

**ZB# 73-1**

**Birk's Realty**

**(no SBL given)**

73-1

Birkis Realty | Smith, Charles G. & Ethel

des pd.

hearing

Jan. 15th, 1973

8:15 p.m.

file

3/26/73  
1:20 P.M.

73-1

Bick's  
Quincy | Smith, Charles G. & Ethel

**PUBLIC NOTICE  
OF HEARING BEFORE  
THE ZONING BOARD OF  
APPEALS**

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 48-33 A of the Zoning Ordinance on the following proposition:

Appeal No. 1-73  
Request of BIRK'S REALTY, INC. for a Variance of the regulations of the Zoning Ordinance, to permit construction and use of a Dodge new car and truck dealership with accessory sale (describe proposal) of new and used cars and trucks being a Variance of Article III, Section 48-12 for property under contract from Charles G. Smith & Ethel R. Smith situated as follows. Located on Temple Hill Road and being approximately 8.49 acres.

SAID HEARING will take place on the 15th day of Jan. 1973 at the New Windsor Town Hall, 555 Union Avenue, New Windsor, N.Y. beginning at 8:15 o'clock P.M.

FRED WYGANT  
Chairman

By Patricia DeLoe, Sec'y

Jan. 5

State of New York  
County of Orange, ss:

Olga Trachewsky, being duly sworn deposes and says that she, Principal Clerk of Newburgh-Beacon News Co., Inc., Publisher of The Evening News, a daily newspaper published and of general circulation in the Counties of Orange and Dutchess, and that the notice of which the annexed is a true copy was published ..... One Time ..... in said newspaper, commencing on the 5th day of January A.D., 19 73, and ending on the 5th day of January A.D., 19 73

Subscribed and sworn to before me this  
8th day of January 19 73

*Olga Trachewsky*  
Robert J. [Signature]

Notary Public of the State of New York, County of Orange.  
MY COMMISSION EXPIRES MARCH 30, 1974

Adopted 12/20/65

APPLICATION FOR VARIANCE

Application No. 73-1

Date: January 2, 1973

TO THE ZONING BOARD OF APPEALS OF THE TOWN OF NEW WINDSOR, NEW YORK

~~xxx(Wex)~~ BIRK'S REALTY, INC. of 55-59 Route 17K, Town of Newburgh,  
(Street & Number)

Orange County New York HEREBY MAKE  
(State)

APPLICATION FOR A VARIANCE:

A. Location of the Property Temple Hill Road (no number) OLI  
(Street & Number) (Zone)

B. Provision of the Zoning Ordinance Applicable: (Indicate the article, section, sub-section and paragraph of the Zoning Ordinance applicable, by number. Do not quote the ordinance.) Article III §48-12

C. NOTE: NECESSARY FINDINGS: Before any Variance is granted, the Zoning Board of Appeals must find all of the following conditions to be present:

1. Conditions and circumstances are unique to the applicant's land, structure or building and do not apply to the neighboring lands, structures or buildings in the same zone because: Applicant is contract purchaser under an agreement which is subject to the use of the land as a new truck and car dealership. The applicant's land is suitable for a new car dealership because of its location and proximity to Union Avenue and other main business arteries which make the land suitable for general business.

2. Strict application of the provisions of this ordinance would deprive the applicant of a reasonable use of the land, structure or building in a manner equivalent to the use permitted to be made by other owners of their neighboring lands, structures or buildings in the same zone because: This site is desirable for the construction of a new car and truck dealership which is a general business use, which use is not incompatible with the uses set forth in the OLI district since an automotive service station is a permitted use in OLI and the applicant's use would not be a use permitted in a lower zone classification than that already permitted in the OLI.

3. The unique conditions and circumstances are not the result of actions taken of the applicant subsequent to the adoption of the Ordinance because: Applicant is not the owner of the land and applicant's obligation to purchase is subject to the favorable determination of this Board for a use variance to permit the construction of the applicant's dealership as set forth above.

4. Relief, if approved, will not cause substantial detriment to the public good or impair the purposes and intent of this Ordinance because: The character of applicant's use does not materially change the type of use already permitted in an OLI zone. For example, OLI permits automotive service stations, airports, heliports, railroads... structures which uses are similar in nature to those permitted in a GB district, which specifically authorizes motor vehicle sales and repair garages.

5. Relief, if approved, will not constitute a grant of special privilege inconsistent with the limitations upon other properties in the zone because: Upon information and belief, the adjoining property has been varied for purposes of automobile brake service and this use is not out of character with OLI uses in general and will produce to the Town of New Windsor a desirable tax ratable.

D. Describe in detail how the property is to be used and submit plans or sketches in duplicate.

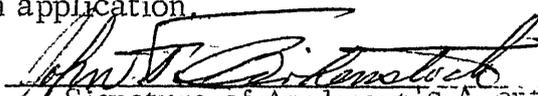
Applicant has no present plans or sketches since the preparation of these sketches, as well as the title closing is contingent upon the use of the property in the manner requested. Applicant is ready, willing and able, however, to submit such site plans or renderings as this Board or the Planning Board may require.

E. Application to be accompanied by two checks, one payable to the Town of New Windsor in the amount decided by the Board and the second check payable to the Secretary for taking the public hearing minutes. Applications to be returned to: Secretary of ZBA.

F. NOTICE OF HEARING: Applicant agrees to send notice of any public hearing via registered or certified mail to all abutting land owners as required by Sec. 9.4.1. of the Ordinance.

G. If the property in question is located within a radius of 500 ft. of an adjoining municipality, the Board should be notified. Also, have your attorney check Sec. 239 I&M of the Gen. Municipal Law to see if it applies. If so, notify the Orange County Planning Board by sending them an application.

Dated: January 2, 1973

  
Signature of Applicant

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

Sworn to on this 2nd day of January, 1972. 55-59 Route 17K, Newburgh, N. Y.  
Address

Kathryn F. West **KATHRYN F. WEST**  
(Notary Public) Notary Public, State of New York 562-4100  
Qualified in Orange County Telephone Number  
Term expires Mar. 30, 1973

(DO NOT WRITE IN THIS SPACE)

Application No. 73-1  
Date of Hearing 1/15/73  
Date of Decision 2/5/73

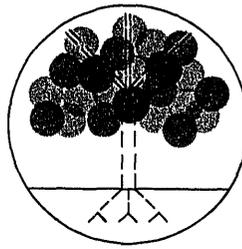
Date Received 1/14/73  
Notice Published 1/2/73

DECISION:

*Granted.*

# Department of Planning

Peter Garrison, AIP, Commissioner  
Edwin J. Garling, AIP, Deputy Commissioner



The County Building  
Goshen, New York 10924  
(914) 294-5151

# County of Orange

Louis V. Mills, County Executive

January 17, 1973

Mr. Fred Wygant, Jr., Chairman  
Zoning Board of Appeals  
Town of New Windsor  
c/o Mrs. Patricia Delio, Secretary  
7 Franklin Avenue  
New Windsor, New York 12550

RE: Use Variance - Birk's Realty  
County Road 59  
Our File No. 73-12-M

Dear Mr. Wygant:

Recently, we received a copy of a notice of public hearing and application for a variance for the purpose of building a new car and truck sales facility. In accordance with the provisions of Sections 239 L and M of the General Municipal Law, we have made our review and render the following comments:

1. Currently, the property is located in an office and light industrial district (OLI). In all likelihood, the designation in this area will not change but, perhaps, be expanded to include wholesaling and service uses. Automobile sales could be included in this expanded category.

2. In our opinion, the applicant has not shown that there are conditions and circumstances unique to the land which would warrant the granting of the variance since it would be quite possible to use the land in any one of a number of ways in the present OLI zone. However, should our recommendations become implemented in the near future, large establishments of this type could be a part of the designation under consideration.

RE: Birk's Realty

3. The property is presently owned by C and E. Smith. In all, the entire tract of land totals about 38 acres. Rather than subdivide the property in a piecemeal fashion and into an infinite number of unrelated parcels and uses, the Smiths should develop an overall plan for their property, including the automotive brake service application submitted awhile ago. The scheme could have a well-designed entrance (possibly opposite Hempstead Lane), common services, and compatibility among users. Also, this approach would probably lessen the traffic problem by eliminating the need for separate entrances along the County road. We hope that this suggestion is not overlooked.

In spite of the fact that the applicant has not substantiated his case, the use seems to be appropriate for this area. We, therefore, have no objection to the proposal and strongly urge the applicant(s) to submit a unified plan to the Town Planning Board should the Zoning Board approve the request.

Very truly yours,



Peter Garrison  
Commissioner of Planning

Reviewed by:

Joel Shaw  
Senior Planner

cc: T. Marsden  
J. Tallarico  
D. Lisack  
R. Drake, Attorney

JS/bd

Public Hearing 8:15 p.m. - Birk's Realty 1/15/73.

Spectators:

| <u>Name:</u>              | <u>Address:</u>                                  |
|---------------------------|--|
| Betty Herring             | 590 Union Ave New Windsor N.Y.                   |
| Zeludee C. Herring        | 540 Union Ave " "                                |
| Shirley Moseley Jr        | 588 UNION AVE                                    |
| Chiffetta Moseley         | 588 Union Ave. New Windsor N.Y.                  |
| James Moroney             | 9-11 Queensboro Ave. N.Y.                        |
| Carolea Simpson           | " " New Windsor, N.Y.                            |
| Theodore M. Mauer         | Newburgh, N.Y.                                   |
| John F. <del>Barnes</del> | 3 BEACH ST., NEWBURGH, N.Y.                      |
| Vincent Dardone           | Temple Hill Rd                                   |
| Frances Dardone           | Temple Hill Rd                                   |
| John A. Gray              | 4 Park Hill Dr. (Representing Kings King Church) |
| M. A. <del>Walker</del>   | Blossing Lane Cph 5                              |



Shea, Theodore C.  
Box 495  
Vails Gate, New York 12584

Simpson, Harry M. & Dorothy  
4 Liberty Street  
Newburgh, New York 12550

Smith, David E. & Rose S.  
1 President Court  
New Windsor, New York 12550

Schultz, John Edward & Grace M.  
3 President Court  
New Windsor, New York 12550

Carroll, Frederick William & Joan A.  
5 President Court  
New Windsor, New York 12550

Cerniglia, Stephen & Josephine  
7 President Court  
New Windsor, New York 12550

Juba, William M.  
9 President Court  
New Windsor, New York 12550

Reynolds, Franklin M. Jr. & Margaret T.  
27 Clarkview Road  
New Windsor, New York 12550

McDonald, Leonard J. & Carol Ann  
29 Clarkview Road  
New Windsor, New York 12550

Porath, Harold A. & Vera  
31 Clarkview Road  
New Windsor, New York 12550

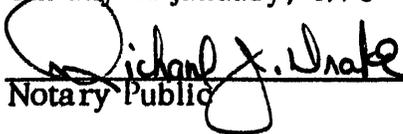
Wilson, Elwood L. & Florence D.  
590 Union Avenue  
New Windsor, New York 12550

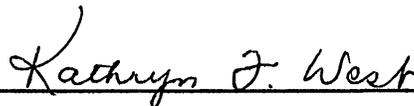
Herring, Zebedee C. & Betty L.  
590 Union Avenue  
New Windsor, New York 12550

Moseley, Le Grande Sr. & Willetta M.  
588 Union Avenue  
New Windsor, New York 12550

Clark, Irving N. & Tillie A.  
572 Union Avenue  
New Windsor, New York 12550

Sworn to before me this  
4th day of January, 1973

  
Notary Public

  
\_\_\_\_\_

SCOTT & HOYT & DRAKE  
ATTORNEYS AND COUNSELORS AT LAW

J BRADLEY SCOTT (1894-1962)  
JULIUS LARKIN HOYT  
RICHARD J DRAKE  
LORRAINE COTÉ DEVERS

POST OFFICE BOX 511  
233 LIBERTY STREET  
NEWBURGH, NEW YORK 12550  
(914) 562-3540

January 4, 1973

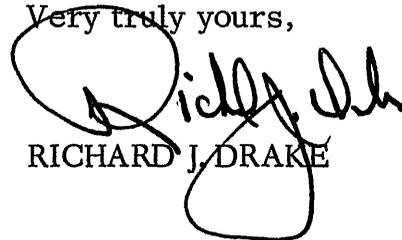
Mrs. Patricia Delio, Secretary  
New Windsor Zoning Board of Appeals  
7 Franklin Avenue  
New Windsor, New York 12550

Re: Birk's Realty, Inc.

Dear Pat:

I enclose three copies of Application in the above matter, which have been executed by John Birkenstock. Certified letters have been sent to all property owners on the list sent to us by the Assessor's Office. We have sent copy of application and plans to the Orange County Planning Department and you have taken care of the legal advertising. The necessary payments have been made to you, the Town of New Windsor and to the Assessor's Office.

Very truly yours,

  
RICHARD J. DRAKE

RJD  
kfw  
enc.

TOWN OF NEW WINDSOR  
ORANGE COUNTY, N. Y.  
OFFICE OF ZONING - BUILDING INSPECTOR

NOTICE OF DISAPPROVAL OF BUILDING PERMIT APPLICATION

File No. ....

Date JAN 10, 1973

To BIRK'S REALTY, INC

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PLEASE TAKE NOTICE that your application dated JAN 3, 1973  
for permit to CONSTRUCT & OPERATE A NEW CAR & TRUCK AGENCY  
at the premises located ON TEMPLE HILL ROAD

.....  
is returned herewith and disapproved on the following grounds:

USE NOT PERMITTED IN OLI ZONE  
.....  
.....

Howard R. Covert  
Building Inspector