

ZB# 01-53

Moisheel Realty

56-1-35

Palin.

October 23, 2001

Public Hearing:

Nov. 26, 2001

Interpretations:

w/Restrictions

Refund

\$358.00

#01-53. Moished Realty, Inc.

Interp.

56-1-35

Don Nichol, Esq.
of D.C.

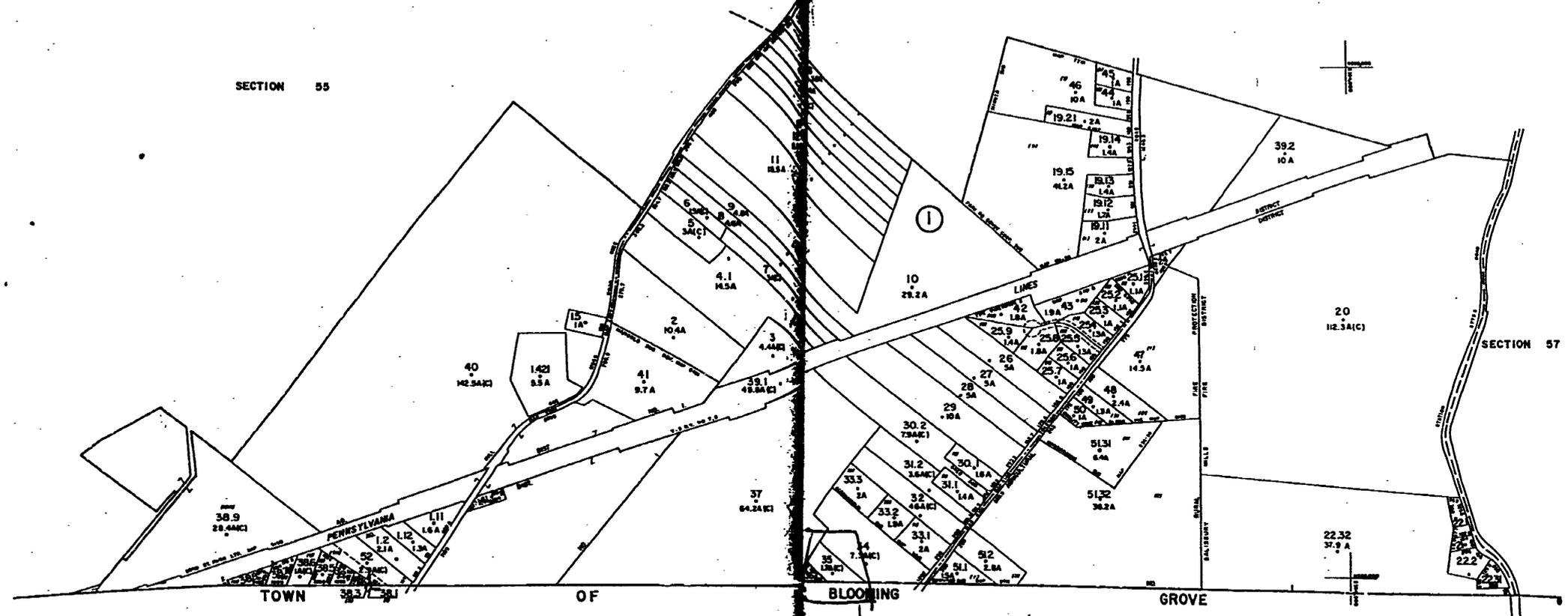
SECTION 52

SECTION 55

SECTION 57

TOWN OF BLOOMING GROVE

subject Lot



ALL WASHINGTONVILLE SCHOOL DISTRICT

Prepared by
 ORANGE CO. TAX MAP DEPT.
 2000 ST., GOSHEN, N. Y. 10801
 1969
 FOR TAX PURPOSES ONLY
 NOT TO BE USED FOR CONVEYANCE

LEGEND			
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ORANGE COUNTY~NEW YORK
 Photo No. 8-498,499,500 Date of Map: 9-24-67
 Date of Photo: 3-1-65 Date of Revision: 3-1-68
 Scale: 1" = 400'

TOWN OF NEW WINDSOR
 Section No. 56

APPLICATION FEE (DUE AT TIME OF FILING OF APPLICATION)

APPLICANT: Moisheed Realty

FILE# 01-53

RESIDENTIAL: \$50.00

COMMERCIAL: \$150.00

INTERPRETATION: \$150.00

AREA _____

USE _____

APPLICATION FOR VARIANCE FEE \$ 150.00

*paid #420
9/12/01*

ESCROW DEPOSIT FOR CONSULTANT FEES \$ 500.00

*paid #419
9/12/01*

DISBURSEMENTS:

STENOGRAPHER CHARGES: \$4.50 PER PAGE

PRELIMINARY MEETING-PER PAGE 10/24/01: 3 \$ 13.50

2ND PRELIMINARY- PER PAGE \$ _____

3RD PRELIMINARY- PER PAGE \$ _____

PUBLIC HEARING - PER PAGE 11/26/01: 13 \$ 58.50

PUBLIC HEARING (CONT'D) PER PAGE \$ _____

TOTAL \$ ~~72.00~~ 72.00

ATTORNEY'S FEES: \$35.00 PER MEEETING

PRELIM. MEETING: 10/24/01 \$ 35.00

2ND PRELIM. \$ _____

3RD PRELIM. \$ _____

PUBLIC HEARING. 11/26/01 \$ 35.00

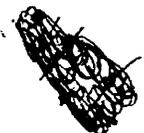
PUBLIC HEARING (CONT'D) \$ _____

TOTAL \$ 70.00

MISC. CHARGES:

..... \$ _____
TOTAL \$ 142.00

LESS ESCROW DEPOSIT \$ 500.00
(ADDL. CHARGES DUE) \$ _____
REFUND DUE TO APPLICANT .. \$ 358.00



MOSHILL INC.
P O BOX 631
HIGHLAND MILLS, NY 10930

419

DATE 8/31/01

10-4/220
BRANCH 415

PAY TO THE ORDER OF TOWN OF NEW WINDSOR \$ 150.00

ONE HUNDRED FIFTY

DOLLARS  Security features included. Details on back.

 **M&T Bank**
Manufacturers and Traders Trust Company - Buffalo, N.Y. 14240
Hudson Valley Division
Monroe / Lake Street Office

John

FOR BA #01-53

⑆022000046⑆⑆10009⑆⑆407676⑆⑆04⑆⑆9

MOSHILL INC.
P O BOX 631
HIGHLAND MILLS, NY 10930

420

DATE 8/3/01

10-4/220
BRANCH 415

PAY TO THE
ORDER OF

Town of NEW WINDSOR

\$ 500⁰⁰

FIVE HUNDRED

DOLLARS  Security features
included
Details on back

 **M&T Bank**
Manufacturers and Traders Trust Company - Buffalo, N.Y. 14240
Hudson Valley Division
Monroe / Lake Street Office

FOR

ZBA # 01-53

John Lee

⑆0 2 2000046⑆ ⑆10009⑆ ⑆407676⑆ 04 20

11/26/01

Public Hearing: Marshel Realty #01-53

Name:

Address:

BARBARA LIBERATORE

89 TOLEMAN RD WILMILIE NJ.

No
objection

but
encroaches
on her
driveway!

-----X
In the Matter of the Application of

MOISHEEL REALTY

MEMORANDUM OF
DECISION GRANTING
INTERPRETATION

#01-53.
-----X

WHEREAS, MOISHEEL REALTY, P. O. Box 631, Highland Mills, N. Y. has made application before the Zoning Board of Appeals for an interpretation concerning 91 Toleman Road in an R-4 zone as a pre-existing, non-conforming use for storage and repair of large vehicles; and

WHEREAS, a public hearing was held on the 26th day of November, 2001 before the Zoning Board of Appeals at the Town Hall, New Windsor, New York; and

WHEREAS, Applicant appeared by Donald G. Nichol, Esq. on behalf of this Application; and

WHEREAS, there was one spectator appearing at the public hearing; and

WHEREAS, one spectator spoke in favor of this Application; and

WHEREAS, a decision was made by the Zoning Board of Appeals on the date of the public hearing granting the application; and

WHEREAS, the Zoning Board of Appeals of the Town of New Windsor sets forth the following findings in this matter here memorialized in furtherance of its previously made decision in this matter:

1. The notice of public hearing was duly sent to residents and businesses as prescribed by law and in The Sentinel, also as required by law.
2. The evidence presented by the Applicant showed that:
 - (a) The property is a residential property with some commercial usage. It is located in a neighborhood containing residential properties.
 - (b) The owner of the property obtained a building permit in 1968 for the construction of three garages to house commercial tractor trailer vehicles.
 - (c) At the time the building permit was issued, the proposed use of the premises conformed with the-then existing Zoning Law requirements.
 - (d) The premises has been used consistently since the granting of the building permit in 1968 to house inside three commercial vehicles used by

the occupant of the residence as tools of and in connection with his trade or occupation.

- (e) The existing structures will permit storage of three commercial vehicles so that they are stored entirely inside in a covered and enclosed environment.
- (f) While the Applicant may perform certain repairs on the vehicles enclosed therein. It does not, nor has any predecessor, operated the premises as a repair shop open to the public.
- (g) No signs have ever been posted on the premises advertising the existence of a repair shop or the existence of a business of any kind.
- (h) The structure is not located on any easement or any water or sewer lines, or any well or septic system.
- (i) The structure does not interfere with the flow of water by diverting or changing it in any way.
- (j) The vehicles stored in the premises were at all times licensed, proper appropriate, and legal for operation on the public highways.

WHEREAS, The Zoning Board of Appeals of the Town of New Windsor makes the following conclusions of law here memorialized in furtherance of its previously made decision in this matter:

1. The use of the premises for the storage of three commercial vehicles predates the enactment of the Zoning Law provisions prohibiting such storage.
2. The storage of the vehicles has been tightly controlled since its inception. Tightly controlled means that the vehicles were stored in a completely enclosed, covered premises; the vehicles were neither stored nor repaired on the outside; no sign was posted on the premises advertising the existence of the vehicles. It also appears that the vehicles in question were used at all times in connection with the trade or occupation of the residential occupant of the residence and were, therefore, incidental to said occupancy.
3. The interests of justice require that the Zoning Board of Appeals interpret the facts of this application so as to permit the storage of three commercial vehicles on the premises with the conditions and limitations as they have always existed. These conditions and limitations are that no more than three vehicles be stored; storage of all vehicles be indoors and completely enclosed; no sign or other advertisement be posted; that the vehicles only be permitted for use by the occupant of the residence in connection with that occupant's trade or occupation; that the vehicles be at all times proper and legal for road operation.

4. As limited by the foregoing, the use of the premises to store no more than three commercial vehicles appears to pre-exist the Zoning Law provisions for the Town of New Windsor prohibiting such use and as such is a pre-existing, non-conforming use and should be allowed to continue.

NOW, THEREFORE, BE IT

RESOLVED, that the Zoning Board of Appeals of the Town of New Windsor make an interpretation determining that the property known as 91 Toleman Road in the Town of New Windsor has a pre-existing, non-conforming use as previously described in an R-3 zone.

BE IT FURTHER

RESOLVED, that the Secretary of the Zoning Board of Appeals of the Town of New Windsor transmit a copy of this decision to the Town Clerk, Town Planning Board and Applicant.

Dated: February 25, 2002

Chairman

Date 12/3/01

TOWN OF NEW WINDSOR

TOWN HALL, 555 UNION AVENUE
NEW WINDSOR, NEW YORK 12553

TO Frances Roth DR.
168 N. Dury Lane
Newburgh, N.Y. 12550

DATE		CLAIMED	ALLOWED
12/1/01	Zoning Board Mtg	75 00	
	Misc. - 2 Manera - 2		
	Leonetti - 1 53 hrs	238 50	
	Applied Building - 1		
	Kucifore - 2	313 50	
	Mlythe - 1		
	U&B Associates - 2		
	Compton - 4		
	Baker - 3		
	Harris - 5		
	Misheal Realty - 13		
	Lucas - 6		
	Sheehan - 3		

MOISHEEL REALTY

MR. TORLEY: Request for interpretation concerning the use of 91 Toleman Road (R-4 zone) property for storage and repair of large vehicles as a pre-existing, non-conforming use. Is there anyone in the audience who wishes to speak on this matter? Please sign this paper.

Donald G. Nichol, Esq. appeared before the board for this proposal.

MS. CORSETTI: For the record, on November 13, we sent out 7 letters containing the public hearing notice to adjacent property owners.

MR. NICHOL: This is a case where in 1968, a former owner of the property applied for a building permit for a storage building for three trucks and the building has continued to be used for that purpose from that time to the present time. The present owner of the building is actually selling it to the present occupant and the gentleman who will be occupying the building has occupied it since 1993, there's no intent to change the type, manner or quality of the use that's undergone there since that time and before and so but because the current use is not allowed under the current zoning, we need the interpretation of this board that it's a pre-existing, non-conforming use. I'd be happy to answer any questions that you might have.

MR. TORLEY: Building permit was issued in 1968?

MR. NICHOL: I'm not sure if they ever got the C.O.

MR. BABCOCK: That's correct, that's what happened.

MR. NICHOL: So it's been sitting around without that having taken place?

MR. BABCOCK: Yeah, they got the building permit in May 31 of '68 and then came to us and applied this year or last year for a C.O. and we stated that they couldn't do that type of operation in a residential district and we give him a C.O. based on it could be storage only to

get him through what they needed to have. And then we sent, there's several letters in the file, Mr. Chairman, back and forth and then we figured it was the best that they come to this board to get an interpretation of whether it's a non-conforming use or not.

MR. TORLEY: What kind of large vehicles are we talking about?

MR. NICHOL: Tractor trailers, they're the standard over the road tractor trailer, to my understanding, and obviously, trucking is not something that stay, vehicles leave in the morning and return at the end of the day.

MR. KANE: How many vehicles are on the property?

MR. NICHOL: I believe there's three trucks, we're only applying for a maximum use of three tractor trailer trucks, we're not asking for more than that. The file contains I believe a letter from my office submitted to the building inspector during the correspondence back and forth and there are some affidavits from property owners to indicate the longstanding nature of the use, I think even those on your board are familiar with the property.

MR. TORLEY: Okay, this is the original building permit, described use for well drill machines, this is what we're talking about?

MR. NICHOL: No, they're tractor trailer trucks.

MR. TORLEY: Before the original permit was applied for defining as being basically a man's tools for his trade, though, they're large commercial vehicles, they're tools for his trade, now it's a repair shop.

MR. NICHOL: No, it's not a repair shop. They're again tools for the gentleman's trade, he's in the trucking business, he takes them out in the morning and does his trucking and returns them the end of the day, they're repaired, but my understanding it's his own vehicles, it's not a repair shop opened to the public. There's

no signage that I'm aware of indicating that type of thing. I don't think we're asking for that, we're just asking for the gentleman's equipment.

MR. REIS: Can we put some limitations on the use as to number of vehicles?

MR. NICHOL: I think it would be appropriate to have the three vehicle limit because that's what originally was there, that's what's historically been there and that's what we're asking for.

MR. REIS: If we considered the passing of the interpretation, I would suggest that we put in that limitation.

MR. TORLEY: Yes.

MR. KRIEGER: If you're going to have a pre-existing, non-conforming use, how do you get him back from '68 to when zoning was enacted? Because I believe it was enacted before January 1st of '68.

MR. NICHOL: We did include in our package of papers a copies of the code provisions from the early '70's that essentially allowed storage of vehicles licensed or unlicensed, as long as they were stored indoors and that's really the natural limitation of the building is that that's what you can fit and that's the use that's being asked for and that fact was granted a building permit in '68.

MR. TORLEY: And at the time of the application, the building, accessory building wherein you stored well drilling rigs at the time did meet remainder of the code as far as slope, distance from the side yard?

MR. NICHOL: My understanding that it did, yes.

MR. KRIEGER: So the storage of three vehicles would be entirely inside?

MR. NICHOL: That's correct.

MR. MC DONALD: That building has been enlarged, it's

40 x 60 foot the first time.

MR. BABCOCK: Yes.

MR. NICHOL: Again, the current use as the exact current use in terms of it's the same person, same operator, same person who's buying has been in effect since 1993, Mr. Hall had submitted an affidavit which was in part of your package indicating that he operated on that basis since that time and has never had any complaints or violations or anything in terms of the property use.

MR. MC DONALD: At the preliminary meeting, we suggested that it is, that we'd like to know the gross weight of the vehicles.

MR. NICHOL: You asked, I don't have that information, other than your standard tractor trailers. I tried to get ahold of the gentleman, I didn't realize I'd been back here till this morning. I have been trying to call Mr. Hall all day at the number but there's not even an answering machine. But my understanding that those are about 18,000 pounds, the tractors and of course, trailer varies by what the load is.

MR. TORLEY: Now, the 1975 version of the code not doing this from memory but from that prior exhibit it did mention the number of vehicles that can be housed there.

MR. NICHOL: No, it said you can have one outdoors and the rest had to be indoors.

MR. TORLEY: In '75, it was limited to three.

MR. NICHOL: Actually, I'm looking at the, that's the '85, I think, and yet, it seems to allow a storage enclosed, I think that's '85, if I can read the small print here and then the earlier provision.

MR. TORLEY: One of the things that concerns me a little bit about this, my recollection preliminary meeting we were still talking well drilling rigs.

MR. MC DONALD: There's a mention of tractor trailers.

MR. NICHOL: They haven't had the well drilling machines for some time prior to the existing tenant. The one that's dated '79 talks about--

MR. TORLEY: Are we discussing just the tractor or the trailers as well?

MR. NICHOL: The trailers are there as well, it's a tractor trailer operation.

MR. TORLEY: He's got a structure that will fit three tractor trailers.

MR. NICHOL: That's my understanding, yes, it's a 40 x 60 foot building that allows 12 foot by 60 foot, there's 12 foot for vehicle with a maximum of 60 foot length to keep it indoors.

MR. KANE: These three vehicles belong to him?

MR. NICHOL: That's my understanding, yes.

MR. RIVERA: Do you have photos?

MR. NICHOL: No, I don't.

MR. TORLEY: For now, these are basically the tenant or the owner's personal business vehicles.

MR. NICHOL: My understanding they're his personal vehicles that he uses in his business and that he keeps in this location.

MR. TORLEY: I would just be concerned this didn't become a regular repair shop. Would the applicant be willing to stipulate that if this variance was granted it will only reflect his own business vehicles and not repairs for third parties?

MR. NICHOL: Yes, that's what I believe we applied for.

MR. RIVERA: Are these vehicles taken out in the morning or in the evening?

MR. NICHOL: No, taken out in the morning, returned in the evening.

MR. TORLEY: At this point, let me open this up to the public. Ma'am, can you state your name?

MS. LIBBATOR (PHONETIC): My name is Barbara Libbator, I live adjacent to the property. I can answer some questions about Mr. Hall's operation, it's just storage of his vehicles. He does no outside repair, except on his own vehicles. They leave between 6 and 6:30 in the morning and they're normally back between 3:30 and 4. You don't even hear the trucks. The only problem I have is which I have asked the owners that currently own the property is the driveway. The driveway, portions of it, is on my property. I have no problem with Mr. Hall using my property to allow his trucks to go in and out, make it easier. But I would like the driveway moved off my property. I'm completely in support of Mr. Hall and I know he has an interest in the property and I have no problem with that man whatsoever. You do not hear those trucks and they're kept clean, the back is spotless and Mr. Hall possibly buying this property can only improve the rest of the property but I would like the driveway moved off my property.

MR. TORLEY: I think--

MR. NICHOL: I understood there was some question with the driveway, I believe that's on the Blooming Grove side of the ledger and, you know, clearly--

MR. TORLEY: If it's not in this town, we have no jurisdiction over it but clearly you have to move it.

MR. NICHOL: I understand.

MS. LIBBATOR: Also portions in the back is on my property which my only concern is I happen to like Mr. Hall, is if Mr. Hall decides to relocate his property, his company and no longer has an interest in this map property then I have a problem with other commercial vehicles possibly using it and encroaching more onto my

property. I have already lost this section on my property up to five feet.

MR. NICHOL: My understanding is Mr. Hall is getting financing, that's one reason he needed the certificate of occupancy. If the survey shows things are off the property, then I think the bank will require that he move them on, but those weren't issues to my client, the owner.

MS. LIBBATOR: Yes, they were, I approached--

MR. TORLEY: Is this in the Blooming Grove part or still New Windsor where the encroachment is?

MS. LIBBATOR: There's a section of both, the beginning of the driveway, the entrance is Blooming Grove and I have discussed it with Mr. Hall which he assured me and I can take Mr. Hall at his word that the drive would be moved over to release my property.

MR. TORLEY: We cannot give anyone relief to build on your property so that's--

MR. NICHOL: Apparently, the arrangements are in place to revolve that when Mr. Hall takes ownership.

MS. LIBBATOR: Yes, I would like it done prior to the ownership.

MR. NICHOL: Well, I think, I imagine he will, I can't speak for the gentleman cause--

MR. TORLEY: Let me assure you the applicant has stipulated that these trucks will always be up to three vehicles, that they'll be the personal or business property of the tenant, it is not third party vehicles and that stipulation if the variance is granted goes with the property so whoever buys this land 20 years from now cannot change that so I have the, it would always be only whoever lived there or leased the property, only those trucks that were part of his business could be there.

MS. LIBBATOR: Yes, I know, that's what Mr. Hall's

intentions are.

MR. TORLEY: That covers you in case Mr. Hall decides to relocate his business, those stipulations still hold to the property.

MS. LIBBATOR: But otherwise I'm in complete support of it.

MR. TORLEY: Thank you. Is there anyone else who wishes to speak on this matter? If not, I'll close the public hearing and open it back to the members of the board. Gentlemen, have you finished looking at the packet?

MR. MC DONALD: Yes.

MR. TORLEY: This structure we're not dealing with any water or sewer lines out there?

MR. NICHOL: No.

MR. TORLEY: Not over any well or septic?

MR. NICHOL: Not to my knowledge.

MR. TORLEY: They're not causing any problems with water flow?

MR. NICHOL: No.

MR. TORLEY: Will be taken care of with the survey, you'll be taking care of any misplacement of driveways?

MR. NICHOL: I'm sure the survey will be updated, it didn't show on an earlier one.

MR. TORLEY: Did we agree to a stipulation on the size of these vehicles, commercial?

MR. REIS: It's got to be within the confines of the structure.

MR. KANE: Got to be able to fit in the building.

MR. NICHOL: That's the natural limitations, they have to fit in the building.

MR. TORLEY: I must say I'm impressed that the neighbors are unable to hear the trucks leaving in the morning, so the trucks are well maintained.

MS. LIBBATOR: I'm awake when they leave.

MR. KRIEGER: It says the garage was built in 1968, so how can the use pre-exist zoning?

MR. TORLEY: He evidently, the applicant is stating that the zoning code at the time permitted storage of vehicles inside in a residential area?

MR. NICHOL: That was what was requested in the building permit application and the more recent code doesn't allow the storage. I do have some code excerpts attached there for Andy, one being it's hard yet to look at the small print in the bottom to see when they're adopted but the current one's been in place since about '85 and the yearly one allowed certain storage of commercial vehicles all the way up to 25 feet outdoors and but didn't have restrictions on the indoor storage.

MR. KRIEGER: All the vehicles are licensed, is that correct?

MR. NICHOL: That's correct.

MR. TORLEY: As long as they're stored indoors, they don't have to be licensed.

MR. TORLEY: If you have an unlicensed, uninsured vehicle in a garage--

MR. KRIEGER: Whenever a statute is enacted, you have to assume that the words selected by the statute, by the body enacting it were selected for one reason, they include the word unlicensed vehicles for a reason. They didn't say just vehicles, they said licensed vehicles, you can't just simply ignore that and say well licensed, unlicensed, it doesn't matter. It

obviously mattered to the persons who enacted the statute.

MR. NICHOL: Well, I think the intent is to eliminate unlicensed vehicles which typically happen in junk yards or collection of unsightly vehicles which aren't in condition to operate on the road. So the purpose and intent was to eliminate the accumulation of those and not necessarily in the use of vehicles that did meet the road standards.

MR. KRIEGER: But these were always vehicles that met the road standards.

MR. NICHOL: Correct and the building permit was granted in '68 and the use has been there since without problem in the neighborhood.

MR. TORLEY: Do you have any, are you able to obtain any other excerpts of the code that speak to storage of commercial vehicles at that time?

MR. NICHOL: No, this is all we were finding at the time and it doesn't seem to have any limitation on the storage of vehicles.

MR. TORLEY: Well, this as our attorney pointed out that may or may not be true with the unlicensed vehicle modification.

MR. NICHOL: There's no limitation I see anywhere in the code on storage of licensed vehicles. They, in fact, many places today as long as you have your vehicles indoors you can have this type of arrangement that you can get a building permit now.

MR. TORLEY: At what point in time would the applicant agree that the zoning code change, that having these commercial vehicles in this residential area would no longer be in compliance with the code?

MR. NICHOL: I'm not a hundred percent sure and I really didn't try to analyze it, I took for granted the building inspector determined that the current code didn't permit it and I didn't really do an analysis.

MR. TORLEY: Well the building permit was to put up a large structure which at that time was a very rural area may or may not have been reflected.

MR. BABCOCK: I'm not sure what he did, I'm looking at it today.

MR. TORLEY: But would you as an applicant agree that today were you to walk in and ask for a building permit on this de novo that it would not meet the present code.

MR. NICHOL: Well, I know the building inspector wouldn't grant it, that means whether it met the code or not, I don't mean to be equivocating but I don't see an express prohibition, I'd take his word for it and that's why we're here but I know I happen to be in a firm that represents a number of municipalities and a number do permit the type of operations as long as it's fully contained indoors with respect to excavators, landscapers and those type of people who don't work at this site, they just come and go and usually as long as they don't disturb the neighbors, it's not a problem.

MR. TORLEY: Given the neighbors seem to approve this, I have no problem. My only restriction would be that if the code at the time were to in '75 prohibited it, we can't use the grandfather argument and then it becomes, assuming that, you know, hypothetically, the grandfather argument falls, would it then be requiring a use permit or area permit?

MR. BABCOCK: Use, today, it says not exceeding 10,000 pounds shall not be deemed a commercial vehicle so anything under 10,000 pounds you're allowed to have one of those, an SUV or a pickup truck or something like that or a camper, anything over the 10,000 pounds you can't have on your property today.

MR. TORLEY: Whether or not it's enclosed.

MR. BABCOCK: Doesn't say whether enclosed or not enclosed, you can't have it, you can't take your tractor trailer home with you today.

MR. NICHOL: There's a copy of the building permit here, it was granted and that's the prima facie evidence that you have. All I can say is the building permit was granted for the use. It's continued to have the three trucks in and that's really all we're looking for.

MR. TORLEY: So at the time the building permit was requested, it was described as being storage for well drilling rigs, large commercial vehicles and at the time, the competent authority building inspector issued the building permit in the belief and assumption that it met the code to the extent at the time.

MR. NICHOL: That's correct. Since this time, there's been two changes apparently in the code that are reflected on this particular type of use so--

MR. KANE: See, the problem is that the interpretation can't go there as a pre-existing.

MR. TORLEY: If he's permitted in '75 and the zoning code was changed later and he started in '75 and continued, it's pre-existing the change in the zone.

MR. KRIEGER: In other words, it is pre-existing but the operative date is not enactment of the zoning code which was '66 or '67, but the operative date in this case was when the amendment was enacted in '75 so as long as he can prove that it existed before the amendment was enacted then he does have a pre-existing argument, cause it pre-existed the portion of that, the portion of the code that prohibits his use.

MR. KANE: So the building permit that he has and the affidavits that he has that it was in existence since '68 is his evidence that it pre-existed the '75 change.

MR. TORLEY: And we're making the reasonable assumption that the building inspector at the time was cognizant of the code and of a building permit in compliance with that.

MR. KRIEGER: If the use pre-existed, the building

inspector had no choice, it was a permitted use then and he had no choice. These vehicles then and now have continuously been stored inside.

MR. NICHOL: My understanding, I mean, I wouldn't be surprised if they're out a night or two but we're only asking for the indoor storage.

MR. TORLEY: Can you so stipulate indoor storage of the owner or renters, lessors, personal or business vehicles?

MR. NICHOL: Yes, that's correct.

MR. KANE: No outside repairs.

MR. NICHOL: Yes.

MR. TORLEY: Three or less.

MR. NICHOL: Three or less.

MR. KANE: Accept a motion?

MR. TORLEY: Yes.

MR. KANE: I move that we interpret in favor of the existing use on 91 Toleman Road with the stipulations that we stated previously.

MR. MC DONALD: Second it.

ROLL CALL

MR. KANE	AYE
MR. REIS	AYE
MR. RIVERA	AYE
MR. MCDONALD	AYE
MR. TORLEY	AYE

MR. NICHOL: Thank you very much and we'll be in contact with the building inspector in the future. Thank you.

OFFICE OF THE BUILDING INSPECTOR
TOWN OF NEW WINDSOR
ORANGE COUNTY, NEW YORK

Prelim.
October 22, 2001.
#01-53

NOTICE OF DISAPPROVAL OF BUILDING PERMIT APPLICATION

APPLICANT IS TO PLEASE CONTACT THE ZONING BOARD SECRETARY AT (845) 563-4630 TO MAKE AN APPOINTMENT WITH THE ZONING BOARD OF APPEALS.

DATE: 7/27/01

APPLICANT: Moisheel Realty
PO Box 631
Highland Mills, NY 10930

PLEASE TAKE NOTICE THAT YOUR APPLICATION DATE:

FOR :

LOCATED AT: 91 Toleman Road

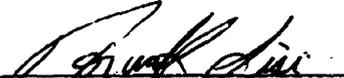
ZONE: R-3 Scc/Blk/ Lot: 56-1-35

DESCRIPTION OF EXISTING SITE: Existing one family house

IS DISAPPROVED ON THE FOLLOWING GROUNDS:

1. Storage of more than one commercial vehicle and repairs to commercial vehicles is not permitted in a residential, R-3, zone.

COPY


BUILDING INSPECTOR

PERMITTED-Not

PROPOSED OR
AVAILABLE:

VARIANCE
REQUEST:

ZONE: R-3 USE: A-6, 48-16 F (1)

MIN LOT AREA:

MIN LOT WIDTH:

REQ'D FRONT YD:

REQ'D SIDE YD:

REQ'D TOTAL SIDE TD:

REQ'D REAR YD:

REQ'D FRONTAGE:

MAX BLDG HT:

FLOOR AREA RATIO:

MIN LIVABLE AREA:

DEV COVERAGE:

cc: Z.B.A.. APPLICANT. FILE, W/ ATTACHED MAP

PLEASE ALLOW FIVE TO TEN DAYS TO PROCESS
IMPORTANT
YOU MUST CALL FOR ALL REQUIRED INSPECTIONS OF CONSTRUCTION

Other inspections will be made in most cases but those listed below must be made or Certificate of Occupancy may be withheld. Do not mistake an unscheduled inspection for one of those listed below. Unless an inspection report is left on the job indicating approval of one of these inspections it has not been approved and it is improper to continue beyond that point in the work. Any disapproved work must be reinspected after correction.

1. When excavating is complete and footing forms are in place (before pouring.)
2. Foundation inspection. Check here for waterproofing and footing drains.
3. Inspect gravel base under concrete floors and underslab plumbing.
4. When framing, rough plumbing, rough electric and before being covered.
5. Insulation.
6. Final inspection for Certificate of Occupancy. Have on hand electrical inspection data and final certified plot plan. Building is to be completed at this time. Well water test required and engineer's certification letter for septic system required.
7. Driveway inspection must meet approval of Town Highway Superintendent. A driveway bond may be required.
8. \$50.00 charge for any site that calls for the inspection twice.
9. Call 24 hours in advance, with permit number, to schedule inspection.
10. There will be no inspections unless yellow permit card is posted.
11. Sewer permits must be obtained along with building permits for new houses.
12. Septic permit must be submitted with engineer's drawing and perc test.
13. Road opening permits must be obtained from Town Clerk's office.
14. All building permits will need a Certificate of Occupancy or a Certificate of Compliance and here is no fee for this.

FOR OFFICE USE ONLY:
Building Permit #: PA 2001-755

**AFFIDAVIT OF OWNERSHIP AND/OR CONTRACTOR'S COMP & LIABILITY INSURANCE CERTIFICATE IS
REQUIRED BEFORE PERMIT WILL BE ISSUED**

PLEASE PRINT CLEARLY - FILL OUT ALL INFORMATION WHICH APPLIES TO YOU

Owner of Premises Moisheer Realty INC.

Address 91 Tallman Rd. Washingtonville N.Y. Phone # 781-0687

Mailing Address P.O.B. 631 Highland Mills N.Y. Fax # _____

Name of Architect Existing Bldg.

Address _____ Phone _____

Name of Contractor _____

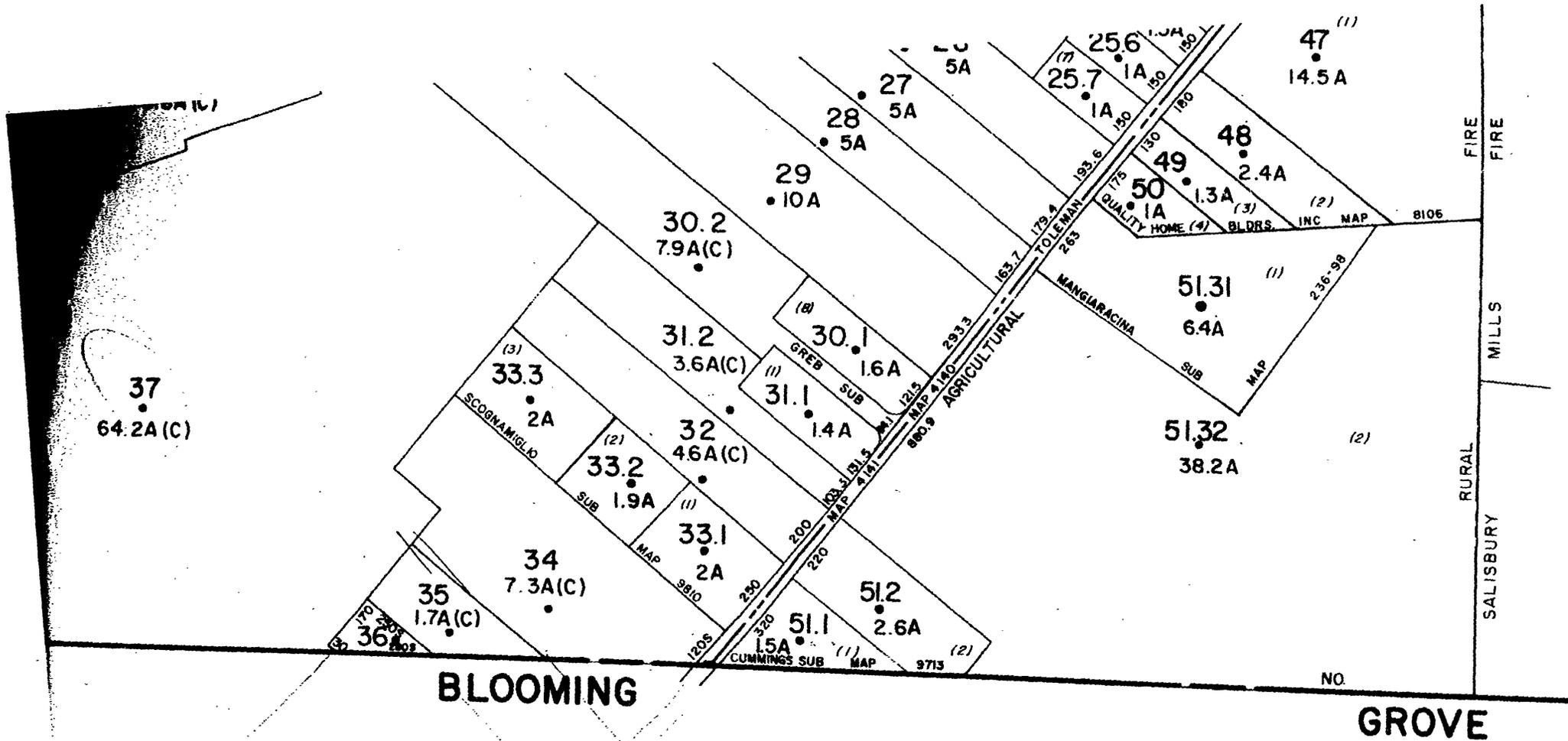
Address _____ Phone _____

State whether applicant is owner, lessee, agent, architect, engineer or builder _____

If applicant is a corporation, signature of duly authorized officer. Mat [Signature]
(Name and title of corporate officer)

1. On what street is property located? On the _____ side of 91 Tolman Rd.
(N,S,E or W)
and _____ feet from the intersection of _____
2. Zone or use district in which premises are situated _____ Is property a flood zone? Y _____ N _____
3. Tax Map Description: Section 56 Block 1 Lot 35
4. State existing use and occupancy of premises and intended use and occupancy of proposed construction.
a. Existing use and occupancy garage b. Intended use and occupancy _____
5. Nature of work (check if applicable) New Bldg. Addition Alteration Repair Removal Demolition Other
6. Is this a corner lot? No - Requires 1 And Storage of large Commerical Vehicles
7. Dimensions of entire new construction. Front 40 Rear 40 Depth 60 Height _____ No. of stories _____
8. If dwelling, number of dwelling units: _____ Number of dwelling units on each floor _____
Number of bedrooms _____ Baths _____ Toilets _____ Heating Plant: Gas _____ Oil
Electric/Hot Air _____ Hot Water _____ If Garage, number of cars _____
9. If business, commercial or mixed occupancy, specify nature and extent of each type of use _____
10. Estimated cost _____ Fee 50 ch # 332

PAID



Pls. publish immediately - Send bill to: Jo G in Warden, N.Y.

OK - PAC

**PUBLIC NOTICE OF HEARING
ZONING BOARD OF APPEALS
TOWN OF NEW WINDSOR**

PLEASE TAKE NOTICE that the Zoning Board of Appeals of the TOWN OF NEW WINDSOR, New York, will hold a Public Hearing pursuant to Section 48-34A of the Zoning Local Law on the following Proposition:

Appeal No. 53

Request of Moisheel Realty, Inc.

Interpretation
for a **VARIANCE** of the Zoning Local Law to Permit:

the continued use of a 40' x 60' garage for storage and repair of
three (3) tractor trailer trucks.

Interpretation
being a **VARIANCE** of Sections 48-16(f) and 48-24

for property situated as follows:

91 Toleman Road south of New York State Route 207

known and designated as tax map Section 56, Blk. 1 Lot 35

PUBLIC HEARING will take place on the 26th day of November,
2001 at the New Windsor Town Hall, 555 Union Avenue, New Windsor,
New York beginning at 7:30 o'clock P.M.

Lawrence Torley
Chairman

By: Patricia A. Corsetti, Secy.



Town of New Windsor

555 Union Avenue
New Windsor, New York 12553
Telephone: (845) 563-4631
Fax: (845) 563-4693

Assessors Office

November 2, 2001

Moisheel Realty, Inc.
P.O. Box 631
Highland Mills, NY 10930



Re: 56-1-35

Dear Sirs:

According to our records, the attached list of property owners are within five hundred (500) feet of the above referenced property.

You may wish to check with the Town of Blooming Grove also, as the subject parcel is within five hundred (500) feet of the boundary line.

The charge for this service is \$25.00, minus your deposit of \$25.00.

There is no further balance due.

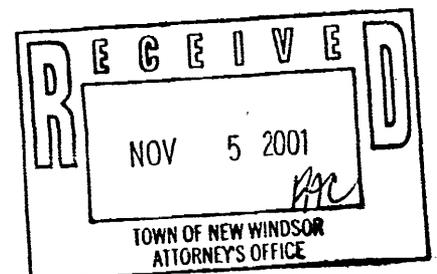
Sincerely,

A handwritten signature that reads "L. Cook" followed by a circled "LCO".

Leslie Cook
Sole Assessor

LC/lrd
Attachments

CC: Pat Corsetti, ZBA



56-1-33.1

Joseph & Jean Scognamiglio
25 Dewhurst Street
Staten Island, NY 10314

56-1-33.2

Joseph & Jean Scognamiglio
18 Jennifer Lane
Washingtonville, NY 10992

56-1-33.3

John & Sharon Scognamiglio
28 Jennifer Lane
Washingtonville, NY 10992

56-1-34

Robert & Marian Sabins
103 Toleman Road
Washingtonville, NY 10992

56-1-36

Louis & Barbara Liberatore
89 Toleman Road
Washingtonville, NY 10992

56-1-37

Legacy Properties LLC
C/o Joseph Berardo
120 Sylvan Avenue
Englewood Cliffs, NJ 07632

56-1-51.1

Peter Efinger
Tamela Wisniewski
106 Toleman Road
Washingtonville, NY 10992

Date 10/26/01

TOWN OF NEW WINDSOR

TOWN HALL, 555 UNION AVENUE
NEW WINDSOR, NEW YORK 12553

TO Frances Roth DR.
188 N. Drury Lane
Newburgh, N.Y. 12550

DATE		CLAIMED	ALLOWED
10/23/01	Zoning Board Meeting	75 00	
	Misc. - 1		
	Searing - 5		
	Moishuel - 4		
	Santos - 4		
	Sheehan - 2		
	Lucas - 3		
	Weed - 6		
	Manera - 2		
	Scheuermann - 2		
	Di Micelli - 6		
	Bila/OC Trust - 3	<u>211 50</u>	
	Patzakis - 3	286 50	
	47		

**Town of New Windsor
555 Union Avenue
New Windsor, NY 12553
(845) 563-4611**

**RECEIPT
#878-2001**

09/12/2001

ZBA - 01-53
Moshill, Inc.

**Received \$ 150.00 for Zoning Board Fees on 09/12/2001. Thank you for stopping by
the Town Clerk's office.**

As always, it is our pleasure to serve you.

**Deborah Green
Town Clerk**

Attn: Patte'

ZBA MEETS ON THE 2ND AND 4TH MONDAY OF EACH MONTH UNLESS A HOLIDAY FALLS ON THAT DATE. JULY AND AUGUST: ONE MEETING PER MONTH ONLY.

PROCEDURE FOR A PUBLIC HEARING

Preparations for a public hearing are relatively simple IF YOU READ AND FOLLOW THIS PROCEDURE:

Step 1 - Order a variance list from the Assessor's Office. A deposit of \$25.00 payable to TNW must be paid in advance for this list. This list is necessary for the mailing of notices to all property owners within 500 feet of your property. The total fee for this list which is prepared on labels, is based on the number of names and addresses on your list.

Step 2 - While awaiting the preparation of the list on labels, fill out the Application and Public Notice of Hearing (leave date blank) which you received at the preliminary meeting before ZBA.

Step 3 - When the list is completed, the Assessor's office will call you. Using the labels provided by the Assessor's Office, attach each to an envelope, add your return address and a first-class stamp and hold. These will be used to forward the hearing notices to all of the adjacent property owners.

Step 4 - Call Pat at 563-4630 and MAKE AN APPOINTMENT to come in with your completed paperwork. At this time also bring with you a copy of your deed or contract of sale, title report (if you have one), photos, completed applications, public hearing notice, addressed/stamped envelopes, and fees payable to the Town of New Windsor. A HEARING DATE WILL NOT BE SCHEDULED UNLESS ALL OF THE PAPERWORK IS COMPLETED AND RETURNED WITH THE FEES TO THE SECRETARY.

Step 5 - The Public Notice of Hearing must be published in the local paper one time, ten days prior to the hearing date. Secretary will make arrangements for the publication of the notice. Applicant is responsible for the payment of publication. Secretary will fill in the date of public hearing on notice when all paperwork is received.

Step 6 - Once the Secretary has had an opportunity to review the hearing notice, she will add the hearing date and you may then insert the completed public hearing notice in each of the prepared envelopes, seal each envelope and bring back to Pat in the order in which they appear on the list. She will then compare the envelopes with the list, if it checks out, she will prepare an Affidavit of Mailing and mail the envelopes out. Notices must be postmarked at least 10 days before the hearing date.

Step 6 - Prepare two separate checks both payable to the Town of New Windsor, one in the amount of \$50.00 (residential) or \$150.00 (commercial) which is the variance application fee, and a second check in the sum of \$300.00 (residential) or \$500.00 (commercial). The second sum will be held in escrow pending the deduction of fee for stenographic services and attorney's fee for the handling of your file.

APPLICANT'S CHECK LIST:

1. Applications (3 copies);
2. Public notice of hearing;
3. Envelopes with names/addresses of adjacent property owners, stamped and ready for notice to be inserted;
4. Fees;
5. Copy of deed or contract of sale, title report, photographs of site.

IMPORTANT NOTE: If your application is approved by the ZBA, you have one (1) year from the date of approval within which to pursue your building plans. A variance becomes null and void after this period. If you are not planning to build within this time frame, you must apply to the ZBA before this date expires to seek an extension of this variance.

**PATRICIA A. CORSETTI, SECRETARY
ZONING BOARD OF APPEALS
Town Hall - 555 Union Avenue
New Windsor, N. Y. 12553
(845)563-4630 - FAX (845)563-4692**

TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS

APPLICATION FOR VARIANCE

01-53

Date: 09/12/01

I. Applicant Information:

- (a) Moisheel Realty, Inc., P.O. Box 631, Highland Mills, NY 10930
(Name, address and phone of Applicant) (Owner)
- (b) same as above
(Name, address and phone of purchaser or lessee)
- (c) Jacobowitz and Gubits, LLP, P.O. Box 367, Walden, NY 12586
(Name, address and phone of attorney)
- (d) N/A
(Name, address and phone of contractor/engineer/architect)

II. Application type:

- Use Variance Sign Variance
- Area Variance Interpretation

III. Property Information:

- (a) R-4 91 Toleman Road 56-1-35 ±3.78 acres
(Zone) (Address) (S B L) (Lot size)
- (b) What other zones lie within 500 ft.? _____
- (c) Is a pending sale or lease subject to ZBA approval of this application? yes.
- (d) When was property purchased by present owner? NOV. 99.
- (e) Has property been subdivided previously? no.
- (f) Has property been subject of variance previously? no.
If so, when? _____.
- (g) Has an Order to Remedy Violation been issued against the property by the Building/Zoning Inspector? no.
- (h) Is there any outside storage at the property now or is any proposed? Describe in detail: no.

IV. Use Variance. N/A

- (a) Use Variance requested from New Windsor Zoning Local Law, Section _____, Table of _____ Regs., Col. _____, to allow:
(Describe proposal) _____

(b) The legal standard for a "use" variance is unnecessary hardship. Describe why you feel unnecessary hardship will result unless the use variance is granted. Also set forth any efforts you have made to alleviate the hardship other than this application.

(c) Applicant must fill out and file a Short Environmental Assessment Form (SEQR) with this application.

(d) The property in question is located in or within 500 ft. of a County Agricultural District: Yes___ No___.

If the answer is Yes, an agricultural data statement must be submitted along with the application as well as the names of all property owners within the Agricultural District referred to. You may request this list from the Assessor's Office.

V. Area variance: N/A
(a) Area variance requested from New Windsor Zoning Local Law, Section _____, Table of _____ Regs., Col. _____.

<u>Requirements</u>	<u>Proposed or Available</u>	<u>Variance Request</u>
Min. Lot Area _____	_____	_____
Min. Lot Width _____	_____	_____
Reqd. Front Yd. _____	_____	_____
Reqd. Side Yd. _____	_____	_____
Reqd. Rear Yd. _____	_____	_____
Reqd. Street Frontage* _____	_____	_____
Max. Bldg. Hgt. _____	_____	_____
Min. Floor Area* _____	_____	_____
Dev. Coverage* _____ %	_____ %	_____ %
Floor Area Ratio** _____	_____	_____
Parking Area _____	_____	_____

* Residential Districts only
** No-residential districts only

(b) In making its determination, the ZBA shall take into consideration, among other aspects, 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. Also, 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 other 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. Describe why you believe the ZBA should grant your application for an area variance:

(You may attach additional paperwork if more space is needed)

VI. Sign Variance: N/A
(a) Variance requested from New Windsor Zoning Local Law, Section _____, _____ Regs.

	<u>Requirements</u>	<u>Proposed or Available</u>	<u>Variance Request</u>
Sign 1	_____	_____	_____
Sign	_____	_____	_____
Sign 3	_____	_____	_____
Sign	_____	_____	_____
	_____	_____	_____

(b) Describe in detail the sign(s) for which you seek a variance, and set forth your reasons for requiring extra or over size signs.

(c) What is total area in square feet of all signs on premises including signs on windows, face of building, and free-standing signs?

VII. Interpretation.

(a) Interpretation requested of New Windsor Zoning Local Law, Sections 48-16(f) and Table of _____ Regs., Col. ~~48-24~~.

(b) Describe in detail the proposal before the Board:

See attached letter dated May 16, 2001, to Hon. Michael Babcock, Building Inspector, with exhibits detailing why the current use of the garage building for storage and repair of three tractor trailer trucks is a pre-existing non-conforming use which is not being enlarged or altered. All vehicles will continue to be stored within the existing building.

VIII. Additional comments:

(a) Describe any conditions or safeguards you offer to ensure that the quality of the zone and neighboring zones is maintained or

upgraded and that the intent and spirit of the New Windsor Zoning is fostered. (Trees, landscaping, curbs, lighting, paving, fencing, screening, sign limitations, utilities, drainage.)

- IX. Attachments required: Application is for an interpretation, therefore several items are not necessary.
- x Copy of referral from Bldg./Zoning Insp. or Planning Bd.
 - x Copy of tax map showing adjacent properties.
 - n/a Copy of contract of sale, lease or franchise agreement.
 - Copy of deed and title policy.
 - n/a Copy(ies) of site plan or survey showing the size and location of the lot, the location of all buildings, facilities, utilities, access drives, parking areas, trees, landscaping, fencing, screening, signs, curbs, paving and streets within 200 ft. of the lot in question.
 - n/a Copy(ies) of sign(s) with dimensions and location.
 - Two (2) checks, one in the amount of \$150.00 and the second check in the amount of \$500.00, each payable to the TOWN OF NEW WINDSOR.
 - Photographs of existing premises from several angles.

X. Affidavit.

Date: 8/31/01

STATE OF NEW YORK)
) SS.:
COUNTY OF ORANGE)

The undersigned applicant, being duly ^{Affirmed} sworn, deposes and states that the information, statements and representations contained in this application are true and accurate to the best of his/her knowledge or to the best of his/or information and belief. The applicant further understands and agrees that the Zoning Board of Appeals may take action to rescind any variance granted if the conditions or situation presented herein are materially changed.

[Handwritten Signature]
AFFIRMED
Sworn to before me this

JOSEPH MANGEL
Notary Public, State of New York
No. 36-2501021
Qualified in Orange County
Commission Expires Month 30, 02
JAM

[Handwritten Signature]

(Applicant)

Issac Landau, President
Moisheel Realty, Inc.

31 day of AUG., 2001.

XI. ZBA Action:

(a) Public Hearing date: _____.