

ZONING BOARD OF APPEALS OF THE  
VILLAGE OF PORT CHESTER

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In the Matter of the Application of  
Roosevelt Holding, LLC

Case No. 2011-0005

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FINDINGS OF FACT

1. The applicant is the owner of property located at 22 Broad Street, Port Chester, New York, also designated as Section 142.22, Block 2, Lot 1 on the Tax Assessment Map of the Town of Rye.

2. The subject premises are improved by a two-story building built in 1910 as a retail store.

3. The subject premises are located in a C-2 Central Business District.

4. The applicant proposes an auto detailing business.

5. The Building Department denied the application for a building permit by Notice of Disapproval dated June 20, 2011 which stated as follows:

“Plans submitted for auto detailing – retail service. Auto detailing is not a permitted use. (Section 345 attachment 3 – auto repair garage).”

6. A public hearing was held over the course of several months wherein the applicant and all interested parties were given a full and complete opportunity to be heard.

7. The applicant was represented by Aldo Vitagliano, Esq., Rye, New York.

8. Mr. Vitagliano made the presentation. Larry Dominquez appeared for the owner. Edwin Montoya, son of the proposed tenant and operator of the car detailing establishment, Cain Pineda, testified as well.

9. Mr. Vitagliano recited the history of the application. During the site plan approval process before the Planning Commission, the applicant was advised that a

zoning compliance review was required. Arising out of the review, it was determined by the former Building Inspector that the proposed use is not a permitted use and that a variance would be required. After the applicant agreed to make concessions to improve the street appeal of the subject premises by better signage, lighting and lowering and replacing the fencing with a more decorative aluminum fence, on June 27, 2011 the Planning Commission made a favorable recommendation to the Zoning Board on the application for a variance.

10. The applicant proposes to operate a car detailing business using 2,100 square feet on the lower level of the two-story building on the subject premises. The proposed use would be similar to that which is currently in operation at the Westchester Country Club. There would be no repairs of vehicles, and would only involve the hand wash and wax of same. The applicant would not be employing any hazardous chemicals in the service of the vehicles. The proposed days and hours of operation were 7 a.m. to 6 p.m. Monday through Friday, Saturday 8 a.m. to 2 p.m, and closed on Sunday.

11. Mr. Vitagliano reviewed the history of the use of the premises, noting that the lower level has been used by the applicant as part of its roofing contracting business; before that it was used as a warehouse for Village Appliance; and before that it was used by Russo Pontiac to store and ready cars for delivery to customers.

12. Counsel stated that the applicant had sought to lease the lower level space to conforming retail businesses. In 2008, the applicant received approval from the Planning Commission to lease the space for a bagel shop with production facilities for retail and wholesale customers. The proposed tenant opted to lease at the former bank property on Irving Avenue, and the tenant build-out was not completed.

13. In June 2010, an application was made to change the use of a portion of the lower level to a conforming retail fish market. This application received site plan approval from the Planning Commission, leaving the remaining portion available for lease. The applicant stated that its further attempts at marketing this space for conforming use have been unsuccessful. The applicant contended that the proposed use is a low traffic impact use for the area and would be a transition to a future conforming use of the property. Polly-Temp, a heating and air conditioning contractor, still occupies the upper level of the building with a different street address (21 North Pearl Street).

14. Initially, the applicant made an application for: (1) an interpretation from the Zoning Board of Appeals that a car detailing business is a use permitted in the C-2 Zoning District, or that the car detailing business is a less intense nonconforming use than the nonconforming use which currently exists, or, in the alternative, for (2) a use variance.

15. At the request of the Zoning Board, the Acting Building Inspector and Assistant Manager/Director of Code Enforcement, Christopher Steers, reviewed the Building Department's files with regard to alleged similar car detailing uses operating in

the Village, the history of the use and occupancy of the subject premises from the Building Department's files, and his findings thereon.

16. In this regard, Mr. Steers provided the Zoning Board with memos dated August 18, 2011, October 20, 2011 and November 16, 2011, which are incorporated by reference and made a part of the record. It should be noted that the subject premises have also been known as 21 North Pearl Street. These reports were exchanged with applicant's counsel.

17. Mr. Vitagliano likewise made further documentary submissions as to use and occupancy, placing particular emphasis on the latest determination of the Zoning Board in 1995 to Polly Temp, and of a redacted lease from the prior owner to Village Appliance.

18. On behalf of the applicant, counsel withdrew that portion of the application that sought a use variance.

19. No one from the public appeared to testify for or against the application throughout the public hearings.

#### CONCLUSIONS OF LAW

1. With regard to the first requested interpretation, the Zoning Board finds and determines that a car-detailing business is not a permitted use in the C-2 Zoning District.

2. The Board agrees with the Acting Building Inspector's position that a "car detailing business" is, in essence, no different from that of a "car wash", which is a use specifically called out in the Zoning Regulation, Chapter 345 of the Village Code. Pursuant to Section 345-61F(8), car washes are permitted as an accessory use to a gasoline service station that is permitted only by special exception in the C-4 Zoning District. Automotive uses are permitted solely in the C-4 heavy commercial and M2 light industrial districts, and then, only by special exception. Therefore, the Board finds that the legislative intent of the Zoning Regulation was to severely limit automotive uses within the Village. The Board would be clearly eviscerating such intent if it were to make the requested interpretation that an auto detailing business is a permitted use, and as of right, in the C2 central business district. Such a result would be even more compelling since, in this particular case, the subject premises is located in the downtown across from the Metro-North railroad station.

3. The applicant appears to be making a claim of disparate treatment with regard to other establishments. The Zoning Board is not the forum for such claims. Nonetheless, although not germane to this determination, the Acting Building Inspector has advised the Board that enforcement action would be undertaken if determined appropriate.

4. With regard to the second requested interpretation, the Zoning Board notes the relevant section of the Zoning Regulation, Section 345-13C(3), which states as follows:

“If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use which, in the opinion of the Board of Appeals, either by general rule adopted on the request by the Building Inspector or on a specific finding on appeal of a particular case, is of the same or of a more restricted nature.” (emphasis added).

5. The Zoning Board views this section as a legislative acknowledgment of pre-existing development patterns of the Village and the intent to provide flexibility in the application of the Zoning Regulation as to nonconforming uses. Without such a remedial provision, property owners would be unable to change to another, albeit less intensive, nonconforming use without the grant of a use variance, admittedly a heavy burden to satisfy. The instant section would facilitate the transition of nonconforming properties to conforming status through the exercise of discretion entrusted to the Zoning Board on the particular facts presented.

6. As an initial matter, the Zoning Board disagrees with the Acting Building Inspector’s finding that there are structural alterations made or to be made to accommodate the proposed subject tenant space. Upon review of the floor plans submitted by the applicant and the testimony from the Assistant Building Inspector, the demised walls are not load-bearing. Consequently, the Board finds that the work that is involved is not a “structural alteration”, or “alteration” as that term is defined in Section 345-2 of the Zoning Regulation) such that would defeat any further consideration of this section.

7. The Zoning Board next must consider whether there is a “nonconforming use” from which to compare the proposed nonconforming use to determine whether the latter is more restrictive. The term nonconforming use is defined in Section 345-2 as “Any use of a building, structure, lot or land or part thereof lawfully existing at the effective date of this chapter which does not conform subsequently to the provisions of this chapter for the district in which it is located.” Upon review of the relevant definitions and the historical record of the use and occupancy of the premises, the Zoning Board finds that applicant has not satisfied the requirement of a legal, prior nonconforming use.

8. By the applicant’s own admission, neither the most recent nonconforming tenancy by Village Appliance nor the applicant’s use and occupancy in conjunction with its own roofing contractor business thereafter have had the benefit of any approvals from the Village to lawfully occupy the space, much less continuously and without interruption to the present date.

9. Nor can the applicant convincingly persuade the Zoning Board that it can reach back to the Zoning Board’s 1995 grant of interpretation to Polly-Temp to extend to the instant portion of the subject premises.

10. Any prior uses have been abandoned by substitution of use by the applicant's predecessors in title.

11. Nevertheless, assuming arguendo, that the applicant did satisfy the standard of a prior nonconforming use, the applicant has failed to demonstrate with competent, probative evidence that the proposed auto detailing use would be more restrictive.

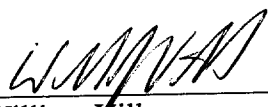
12. Although the applicant represents that all work on the vehicles will be done in the building and that there is sufficient parking, the proposed auto detailing establishment is not a passive business. This conclusion is supported by the applicant's own advertisement for its current operations outside the Village. Further, the applicant's proposed hours of operation are not insignificant. The plan is to be open six days a week, starting at 7 a.m. and ending at 6 p.m. from Monday through Friday. Moreover, the applicant did not satisfactorily explain what steps would be undertaken to prevent any overflow of vehicles onto the sidewalks and street. Nor did the applicant dissuade the Zoning Board from concluding the seeming incompatibility between the proposed auto detailing business and the retail fish store tenancy that was most recently approved after a site plan approval process. The foregoing are substantial issues in any analysis by the Zoning Board pursuant to Section 345-13C(3). As stated previously, automotive-related uses are restricted to the C-4 and M2 zoning districts evidencing the legislative concern as to the incompatibility presented by these uses.

13. The Zoning Board acknowledges the offer made by the applicant in an attempt to improve the property in the approval process. The Board further notes the level of cooperation of the applicant's counsel in developing the record with regard to the use and occupancy of the subject property. However, if there is relief to be had, the Board is not convinced that it is through a strained or unsupported use of the interpretation authority conferred to the Board in the Zoning Regulation. Rather, it would appear that the applicant, should it determine to proceed further, may wish to do so by petition to the Board of Trustees for a zoning amendment.

#### DETERMINATION

On motion of *CMSA. PETRONE*, seconded by *CMSR. STRAUCH*  
The Zoning Board of Appeals of the Village of Port Chester, the application  
of Roosevelt Holding, LLC for an interpretation and authorizes the Chairman to sign  
these Findings on its behalf.

Dated: January 19, 2012  
Port Chester, New York

  
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William Willanova  
Chairman