

**UPPER SADDLE RIVER
ZONING BOARD OF ADJUSTMENT**

IN THE MATTER OF THE APPLICATION OF JACK DANIELS MOTORS, INC. d/b/a JACK DANIELS PORSCHE))))	RESOLUTION OF MEMORIALIZATION AS TO “OFFICIAL ACTION” GRANTING PRELIMINARY AND FINAL SITE PLAN APPROVAL WITH GRANT OF CERTAIN VARIANCES
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WHEREAS, Jack Daniels Motors, Inc. (hereinafter referred to as the “Applicant”), 120 Pleasant Avenue, Upper Saddle River, New Jersey, is the tenant of the real premises located at 335 Route 17 South, known as Lot 7, in Block 1015, as shown on the current Tax Assessment Map of the Borough of Upper Saddle River; (hereinafter referred to as the “Property”); and

WHEREAS, Applicant proposes to redevelop the Property constructing a new and pre-owned Porsche automotive dealership; and

WHEREAS, the property is located in the H-1R Highway Retail and Commercial District and the H-1 Highway Commercial zone which do not permit automotive dealerships, and which expressly prohibit the outdoor warehousing of motor vehicles; and

WHEREAS, Applicant applied to the Zoning Board of Adjustment of the Borough of Upper Saddle River (hereinafter referred to as “Board”) for preliminary and final site plan approval, use variances and certain bulk variances and waivers as enumerated herein (“Application”); and

WHEREAS, Applicant by way of the Application as amended during the course of the hearings requested that the following variances be granted in accordance with N.J.S.A. 40:55D-70(c)(2):

- a) **Front yard buffer** – 8 feet provided as amended on Route 17 and 8 feet provided on Pleasant Avenue, 10 feet required pursuant to Upper Saddle River Zoning Code Section 150-16 and Section 150-17;
- b) **Parking space size** – 180 square feet proposed, 200 square feet minimum required pursuant to Upper Saddle River Zoning Code Section 150-29.C;
- c) **Parking setback to street line** – 5 feet provided on Route 17 and 6 feet provided on Pleasant Avenue, 10 feet required pursuant to Upper Saddle River Zoning Code Section 150-29.E;
- d) **Freestanding sign setback** – 20 feet proposed, 35 feet required pursuant to Upper Saddle River Zoning Code Section 150-21.B.1;
- e) **Freestanding sign area** – 60 square feet proposed, 36 square feet maximum permitted pursuant to Upper Saddle River Zoning Code Section 150-21.B.1;
- f) **Freestanding sign height** – 25 feet proposed as amended, 20 feet required pursuant to Upper Saddle River Zoning Code Section 150-21.B.1;
- g) **Freestanding sign depth** – 18-1/2 feet proposed, 18 feet maximum required pursuant to Upper Saddle River Zoning Code Section 150-21.B.1;
- h) **Wall sign area** – 91.5 square feet proposed Porsche sign, 60 square feet maximum required pursuant to Upper Saddle River Zoning Code Section 150-21.B.2;
- i) **Aggregate wall sign area** – 129.1 square feet proposed (2 wall signs), 90 square feet maximum required pursuant to Upper Saddle River Zoning Code Section 150-21.B.2; and
- j) **Required shade trees in parking area** – 2 provided, 1 tree per ten spaces or 8 trees required pursuant to Upper Saddle River Zoning Code Section 126-36.F.

WHEREAS, Applicant also requested that the following use variances be granted in accordance with N.J.S.A. 40:55D-70(D)(1): To permit a Porsche automotive dealership facility, which will sell new and automobiles and store automobiles outside the building; and

WHEREAS, the Applicant also requested preliminary and final site plan approval; and

WHEREAS, the Applicant provided adequate proof to this Board that public notice of the hearing was effectuated in accordance with Municipal Land Use Law Section 40:55D-12; and

WHEREAS, the Applicant submitted the consent of Cedar Holding Associates, the owner of the Property to make this Application; and

WHEREAS, public hearings commenced before the Board on August 21, 2008, and continued on September 18, 2008. During these hearings, the Board heard testimony from the Applicant's professionals and witnesses, as well as testimony, questions and comments from the public. The Board also received exhibits marked as A-1 through A-19 (Applicant's Exhibits), which are hereby incorporated by reference into this Resolution; and

WHEREAS, on September 18, 2008, the Board voted in favor of the Application as amended during the hearings granting preliminary and final site plan approval, use variances, together with certain bulk variances, all subject to certain conditions and approval of the Resolution; and

WHEREAS, the Board now wishes to memorialize approval of the Application by adopting this Resolution ("This Resolution") in accordance with the requirements of N.J.S.A. 40:55D-10(g)(2); the Board hereby makes the

following findings of fact and conclusions of law based upon the record presented:

1. The Applicant's testimony and evidence presented confirm that the Applicant is a long-term tenant pursuant to a written lease of the Property located on the northwest corner of Route 17 South and Pleasant Ave. The Property which is currently developed with the Steak & Ale Restaurant contains a lot area of 78,864 square feet or 1.70 acres. The Property which is identified as Block 1015, Lot 7, in the Borough of Upper Saddle River is located to the front along Route 17 in the H-1R Highway & Retail Commercial District and the rear of the site is located in the H-1 Highway Commercial District. The Applicant is proposing to redevelop the site with a Porsche automotive dealership, which will sell new and pre-owned automobiles.

2. The Applicant through its engineer, Andrew Missey, P.E. of LaPatka Associates, testified during the hearings and described the existing conditions on the Property. The Applicant proposes to demolish the existing restaurant and construct a new "state of the art" auto dealership. The new facility will be designed in accordance with Porsche's criteria. Mr. Missey testified extensively with respect to the full set of plans originally marked as Exhibit (A-4), and the modified set of plans marked as A-9. His testimony included a full analysis of the site plan, and modifications occasioned by particular concerns related by the Board Members and professionals during the first hearing on August 21, 2008. Mr. Missey testified among other things to the following:

(a) The reduction in the size of the building by 10 percent (10%) to 16,240 square feet.

[b] The site plan proposed parking and circulation on site and the increase in parking space width and the setback from the Pleasant Avenue right-of-way. He indicated that total parking requirement for the site is 70 spaces and the Applicant is providing 79 even after increasing the size of the spaces.

[c] Mr. Missey also testified extensively with respect to the proposed site lighting and proposed signage on the Property, including the free standing sign at the southerly driveway from Route 17, and the two wall signs. He testified as to the visibility on Route 17 and the reasons for the proposed location of the signs.

[d] Mr. Missey also testified with respect to the proposed drainage system on the site and reviewed the Board Engineers comments and the changes necessitated thereby.

(e) Mr. Missey also described the proposed landscaping on the Property, which the Board found to be inadequate and directed the Applicant to provide a more extensive plan to be approved by the Board Engineer.

(f) The Board finds Mr. Missey's testimony to be knowledgeable and credible. The Board finds that the proposed site plan meets the requirements of the applicable provisions of the Borough of Upper Saddle River Site Plan Ordinance. The plans submitted contain sufficient specificity required and insure that the site is designed in accordance with the applicable regulations of the Site Plan Ordinance.

3. The Board also heard testimony from John J. Daniels, IV, who is the Chief Operations Officer for the Applicant. Mr. Daniels described the family owned business, and its operations and locations, including the Audi facility

previously approved by this Board on Route 17 in the Borough of Upper Saddle River, and the Corporate headquarters approved by this Board located on Pleasant Avenue in the Borough of Upper Saddle River. He testified that it is the Applicant's desire to re-locate its Porsche dealership from Fair Lawn to the Property. The Applicant proposes to demolish the existing Steak and Ale Restaurant and to construct a First Class Porsche Dealership, which will showcase approximately 23 or 24 vehicles. He indicated that there would be approximately 18 employees in the facility, which will only have one service bay to perform diagnostic tests. He further testified that no other automotive repair services whatsoever including vehicle prepping would be performed on the Property. All deliveries of motor vehicles and other parts will be to the Pleasant Avenue facility. He testified that based upon the present operations at the Fair Lawn facility, as well as the anticipated use at the Property, the parking spaces to be provided will be more than adequate to handle the parking required by the Applicant. He testified that the hours of operation proposed for the service reception facility are: 7:30 a.m. to 6:00 p.m. from Monday through Friday, and Sales from 9:00 a.m. to 9:00 p.m. and Saturday until 6:00 p.m. He further testified there would be no operations of any type at the facility on Sunday. The operations will only consist of vehicle drop off and pick up, and that there would be no servicing or prepping of any vehicles on the Property, since these activities will occur at the Pleasant Avenue facility. He indicated that the liquor license was not being transferred to the Applicant. He testified that the Applicant would consent to the foregoing conditions being memorialized in any final Resolution of approval.

4. Katherine Gregory, a licensed Professional Planner in the State of New Jersey, testified as follows:

(a) After qualifying as a licensed Professional Planner in the State of New Jersey, she confirmed that she reviewed the existing Property, the proposed site plan submitted, the Borough of Upper Saddle River Master Plan, re-examination, and Zoning Ordinances, as well as having inspected the Property and surrounding areas.

(b) She described the Property, including the condition of the existing building on-site. She also described the surrounding uses, and reviewed the proposed use by the Applicant.

(c) Ms. Gregory testified with respect to the use variances required by the Borough of Upper Saddle River Code, and noted that a variance was required in accordance with N.J.S.A. 40-55D-70(d)(1) since the proposed automotive dealership, as well as outdoor storage of vehicles were prohibited. She reviewed the positive criteria, including the suitability of the site for the proposed uses and concluded that special reasons existed to grant the use variances sought. She noted that the Master Plan reexamination encourages the redevelopment of commercially zoned properties along Rt. 17. She further noted that in addition to establishing the special reasons, the proposed use variances could be granted without substantial detriment to the public good, and without substantially impairing the intent and purpose of the Zoning Plan and Zoning Ordinance. She testified that the proposed development of the Property, especially the newly constructed facility and landscaping, represented a significant aesthetic improvement. She also noted the reduction of the size of the building and the elimination of a number of existing variances. Based upon

the location of the Property, including the fact that a number of automotive facilities already exist in the area, she concluded that there were no substantial detriments.

(d) Ms. Gregory also reviewed the sign variances and the various bulk variances requested by the Applicant. She described the proposed signage on the Property and she testified that based upon the testimony presented that the variances could be granted since the purposes of the Municipal Land Use Act would be advanced, and the benefits of the requested bulk variances would substantially outweigh any detriments.

(e) The Board accepts and adopts the testimony of Ms. Gregory with respect to the use variances requested and finds and concludes that the location of the Property, coupled with the similar uses in the area make the site particularly suitable to the proposed uses which represent a special reason that the Board should consider granting the use variances. The Board further finds based upon the testimony presented and exhibits reviewed that the use variances can be granted without substantial detriment to the public good, and further that the grant of the use variances will not substantially impair the intent and purpose of the Zoning Plan and Zoning Ordinance. The Board makes this determination specifically based upon the fact that the Property is located in an area surrounded by other automotive facilities and there is little or no impact on residential uses in the Borough. The Board further finds and accepts the testimony of the Applicant and Ms. Gregory with respect to the proposed bulk and sign variances, and concludes that these variances as amended by the Applicant during the hearings can be granted based upon the proposed usage.

5. The Board overall is satisfied that the Application as presented offers an improvement to aesthetics based upon the newly constructed facility. The Board finds that the purposes of the Municipal Land Use Act will be advanced by deviating from the Zoning Ordinance requirements, and the benefits of the deviations would substantially outweigh any detriments, specifically based upon the enhanced aesthetic improvement to the Property which is supported by the proofs as presented by the Applicant.

6. The Board concludes that the Applicant's request for preliminary and final site plan approval, variances for front yard buffer, minimum size of parking spaces, parking setback to street line, freestanding sign setback, freestanding sign area, freestanding height, freestanding sign depth, wall sign area, aggregate wall sign area, required shade trees in parking lot and use variances to permit an automotive dealership which will sell new and pre-owned automobiles, as well as the outdoor storage of these automobiles is hereby granted for the reasons and conclusions set forth hereinabove.

NOW, THEREFORE, BE IT RESOLVED that the Zoning Board of Adjustment of the Borough of Upper Saddle River hereby approves the Application as set forth and detailed herein ("Approval"), subject to the following conditions:

1. The Applicant shall obtain all other governmental approvals and permits and shall perform all acts of compliance which may be required under applicable Federal, State, County, and local statutes, regulations and ordinances for this Approval. The Applicant shall submit to the Board copies of all permits and approvals or in the alternative written verification that no permits or approvals are required. The Board reserves the right to require

further review of this Application in the event that another governmental entity requires “substantial modifications or revisions” to the Application as approved.

2. The Applicant shall apply for and obtain any soil movement permit required by the Borough of Upper Saddle River Zoning Code, and shall obtain approval from the Bergen County Soil Conservation District if required.

3. All conditions and stipulations of approval contained in the body of This Resolution are incorporated herein as if they were repeated at length. The Applicant agrees to be bound by all such conditions and stipulations.

4. The site plan shall be amended herewith to include all required changes noted herein and in the testimony presented on September 18, 2008, those which have been previously agreed to by the Applicant and those as may reasonably required by the Board Engineer during the course of construction.

5. The Applicant shall pay all taxes, fees, and post any and all necessary escrows required in connection with this Application, Approval, subsequent inspections and any other work encompassed by way of this Application. If applicable, the Applicant shall immediately correct any negative balances in the legal and engineering escrows posted for review of this Application. It shall further agree to keep all future accounts current. No further permits shall be issued in the event a negative balance exists.

6. The Board has considered the comments of the Board Engineer, David A. Hals in his written reports dated July 11, 2008, August 21, 2008 and September 12, 2008 (“Report”), as well as his testimony on September 18, 2008. The Applicant is to comply with all conditions in the Report and testimony

required by the Board Engineer, unless expressly waived during the hearings or excepted herein.

7. The Applicant shall execute a Developer's Agreement to be prepared by the Board attorney, and to post such performance guarantees and maintenance guarantees for any improvements as estimated by the Borough Engineer, in accordance with the Borough of Upper Saddle River Code.

8. All documents required to be prepared by Applicant by virtue of the terms or provisions of any conditions set forth in This Resolution shall, before execution, be submitted to and approved by the Board Attorney and Board Engineer.

9. The Applicant shall comply with all conditions of approval within 190 days and shall submit an affidavit of compliance to the Board Secretary showing the conditions that each document satisfies.

10. If another governmental agency grants a waiver or variance of a regulation, then this Board shall have the right to review that issue as it relates to this approval granted by this Board and modify or amend same.

11. The Applicant shall not park or store any trucks on the Property and shall not perform any automotive service, repairs or maintenance of any motor vehicles on the Property, other than simple diagnostic tests. All new or pre-owned motor vehicles must be parked in designated approved parking spaces on the Property.

12. The Applicant shall not permit the parking of any delivery vehicles on Route 17 or the drop-off of any motor vehicles on Route 17.

13. No on site storage of any fuel oil or fueling of vehicles shall be permitted on Property, and the Applicant shall not maintain any oil or other maintenance products on the Property.

14. The Applicant shall amend the final site plan which shall be reviewed and approved by the Board Engineer and which shall contain the following changes as testified and agreed to during the hearings:

[a] The front buffer setback on Rt. 17 and Pleasant Ave. will be modified to 8 feet with a permitted 2-foot overhang as testified to.

[b] Elimination of the 2 parking spaces at the southeast entrance driveway of Route 17.

[c] The column in the southwestern corner of the building will be moved so that circulation will improve in that area.

[d] Truck turning movements from the Southerly side drive aisle to Pleasant Avenue shall be revised to the Board Engineer's satisfaction.

[e] The free- standing sign shall be relocated to an area just north of an alignment with proposed door and shall be reduced to a maximum of 25 feet in height.

[f] The rear parking stalls shall be 9 by 18 increasing the greenspace, and the Applicant's shall submit a landscaping plan to the Board Engineer for his approval, which provides shade trees and shrubbery.

15. The Applicant shall submit the revised site plan to the Borough Fire Chief or his designee for his review and approval of the adequacy of the proposed site circulation for emergency vehicles.

16. All final plans shall be modified to reflect all variances as granted in This Resolution. All construction, use and development of the

Property shall be in conformance with the plans approved herein, all findings of fact and terms and conditions of this Resolution and, to the extent not inconsistent therewith, all representations of Applicant and its witnesses during the public hearing. Any deviation from the terms or conditions of the approved plans, the representations of the Applicant, or the terms and conditions of this Resolution shall be deemed a violation of the terms and conditions of site plan approval.

17. All of the terms and conditions imposed by This Resolution shall bind and apply to any subsequent Owner of the Property as well as the Applicant, and This Resolution shall be duly recorded by the Applicant's attorney, with the Developer's Agreement in the Register of Deeds in the Bergen County Clerk's Office within sixty (90) days hereof.

18. All site plan improvements, screening, fencing, and landscaping required by the approved plans or the terms and conditions of this Resolution shall be maintained in good condition for so long as any building, structure, or use approved herein shall remain on the Property.

19. Applicant's construction activities shall be limited to those hours permitted by ordinance.

20. **ALL NOTES INCLUDED IN THE APPROVED PLANS, INCLUDING NOTES REQUIRED BY THIS RESOLUTION, SHALL BE DEEMED TO BE CONDITIONS OF APPROVAL HAVING THE SAME FORCE AND EFFECT AS CONDITIONS EXPRESSLY SET FORTH HEREIN.**

21. Notice of this decision shall be published in the official newspaper of the Borough of Upper Saddle River.

BE IT RESOLVED, that the members of this Zoning Board of Adjustment do hereby MEMORIALIZE AND CONFIRM the foregoing findings of fact, determinations and decision set forth in This Resolution of Memorialization as “official action” taken by this Zoning Board of Adjustment on this date in accordance with the provisions of N.J.S.A. 40:55D-10(g)(2) of the New Jersey Municipal Land Use Law this 10th day of November 10, 2008.

I hereby certify that This Resolution of Memorialization consisting of 14 pages was duly adopted by a majority vote of the members of the Upper Saddle River Zoning Board of Adjustment, a quorum of the membership being present, at the official public meeting of said Zoning Board of Adjustment.

LINDA MARMORA, Recording Secretary
and Clerk of the Zoning Board of
Adjustment of the Borough of
Upper Saddle River

Official Public Monthly Meeting
November 10, 2008