

ZBA MEETING – MAY 28, 2015

(Time Noted – 7:26 PM)

BIRKS REALTY INC.

200 AUTO PARK PLACE, NBGH  
(97-2-11.2) I / B ZONE

Applicant is seeking area variances for the front yard landscape buffer of 35 feet and the required buffer from the IB zone to the adjacent R-2 residential zoning district to expand the showroom and service building of the automobile dealership (Hudson Valley Chrysler Dodge Jeep Ram).

Chairperson Cardone: Our next applicant Birks Realty Inc.

Ms. Gennarelli: This applicant sent out forty-seven letters. All the mailings, publications and postings are in order.

Mr. Sarchino: Good evening, Joe Sarchino with the firm of John Meyer Consulting. I'm here tonight representing Hudson Valley Chrysler. It was previously a Park Motors location. The site is located on Auto Park Place and Route 17 (17K). We've been before the planning board processing a site plan approval for the expansion of an existing building to renovate the façade and...and create a new dealership in that location. During that process the existing condition, two existing conditions were noted by the Town that were existing non-conformities on the lot. The first one was a thirty-five foot landscape buffer is required along 17K adjacent to the a...adjacent to that roadway. There presently exists parking in that location. The second one, the site is located in an I/B Zoning District here, down in the corner of the property to the rear we bound a R-2 Zoning District as well. So as part of that in the Code Section 185-18-C-(5)-(a) a hundred foot buffer is required and that would be this line right here is the dash line, the grey area is existing parking. So that, that again is an existing parking area. The proposed application, if you see the building here, the site plan application presently before the Board basically is just filling these two square areas here. There are no improvements in the front yard here and no proposed improvements in this location either so we're not increasing the existing non-conformity. I just wanted to make note of that. We did submit some pictures to the Board as required, just so you could see, again I have them here. This is the front yard so that is an existing condition in the front yard. Again we're not proposing to increase it or anything like that it's just to remain existing. In the rear, along the residential boundary you can see the existing parking lot here; we have a substantial evergreen buffer in the back along that property line. Actually, here's a winter picture just to see what it looks like in the winter as well and there is a substantial evergreen between this property and the residential property. So basically that's a summary of the two variances that are required. Again they are just for the existing conditions and there was no proposed work in this location or in this location in the rear as well.

Mr. Donovan: I know there are existing conditions so you don't propose to encroach any further into either area but could you give us for the front yard landscape buffer is required thirty-five feet how much is there provided currently?

Mr. Sarchino: Well there is a green area here of thirty-five feet, thirty-five point seven three feet. The present buffer from or the setback from the property line is approximately two to three feet

in this location, a little bit more here but the existing green area from 17K is thirty-five point seven three feet.

Mr. Donovan: Okay, so you achieved the buffer just not from the property line?

Mr. Sarchino: Correct.

Mr. Donovan: And how about on the adjacent residential zoning district?

Mr. Sarchino: Again this green area exists from the property line, there's an encroachment of approximately thirty feet...thirty-five feet here and approximately eight feet in this location. It varies a little bit. We are fortunate though in the back that the evergreen buffer was planted previously and it's very mature and very established.

Chairperson Cardone: I have the report from the Orange County Department of Planning. We note that at this time according to the Short Environmental Assessment Form prepared by the applicant storm water flows off site onto adjacent properties. If it is the choice of the ZBA to approve this variance thereby allowing development of the site as proposed by the applicants we encourage them to request that additional storm water management measures be made part of the existing vegetated buffer areas.

Mr. Sarchino: I'm assuming that would be part of what the planning board is looking but the...the project proposes to reduce the amount of impervious area as we've stated to the planning board so we...we're actually having less impervious area than presently exists. So I would imagine we'd be addressing the engineering portion of the design a...with the planning board during the course of that work but we are proposing less impervious I'm not sure if the Planning Department realizes that.

Chairperson Cardone: Do we have questions from the Board?

Mr. Levin: Is there a way of moving the buffer area back so you're not in...in...so you are in compliance?

Mr. Sarchino: There really isn't in order to try to...in order to keep the parking count that the dealership has presently. It would substantially reduce the amount of parking and a...

Mr. Levin: I have noticed that you...the dealership has used the buffer area to park cars from time to time.

Mr. Sarchino: I'm not sure that this dealership did but if they did I will inform them that they should not be doing that and...

Mr. Levin: No, this is a different dealership. I realize that.

Mr. Sarchino: Yeah, I know that...I know...I don't want to say but other ones do do that I have seen but I don't think that they have but the one down at the corner.

Chairperson Cardone: Do we have any comments from the public?

Mr. Manley: I have a...a...just something that I just wanted to point out the County pointed out in their memorandum to us that they had a concern with respect to the...additional storm water management measures being included in the project due to the fact that the a...water actually goes onto the other properties that surround the...the site. So I'm wondering what a...what the applicant is going to do to mitigate that?

Mr. Sarchino: We aren't changing the existing condition so a...I really, I mean in this location this is a gravel parking lot so basically the water percolates into the ground there. The drainage in the front here goes to a catch basin here and here...excuse me...it ties into the State DOT system and that's been like that for many, many, many years now. So a...there really aren't any changes other than what we're doing here which is a reduction in the amount pervious pavement and this gravel parking lot is proposed to remain gravel. Nothing...we're not proposing to change that at all so since we aren't proposing anything new I...I certainly would address that maybe in the planning process but I don't think, you know, there isn't any changes to the drainage or new pavement or we're not changing the direction of the pavement so maybe they just didn't realize that when they prepared the letter.

Mr. Manley: Well I'll actually read the comments into the record for just for the record. This is from the County Department of Planning to the Town of Newburgh ZBA, subject applicant Birks Realty, comments:

The planning department has reviewed the submitted materials regarding the appeal for an area variance. While the Zoning Board of Appeals must weigh the local issues in balancing the needs of the appellant with the potential impacts on the surrounding area it does not appear that inter-municipal or county-wide impacts would result if the Board finds that granting relief is warranted in this matter. We note that at this time according to the Short Environmental Assessment Form prepared by the applicant storm water flows off site onto adjacent properties. If it is the choice of the Zoning Board of Appeals to approve this variance thereby allowing development of the site as proposed by the applicants we encourage them to request that additional storm water measures be made part of the existing vegetated buffer areas. And the County recommendation is Local Determination.

That was my only note.

Chairperson Cardone: Any questions from the Board?

Mr. McKelvey: Could we...could we give the planning board this statement from the County?

Chairperson Cardone: We could.

Mr. Sarchino: That's where it would be addressed. I would address it the planning...

Mr. McKelvey: Yeah, that's why I say make sure that they know about this.

Mr. Sarchino: Correct.

Chairperson Cardone: Do we have a motion to close the Public Hearing?

Mr. Levin: I'll make a motion to close the Public Hearing.

Mr. Masten: I'll second it.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

James Manley: Yes

John Masten: Yes

John McKelvey: Yes

Grace Cardone: Yes

Chairperson Cardone: Thank you.

(Time Noted - 7:38 PM)

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ZBA MEETING – MAY28, 2015 (Resumption for decision: 9:16 PM)

BIRKS REALTY INC.

200 AUTO PARK PLACE, NBGH  
(97-2-11.2) I / B ZONE

Applicant is seeking area variances for the front yard landscape buffer of 35 feet and the required buffer from the IB zone to the adjacent R-2 residential zoning district to expand the showroom and service building of the automobile dealership (Hudson Valley Chrysler Dodge Jeep Ram).

Chairperson Cardone: On the next application Birks Realty. This is an Unlisted Action under SEQR. Do I have a motion for Negative Declaration?

Mr. McKelvey: I'll make that motion.

Mr. Manley: Second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

James Manley: Yes

John Masten: Yes

John McKelvey: Yes

Grace Cardone: Yes

Chairperson Cardone: Do we have discussion on this application?

Mr. Manley: Well the only concern that I have is what was addressed by the County and I would like to a...really point out that we really should have that a condition of our approval would be that the County's comments get addressed by the planning board.

Mr. Donovan: So I don't think we can bound them, bind the planning board but what we could do is a...indicate or make a condition of our approval that the planning board take into consideration before they take any action on the application the comments raised by the Orange County Planning Department with something in their record indicating that they had taken those into consideration.

Mr. Manley: Correct. With that I'll make a motion for approval.

Mr. Masten: I'll second.

Ms. Gennarelli: Roll call.

Richard Levin: Yes

James Manley: Yes

John Masten: Yes

John McKelvey: Yes

Grace Cardone: Yes

Chairperson Cardone: The motion is carried.

PRESENT ARE:

GRACE CARDONE  
RICHARD LEVIN  
JAMES MANLEY  
JOHN MASTEN  
JOHN MC KELVEY

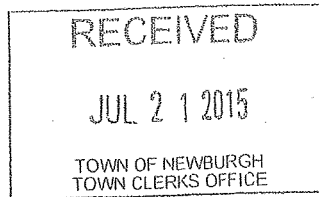
ABSENT:

MICHAEL MAHER  
DARRIN SCALZO

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.  
BETTY GENNARELLI, ZBA SECRETARY  
GERALD CANFIELD, CODE COMPLIANCE

(Time Noted – 9:18 PM)



Section 97, Block 2, Lots 11.2

TOWN OF NEWBURGH: COUNTY OF ORANGE  
ZONING BOARD OF APPEALS

-----X

*In the Matter of the Application of*

**BIRKS REALTY, INC.**

**DECISION**

*For area variance as follows:*

- *Grant of a variance from the requirement of Section 185-18(C)(4)(c) which requires a front yard landscape buffer of 35 feet;*
- *Grant of a variance from the requirement of Section 185-18(C)(5)(a) which requires a 100-foot buffer from an adjacent residential zoning district.*

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**Introduction**

Birks Realty, Inc. proposes to expand the showroom and service building of their automobile dealership.

In order to accomplish their objective, the applicant requires the following variances: (1) A variance from the requirements of Section 185-18(C)(4)(c) which requires a front yard landscape buffer of 35 feet; and (2) A variance from the requirements of Section 185-18(C)(5)(a) which requires a 100-foot buffer from an adjacent residential zoning district.

At the outset, it should be noted that both of these deficiencies are pre-existing conditions. The site was previously the home of Park Motors and the operations of this automobile dealership encroached into both buffer areas. The

new property owner plans to operate an entity known as "Hudson Valley Chrysler" on the property. They are presently processing an application for site plan approval before the Town Planning Board in which they propose to expand the existing building and renovate the existing building façade. As a result of the site plan application, variances must be obtained for these pre-existing conditions.

The property is located at 200 Auto Park Place in the IB Zoning District and is identified on the Town of Newburgh tax maps as Section 97, Block 2, Lot 11.2.

A public hearing was held on May 28, 2015, notice of which was published in *The Mid-Hudson Times* and *The Sentinel* and mailed to adjoining property owners as required by Code.

#### Law

Sections 185-18(C)(4)(c) and 185(C)(5)(a) and of the Code of Ordinances of the Town of Newburgh [Zoning], set forth certain landscape buffer requirements

Relative to this project, these Code provisions require a front yard landscape of 35-feet from NYS Route 17k and a 100-foot buffer from the adjacent residential zoning district.

#### Background

After receiving all the materials presented by the applicant and hearing the testimony of Joe Sarchino from John Meyer Consulting at the public hearing held before the Zoning Board of Appeals on May 28, 2015, the Board makes the following findings of fact:



1. The applicant is the owner of tax parcel 97-2-11.2 located at 200 Auto Park Place.
2. The lot was previously improved by an automobile dealership known as Park Motors.
3. The applicant now proposes to begin operating a new automobile dealership on the premises known as Hudson Valley Chrysler.
4. This new proposal is presently before the Town Planning Board seeking site plan approval.
5. As a result of the requirement for a new site plan approval, two pre-existing conditions related to the required landscape buffers from the adjacent residential zoning district and from NYS Route 17k now require re-a variances.
6. The applicant's proposal is set forth on a series of photographs and plans prepared by JMC Site Development Consultants dated December 22, 2014, last revised March 5, 2015. Those photographs and plans are hereby incorporated into this decision and a set shall remain in the zoning board's file in this matter.
7. The applicant was referred to the Zoning Board of Appeals by the Planning Board pursuant to correspondence from their counsel dated March 27, 2015.
8. This application was referred to the Orange County Department of Planning ("OCDP") as required by law. The OCDP identified issues regarding off site stormwater flows. Because these issues are proper-

ly addressed by the Planning Board during their site plan review, this Board will direct this issue to the planning board to be addressed during their review of this project.

After hearing the testimony at the public hearing and considering the materials received by the Board and after viewing the subject site, the Board decides as follows:

#### **SEQRA**

This matter constitutes an unlisted action under the State Environmental Quality Review Act. The Board reviewed this matter on an uncoordinated review basis and issued a negative declaration on May 28, 2015 thereby concluding the SEQRA process.

#### **GML 239 Referral**

This application has been referred to the Orange County Planning Department for review and report. The Planning Department has reported that this matter is one for local determination, there being no significant inter-municipal or countywide considerations found to exist.

In reviewing the facts presented for the requested area variance, the Board considered the five standards for determining whether the applicant has sustained its burden of proof as required by Town Law Section 267-b (3). Each factor has been considered relevant to the decision of the board of appeals, but no single one is viewed as precluding the granting of the variances.

**(1) Undesirable Change—Detriment to Nearby Properties**

The applicants testified at the hearing that the proposed project would be in harmony with the character of the neighborhood and would not in any way result in any undesirable changes to the neighborhood nor cause any detriment to any nearby properties.

The building in question – as well as their deficiencies – presently exist and the continuation of these non-conformities would not adversely impact the neighborhood.

There was no contrary evidence adduced at the hearing.

Accordingly, based upon the evidence and testimony submitted to the Board, the Board finds that granting of the request of the area variance will not result in any serious, undesirable, detriment to surrounding property owners.

**(2) Need for Variance**

The applicant's request is generated by their desire to expand their showroom and service buildings of the dealership. It is difficult for the Board to evaluate the applicants' *subjective* desire to subdivide and alter the lot lines. However, the Board notes that the focus of our inquiry is on the character of the surrounding neighborhood. We have heretofore determined that the grant of the variances will not adversely impact the character of the neighborhood. We also note that the work proposed will not expand any further into the buffer areas than already exists.

Accordingly, the Board finds that the benefit sought to be achieved by the applicant cannot be achieved by any other method other than the issuance of the requested variances.

### ***(3) Substantial Nature of Variances Requested***

The variances requested are substantial. However, the Board finds that the *overall effect* of the variances – when viewed in the context of the totality of the circumstances – is minimal. Moreover, because the focus of the inquiry by the Zoning Board of Appeals is upon the character of the neighborhood in question, we believe, under the circumstances presented here, that the moderately substantial nature of the variances requested does not prohibit us from granting the application.

### ***(4) Adverse Physical & Environmental Effects***

No testimony was given, nor was any evidence provided, that would indicate that issuance of the requested variances would result in any adverse physical and/or environmental effects. The applicant testified that no such effect would occur.

As indicated above, however, the OCDP has identified certain concern regarding offsite stormwater flows. These flows are not directly related to the variance herein requested but the zoning board concurs that the issue is important and should be addressed by the planning board during site plan review.

Based upon the evidence and testimony submitted, the Board finds that issuance of the requested variances will not adversely impact the physical and environmental conditions in this neighborhood. However, the planning board should consider and address the stormwater issues identified by the OCDP.

### ***(5) Self-Created Difficulty***

The need for these variances is clearly self-created in the sense that the applicants purchased this property charged with the knowledge of the need to

obtain variances in order to expand the dealership as proposed.

However, under the circumstances presented, the Board finds that the self-created nature of the need for the variances requested does not preclude granting the application.

### **Decision**

In employing the balancing tests set forth in Town Law Section 267-b (3), the Board hereby determines that the applicant has satisfied the requisites of Section 267-b and grants the area variance as requested conditioned specifically upon the following :

1. This approval is not issued in a vacuum but is rather one of two independent yet interconnected discretionary approvals (the other being within the jurisdiction of the Town of Newburgh Planning Board). As such, this grant of variance is conditioned upon approval of the application now pending before the planning board. This approval of the ZBA is intended to do no more than vary the specified strict limitation provisions of the Code identified; it is not intended to authorize construction of a particular building nor approve the footprint, size, volume or style thereof. The planning board remains possessed of all of its power and authority to review, limit, request modifications to, and to ultimately approve (absolutely or conditionally) any application in reference to this project as may come before it. Should the planning board require changes in the size, location or configuration from what is shown on the plans before the ZBA that require greater or different variances, the applicant must return to the ZBA for further review and approval.

2. Section 185-55 [Procedure; construal of provisions; conflict with state law] of

the Code of Ordinances of the Town of Newburgh provides, in subdivision "D," that this grant of variances shall become null and void at the expiration of six months from issuance, unless extended by this board for one additional six-month period. . As noted above, this application is not decided in a vacuum but is rather tied to a specific application for approval pending before the Town of Newburgh Planning Board and this approval is conditioned upon the applicant diligently pursuing his application before that board. Provided that the applicant shall report to this board monthly on the progress of the application pending before the planning board, and provided that such reports demonstrate a diligent pursual of that application, the time period within which the planning board application is processed shall not be included within the initial six-month limitation of Section 185-55 D.

3. The Planning Board shall evaluate and address the stormwater issues identified by the OCDP in their review letter addressed to the zoning board dated April 28, 2015.

Dated: May 28, 2015



Grace Cardone, Chair  
Town of Newburgh ZBA

*By roll call a motion to adopt the decision was voted as follows:*

AYES:           Chair Grace Cardone  
                  Member John Masten  
                  Member James Manley  
                  Member John McKelvey

Member Richard Levin

NAYS: None

ABSENT: Member Michael Maher

Member Darrin Scalzo

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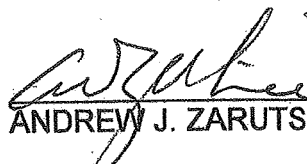
STATE OF NEW YORK )  
 )ss:  
COUNTY OF ORANGE )

I, BETTY GENNARELLI, Secretary to the Zoning Board of Appeals of the Town of Newburgh, do hereby certify that the foregoing is a true and exact copy of a Resolution maintained in the office of the Town of Newburgh Zoning Board of Appeals, said resulting from a vote having been taken by the Zoning Board at a meeting of said Board held on May 28, 2015.

  
BETTY GENNARELLI, SECRETARY

TOWN OF NEWBURGH ZONING BOARD OF APPEALS

I, ANDREW J. ZARUTSKIE, Clerk of the Town of Newburgh, do hereby certify that the foregoing Decision was filed in the Office of the Town Clerk on JUL 21 2015.

  
ANDREW J. ZARUTSKIE, CLERK  
TOWN OF NEWBURGH