

**VILLAGE OF UPPER NYACK PLANNING BOARD  
RESOLUTION OF SPECIAL USE PERMIT AND SITE PLAN APPROVAL**

**Property Address:** 530 North Highland Avenue, Village of Upper Nyack (the “Property”)   
**County Map No.:** 59.12-02-02 & 17   
**Zoning District:** Office Business (OB) Zoning District   
**Applicant/Owner:** 4 5 Motorsport LLC (the “Applicant”)   
**SEQRA Classification:** Type II (6 NYCRR 617.5c18) No further SEQRA review required.   
**Dates of Public Hearing:** January 19, 2023 and February 15, 2023

**SUMMARY**

The Applicant is seeking site plan approval and a special use permit to establish a Motor Vehicle Service Facility in the existing building on the Property. The Applicant is not proposing to make any site changes and will use the existing parking spaces, utility services and other site improvements in their current configuration. A Motor Vehicle Service Facility is a special permit use in the Office Business Zoning District (*see* Village of Upper Nyack Zoning Law (the “Village Zoning Law”) §4.4.1 (Use Table Row 10, Col. 3) subject to compliance with the special use permit criteria set forth in Village Zoning Law §§ 9.5 and 9.6.9.

**INFORMATION REVIEWED**

**For January 18, 2023 Meeting**

1. Planning Board Project Narrative, prepared by S&Co. Architecture and Design, dated November 11, 2022
2. *Site Plan (Sheet A-001)*, prepared by S& CO Architecture + Design, dated November 11, 2022.
3. Letter from the New York State Department of Transportation (“NYSDOT”), dated January 18, 2023.
4. Letter from the Rockland County Department of Health, dated January 11, 2023.
5. Letter from the Town of Clarkstown (local determination).
6. Review Memoranda from Village Engineer Dennis Letson, PE to Planning Board dated January 18, 2023.

**For February 15, 2023 Meeting**

1. *Site Plan (Sheet A-001)*, prepared by S& CO Architecture + Design, dated November 11, 2022, last revised January 22, 2023.
2. Review Memoranda from Village Engineer Dennis Letson, PE to Planning Board dated February 15, 2023.

**DESCRIPTION OF THE PROPERTY AND THE APPLICATIONS**

The Property is located on the west side of North Highland Avenue (Route 9W) approximately 1,100 feet north of 9W’s intersection with Christian Herald Road in the Village OB Zoning District. The Property is improved with an existing one story approximately 4,073 square-foot building and

related site improvements including 13 parking spaces and one (1) loading space, existing utility services and an ingress and egress driveway providing vehicular access to the Property from Route 9W.

Previous uses of the building include a bicycle sales and service business (approximately 2005 to 2022) and an automotive service garage from 1969 to 2005. The Property's current owner, 4 5 Motorsport LLC, acquired the Property in 2022 and is seeking approvals to operate a Motor Vehicle Service Facility on the Property. The Applicant has represented that the proposed Motor Vehicle Service Facility-- DeMan Motorsports-- is a full-service Porsche facility established in 1990 and previously operated in various locations in Rockland County that provides engine modifications, maintenance, repair and rebuilds for Porsche automobiles from around the country. Vehicles are shipped to the facility via common carrier (e.g., Plycar), and leave by the same method. Up to six (6) vehicles may be serviced simultaneously and all serviced vehicles, whether not yet started, in process or completed are housed inside the building. Because of DeMan Motorsport's highly specific service type and geographic reach, customer visits to the Property are infrequent.

It is expected that there will be a total of four (4) employees working regularly on-site, and business hours are from 7AM to 4PM Monday through Friday, excluding holidays.

The Applicant is not proposing any changes to the exterior physical premises at this time. Although the Applicant originally proposed to reinstall an existing roll-up door that was previously removed to create a second service bay at the current main entry location and other related façade improvements, it has withdrawn that portion of the plan from this application and is not proposing any exterior modifications to the existing building or other site modifications.

### **AGENCY REFERRALS AND COMMENTS**

Because the Property is located within 500 feet of Route 9W and the Village/Town of Clarkstown municipal boundary, this application was referred to the Rockland County Department of Planning for review pursuant to General Municipal Law 239-m.

The application was also referred to the NYSDOT due to the Property's proximity to Route 9W, the Town of Clarkstown due to the Property's proximity to the Village/Town municipal boundary, the Rockland County Department of Health, and the NY/NJ Trail Conference due to the Property's proximity to the Long Path.

#### **NYSDOT**

By letter dated January 18, 2023 the NYSDOT advised that it does not expect any direct impacts to the state highway system and therefore did not have any comments.

#### **Town of Clarkstown**

The Town of Clarkstown determined that this application is a matter for local determination.

**Rockland County Department of Health**

By letter dated January 11, 2023 the Rockland County Department of Health advised that there are no Department of Health approvals required in connection with this application.

**Rockland County Department of Planning**

By letter dated January 13, 2023 the Rockland County Department of Planning recommended several modifications to the application. A summary of the Department of Planning's comments are included below in bold italics and the Planning Board's response appears below the comment.

***RCP Comment 1: The Board must determine whether the Special Use Permit Criteria are satisfied.***

**Response:** The Applicant's written submission on this application and its presentation at the Planning Board's January 18, 2023 public hearing addressed compliance with the applicable special use permit criteria. An evaluation of those criteria is found in the "Board Findings" section of this resolution.

***RCP Comments 2, 3 and 4: These comments provide that an opportunity for review must be provided to the Town of Clarkstown, the NYSDOT and the NY/NJ Trail Conference.***

**Response:** This application has been referred to the Town of Clarkstown, the NYSDOT, and the NY/NJ Trail Conference. Responses from the Town of Clarkstown and NYSDOT are as indicated above. The NY/NJ Trail Conference did not submit a response to the referral.

***RCP Comment 5: The Planning Board must determine whether the intent of Zoning Law § 5.3.3.2 has been met or if additional plantings are required along the 9W frontage.***

**Response:** During the January 18th session of the public hearing on this application, the Planning Board members reviewed photographs of the existing landscaping along Route 9W and recent Google Earth images of the landscaping along 9W. Additionally, members indicated their general familiarity with the project site and its layout. Along the 9W frontage there are several evergreen shrubs and existing mature deciduous trees which buffer the view of the existing building and parking area from Route 9W. These plantings are generally in good condition. Since the existing plantings are adequate to buffer the view of the improvements from Route 9W and appear to be in a good and healthy growing condition, the Planning Board has determined to waive the strict requirements of Village Zoning Law §5.3.3.2 on the condition that these plantings are maintained in a healthy growing condition, or replaced with substantially similar plantings in the event the existing vegetation fails.

***RCP Comment 6: Comment 6 indicates that several of the answers included in the Environmental Assessment Form ("EAF") submitted by the applicant are inconsistent with the responses to such questions provided by the New York State Department of Conservation's Environmental Mapper tool, and encourages the Planning Board to advise applicants to use the EAF Mapper when preparing EAF forms.***

**Response:** The proposed action is classified as a Type II action under the New York State Environmental Quality Review Act (SEQRA). See 6 NYCRR 617.5c18 (reuse of a commercial or

residential structure). Accordingly, no further SEQRA review is required and, therefore the EAF does not have to be revised. However, the Planning Board will take note of the comment for future applications.

***RCP Comment 7: Observation comment- the tax map number on the plan must be corrected to reference tax lot number 59.12-2-2 and 17.***

**Response:** The tax map designations on the site plan have been corrected.

## **BOARD FINDINGS**

### **SPECIAL USE PERMIT APPLICATION (see VILLAGE ZONING LAW §9.5 AND 9.6.9)**

Special permit uses are deemed to be permitted uses in their respective district (here the OB District) provided that the applicant can demonstrate that the use will comply with the generally applicable special use permit criteria set forth in Village Zoning Law §9.5 and any use specific special permit criteria in Village Zoning Law §9.6. Use specific special use permit criteria for Motor Vehicle Service Facilities are provided in Village Zoning Law §9.6.9.

Below is the Board's analysis of the proposed use's compliance with these criteria. The applicable criteria are summarized in bold italics and the Board's analysis follows the summary of each criteria.

***Criteria (9.5.1): The proposed use is in keeping with the nature and intensity of the surrounding neighborhood and utility services are available to serve the site.***

**Board Finding:** The Board finds that the proposed use is in keeping with the nature and intensity of the surrounding neighborhood and that utilities services are available to serve the use. As presented in the application submission materials and at the public hearing on this application, the Applicant is not proposing any substantial alterations to the existing site, and will re-use the existing building and the parking area in its current external configuration for the use. Automotive-related uses are in keeping with this section of Route 9W, which includes other automotive-related uses such as Torrent Motorworks and an existing gas station.

The Applicant has advised that all utilities serving the building are currently existing and will be sufficient to accommodate the proposed use.

***Criteria (9.5.2): Site layout, landscaping and screening will not hinder or discourage the use of surrounding lots.***

**Board Finding:** The Applicant is not proposing any changes to the existing external site configuration. As described above, there are existing evergreen and deciduous plantings along the Property's Route 9W frontage that are in good condition and buffer the view of the Property from 9W. No change to such plantings are proposed as a part of this application. Since the layout and configuration of the Property will remain unchanged, and since the proposed use, as described by the Applicant's

representative at the January 18<sup>th</sup> hearing and its submission materials, is a low intensity use, the proposed layout of the site will not hinder or discourage the use of surrounding lots.

***Criteria (9.5.3): Operations in connection with a special permit use shall not be more objectional by reason of noise, traffic, airborne particulate matter, odors, fumes, vibrations or other characteristics than other uses not requiring a special use permit.***

**Board Finding:** The Applicant has provided a detailed explanation of the operations that will occur on the Property. The proposed use is a Motor Vehicle Service facility that serves Porsche vehicles exclusively. Cars are generally delivered to the property by truck, will be worked on and stored indoors, and then will be retrieved and taken off-site by truck. No work or storage of vehicles or materials will occur outside; all work and storage of cars being worked on will occur in the building on the site. Additionally, the proposed use does not include the performance of body work on the cars being serviced.

As described by the Applicant's representative at the January 18<sup>th</sup> hearing, approximately six (6) cars can be serviced at any one time within the building. The building will have air quality and filtration systems and they will have to comply with all building and other regulations. Because of the nature of this use—repairs other than body repairs to high end vehicles – it will be less intensive than similar and other permitted uses. Moreover, the nature of the business is a low traffic use.

***Criteria (9.5.4): Parking and loading spaces are of adequate size and configuration and are adequately screened.***

**Board Findings:** The Board finds that the parking and loading facilities are adequate for the proposed use and will be adequately screened by the existing landscaping along the Property's Route 9W frontage. Based on the Village Zoning Law's parking requirements, eight (8) off-street parking spaces measuring a minimum nine (9) feet by 18 feet are required and one (1) loading space measuring a minimum of 12 feet by 20 feet are required to serve the use. The Site Plans shows that 14 spaces (13 parking spaces including a handicapped accessible space, and one (1) loading space are existing and proposed to remain. The parking and loading spaces measure 10 feet by 20 feet and thus exceed the size requirements for parking spaces in the Village Zoning Law. Although the proposed loading space is slightly undersized (10 feet in width rather than 12 feet in width), it is a preexisting condition which may remain in its nonconforming condition unless altered, at which time a variance may be required if it is to remain undersized.

The applicant has advised that generally there will be 4 employees working at the site (who are expected to travel to the site by vehicle). The cars being serviced on site will be worked on and stored inside of the building and will not be parked outside. Cars to be serviced on the Property are generally delivered to the site by panel truck; clients of the business will not frequently visit the Property. The truck would arrive at the site, unload the vehicle, and then would depart from the site. Therefore, trucks will not be parked on site for an extended duration.

Given the above, the Board finds that the parking and loading spaces are of adequate size and configuration. The provision of landscaping along the Property's Route 9W frontage is addressed above and, as described, will be adequate to buffer the view of the parking area from Route 9W.

***Criteria (9.5.5): Lighting must comply with Section 6.6. of the Village Zoning Law.***

Board Findings. The Applicant's representative advised that no changes to exterior lighting are proposed. Ongoing compliance with Village Zoning Law § 6.6 will be incorporated as a condition of this approval.

***Criteria (9.6.9.1 and 9.6.9.2): Criteria 9.6.9.1 and 9.6.9.2 provide the following supplemental bulk standards for Motor Vehicle Service Facilities: Minimum Lot Area: 1 acre, and Minimum Building Setbacks: 40 feet from all lot lines with parking prohibited in such setbacks.***

Board Findings: As explained at the January 18<sup>th</sup> hearing, the Village's Zoning Inspector has determined that although the Property is not in strict compliance with these requirements, because the Applicant is reusing the existing improvements without modifying them, they may continue in this nonconforming configuration. However, if *any* changes to these improvements are made, including but not limited to reconfiguring, adding to or removing parking spaces, a variance from the Zoning Board of Appeals and a modified special use permit will be required.

***Criteria (9.6.9.3): Storage of petroleum products must be underground and in compliance with controlling laws.***

Board Findings: The Applicant has advised that storage of petroleum products will occur underground. This will be incorporated as a condition of this approval.

***Criteria (9.6.9.4): Inoperative and partially dismantled vehicles may not be stored onsite for more than 30 days. All such parking is prohibited in the Front Building Setback and must be screened from view.***

Board Findings: The Applicant's representative advised that parking and storage of inoperative or partially dismantled vehicles will not occur on the Property, and that all cars being worked on will be stored indoors. Considering that representation and the fact that the proposed parking will occur in the nonconforming parking area within the front building setback, this approval includes a condition prohibiting the outdoor storage of inoperative or partially dismantled vehicles on the Property.

***Criteria (9.6.9.5): All repairs and service work will be performed in a fully enclosed building.***

Board Findings: The Applicant has confirmed in its written submission and orally at the January 18<sup>th</sup> public hearing on this application that repairs and service work will be performed indoors and that no body work is proposed to occur on the Property. This approval includes a condition that all repairs and service will be performed in a fully enclosed building.

***Criteria (9.6.9.6): Vehicle inventory and vehicles being parked onsite awaiting service or pick up must be parked in designated spaces.***

Board Findings: The Application submission provides that all vehicles being serviced on the Property will be stored indoors from the time they are delivered to the time they are removed from the Property. Therefore the site plan does not include any designated spaces for the regular parking of vehicle

inventory or vehicles awaiting service or pick up on site. Accordingly, the parking of such vehicles outside of the building shall be prohibited as a condition of this approval.

**Criteria (9.6.9.7):** *Tow trucks and other similar vehicles may be parked on site in parking spaces designated on the site plan for such vehicles, subject to compliance with certain dimensional standards.*

Board Findings: At the January 18<sup>th</sup> session of the public hearing on this application the Applicant's representative advised that the Applicant is not going to park or store tow trucks or other similar vehicles on the Property. Accordingly, the site plan does not include a location for the parking of such vehicles and parking of such vehicles will be prohibited as a condition of this approval.

**Criteria(9.6.9.8):** *Prohibited uses- outdoor spray paint and outdoor storage of tools, equipment materials and merchandise.*

Board Findings: The Applicant's representative has indicated that no body work will occur on the Property and that outdoor spray painting and outdoor storage will not occur on the Property. Moreover, all materials storage will occur indoors. The prohibition of these uses shall be a condition of this approval.

**SITE PLAN APPLICATION (see VILLAGE ZONING LAW §10.6)**

1. Vehicular and Pedestrian Circulation. The existing site layout will continue to provide for convenient and safe access to the Property; no site layout changes are proposed. As the applicant has explained, traffic to the site will generally be limited to employees and delivery of cars to be worked on, all of which will be stored within the existing building on site. There is an existing curb cut onto Route 9W that will continued to be used to provide access to the property. The NYSDOT has advised that it does not expect any impacts to the state highway system to result from this application.

2. Site Layout. No changes to the existing site layout are proposed.

3. Screening, Landscaping and Buffer Areas. During the January 18th session of the public hearing on this application, the Planning Board members reviewed photographs and recent Google Earth images of the existing landscaping along Route 9W. Additionally, members indicated their general familiarity with the Property and its layout. Along the 9W frontage there are several evergreen shrubs and existing mature deciduous trees which buffer the view of the existing building and parking area from Route 9W. These plantings are generally in good condition and adequately buffer the view of the improvements and parking area on the Property from 9W. Since the existing plantings are adequate to buffer the view of the improvements from Route 9W and appear to be in a good and healthy growing condition, the Planning Board has determined to waive the strict requirements of Village Zoning Law §5.3.3.2 on the condition that these plantings are maintained in a healthy growing condition, or replaced with substantially similar plantings in the event the existing vegetation fails

4. Stormwater Management. The Applicant is not proposing any additional areas of impervious surface coverage as a part of this application. Therefore, no additional stormwater mitigation is needed.

5. Utility Services. No change in utility service to the Property is proposed as a part of this application. The application includes the reuse of an existing building with existing utility services.

6. Conformance with the Village Comprehensive Plan. The Comprehensive Plan of the Village of Upper Nyack encourages commercial uses in the OB District along the 9W corridor. The proposed Motor Vehicle Service Facility use is a permitted special permit commercial use and is in keeping with the goals of the Comprehensive Plan.

7. Clearing and Grading. No clearing, grading or other site disturbance is proposed as a part of this application.

### **DETERMINATION AND CONDITIONS**

Based on the foregoing, the materials submitted in support of this application, and the information provided at the public hearing on this application, the Planning Board approves the *Site Plan (Sheet A-001)*, prepared by S& CO Architecture + Design, dated November 11, 2022, last revised January 22, 2023, subject to the following conditions:

1. Conditions to be satisfied before the Chairman signs the site plan.

a. The Site Plan shall be revised to include an entry in the revision note section to indicate the date that the plan is submitted for Planning Board signature. The description for the revision date note shall read "For PB Signature."

2. Conditions to be satisfied before a Certificate of Occupancy is issued by the Building Department.

a. The Applicant shall provide two (2) copies of an as-built survey signed and sealed by a licensed professional to the Zoning Inspector.

3. General or Ongoing Conditions.

a. The existing landscaping located along the Property's 9W frontage shall be kept in a healthy condition or promptly replaced with the same or a substantially similar species.

b. Lighting levels on the Property shall comply with Village Zoning Law § 6.6.

c. The parking and loading spaces are permitted to continue in their pre-existing, nonconforming configuration because the parking/loading area is not being modified. If there is any modification to the parking area, modified special use permit approval and amended site plan approval from the Planning Board will be required. If the improvements as modified do not comply with the Village Zoning Law, variances from the Zoning Board of Appeals may also be required.



d. Unless otherwise required by law, all bulk petroleum products or other similar substances shall be stored underground, and all applicable laws and rules governing the storage of petroleum in underground tanks shall apply and be complied with.

e. The parking or storage of inoperative or partially dismantled automobiles outside of the fully-enclosed building on the Property is prohibited.

f. All repairs and service shall be performed in a fully enclosed building.

g. Parking of tow trucks or other similar vehicles is prohibited on the Property without modification of this special use permit and amended site plan approval. If such parking does not comply with the provisions of the Village Zoning Law, variances from the Zoning Board of Appeals may also be required.

h. The parking of vehicle inventory or vehicles awaiting service or retrieval after service is completed shall be prohibited outside of the fully enclosed building on the site without modification of this special use permit and amended site plan approval. If such parking does not comply with the provisions of the Village Zoning Law, variances from the Zoning Board of Appeals may also be required.

i. The application of spray paint outdoors and the outdoor storage of tools, equipment, materials and merchandise is prohibited.

j. The Applicant shall comply with the requirements of the New York Uniform Fire Prevention and Building Code, all Village of Upper Nyack laws and ordinances, and all other applicable laws and regulations of any governmental entity or agency with jurisdiction over the Property or its use.

k. This final site plan approval authorizes the Applicant to undertake only the activities specifically set forth herein, in accordance with this resolution of approval and as delineated on the final site plan endorsed by the Planning Board Chairman. Any changes or modifications to such plan require amended site plan approval from the Planning Board.

#### 4. Expiration of Site Plan Approval.

a. Except as otherwise provided in Village Zoning Law §10.4.1, this approval shall expire if it is not signed by the Planning Board Chairman within 90 days of the date hereof, if a building permit for the work proposed herein is not issued within 3 years of the date hereof, or if a Certificate of Occupancy or Certificate of Compliance has not been issued within 2 years of the date that the building permit is issued.

b. This Site Plan approval shall expire if the use permitted hereunder substantially ceases for a period of 12 consecutive months.

#### 5. Expiration of Special Use Permit Approval.

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- a. This special use permit is subject to the expiration provisions of Village Zoning Law §9.1.4, which is specifically incorporated herein by reference.
- b. As provided in Village Zoning Law §9.4.2.1.1, this special use permit approval shall expire on a date that is five (5) years from the date that this Resolution is filed in the Office of the Village Clerk. *See* Village Zoning Law §9.4.2 for renewal provisions.

**DATED:** February 15, 2023

**VOTE:** Motion to Approve Resolution:

Second:

Vote:

Village of Upper Nyack Planning Board

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William Pfaff, Chairman