered a multitude of restrictions both as to type of car carrier and timing of deliveries, neither of which pertained in connection with the Jaguar Land Rover or Chrysler Dodge Jeep Dodge Ram applications. As noted above, the requested parking variance is smaller in magnitude than that involved with Jaguar Land Rover and almost identical to that involved in Chrysler Jeep Dodge Ram. It is respectfully submitted that based upon all of the factors applicable to each of these applications, the granting of relief in connection with this application is most appropriate.

Although it is often said that an application for a variance stands on its own merits, decisional law is consistent in indicating that a failure to comply with prior precedent established by a zoning board of appeals when dealing with applicants similarly situated renders a contrary action by such zoning board of appeals arbitrary and capricious. The Appellate Division for the Second Department has been particularly emphatic in its adherence to the legal maxim that zoning boards of appeals are administrative agencies which are required to adhere to their own prior precedent with respect to applications based on essentially the same facts. In Lucas v. Board of Appeals of Village of Mamaroneck 57 A.D.3d 784, 870 N.Y.S.2d 78, (2d Dept., 2008), the Appellate Division dealt with a denial by zoning board of appeals of an application made in 2006 despite the fact that a virtually identical application was approved 15 years earlier. Stating that reasons proffered by the local zoning board of appeals in an attempt to differentiate the application at issue from a 1991 application were insufficient to justify denial, the Court stated in pertinent part as follows:

“ ‘A decision of an administrative agency which neither adheres to its own prior precedent nor indicates its reasons for reaching a different result on essentially the same facts is arbitrary and capricious’ ” (Matter of Tall Trees Constr. Corp. v. Zoning Bd. of Appeals of Town of Huntington, 97 N.Y.2d 86, 93, 735 N.Y.S.2d

873, 761 N.E.2d 565, quoting Knight v. Amelkin, 68 N.Y.2d 975, 977, 510 N.Y.S.2d 550, 503 N.E.2d 106; see also Matter of Campo Grandchildren Trust v. Colson, 39 A.D.3d 746, 834 N.Y.S.2d 295), and mandates reversal, even if there may otherwise be evidence in the record sufficient to support the determination (see Matter of Campo Grandchildren Trust v. Colson, 39 A.D.3d at 747, 834 N.Y.S.2d 295; Matter of Corona Realty Holdings, LLC v. Town of N. Hempstead, 32 A.D.3d 393, 395, 820 N.Y.S.2d 102).

See also Olson v. Scheyer 67 A.D.3d 914, 889 N.Y.S.2d 245 (2d Dept, 2009).

Subsequently, the Appellate Division had an opportunity to restate its position on the same subject matter. In Bout v. Zoning Bd. of Appeals of Town of Oyster Bay 71 A.D.3d 1014, 897 N.Y.S.2d 205, (2d Dept., 2010) the Court stated:

“Local zoning boards have broad discretion in considering applications for variances, and judicial review is limited to determining whether the action taken by the board was illegal, arbitrary or an abuse of discretion” (citation omitted) nonetheless, a determination of a zoning board of appeals that “ ‘neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious’ ” (citations omitted). Such a determination must be annulled even if there may otherwise be evidence in the record sufficient to support the determination (see Matter of Campo Grandchildren Trust v. Colson, 39 A.D.3d 746, 746-747, 834 N.Y.S.2d 295; Matter of Corona Realty Holdings, LLC v. Town of N. Hempstead, 32 A.D.3d at 395, 820 N.Y.S.2d 102).

On this specific point, the Appellate Division has held that a decision which neither adheres to its prior precedent nor provides a rational basis for disparate treatment of applicants similarly situated is arbitrary and capricious. In Bassano v. Town of Carmel Zoning Bd. of Appeals 56 A.D.3d 665, 868 N.Y.S.2d 677, (2d Dept., 2008), the Court stated:

“While local zoning boards have broad discretion in considering variance applications, a determination cannot be sustained if it lacks a rational basis and is arbitrary and capricious (citation omitted) The decision of “an administrative agency which neither adheres to its own prior precedent nor indicates its reason for reaching a different result on essentially the same facts is arbitrary and capricious” (Knight v. Amelkin, 68 N.Y.2d 975, 977, 510 N.Y.S.2d 550, 503 N.E.2d 106 [citation and internal quotation marks omitted]). Here, the Town of Carmel Zoning Board of Appeals (hereinafter the Board) found, on three prior occasions, that the variance the petitioners sought would not produce an undesirable change in the character of the neighborhood or a significant detriment to nearby properties, that the benefit sought could not be achieved by other methods, that the variance sought was not substantial, and that the variance, if granted, would not have an adverse effect or impact on the neighborhood. The Board's subsequent decision to deny the petitioners' application on essentially the same facts without explanation was arbitrary and capricious, and lacked a rational basis (citations omitted).

As set forth above, this Board has provided guidance on multiple levels, which such guidance, upon the facts and circumstances applicable to this matter, should result in a determination to grant the application upon the proof submitted by the applicant.

The Special Permit

Turning next to the standards applicable to the issuance of the requested special permit for a public garage, the Code specifies the procedure by which your Board may proceed to grant the requested special permit. Section 125-59 provides for Planning Board review of the application for the purpose of making a recommendation to your Board in connection with issuance of the requested special permit. As indicated above, the applicant is appearing before the Planning Board on April 26, 2016 and it is anticipated that your Board will receive a recommendation from the Planning Board at such time.. The applicable standards include only the following⁷:

§ 125-60. General standards.

A. The proposed use will serve a community need or convenience and will not adversely affect the public health, safety and general welfare.

B. The location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to streets giving access to it are such that it will be in harmony with the appropriate and orderly development of the area in which it is located.

C. The location, nature and height of buildings, walls, fences and the nature and extent of existing or proposed plantings on the site are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings.

D. Operations in connection with any special permit use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, light or other characteristics than might be the operations of any permitted use not requiring a special use permit.

⁷ There are other specific standards set forth in section 125-68 of the Code which, although the caption indicates are applicable to public garages, in fact only apply to the type of public garage which is defined as an automobile service station or gasoline filling station and this determination has been made by both the Planning Board and ZBA with the result that only the standards set forth in section 125-60 are the standards applicable to the type of public garage proposed by Vail.

E. Parking areas will be of adequate size for the particular use, properly located and suitably screened from adjoining residential uses; and the entrance and exit drives shall be laid out so as to achieve adequate safety.

In New York State, the law applicable to the issuance of special permits (also sometimes referred to as a special exception) is clear and consistent. For example, in Nathan v. Board of Appeals of Town of Hempstead 125 A.D.3d 866, 5 N.Y.S.3d 127 (2nd Dept, 2015), the Appellate Division for the Second Department articulated the standards for issuance of a special permit as follows:

“A ‘special exception gives permission to use property in a way that is consistent with the zoning ordinance, although not necessarily allowed as of right’ (citation omitted). The burden on an owner in seeking a special exception permit is, therefore, “considerably less” than the burden on an owner seeking a use variance (citations omitted). An applicant for a special exception permit need only show that it has complied with every legislatively imposed condition on the permitted use (citations omitted).”

Similarly, in Kabro Associates, LLC v. Town of Islip Zoning Bd. of Appeals 95 A.D.3d 1118, 944 N.Y.S.2d 277, (2nd Dept, 2012) the Court stated:

“Unlike a use variance, a ‘special exception allows the property owner to put his property to a use expressly permitted by the ordinance ... subject only to ‘conditions attached to its use to minimize its impact on the surrounding area’ ” (citations omitted). “The significance of this distinction is that the ‘inclusion of the permitted use in the ordinance is tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood’ ” (citations omitted). “Thus, the burden of proof on an owner seeking a special exception is lighter than that on an owner seeking a variance” (citations omitted). An owner seeking a special exception permit is only “required to show compliance with any legislatively imposed conditions on an otherwise permitted use”

See also White Castle System, Inc. v. Board of Zoning Appeals of Town of Hempstead 93 A.D.3d 731, 940 N.Y.S.2d 159, (2nd Dept, 2012).

Perhaps the best overview of relevant holdings pertaining to the issuance of special permits was set forth in the 2014 decision of Serota Smithtown LLC v. Town of Smithtown Board of Zoning Appeals 43 Misc.3d 1206(A), 990 N.Y.S.2d 440 (Sup. Ct. 2014)

“Unlike a use variance, a special exception allows a property owner to put his property to a use expressly permitted by the ordinance subject only to conditions attached to it to minimize the impact on the surrounding area. The significance of this distinction is that the inclusion of the permitted use in the ordinance is

tantamount to a legislative finding that the permitted use is in harmony with the general zoning plan and will not adversely affect the neighborhood (citations omitted). The burden of proof is lighter than that on an owner seeking a variance, and an owner seeking a special exception permit is only required to show compliance with any legislatively imposed conditions on an otherwise permitted use (citations omitted). While the reviewing board retains some discretion to evaluate each application for a special use permit, to determine whether the applicable criteria have been met and to make commonsense judgments in deciding whether a particular application should be granted, such determination must be supported by substantial evidence (citation omitted). Although scientific or expert testimony is not required in every case to support a determination, the board may not base its decision solely on generalized community objections. Moreover, expert opinion regarding traffic patterns, when presented, may not be disregarded in favor of generalized community opposition (citation omitted). Generalized or unsubstantiated complaints from neighbors, unsupported by empirical or expert evidence are generally insufficient for a zoning board to base its decision (citations omitted).

In our submission to the Planning Board we set forth therein and restate herein our basis for our belief that the application complies with all the standards digested at section 125-60. It is respectfully submitted that, in making the specific findings referenced above, your Board should take into consideration the characteristics of the RB Roadside Business zoning district both in terms of permitted and existing uses. In the Town of Bedford alone are numerous automobile dealerships along the same road in the same zoning district including Ford, Honda, Acura, Chrysler Jeep Dodge Ram and Buick GMC. In terms of sales (and presumably service) volume, each of these facilities can be anticipated to have levels of activity in multiples of that anticipated in connection with Open Road's proposed Cadillac facility. Even aside from the benefits of the anticipated low volume of activity, Open Road has demonstrated the existence of technological innovations and proposed multiple conditions which would mitigate any perceived impacts associated with the issuance of the special permit. Taking all of these factors into consideration, I believe that your Board has before it sufficient facts to support a determination to the effect that all of the standards applicable to issuance of the requested special permit have been met.

Initially, in connection with the requirement set forth in section 125-60 A, there is no doubt that the proposed use at this location will serve a community need or convenience and will not adversely affect the public health, safety and general welfare. There is a demand for Cadillac sales and service in the area as there has been for almost seven (7) decades⁸ and Cadillac sales and service facilities have always been located on North Bedford Road with the result that any impacts arising therefrom are impacts which (1) have previously existed with respect to North Bedford Road for seven decades as aforesaid; and (2) have actually decreased over time as Cadillac sales have decreased during that same period. Subsections 125-60 B through E all relate to the suitability of the site for the proposed use and the appropriateness of the use at the proposed location. In this regard, as set forth above, subsection 125-60 B requires

⁸ As some of you may know, my father was the Cadillac dealer at 271 North Bedford Road for 54 years before Cadillac sales and service was relocated to 175 North Bedford Road where it exists today.

a determination by your Board that “[t]he location and size of the use, the nature and intensity of the operations involved in or conducted in connection with it, the size of the site in relation to it and the location of the site with respect to streets giving access to it are such that it will be in harmony with the appropriate and orderly development of the area in which it is located”. Subsection 125-60 C requires a determination that “[t]he location, nature and height of buildings, walls, fences and the nature and extent of existing or proposed plantings on the site are such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings”. Subsection 125-60 D requires a determination that “[o]perations in connection with any special permit use will not be more objectionable to nearby properties by reason of noise, fumes, vibration, light or other characteristics than might be the operations of any permitted use not requiring a special use permit”. Finally, Subsection 125-60 E requires a determination that “[p]arking areas will be of adequate size for the particular use, properly located and suitably screened from adjoining residential uses; and the entrance and exit drives shall be laid out so as to achieve adequate safety”.

It is in these related respects that I believe that when your Board takes in the consideration the characteristics of the site and the permissible and existing uses in this portion of the Town, your Board should come to the determination that the requirements of each of these subsections have readily been met. With respect to site-specific characteristics, the site consists of approximately 1.4 acres which is appropriately sized for the proposed activity especially in connection with Cadillac’s new philosophy as detailed above. Indeed, as the Board is aware, dealership facilities on North Bedford Road have functioned very well with less than half of the land area in issue. The building, as proposed to be modified, will be more than adequate to meet the facility demands for a Cadillac dealership. The proposed modifications to the building and site plan are unique and well-suited to the purposes for which approval is sought.

In respect of appropriateness for the area and the absence of a deleterious effect on other uses established on nearby properties or the appropriate and orderly development of the area, initially it should be recognized that in view of the multiplicity of motor vehicle sales and service facilities and other public garage uses already approved along North Bedford Road, it is clear that establishment of this use at this location will be in harmony with the appropriate and orderly development of the area in which it is located, a point which will be further emphasized and demonstrated by reference to existing uses when the applicant appears before your Board. Accordingly, I believe that it is clear that this use will be in harmony with the appropriate and orderly development of the area in which it is located and that operations in connection with this proposed use will clearly not be more objectionable to nearby properties by reason of noise, fumes, vibration, light or other characteristics than might be the operations of any permitted use not requiring a special use permit. Finally, while the size of the parking areas may be an issue for consideration, it is respectfully submitted that, consistent with the determinations made by your Board in connection with the above-referenced applications, the availability of off-site storage mitigate any impact associated with the size of the parking areas. With respect to screening from any adjoining residential use, there exists both topographical differentials and significant amounts of wooded areas which preclude any determination indicating that there exists a need for further screening. Finally, with respect to the layout of access and egress drives and site circulation, the planned improvements represent a significant upgrade in terms of site functionality and appearance.

For all the reasons set forth above and consistent with prior determinations made by your Board, on behalf of the applicant I respectfully suggest that the applicant has demonstrated an entitlement to the relief sought in the form of issuance of a parking variance and issuance of a special permit subject to such reasonable conditions as your Board might determine to impose consistent with representations made by the applicant as hereinabove set forth. We look forward to appearing before your Board at its meeting of May 4, 2016. If, prior to that time, any member of the Board would desire additional information with respect to the application or any aspect thereof, please do not hesitate to contact me.

Yours very truly,



Charles V. Martabano

cc: Open Road Auto Group
Insite Engineering
Curco Operating Company

EXHIBIT A

Automotive News

Cadillac boss to introduce 'boutique' store concept to 700 dealers
Emphasis will be on high-tech showrooms, high level of customer service



Mike Colias

Automotive News | January 22, 2015 - 9:37 am EST

Cadillac plans to ask about 700 of its dealerships to invest in small "boutique" stores that would offer "high technology showrooms" and a higher level of service than they offer today. Cadillac President Johan de Nysschen outlined the plan in an appearance at the Washington, DC, auto show today and will do so again at the National Automobile Dealers Association convention in San Francisco this weekend.

DETROIT -- Cadillac plans to ask about 700 of its dealerships to invest in small "boutique" stores that would offer "high technology showrooms" and a higher level of service than they offer today.

Cadillac President Johan de Nysschen outlined the plan in an appearance at the Washington, D.C., auto show today and will discuss it further at the National Automobile Dealers Association convention in San Francisco this weekend.

Cadillac's network of slightly more than 900 dealerships includes about 200 "flagship" standalone stores. Another 700, many of which are paired with Chevrolet or other brands, will be asked to convert to "smaller, boutique locations," the brand said in a statement today.

"The boutique concept would feature exclusive Cadillac consumer touch points, highly trained sales and service staff and luxury amenities," the statement says, citing interactive digital displays that would allow customers to configure their vehicles, for example.

In an interview last week, de Nysschen said he has no plans to cut the number of dealerships, saying the network's market coverage can be an advantage over competitors. But he said dealerships that don't have Cadillac as their focal point will be expected to invest.

"I am definitely going to be in disagreement with dealers who think they can sustain the business for Cadillac by selling Cadillac out the backdoor of a Chevy store," de Nysschen said.

Work in progress

In the interview, de Nysschen stopped short of insisting that every Cadillac dealership would need to have a standalone store. It's unclear whether the boutique concept -- which he said still is a work in progress -- would allow for a separate Cadillac showroom that is attached to a dealership that sells other brands.

"I want wherever it is feasible to have dedicated, standalone Cadillac stores," he said. "In those areas where it is not feasible -- and there will be many -- we want to come up with a concept where we can have a small footprint, boutique-like store that is very premium in its expression and size-appropriate, also in terms of its investment."

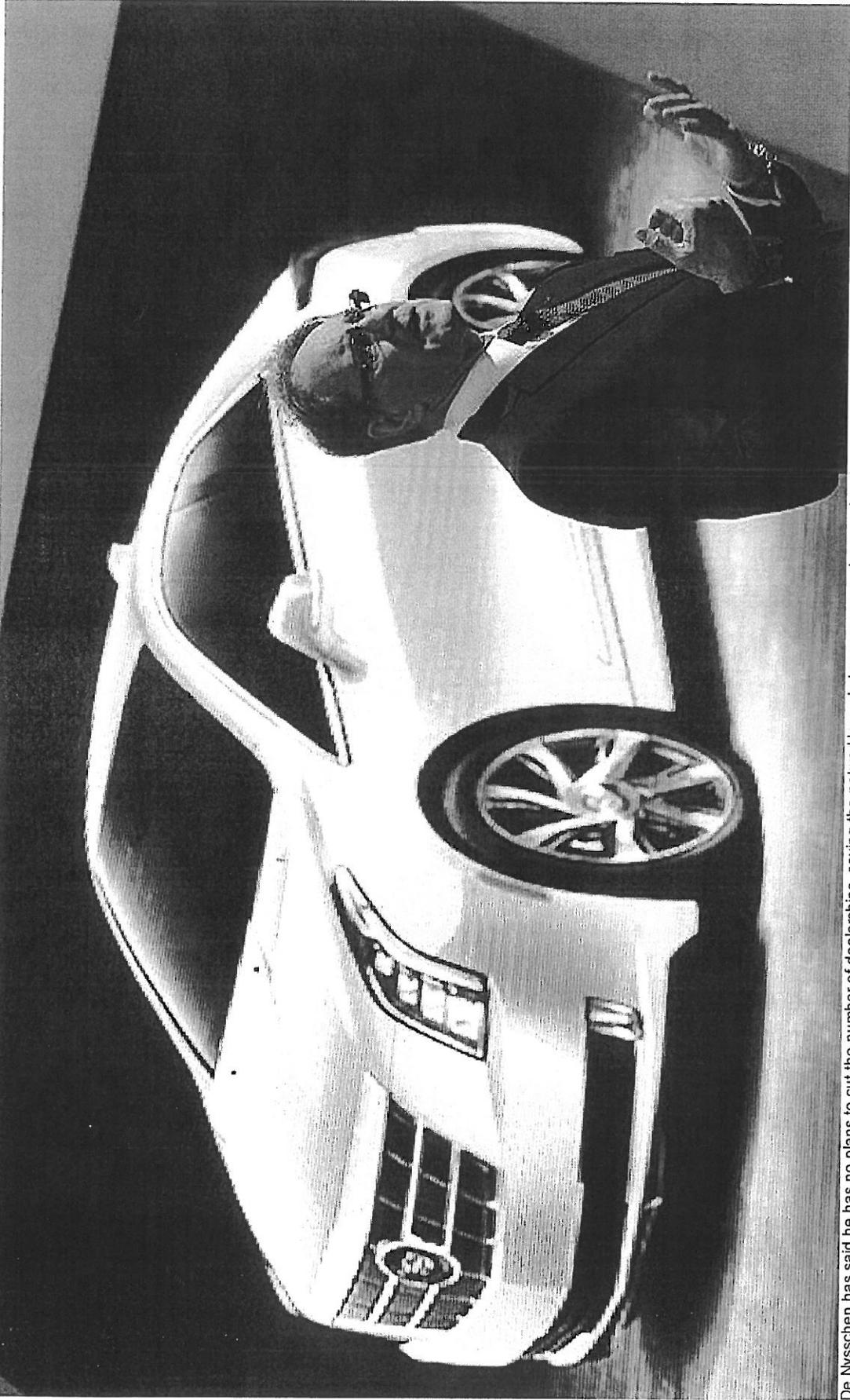
In Cadillac's statement today, de Nysschen cited the \$12 billion in product investments that he announced last week, planned over the next several years. He said dealers must be willing to make their own investment in facilities and "upgrades to the customer experience" in return.

Cadillac envisions "virtual showroom" technology that would allow customers to configure their vehicles, such as color and interior choices, through interactive digital displays, possibly even holograms.

De Nysschen conceded in the interview that the size of Cadillac's dealer network is larger than he would like if he was starting from scratch. But, contrary to recent rumors among Cadillac dealers that he wants to cut hundreds of stores, de Nysschen insisted: "I have no plans to cut the network."

He said Cadillac's reach into non-urban markets where BMW, Mercedes and Audi don't have stores can be an advantage, especially in giving customers access to service. But he said the customer experience must improve across Cadillac's retail network.

"We are going to have to work with our dealers and also invest a little bit in getting our people on the showroom floor trained up for a new approach to selling the cars," he said. "It's not a matter of, as the customer walks in, to explain to him how fortunate his is, because today we've got a good deal going."



De Nysschen has said he has no plans to cut the number of dealerships, saying the network's market coverage can be an advantage over competitors. Reuters

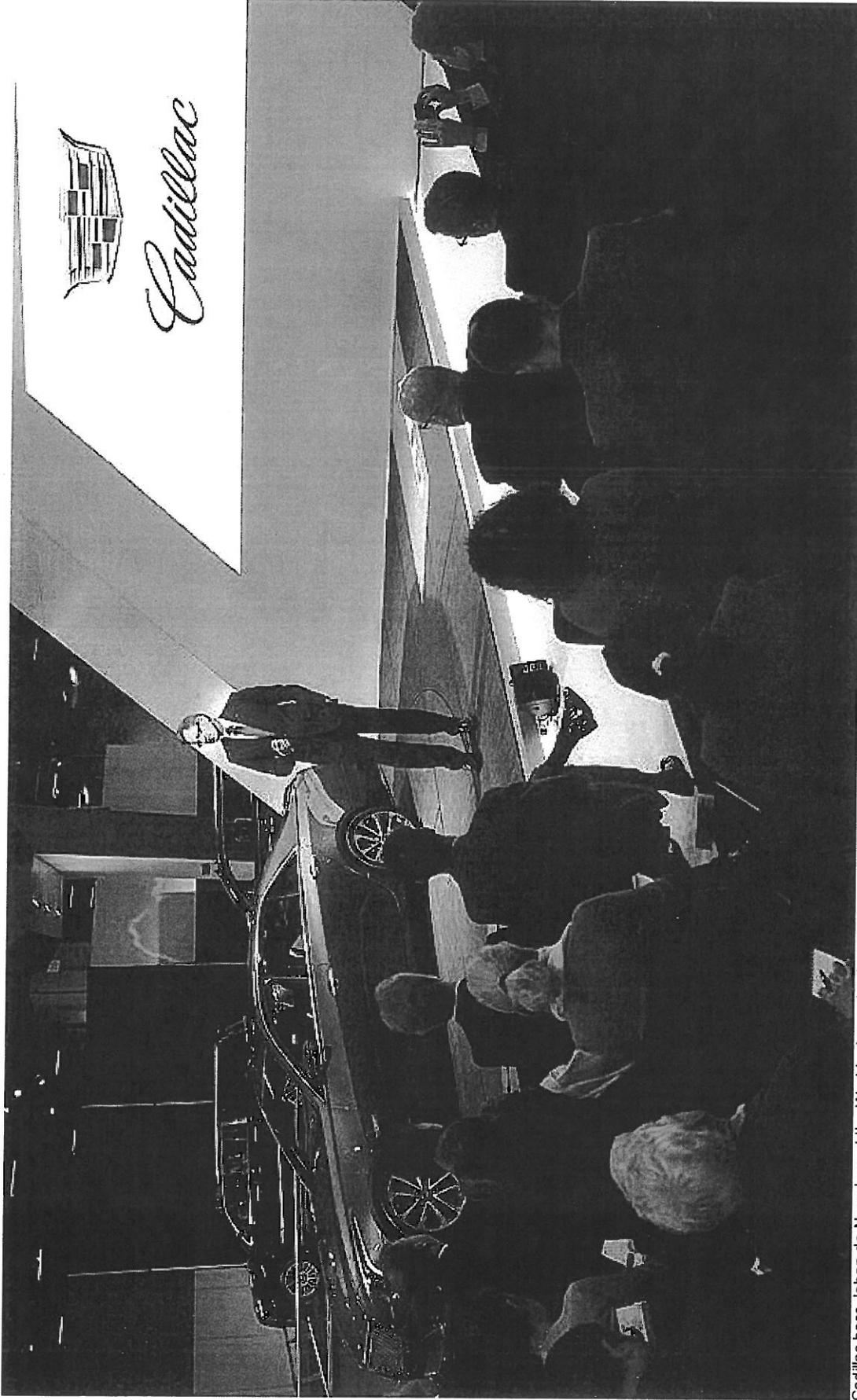
Improve dealer profits

De Nysschen also has said that he wants to improve Cadillac dealers' profitability. He is exploring "a revised dealer margin and bonus system that encourages and rewards the right behaviors, which also includes investment in facilities and people."

He said he would like to improve new-vehicle margins and "do more indirect holdback support" to reward dealers who invest in facilities, boost marketing and expand their courtesy transportation fleets, for example.

Many Cadillac dealers have renovated or rebuilt their stores in recent years through a similar General Motors incentive program, Essential Brand Elements, which pays dealers for each new car they order from the factory. De Nysschen said that model won't work for Cadillac. He has

been slashing production in a bid to boost the exclusivity of Cadillac's vehicles and reduce the incentives required to sell them



Cadillac boss Johan de Nysschen at the Washington auto show today. "The boutique concept would feature exclusive Cadillac consumer touch points, highly trained sales and service staff and luxury amenities," the brand said today. Reuters

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EXHIBIT B

**ZONING BOARD OF APPEALS
Town of Bedford
Westchester County, New York**

**Resolution #01-08 - Two
Diamond Properties LLC
Jaguar/Land Rover**

WHEREAS, application has been made pursuant to Article V Section 125-50; Article X Section 125-102; and Article III Section 125-11 of the Code of the Town of Bedford for a variance to permit the expansion of an existing car dealership building to permit additional parking and service as an accessory use to a Jaguar/Land Rover car dealership, where the existing structure is located in the LI and CB zoning districts and where the existing building coverage in the CB district is pre-existing, non-conforming, and where the existing maximum parking and building coverage in the CB district is pre-existing, non-conforming, and where the existing side-yard setback in the LI district is pre-existing, non-conforming at 5'7" resulting in (1) a request to permit a side yard setback of 5' 7" where 15' is required in the LI district; (2) a request to permit 97 parking spaces in the LI and CB districts where a combined total of 179 parking spaces on the site are required in the LI and CB zoning districts for premises located at 531 Bedford Road, Bedford Hills, New York 10507, being known and designated on the Tax Map of the Town of Bedford as Section 72.5 Block 1 Lot 8 in the LI and CB Districts, and shown on a plan submitted on December 6, 2007, and

WHEREAS, a public hearing was held on January 9, 2008 at which time all those present wishing to speak were given an opportunity to be heard, and

WHEREAS, the Town of Bedford Planning Board by Resolution No. 07/37 dated November 29, 2007 found the proposal did not meet the standards for approval of the Town Code,

WHEREAS, all members of the Board of Appeals have had the opportunity to visit the site, and

NOW THEREFORE BE IT RESOLVED, on a motion by Mrs. Spano, seconded by Mr. Michaelis,

RESOLVED, the application for a variance to permit the expansion of an existing car dealership building to permit additional parking and service as an accessory use to a Jaguar/Land Rover car dealership, where the existing structure is located in the LI and CB zoning districts and where the existing building coverage in the CB district is pre-existing, non-conforming, and where the existing maximum parking and building coverage in the CB district is pre-existing, non-conforming, and where the existing side-yard setback in the LI district is pre-existing, non-conforming at 5'7" resulting in (1) a request to permit a side yard setback of 5' 7" where 15' is required in the LI district; (2) a request to permit 97 parking spaces in the LI and CB districts where a combined total of 179 parking spaces on the site are required in the LI District, be approved in accordance with the plan entitled "Jaguar Land Rover, Bedford Hills, 531 Bedford Road, Bedford Hills," prepared by Gallin Design Studio, PLLC, dated 11/13/07, last revised 12/6/07 and received on 12/6/07, because of the following,

1. That the benefit cannot be achieved by another means feasible to the applicant due to the present location of the building; and
2. That there will be no undesirable change to the neighborhood or nearby properties as the applicant is renovating and upgrading an existing building which will result in an enhanced building; and
3. That the variance requested is not substantial in that the building is situated in two zoning districts resulting a unique situation wherein the applicant must comply with two zoning standards and that the parking for car storage will be off site which mitigates the impacts of the dealership; and

Resolution #01-08 - Two – Diamond Properties LLC – Jaguar Land Rover
Page Two

4. That the request will not have an adverse physical or environmental effect and that the Planning Board will conduct an environmental and site plan review of the proposal, and though
5. That the alleged difficulty is self-created, this is only one of the factors to be considered by the Board in making its decision.

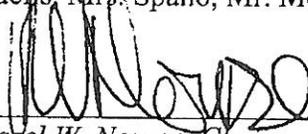
And, subject to the following conditions:

1. Site plan approval by the Planning Board and any conditions of approval imposed by the Planning Board, and
2. That the applicant apply for a building permit within one (1) year of the date of the Board's vote on the application and diligently pursue such application to completion.
3. No loading or unloading of vehicles shall be done on Rte. 117.
4. That the approval is in accordance with the plans submitted entitled "Jaguar Land Rover, Bedford Hills, 531 Bedford Road, Bedford Hills," prepared by Gallin Design Studio, PLLC, dated 11/13/07, last revised 12/6/07 and received on 12/6/07.

Vote taken on the foregoing motion was as follows:

Ayes – Ms. Schaefer, Mr. Michaelis, Mrs. Spano, Mr. Menken, Mrs. Nourse.

Nays – None



Hazel W. Nourse, Chair

The foregoing is certified to be a true copy of a Resolution of the Zoning Board of Appeals of the Town of Bedford that was filed in the Office of the Clerk of the Town of Bedford on 3-19 —, 2008.



Alexandra J. Costello, Secretary
Zoning Board of Appeals

EXHIBIT C

**ZONING BOARD OF APPEALS
Town of Bedford
Westchester County, New York**

**Resolution #03-12 One
DP32 LLC – Chrysler Jeep Dodge Dealership – Bedford Hills**

WHEREAS, application has been made for variances pursuant to the Town of Bedford Zoning Code to permit the renovation and expansion of an existing building located in the LI and RB zoning districts to be used as a car dealership resulting in: (1)A request to permit a side yard setback of 5' 7" where 15 feet is required in the LI Zoning District where the side yard setback for the existing building is pre-existing, non-conforming for the LI and RB Zoning Districts at 5' 7"; Article V Section 125-50, Article III Section 125-11. (2)A request to permit 105 parking spaces in the LI and RB zoning districts where a combined total of 150 parking spaces are required on the site in the LI and RB Zoning Districts; Article X Section 125-102A. (3)A request to permit Seven (7) signs for a commercial use on a parcel where 2 signs are permitted; Article XI Section 125-120 B. (4) A request to permit letters on wall signs exceeding 12 inches by a variation of 3 inches to 18 inches) where 12 inches is permitted when the signs are located less than 100 feet from the center line of the road (Bedford Road); Article XI Section 125-120 B (1). (5)A request to permit building coverage of 24% in the RB Zoning District where the existing building coverage is pre-existing non-conforming at 23% where 20% is permitted, for premises located at 531 Bedford Road, Bedford Hills, New York 10507, being known and designated on the Tax Map of the Town of Bedford as Section 72.5 Block 1 Lot 8 in RB and LI Zoning District, and shown on a plan submitted on February 13, 2012; and

WHEREAS, a public hearing was held on March 7, 2012 at which time all those present wishing to speak were given an opportunity to be heard; and

WHEREAS, the Town of Bedford Planning Board by Resolution No. 12/07 dated February 8, 2012 found the proposal did not meet the standards for approval of the Town Code; and

WHEREAS, all members of the Board of Appeals have had the opportunity to visit the site; and

NOW THEREFORE BE IT RESOLVED, on a motion by Mr. Michaelis, seconded by Ms. Schaefer,

RESOLVED, that the application for variances to permit the renovation and expansion of an existing building located in the LI and RB zoning districts to be used as a car dealership resulting in: (1)A request to permit a side yard setback of 5' 7" where 15 feet is required in the LI Zoning District where the side yard setback for the existing building is pre-existing, non-conforming for the LI Zoning District at 5' 7"; Article V Section 125-50, Article III Section 125-11. (2)A request to permit 105 parking spaces in the LI and RB zoning districts where a combined total of 150 parking spaces are required on the site in the LI and RB Zoning Districts; Article X Section 125-102A. (3)A request to permit Seven (7) signs for a commercial use on a parcel where 2 signs are permitted; Article XI Section 125-120 B. (4) A request to permit letters on wall signs exceeding 12 inches by a variation of 3 inches to 18 inches) where 12 inches is permitted when the signs are located less than 100 feet from the center line of the road (Bedford Road); Article XI Section 125-120 B (1). (5)A request to permit building coverage of 24% in the RB Zoning District where the existing building coverage is pre-existing non-conforming at 23% where 20% is permitted, be approved in accordance with the plan submitted on February 15, 2012 entitled "Diamond Properties, Chrysler Jeep Dodge Dealership at Bedford Hills, 531 Bedford Road, Bedford Hills," consisting of 11 sheets, prepared by Gallin Design Studio, dated February 13, 2013, and because of the following,

Resolution #03-12 One
DP32 LLC – Chrysler Jeep Dodge Dealership – Bedford Hills
Page Two

1. That the benefit cannot be achieved by another means feasible to the applicant due to the constraints on the site including the location of the septic system; and
2. That there will be no undesirable change to the neighborhood or nearby properties and in fact the renovation will improve the existing facility which has been left neglected for the past five year; and
3. That even though the variance requests are substantial in several categories this is only of the factors to be considered by the Board in making its decision and is not determinative.
4. That the requests will not have an adverse physical or environmental effect, and
5. That even though the alleged difficulty is self-created, the proposal is a realistic plan in terms of other automobile dealerships in the area and this is only one of the factors to be considered by the Board in making its decision.

And, subject to the following conditions:

1. Site plan approval by the Bedford Planning Board as well as any conditions imposed therein; and
2. That the applicant applies for a building permit within one (1) year of the date of the Board's vote on the application and diligently pursues such application to completion.
3. That the applicant shall submit an as-built survey to the building department prior to the issuance of a Certificate of Occupancy.
4. The variances are granted in accordance with the plans submitted on February 15, 2012 entitled "Diamond Properties, Chrysler Jeep Dodge Dealership at Bedford Hills, 531 Bedford Road, Bedford Hills," consisting of 11 sheets, prepared by Gallin Design Studio, dated February 13, 2013.

Vote taken on the foregoing motion was as follows:

Ayes – Mr. Bird, Ms. Schaefer, Mr. Michaelis, Mrs. Spano, Mr. Menken

Nays – None

David A. Menken, Chair

The foregoing is certified to be a true copy of a Resolution of the Zoning Board of Appeals of the Town of Bedford that was filed in the Office of the Clerk of the Town of Bedford on _____, 2012.

Alexandra J. Costello, Secretary
Zoning Board of Appeals