

IN THE MATTER OF THE APPLICATION
OF:

LES DANN, LLC

BEFORE THE VILLAGE OF RIDGEWOOD
BOARD OF ADJUSTMENT

Case No. ZBA 22-41

POSITION STATEMENT

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POSITION STATEMENT

I. Preliminary Statement

This request for a Certificate of Nonconforming Use applies to two lots, Lot 12 and Lot 14 of Block 3905 for a preexisting nonconforming use as an auto body shop (Public Garage) with outdoor storage for the entirety of Lots 12 and Lot 14, with the exception of the portion of Lot 14 that previously contained the footprint of a residential dwelling and the area directly in front of it. The applicant has submitted substantial uncontradicted evidence in support of the requested Certificates and the fact that both lots were lawfully used as Automobile Body Repair Shops and automobile storage and repair facilities with outside storage, at a time when all such uses were permitted in the zone and considered to be the same singular use (Public Garage), and that said use continued uninterrupted (with a *de minimis* temporary exception) to today. While the applicant could have requested the certificate of nonconforming use and rightfully obtained it for public garage thereby preserving its rights to engage in all such activities it is the applicant's intent to secure it at this time solely for an auto body shop without side storage, which it will continue to operate only if the ultimate application or expansion is approved. As such, applicant reserves the right to secure a similar certificate for public garage in the future if its application is ultimately denied.

As set forth fully below, the entirety of the objectors' opposition is based upon changes in the zoning code that were made after that point in time, but such position is contrary to case law and statutory law. Furthermore, their argument, even if correct (which it is not), also fails by the application of simple logic and for the reasons set forth below.

First and foremost, it is **noteworthy** that **this very Board has already determined** that **pre-existing nonconforming auto body shops existed on both lots.** With respect to Lot 12, this Board had already **found that a pre-existing nonconforming auto body repair shop existed on the entirety of Lot 12** by resolution of this Board on November 11, 1987. While an auto body shop was not “expressly” designated as a pre-existing nonconforming use by this Board on Lot 14, it implicitly did by finding that there was a nonconforming auto body repair shop on the majority of Lot 14 and **concluded that the owner had the right to continue that use on September 25, 1974**, as set forth in a resolution of the same date. As such, this Board is required as a matter of law to follow and accept such findings of fact and conclusions.

Notwithstanding the same, the Applicant provided substantial evidence that proved that the “auto body shop use with outdoor storage” on Lot 12 existed when permitted (as a public garage) and continued to exist and operate to the present day, **without interruption** as has an auto body use with outdoor storage on Lot 14, with only a single (very temporary) interruption that occurred only after this very Application was actually filed (which in and of itself demonstrates that the Applicant had no intent to abandon such use). Substantial evidence submitted at the hearings for this Application further demonstrates that the same use as a “Public Garage” existed on the rear portion of Lot 14 from the time when it was permitted (as a public garage) to the present day without interruption and that preserved the right to perform any and all Public Garage activities, which included repairing auto bodies. This evidence included official government records (such as fire reports, site plans, resolutions from prior land use boards, employment ads, autobody advertisements, and photos) and live testimony witnesses, one of which had firsthand knowledge of activity on both lots, dating back over 60 years ago.

Neither Applicant nor any prior owners of the Property ever intended to abandon the auto body use or outside storage since that time when it was permitted.

The substantial evidence submitted, supports a finding that the Applicant is entitled to a determination of (1) a pre-existing nonconforming use pursuant to *N.J.S.A. 40:55D-5* (and Code § 190-3) as an auto body repair shop and prior Resolutions of this Board regarding outdoor storage, due to the inclusiveness of the definition of “Public garage” on Lot 12 and Lot 14; (2) the uses on Lot 12 and Lot 14 as auto body repair shops, with outdoor storage, were never abandoned, and, therefore, that (3) the use of Lot 12 and Lot 14 as an auto body repair shop, with outdoor storage must be allowed to continue and this Board should issue the requested Certificates in accordance with *N.J.S.A. 40:55D-68* and Code § 190-126. Similarly, the Applicant is entitled to such Certificate to that portion of Lot 14 that were used for other public garage activities as such activities preserved the right for all public garage activities, including auto body repair.

II. Procedural History and Statement of Facts

A. The Request and Hearings

1. Over the course of eight hearings, commencing on May 23, 2023 and culminating on August 27, 2024, the Board entertained testimony and accepted evidence from the Applicant and members of the public, including from objectors, the Religious Society of Friends Ridgewood Friends Meeting and the Friends Nursery School (represented by Robert J. Inghima, Jr.).¹ The Board heard from the multiple witnesses, who provided uncontradicted factual testimony supporting the Applicant’s request and some expert testimony from both Applicant and the Objectors, as well.

¹ The application was informally bifurcated with the request for a Certificate of Nonconforming Use being considered first, which is the subject of this Position Statement.

2. Michael Daniel, an owner of Les Dann, LLC, which operates Mountain View Auto Body, provided testimony as to the ongoing operations of that shop other facilities he operates, and the type of operation he is accustomed to operating, following his purchase of the same on or about 2021.

3. Karl E. Montick was the most recent owner of Lot 12 and Lot 14 prior to the Applicant and his first-hand knowledge of the uses and activities on both lots dates back 60 years.

4. Mr. Montick testified as to the prior auto body repair shops (with outdoor storage) that operated on both Lot 12 and Lot 14 consistently and continuously, which auto body uses were observed by Mr. Montick on both lots since approximately 1967.²

5. Mr. Montick was born in 1955 and has first-hand knowledge of the auto body repair shop uses on Lot 12 and Lot 14, as of approximately 1967, testifying (in part):

Q Okay. So is it fair to say from your earliest recollection, which we know is 1967 or '68, the latest, that you have always observed body shop uses on both lots, Lots 12 and 14, 246 and 264 South Broad Street?

A Yes. *See October 24, 2023 Transcript, T18:1-T18:5 and T42:4-T42:9.*

6. With respect to Lot 12, Mr. Montick testified that his father owned the lot and operated an auto body repair shop on site, Ridgewood Vehicle, which use continued through the years. *See October 24, 2023 Transcript, T18:21-T19:13.*

7. Mr. Montick testified that his grandfather owned Lot 14, until such time as he sold it to Mr. Montick's father, and that during the period of ownership by his grandfather, an auto body shop operated on the site. *See October 24, 2023 Transcript, T42:25-T43:8.*

² Mr. Montick's testimony is set forth throughout the *Statement of Facts*, in greater detail.

8. Mr. Montick testified that his grandfather ultimately sold the auto body shop on Lot 14, but that he maintained ownership of the lot. The auto body shop on Lot 14 was sold to Barry Rozema and became Barry's Auto Body sometime prior to 1983. See *October 24, 2023 Transcript, T23:9-T24:22 and T56:15-T57:9; see also, A-60 and A-61*.

9. Mr. Montick testified that he acquired title to Lot 12 and Lot 14 and the business thereon in 80s, after the passing of his father (who was the prior owner thereof and who had acquired the property from his grandfather). See *October 24, 2023 Transcript, T16:6-T16:10 and T18:9-T18:10*.

10. Once he acquired title, Mr. Montick came to possess all the business records (thereby knowing facts beyond his years of observance) of the auto body repair shop (Ridgewood Vehicle) operating on Lot 12. See *October 24, 2023 Transcript, T16:11-T16:14*.

11. Mr. Montick sold the properties to the Applicant in 2021. See *October 24, 2023 Transcript, T14:20-T14:22*.

12. Mr. Montick was familiar with Lot 12 and Lot 14 because he started working on the properties (as a child, teenager, and adult) from 1967 until he sold the properties, testifying, with respect to Lot 12:

Q Okay. And as a child, were you familiar with this property?

A Yes.

And as to Lot 14,

Q Okay. And were you familiar with the businesses that operated on that site –

A Yes.

Q -- through those years?

A Yes.

Q And the businesses that were on that site consisted of what?

A It was an auto body shop, Ridgewood Auto Body, and at that time there was a taxi garage, repair garage. *See October 24, 2023 Transcript, T17:18-T17:20 and T19:19-T20:2.*

13. During that time, Mr. Montick served as a sweeper, a manager, and ultimately the owner of Ridgewood Vehicle. *See October 24, 2023 Transcript, T18:25-T19:9, T26:23-T28:16, and T30:24-T31:1.*

14. During the same years, Mr. Montick was also familiar with the auto body repair operations on Lot 14, which became Barry's Auto Body, because the property was owned by his grandfather, and he became friends with the owner of that shop and shared parts. *See October 24, 2023 Transcript, T24:23- T26:11,*

15. Alexander Saavedra, of Alexander Saavedra, LLC (private investigator) testified that he was retained to investigate historical documents applicable to the lots in question. He testified as to the investigation he performed, which included establishing a history of the auto body repair shop uses on Lot 12 and Lot 14. *See October 24, 2023 Transcript, T78:2-T80:6.*

- a. Mr. Saavedra's exhaustive investigation involved obtaining historical proof of the uses on Lot 12 and Lot 14, which he obtained from the Village Historian, at the Ridgewood Public Library, by searching the Village's archived records.
- b. Mr. Saavedra produced certain documents (from public records maintained at the Village library) to which he testified, evidencing the existence of an auto body repair shop on Lot 14 from 1930 and the existence of an auto body repair shop on Lot 12 from 1962 onward. The official government records testified to by Mr. Saavedra are as follows (which will be addressed in further detail later on):³

³ These Exhibits have not been attached for brevity.

- A-50 Sanborn Fire Insurance Company map of Ridgewood, 1930/1948, which depicted use of an auto body shop – Lot 14
- A-50 A B Enlarged image of A-50, which showed Lot 14 and Lot 12 and the existing use of an auto body shop – Lot 14
- A-51 Advertisement for the opening of Ridgewood Auto Body dated March 8th, 1942, the Sunday News Ridgewood – Lot 14
- A-52 Advertisement for Ridgewood Auto Body dated December 20, 1942, the Sunday News Ridgewood – Lot 14
- A-53 A Newspaper Publication, depicting a fire on site referencing Ridgewood Auto Body - Lot 14
- A-54 Advertisement for a Want Ad for an Auto Body Painter for 264 South Broad Street – Lot 14
- A-55 A Advertisement dated 12/21/1958 for Ridgewood Auto Body. Sunday News Ridgewood – Lot 14
- A-56 Auto body mechanic ad for Ridgewood Auto Body– Lot 14
- A-57 Classified advertisement dated October 31, 1965, Sunday News Ridgewood, New Jersey, referencing Barry – Lot 14
- A-58 Ridgewood Auto Body ad, dated February 9, 1966 - Lot 14
- A-59 Public notice dated September 15, 1974 referencing construction of auto body shop on Lot 14 – Lot 14
- A-60 Newspaper publication for Barry's Auto Body dated April 3, 1983, the Sunday News – Lot 14
- A-61 Advertisement for Barry's Ridgewood Auto Body, dated July 31, 1983 – Lot 14
- A-62 Advertisement dated October 9th, 1983 for Ridgewood Auto Body, Sunday News Ridgewood – Lot 14
- A-63 Advertisement for Ridgewood Auto Body, dated January 29, 1984 - Lot 14

- A-64 Advertisement for Ridgewood **Auto Body**, dated November 9, 1986 - Lot 14

- A-65 A Dated September 16, 1990, Sunday News Ridgewood, New Jersey titled: Barry's Ridgewood **Auto Body**, Incorporated – Lot 14

- A-66 Newspaper article dated June 16, 1963 for variance request by Karl Montick – Lot 12

- A-69A B Public notice for a variance request to permit an addition a structure by Karl Montick, dated October 18, 1987, Sunday News Ridgewood – Lot 14

- A-70A Public notice for a request to construct one-story addition on to **body shop** dated October 18, 1987, Sunday News Ridgewood – Lot 14

- A-77 Ridgewood Fire Department Company Fire Report - Fire No. 13702, identifying Ridgewood Vehicle and **auto body** use, dated March 19, 1974 – Lot 12

- A-78 State of NJ Fire Incident Report, identifying Ridgewood Vehicle and **auto body** use, dated April 7, 1987 – Lot 12

- A-80 Ridgewood Fire Department Company Fire Report, Fire No. 14, identifying Ridgewood **Auto Body**, dated 1948 – Lot 14

- A-81 Ridgewood Fire Department Company Fire Report -Fire No. 1565, identifying Ridgewood **Auto Body**, dated 1953 – Lot 14

- A-83 Ridgewood Fire Department Company Fire Report -Fire No. 6037, identifying Ridgewood Vehicle and **auto body** use, dated 1963 – Lot 12

16. Steve Lydon, P.P., Planner for the Applicant, provided extensive planning testimony and performed an investigation, ultimately opining that the Applicant was entitled (based on the evidence presented) to a Certificate of Nonconforming use as an auto body repair shop with

outdoor storage on Lot 12 and Lot 14 (except for the portion of Lot 14 that previously contained a residential structure).⁴

B. Zoning and Permitted Uses for Lot 12 and Lot 14

1946-1964 (1946 Zoning Ordinance)

17. Lot 14 and Lot 12 were located in a business zone, for the period from 1946 through 1964 (A-72).⁵

18. A “public garage” was a permitted use in the Retail Business Zone **only** during the period from 1946 through 1965. See O-5,⁶ attached hereto as *Exhibit A*.

1965-1984 (1965 Zoning Ordinance)

19. Beginning with 1965 (until 1984), Lot 12 and Lot 14 were zoned as the B-2 Retail Business District, until such time as the lots were rezoned to the R-3 Two-Family Residence District. See A-71A, A-71B, and A-87, of which A-71A and A-71B are attached hereto as *Exhibit B*.

20. During this entire time, public garages were a permitted use in the B-2 Zone, subject to the additional regulations set forth in Article 5 of the 1965 Zoning Ordinance. See A-71B, attached hereto as *Exhibit B, Article 18*.

21. The outdoor repair of motor vehicles was prohibited; however, on site storage (vehicles, parts, and supplies) were permitted to be stored outside overnight in rear and side yards subject to the requirements of Section 412 of the Ordinance. See A-71A, attached hereto as *Exhibit B, Article 5, Section 508*.

⁴ Mr. Lydon’s testimony is discussed in detail later in this Statement of Facts.

⁵ The Plot Size Map does not differentiate between business zones (retail or general).

⁶ While the Applicant could justify its pre-existing nonconforming use under this Ordinance and the operations on both lots since then. It is ever simpler to so under the 1965 Ordinance as set forth below.

22. Section 412 of the 1965 Code provided that articles, equipment, vehicles, and materials may be stored outside in the side and rear yards. *See A-71A*, attached hereto as *Exhibit B*, *Article 4, Section 412*.

23. Although the Zoning Ordinance was revised and readopted in 1976, Article 33 (Zoning Ordinance), the relevant provisions effectively remained the same but were simply relocated/renumbered accordingly. Public garages were still permitted in the B-2 zone (Article XVII) subject to the regulations set forth in Article III. *See Exhibit C, § 33-118(b)*. Public garages were still not permitted to repair motor vehicles outside but were allowed outside storage.

1984-Present

24. Ordinance No. 1949, adopted in calendar year 1984, **specifically rezoned Lot 12 and Lot 14 from the B-2 Business Retail Zone to the R-3 Two-Family Residence District**. *See A-76*,⁷ a copy of which is attached hereto as *Exhibit D*. The Properties remain in the R-3 Zone through the present.

25. Public garages are not permitted in the R-3 Zone. *See Exhibit E, § 190-123(A)*(identifying public garages as only being permitted in the B-2 and C Districts in the current code); *see also Exhibit E, § 190-106*.

C. The Village of Ridgewood Zoning Code Definitions

The following definitions and terms referenced in the Village's Zoning ordinances through time (as identified below) are pertinent to the matter.⁸

⁷ This change was suggested by the Master Plan Examination, which occurred in 1983. *See A-76B*.

⁸ Exhibits presented at the hearing are referenced as "A" and "O" for those of the Applicant and Objector, with references to Code Provisions and Ordinances provided by Mr. Inglima, noted as "Exhibit" with a copy of the document attached hereto.

Public Garage v. Private Garage

26. **Public Garage (1946 Zoning Code).** See O-5, attached hereto as *Exhibit A*.

- a. Private Garage – “Is an accessory building in which no business, commercial service, or industry connected with motor vehicles is carried on.” *Exhibit A, §1*
- b. Public Garage – “Any garage other than a private garage.” *Exhibit A, §1*

27. **Public Garage (1965 Zoning Ordinance).** See A-71A and A71B, attached hereto as *Exhibit B*.

- a. Private Garage – “A private garage is a detached accessory building or a portion of a principal building, used primarily for the storage of motor vehicles owned or used by the occupant of the principal building to which the garage is an accessory.” *Exhibit B, § 325*
- b. **Public Garage - Public garage or gasoline service station** – “A public garage or gasoline service station is any building, structure, lot or land in or upon which a business, service or industry involving the storage, maintenance, washing or servicing, and storage in connection therewith, of motor vehicles is maintained, conducted, operated, or rendered.” *Exhibit B, § 326.*^{9 10}

28. Public Garage (1976 Zoning Code - Chapter 33). See *Exhibit C*

⁹ The Objector’s Planner, when cross-examined about the definition of “public garage” and the use of the word “servicing” in the definition, would not simply agree to use the definition for servicing car repairs, as detailed in Webster’s Dictionary or even admit that Webster’s was a good benchmark as to what common usage means for various definitions. See August 27, 2024 Transcript, T81:10-T82:5. Although he did eventually agree that Webster’s could be used, his argument over the issue demonstrates his bias and complete lack of credibility with his testimony.

¹⁰ The Objector’s Planner attempted to argue that “storage” was intended to be an “accessory component” of the definition of Public Garage. However, when questioned by Counsel, Mr. Steck admitted that definition did not contain the term accessory. See August 27, 2024 Transcript, T76:16-T78:17. A plain reading of the Code demonstrates that the Objector’s Planner’s position is nonsensical and that his testimony was biased and not credible.

a. Private garage – “A detached accessory building, or a portion of a principal building, used primarily for the storage of motor vehicles owned or used by the occupant of the principal building to which the garage is accessory.” *Exhibit C*, § 33-3.

b. Public garage or gasoline service station – “Any building, structure, lot or land in or upon which a business, service or industry involving the storage, maintenance, washing or servicing, and storage in connection therewith, of motor vehicles is maintained, conducted, operated or rendered.” *Exhibit C*, § 33-3.

29. Public Garage (2007 Code through the present): Public Garage is no longer defined in Chapter 190 and has not been so defined since at least 2007.

Auto Body Repair Shop

30. Auto Body Repair Shop has never been defined in the Village Code, but clearly has been included in the definition of Public Garage for decades.

31. Auto Body Repair Shop (1946 Code): The term is not defined in the code, nor is it referenced in any way. *See O-5*, attached hereto as *Exhibit A*.

32. Auto Body Repair Shop (1965 Code): was changed to permit “auto body repair shops” in the C-Zone, without the added requirements for a “public garage”. *See A-71A and A71B*, attached hereto as *Exhibit B*, Art. 20.¹¹

33. Auto Body Repair Shop (1976 Code): permits “auto body repair shops” in the C-zone in the same manner as the 1965 Code. *See Exhibit C*, § 33-121 (1976 Code).

34. Auto Body Repair Shop (2007 Code): permits “auto body repair shops” in the C-zone in the same manner as prior Code (1976). *See Exhibit F*, § 190-114 (2007 Code).

¹¹ It is noteworthy that the Code was never amended to separate auto body repair shop from the definition of “public garage”, as it expressly did in 1976 when it excluded car washes as permissible activity. *See Exhibit C*, §33-118(b). This just permits one separate activity of a public garage, to be conducted in the C-Zone, no other.

35. Auto Body Repair Shop (2012 Code): Same as 2007 Code. *See Exhibit G, § 190-114* (2012 Code).

36. In 2016, Ordinance 3492, amended Chapter 190 to add the term “automotive repair shop”, at which time the term “auto body repair shop” (in the Code since 1965) was no longer reflected in the Code. *See Exhibit H* (2016 Ordinance).

Automotive Repair Shop

37. Prior to 2016, the term “automotive repair shop” did not exist in the Village Zoning Ordinance.

38. The 2016 Ordinance No. 3492 added “Automotive repair shops” as permitted uses in the C-zone but did not define the term. *See Exhibit H*.

The Public Garage Use is a Single Use, Encompassing Several Activities

39. The definition of “public garage”, which use¹² has been defined in the Village’s Zoning Ordinances since at least 1945 and includes an abundance of activities, such as auto body repair shops, automotive repair shops, automotive mechanical shops, and related motor vehicle repair facilities (none of which are defined in the Village’s Zoning Ordinances). *See March 26, 2024 Transcript, T40:22-T42:9*.

40. In accord with the *Stop & Shop Supermarket Co. v. Board of Adjustment of Twp. Of Springfield* decision, *supra*, the fact that the Village’s Zoning Ordinances only defined public garage in broad terms in 1965, means that all uses which could fall under that public garage are the same use and it is that definition that the **Board must apply** in its analysis now and at all times.

¹² It is noteworthy that despite the fact that Public Garage was clearly listed as a use in the B-2 Zone in 1965 (and in the retail business zone prior thereto), the Objector’s Planner, Mr. Steck, took the incredulous position that the definition of “Public Garage” was not to be interpreted as a use, but merely as a type of building. *See August 27, 2024 Transcript, T65:25-T66:5*. Even in the face of commonsense and the plain language of the Code, Mr. Steck would not agree, demonstrating his bias and lack of credibility.

41. As testified to by the Applicant's Planner, auto body repair shops, automotive repair shops, automotive mechanic shops, and related motor vehicle repair facilities are included within the Ordinances' definition of "Public Garage" (to which the Objector's Planner agreed)¹³ and, therefore, a change in operations from an autobody repair shop to an automotive repair shop, muffler shop, or similar facility, is no change in use at all. *See id.*

D. Historical Evidence That Auto Body Repair Shops Uses Existed on Lot 14 since at least 1930 and on Lot 12 since at least 1962

Lot 14

42. With respect to Lot 14 (264 South Broad) the evidence demonstrates that an auto body repair shop existed on Lot 14 as far back as 1930 and that Ridgewood Auto Body was established on the site by at least 1942. *See A-50A/B; A-51; and A-52.*

43. Mr. Saavedra, a licensed private investigator¹⁴ produced and testified to the existence of the Sanborn map from 1930, showing an auto body shop on Lot 14. *See October 24, 2023 Transcript, T80:19-T83:18.*

44. More specifically, the 1930 Sanborn insurance map¹⁵ (A-50A) further identifies the use in the middle of Lot 14 as being used for auto body repair and painting as far back as 1930, while identifying three buildings on the lot at that time.

¹³ Mr. Steck testified that auto body shops, mechanic's shops, would be considered a "public garage" pursuant to the Village's Zoning Ordinances. *See August 27, 2024 Transcript, T66:6-T66:19.*

¹⁴ Mr. Saavedra was previously employed by the Bergen County Prosecutor's Office as a detective and had a commission from the Governor of the State of New Jersey. *See October 24, 2023 Transcript, T77:2-T77:7.*

¹⁵ Steve Lydon had experience regularly reading of such maps for historical uses.

45. Mr. Saavedra also produced an advertisement showing the existence of Ridgewood Auto Body on Lot 14¹⁶ as of 1942, as well as certain articles/reports in the newspaper from 1948 demonstrating the existence of an auto body shop on Lot 14. *See id.*; *see also, A-51 through A-53a.*

46. Official government records, such as fire incident reports from 1948 and 1953, identify the operations on Lot 14 as Ridgewood Auto Body and as an auto body shop. *See A-80 and A-81.*

47. Ridgewood Auto Body performed body repair work, painting, muffler installation, welding, and related services. *See A-55A; see also, A-50A/B.*

48. Advertisements from the 1950s also confirmed the existence of an auto body repair shop on Lot 14, to which Mr. Saavedra testified:

Q A-55 and A-55A seem to go together, and what do they show?

A A-55 is an advertisement dated -- actually, A-55A is an advertisement dated 12/21/1958. Sunday News Ridgewood, New Jersey advertisement referencing auto body addressed at 264 South Broad Street.

Q And as its heading it has Ridgewood Auto Body again, correct?

A Yes. "Ridgewood Auto Body, American and foreign cars expertly repaired, insurance work, estimates". *See October 24, 2023 Transcript, T84:9-T84:18.*

49. A variety of newspaper ads, such as employment want ads and general business advertisements, between the period of 1942-1966 advertise for Ridgewood Auto Body with an address of 264 South Broad. *See A-51 through A-56, and A-58.*

50. Mr. Saavedra produced at least six ads for Barry's Auto Body, reflecting the 264 South Broad Street address for the period from 1983 through 1990. *See A-60 through A-65.*

¹⁶ Mr. Montick testified that it was his grandfather's auto body repair shop.

51. Mr. Saavedra testified to the existence of official government records such as a fire report dated January of 1948, expressly identified the operations on Lot 14 as Ridgewood Auto Body and its operations as the repairing/repainting vehicles. *See A-80*. Similarly, an official 1953 fire report identified the entire Property as Ridgewood Auto Body and as an auto body shop. *See A-81*.

52. With respect to Lot 14, Mr. Montick testified that Ridgewood Auto Body was continuously used as an auto body shop up until it was purchased and became Barry's Auto, stating:

Q Okay. Do you know firsthand whether or not the body shop continued to function as a body shop from the time that it was Ridgewood Auto Body until the time that Barry's purchased it?

A Yes.

Q Okay. And do you know that from your firsthand observations when you were present at the property?

A Yes.

Q Okay. *See October 24, 2023 Transcript, T22:20-T23:24*.

53. Mr. Montick provided additional testimony that the auto body use continued through the time Lot 14 was sold to the Applicant and that it was always the intent of Mr. Montick and prior owners to continue the auto body use on Lot 14. More specifically, Mr. Montick testified:

Q And with respect to 264, up until the time that you started working there again full time in '84, '85, did body shop operations on Lot 264 ever stop?

A No.

Q And did your father ever have expressed to you any intent to have it stopped on that lot?

A No.

Q Are you aware as to whether or not your father made any applications to actually expand body shop operations on Lot 264?

A Well, he tried - I'm not sure exactly when it was in the '70s - to put up, you know, some buildings there and change that property and to have it be Ridgewood Auto Body, a transmission guy, and a glass guy. They were going to do two or three different things. There was an application for the town that was eventually withdrawn.

Q But the body shop operations were always going to continue?

A Yes. *See October 24, 2023 Transcript, T28:25-T29:19.*

...

Q Okay. And on Lot 264 where Barry's Auto Body shop was, did you continue to be a landlord of the body shop on that property?

A Yes.

Q And up until the time that you sold the property to the Daniels, did there continue to be a body shop on that property 264 up through the date of sale?

A Yes. *See October 24, 2023 Transcript, T31:18-T31:25.*

54. Mr. Montick further testified that Ridgewood Taxi occupied the rear building on Lot 14 since the 1950's, using it as a repair garage to service its own vehicles while also storing vehicles on site. Mr. Montick testified as follows:

Q Okay. What other businesses do you recall functioning on that site during the years that Ridgewood Auto Body operated on that site? I'm talking about Lot 264.

A **There was a taxi garage, repair garage there. Ridgewood Taxi was the title.** *See October 24, 2023 Transcript, T26:17-T26:22 (emphasis added).*

...

Q You previously indicated that Barry's Auto Body and the rear of the building was occupied by Ridgewood Taxi, right?

A Yes.

Q Did Ridgewood Taxi store vehicles on the property on Lot 14?

A Yes.

Q And you say they repaired them in the garage?

A Correct. *See October 24, 2023 Transcript, T57:10-T57:19.*

...

Q When did Ridgewood Taxi leave Lot 14, do you know?

A I'm thinking like '17 or '18. Whenever they -- when they lost their lease here in town, when they left the car shop.

Q You said in '17 or '18?

A I believe so, yeah.

Q 2017 or 2018?

A **That's when Ridgewood Taxi left, and E & J came in.** *See October 24, 2023 Transcript, T57:25-T58:7 (emphasis added).*

...

Q Do you recall when Ridgewood Taxi occupied the building on building 6?

A No, I was too young. I believe it was in the '50s. But I don't know for sure.

Q Did you witness what they did on that site during the years?

A Yeah, as I got older, they were doing repairs of the taxis.

Q Did they use that also as a dispatch office?

A I don't know for sure. I believe the dispatch office was in the train station here in town at the time, and they were used to store their extra taxis and to repair the ones that needed to be

repaired. *See October 24, 2023 Transcript, T73:21-T74:11.*¹⁷

55. Once Ridgewood taxi left in 2017/2018, E&J Mechanical, an auto repair shop, moved in and utilized the space until moving out after the Applicant purchased Lot 14. *See October 24, 2023 Transcript, T57:25-T58:6 and T73:21-T73:25.*

56. Since both operations in ¶55 (and all activities on Lot 14) are considered the same singular use (Public Garage), the use continued. *See January 23, 2024, T86:8-T86:16 and T89:18-T91:17; see also, March 26, 2024 Transcript, T40:22-T42:9*

57. With respect to outdoor storage on Lot 14, Mr. Montick testified that vehicles and car parts were stored all over the lot, stating:

Q Okay. Did Ridgewood Auto Body, where did they store their vehicles that they were working on?

A On the lot.

Q Whereabouts on the lot?

A Anywhere from the street to the back. You know, there was parking in front, parking in the back and out on the sides.

Q And where did they store car parts?

A Wherever it was convenient at the time in the area. Sometimes, you know, basically right outside, you know, wherever was easiest to get to whatever they need.

Q Okay. And were those parts on the ground, near the surface on the ground? Were they on racks or some other means?

A Probably all of the above. Racks and some stuff on the ground.

Q Okay. And when you say "probably", do you have firsthand memory of that?

¹⁷ Mr. Montick, therefore, testified that the use by Ridgewood taxi was limited to storage and repair.

A I remember going over there to, you know, I'd be sent over to pick up parts or supplies or something. They had an amicable relationship, so at time I would get something like a tool or whatever.

Q Okay. And so while you were doing that you would end up seeing the vehicles that were in the process of being worked on –

A Yes.

Q -- outside?

A Yes.

Q As well as parts?

A Yes.

Q On the ground?

A Yes.

Q And on racks?

A Yes. *See October 23, 2024 Transcript, T 20:8-T21:16.*

58. Outdoor storage on Lot 14 was also continued by E&J Mechanical which kept various vehicles to be repaired outside, (i.e., public garage with outside storage). *See August 8, 2023 Transcript, T67:15-T68:6.*

59. Mr. Daniel also provided testimony that E&J was an automotive repair company and, thus, the change from Ridgewood Taxi to E&J Mechanical to Mountain View Auto Body was the same use as a Public Garage. *See October 24, 2023 Transcript, T58:8-T58:14.*

Lot 12

60. Mr. Montick testified that with respect to Lot 12, Ridgewood Vehicle began operating as an auto body shop on the site as of 1962. *See October 23, 2024 Transcript, T17:1-T17:15.*

61. Official government records (such as fire reports) from 1963, 1974, and 1987, all identify the operations on Lot 12 as Ridgewood Vehicle, and as an auto body shop. *See A-77, A-78, and A-83.*¹⁸

62. As testified to by the Applicant's Planner and as reflected on the official government record, the 1963 fire department report identified the location as Ridgewood Vehicle¹⁹ and the operations as an auto body repair shop. *See January 23, 2024 Transcript, T70:9-T71:8; see also, A-83.*

63. In 1974, a brush fire occurred at Ridgewood Vehicle (a known auto body repair shop) and the official fire incident report noted the company as Ridgewood Vehicle and its operation as an auto body repair shop. *See January 23, 2024 Transcript, T71:9-T72:1; see also, A-77.*

64. In 1987, in response to an emergency incident at Lot 12, the aforementioned reports identified the site as Ridgewood Vehicle, in use as an auto body repair shop. *See January 23, 2024, T72:1-T72:12.*

65. The Outside storage of car parts (such as hoods, bumpers, and fenders), vehicles, and the like occurred on Lot 12, with Mr. Montick testifying:

Q And what about on Lot 246, which was your father's auto body shop, where were the vehicles stored that he worked on?

A Well, there was parking in the front of the building for maybe a half dozen cars, and then the rest of them were stored in the back.

Q Were they stored inside or outside?

A Outside.

¹⁸ The Objector's Planner agreed that Ridgewood Vehicle was an auto body shop. *See August 27, 2024 Transcript, T56:13-T56:15.*

¹⁹ Mr. Montick testified as to the use as an auto body shop as set forth in greater detail below.

Q Okay. And what about parts, parts that were taken off damaged parts and cars, where were they stored?

A Well, some were stored in the front depending on where, you know, what process the car was in, and the rest would be outside in the back.

Q Okay. Would they be on the ground outside in the back or would they be on top of racks?

A There were racks for some of the parts, and the rest of them would be on the ground, depending on what part it was.

Q And what about the storage parts in front?

A There were no racks in the front. So they would be up against the wall or stored on the ground.

Q Okay. And that's what your memory is throughout those years?

A Yes. *See October 24, 2023 Transcript, T21:17-T22:16.*

...

Q Okay. And was it your intent to always use the property to store either cars or parts to whatever extent was necessary to continue operations?

A Yes.

Q Okay. Just to get a better sense as to the type of storage. Were there tires on occasion that would get stacked on the property?

A Yeah, you know, if they needed to be replaced in the course of repair. We would put them out and store them until such time as we had enough quantity where we'd get somebody to take them away.

Q Okay. Fenders?

A Yes.

Q Hoods?

A Yes.

Q Bumpers?

A Yes. *See October 23, 2024 Transcript, T41:13-T41:6.*

66. Mr. Montick never ceased auto body operations on Lot 12 and never stopped outside storage on Lot 12, testifying:

Q During the time period that you owned Ridgewood Vehicle, did you ever stop auto body operations on that property?

A No.

Q Did you ever stop storage outside with respect to vehicles that you were working on?

A No.

Q Did you ever stop outside storage parts?

A No. *See October 23, 2024 Transcript, T31:9-T31:17.*

67. Accordingly, Lot 12 consistently operated as an auto body shop (with outside storage) since 1962 under the name “Ridgewood Vehicle” until it was subsequently renamed to Mountain View Auto after having been purchased by the Applicant in June 2021. *See October 24, 2023 Transcript, T14:20-T14:22.*

E. Prior Resolutions of this Board Involving Lot 12 and Lot 14 Support the Preexisting Nonconforming Use Status as an Auto Body Repair Shop on Lot 12 and Lot 14

Records submitted in conjunction with the Application²⁰ as well as the exhibits produced during the hearings support the Applicant’s position.

²⁰ To the extent there is no citation to a resolution in this section, the resolution and/or index card from the Village was submitted as part of the Application package.

Lot 12

68. In 1963, Mr. Montick's father filed an application to erect a 6' tall fence on Lot 12, which request was subsequently granted in June of 1963 (but no copy of the resolution exists). *See Application.*

69. In 1979, Mr. Montick's father filed an application to construct a six-foot tall chain link gated fence on Lot 12 (which was in the B-2 zone), which application was approved and memorialized in a decision dated October 24, 1979. *See A-84A.*

70. The 1979 Resolution of Approval (*A-84A*) related to Lot 12 correctly determined that the **site was in use as an automobile repair shop** (a subset of public garage), **which it expressly found to be a permitted use** in the B-2 zone. Mr. Montick's father sought "to add to an existing fence in order to discourage a growing problem of vandalism and thievery[]" in the yard.²¹ The purpose of the fence was to act as a deterrent. *See A-84A.*

71. The proposed fence, which would enclose the entirety of Lot 12, was depicted on a site plan prepared by Andrew Marshall, Jr., dated July 30, 1979 ("Marshall Plan"), which identified the occupant of Lot 12 as Ridgewood Vehicle. *See A-84B.*

72. In 1987, Mr. Montick, Sr. filed an application with respect to Lot 12 to construct an addition to house a spray paint booth. By 1987, Lot 12 (and Lot 14) was located in the R-3 residential zone, which prohibited public garages (and, since 1984, auto body repair shops). *See A-85.*

73. The Resolution of Approval, dated November 18, 1987 (*A-85*) found that the one building on site was a pre-existing non-conforming use as an auto body repair shop.²² Ultimately, the

²¹ Clearly in response to outside storage, as a fence would not protect any valuables that were inside buildings.

²² The zoning change from B-2 to R-3 evidence why the Board found in 1979 (in response to Mr. Montick's application to erect a fence on Lot 12) that the auto body repair shop use was permitted, but that in 1987, an auto body repair shop was a preexisting nonconforming use. Because Lot 12 and Lot 14 had been rezoned from the B-2 zone, which

application was approved, with a finding that the proofs supported “the grant of an expansion of a use not permitted in the zone[.]”

Lot 14

74. In 1974, Mr. Montick’s father filed an application to construct a new building, in which to expand the auto body shop on Lot 14 (which was then in the B-2 Zone), which request was denied. *See Application.*

75. The Resolution of Denial, dated September 25, 1974, found that Lot 14 to be in use by a “non-conforming auto body repair shop” and which “**pre-existing nonconforming use would be enlarged or otherwise extended . . .**” by the requested relief (emphasis added). The 1974 resolution further found that the three non-residential buildings on Lot 14, consisted of the rear building, occupied by Ridgewood Taxi; a block garage in use as a paint shop; and the eastern most building being a one-story frame garage occupied by Ridgewood Auto Body, which was proposed to be expanded. All of which fell within the definition of public garage. *See Application.*

76. The 1974 resolution also referenced the existing residential dwelling. Importantly, the pre-existing nonconforming use finding by the Board, supports the conclusion that an auto body shop (which is a subset of public garage) had existed in continuous use on Lot 14 since 1930, prior to the enactment of the 1946 Zoning Ordinance. *See Application.*

77. Most importantly, the Board concluded that even though the application was denied, **that the auto body repair shop use could continue, as set forth in the 1974 Resolution.** *See Application.*

permitted auto body repair shops, to the R-3 zone, which did not, the Board’s determination that the auto body repair shop was a preexisting nonconforming use was correct.

78. Moreover, at the time of the 1974 Resolution, the only definition that “auto body repair shop” could conceivably fit into, would be that of a public garage, the same use that the taxi service and paint shop fall in.

F. There was never any Intent to Abandon the Auto Body Repair Shop Use

79. Throughout the hearings, the evidence and testimony were clear that there was never any intent to abandon the auto body repair shop uses that were ongoing on either Lot 12 or Lot 14. Throughout the entirety of time, it was the intent of Mr. Montick, his father and the Applicant, to maintain the auto body repair usage on Lot 12 and Lot 14, which use has not been abandoned.

Lot 12

80. Mr. Montick never ceased auto body operations on Lot 12 and never stopped outside storage on Lot 12. *See* ¶66.²³

81. Although Mr. Montick permitted certain third parties, such as M&K Landscaping, to temporarily store vehicles and materials outside (uses encompassed by the use of Public Garage), on a portion of Lot 12, it was always the intent of Mr. Montick to maintain the public garage/auto body use with outdoor storage on Lot 12. *See August 8, 2023 Transcript, T18:4-T20:5; see also, October 24, 2023 Transcript, T53:18-T53:20.*

82. Mr. Montick testified that once he sold the Property and business to the Applicant, he intended that the auto body business would continue. *See October 24, 2023 Transcript, T28:17-T31:8; T34:9-T34:13; and T40:13-T41:14.*

83. Mr. Daniel testified that it was the Applicant’s intent to continue auto body operations on Lot 12, after having purchased the same, testifying:

²³ In fact, the 1979 Resolution granted a variance for an auto body shop use to install a fence to prevent theft and vandalism of parts and vehicles.

Q And at the time of your acquisition, was it your intent to continue the body shop operations of Ridgewood Vehicle and have it assume your name of Mountain View Auto Body?

A Correct. *See January 23, 2024 Transcript, T8:6-T8:10.*

84. In point of fact, the Applicant not only purchased Lot 12, but continued the auto body repair shop business on that lot, testifying:

Q Okay. And at some point in time did you change over to Mountain View Auto Body at that location?

A We did.

Q And from the time period that you acquired the property up until the present date, has auto body operations continued uninterrupted on both lots, Lots 12 and 14?

A Yes, it has. *See January 23, 2024 Transcript, T10:16-T10:23.*

Lot 14

85. Mr. Montick provided testimony it was always the intent of Mr. Montick and prior owner (his father) to continue the auto body use on Lot 14. More specifically, Mr. Montick testified:

Q And with respect to 264, up until the time that you started working there again full time in '84, '85, did body shop operations on Lot 264 ever stop?

A No.

Q And did your father ever have expressed to you any intent to have it stopped on that lot?

A No.

Q Are you aware as to whether or not your father made any applications to actually expand body shop operations on Lot 264?

A Well, he tried - I'm not sure exactly when it was in the '70s - to put up, you know, some buildings there and change that property and to have it be Ridgewood Auto Body, a

transmission guy, and a glass guy. They were going to do two or three different things. There was an application for the town that was eventually withdrawn.

Q But the body shop operations were always going to continue?

A Yes. *See October 24, 2023 Transcript, T28:25-T29:19.*

...

Q Okay. And on Lot 264 where Barry's Auto Body shop was, did you continue to be a landlord of the body shop on that property?

A Yes.

Q And up until the time that you sold the property to the Daniels, did there continue to be a body shop on that property 264 up through the date of sale?

A Yes. *See October 24, 2023 Transcript, T31:18-T31:25.*

86. Mr. Daniel further testified that it was his intention to continue the auto body shop operations on Lot 14 as well, testifying,

Q Okay. When you purchased the properties, Barry's was an operating body shop on Lot 14, you previously testified to. Correct?

A Correct.

Q And it was your intent that they continue their operations as well as your tenant. Correct?

A Correct. *See January 23, 2024 Transcript, T8:11-T8:170; see also, January 23, 2024 Transcript, T19:18-19:21.*

87. Mr. Daniel expanded on his intent to continue to operate the space occupied by Barry's Auto Body on Lot 14 as an auto body shop, further testifying:

Q At the time that you had acquired the property, was it your intent that the property that was occupied by Barry's Auto Body continue as an auto body shop?

A Yes.

Q And was it also in the plans or the realm of consideration that if Barry's ever left that you would eventually take that property over and use that portion of the property for your body shop as well?

A Yes.

Q Okay. And in fact, after Barry's did leave, did you utilize a portion of the property that was previously occupied by Barry's for the operation of your facility?

A Yeah, we actually had the full intention to take on the entire building. *See August 8, 2023 Transcript, T43:14-T44:4.*

88. Mr. Daniel further testified that it was the Applicant's intent not to abandon the auto body shop use on Lot 14 and they intended to occupy the entirety of the building wherein Barry's had been located, but merely permitted Shuart contracting to rent a portion thereof on a temporary basis, testifying:

Q Okay. Now, I understand that there was a short period of time that Shuart Contracting may have rented a portion of the property that was previously utilized by Barry's. Is that correct?

A Correct. *See August 8, 2023 Transcript, T44:5-T44:9 and T46:13-T47:17.*

89. Mr. Daniel also testified that he only permitted the temporary use by Shuart because Mr. Shuart's wife was sick with cancer and, thus, he did it out of the goodness of his heart and not with any intent to abandon:

Q What was your intent with respect to the property at the time that you entered into that agreement with Shuart Contracting?

A To backtrack a little bit. The O-3 and O-2 reference buildings, the gray building, they're separate but they're basically the same building. So at the time when Barry

moved out seemingly overnight because the tenant refused to sign a contract to help the property -- excuse me -- the lease, to ensure that our property is kept safe after our phase 1 and phase 2. He didn't like the terms. So once he moved out we had every intention of entering those buildings and operating them as our facility.

Once we got in there and we realized that they didn't meet our culture and our, you know, the way we wanted to appear to our consumers, so we went in, as Mr. Inglima put on the record, we did reconstruct, reconfigure the background building in O-3. We had every intention of doing that to the main building that we continue to point out on O-2, but at the time we were also in the midst of finishing up construction at 96 Newark Pompton Turnpike.

At the time Mr. Shuart actually did some of the work at 96 Newark Pompton Turnpike. Did concrete acid edging and designs on concrete. I became friendly with him and things like that and I said, listen, you know, at the time right now the photograph in O-2 doesn't really meet our, you know, our appearance, so we're going to paint the building and clean up the surrounding area and, you know, you're growing, so as you're growing and stuff, he needed space quickly. So he had every intention of only being in there for a few months while I cleaned up the building and then he was moving out. **During that interim period of him growing and things like that, like I said, his wife got sick. She has cancer. Human nature, it's kind of hard to kick somebody out when they're going through that. So we continued to do a month-to-month thing with him.** He's now, like I stated on the record, officially out as of the 31st. It was always our intention to remove him as we grew into that space and cleaned it up so it fit our appearance.

Q Okay. And what has happened with the space since he has left, if anything?

A Now we're able to use that space for things such as glass removal, glass installations, things like that. Body shop activities.

Q So at this point in time is the entire space that was formally occupied by Barry's now fully occupied by Mountain View?

A Yeah, we have the keys. We are able to use it. Like I said, if you go there right this second, he does have a few facilities there right now. I'm not going to not tell you that. But we're able to use it and it's ours. *See August 8, 2023 Transcript, T45:13-T47:17 and T27:15-T27:19.*²⁴

90. The Applicant filed this Application on September 9, 2022 and had site plans prepared, dated June 13, 2022, before Shuart temporarily stored items on Lot 14, which demonstrates the Applicant's intent not to abandon any of the pre-existing nonconforming uses.

91. Mr. Daniel provided additional testimony and presented photographic evidence (which was admitted into evidence), demonstrating the existence of outdoor storage at the time the Applicant purchased the Property and its continued existence, and the intent for the same to remain.

92. The photos and testimony depict the outdoor storage of car parts, tires, and vehicles on Lot and Lot 14, which continues to this day. The photographic evidence supporting Mr. Daniel's testimony as present is set forth at A-27 through A-49.²⁵

- | | |
|------|---|
| A-27 | Photo of drums on top of a pallet; - Lot 14 |
| A-28 | Photo of the building that has written on the side Ridgewood Vehicle; - Lot 12 |
| A-29 | Photo of shipping container, landscaping truck, some snowplows; - Lot 13 |
| A-30 | Photo of vehicle in the lower left-hand corner with the words Fully Insured over the passenger wheel well; - Lot 13 |
| A-31 | Photo of trailer with a red tinge on the short side as well as a pickup truck with MK on it; - Lot 13 |
| A-32 | Photo of a white pickup truck in the lower right-hand corner and a boat; - Lot 12 |

²⁴ Mr. Daniel testified:

Q Okay. Isn't it true that you did work with respect to the building that Shuart has occupied?

A Yes, we repainted it.

Q That's it?

A Yes.

²⁵ For the sake of brevity, these Exhibits have not been attached.

- A-33 Photo of a van with the words Rick's Pool Service – Lot 14
- A-34 Photo of overview of how many tenants residing on the property – Lots 12, 13, and 14
- A-35 Photo of the side of the gray building and siding used for vents – Lot 14
- A-36 Photo of disassembled cars from Barry's Auto Body – Lot 14
- A-37 Photo of red and green Dumpster that E & G and Barry's Auto Body shared and tools and parts – Lot 14
- A-38 Photo of beige building with two tall garage doors with some vehicles and a Dumpster in front of those doors, E & G Mechanical, the back of Lot 14
- A-39 Photo of stacks of tires on and off a pallet on Lot 14 – Lot 14
- A-40 Photo of rim in the lower right-hand corner – Lot 14
- A-41 Photo of Lot 14 with parts, an oil tank, hoods and tires – Lot 14
- A-42 Photo of Lot 14 showing outdoor storage by Barry's Auto Body – Lot 14
- A-43 Photo of building that has the words Barry's Ridgewood Auto Body sign on the side – Lot 14
- A-44 Photo of enclosed canvas structure – Lot 14
- A-45 Photo of a vehicle under a green tarp – Lot 14
- A-46 Photo of a white pickup truck – Lot 14
- A-47 Photo of a blue Land Rover – Lot 14
- A-48 Photo of red truck off to the left-hand side a little bit further past a pickup truck with the tailgate open – Lot 14
- A-49 Photo of a retaining wall with a Barry's Auto Body sign above it. – Lot 14 *See August 8, 2023 Transcript, T49-T71.*

93. The use of Lot 14 (but for the residential portion thereof) as an auto body repair shop on a continuous basis is without debate.²⁶ The intermittent uses by Ridgewood Taxi,²⁷ E&J Mechanical, and the temporary use by Shuart did not interrupt the continuous operations of the auto body shops (which are a subset of public garage).²⁸

Facts in Support of Non-Abandonment

94. As set forth in ¶¶80-82 and 85 above, Mr. Montick never abandoned nor intended to abandon the Public Garage and auto body uses.

95. As set forth in ¶¶83-84 and 86-93 above, Mr. Daniel testified that the Applicant neither abandoned nor intended to abandon the Public Garage use, or any of the activities associated therewith.

96. The Applicant's Planner, Mr. Lydon, testified as to the test for a preexisting nonconforming use and whether the same has been abandoned, testifying as follows:

Q Okay. So there needs to be some type of overt action and an intention to walk away from and discontinue that use ad infinitum. Correct?

A Yes. *See January 23, 2024 Transcript, T41:23-T42:1.*

97. The Applicant's Planner expanded on the lack of abandonment, testifying that it required intent and an overt act, and that based on the testimony presented by Mr. Montick and Mr. Daniel,

²⁶ The Objector's Planner agreed that at least a "portion of lot 14 was used for auto body work." *See August 27, 2024 Transcript, T110:16-T110:20.*

²⁷ Which used a portion of Lot 14 (the rear building) as a taxi repair garage, with which the Objector's Planner agreed that rear building on Lot 14 was used only "for the storage and servicing of its taxis." *See August 27, 2024 Transcript, T21:11-T21:17.*

²⁸ There was also testimony by Mr. Montick as to Rick's Pool Service and Mr. Dunegan (a contractor) being tenants of Lot 14, but that they were only permitted to store vehicles on Lot 14. *See October 24, 2023 Transcript, T52:14-T53:23 and T55:15-T55:17.*

as well as the historical evidence, it was clear that the auto body shop use (and, thus, public garage) was continuous and had not been abandoned. *See January 23, 2024 Transcript, T41:23-T44:8.*²⁹

98. Mr. Lydon continued that a certificate of occupancy would have no bearing on the pre-existing nonconforming use status because it has nothing to do with a person's intent and is simply based on an inspection.³⁰ Ultimately, Mr. Lydon summarized his findings of facts and testimony as follows:

Q So based upon the evidence that you have seen through this hearing, what is your opinion as to whether or not there's a preexisting nonconforming use for auto body and related storage inside, outside, anywhere on Lots 12 and 14?

A I think the evidence is overwhelming. I think, and I say that because A, we've confirmed what the zoning was before, certainly, before the building on Lot 12 was constructed in 1963, '64. We know what the zoning is B-2. We know it didn't change until 1984 when the Master Plan went through a recommendation. So we know at the time it was initiated it was a permitted use. And we know that also because the later Andrew Marshall site plan in 1979 when the owner secured fence and gate approvals identified it as its use, its identification by location and its identification as by zone. And the building still exists. That's probably the biggest thing, the building and the outdoor storage still exists to this day. And from 1979 in the Marshall drawing and the drawings submitted in support of this application prepared by Burtin Engineering, which I suppose will be marked in evidence somewhere along the line, the buildings are amazingly similar. It looks like there may have been an addition built out the back later, but it's the same building by and large. And then the multiple buildings on Lot 14, which were used sort of cooperatively and in conjunction with other uses have been on that site for a very long time as well. And in fact, the Sanborn map from 1930, I believe, identifies it as an auto body shop and you've heard testimony that those uses continued through the years and **you've heard**

²⁹ The Objector's Planner agreed that he was not aware of any evidence "presented that outdoor storage has been discontinued." *See August 27, 2024 Transcript, T53:1-T53:13.*

³⁰ As set forth below, the Courts have concluded the same.

testimony that that was always the intent and then eventually they came into the ownership of LES Dann or the Daniels, and their testimony has been that they continued to want to use it as an auto body. In fact, he said he was going to let Barry stay on Lot 14, but Barry didn't want to provide the environmental insurance against spills and other insults to the environment. So Barry left. So rather than waste a valuable use in building in facilities, the idea was, well, if Barry's leaves, I'm taking it. So there's always been, at least in this hearing, there's been an expressed interest in continuing the use.

Q Okay. And so you believe that this is a preexisting nonconforming use on both lots or no?

A Yes, and I would urge the Board of Adjustment to issue the requested certificate indicating same.

Q And do you maintain that opinion within a reasonable degree of planning certainty?

A Yes, I do. *See January 23, 2024 Transcript, T89:18:24-T91:17.*

99. The evidence and testimony demonstrate that auto body repair shops with outdoor storage have existed on Lot 12 since at least 1962 and on Lot 14³¹ (with the exception of the footprint of the residential structure) likely since 1930, and it is undebatable that since 1967 those uses continued through time and were never abandoned by any of the prior owners of the Property or the Applicant, nor was there ever an intent to abandon the use. Accordingly, the Applicant is entitled to a Certificate of Nonconforming use as an auto body repair shop with outdoor storage for the entirety of Lot 12 and the entirety of Lot 14, with the exception of the portion of Lot 14 that was previously improved with a residential dwelling.

100. These facts are illustrated in a timeline attached hereto as *Exhibit I*.

³¹ The Board should take notice that certain records that may have existed previously and which were requested by the Applicant in various Open Public Records Act requests, were lost in floods.

III. Legal Analysis

As set forth above, the substantial evidence demonstrates that the auto body shops on both lots, routinely kept vehicles and stored parts/materials outside, which outdoor storage was open and notorious from the inception of the auto body shops through the present.

A. Pre-Existing Nonconforming Use Status under the MLUL

A nonconforming use is defined in the MLUL and “means a use or activity which was lawful prior to the adoption, revision or amendment of a zoning ordinance, but which fails to conform to the requirements of the zoning district in which it is located by reasons of such adoption, revision or amendment.” *N.J.S.A.* 40:55D-5. “Any nonconforming use or structure existing at the time of the passage of an ordinance may be continued upon the lot or in the structure so occupied and any such structure may be restored or repaired in the event of partial destruction thereof.” *N.J.S.A.* 40:55D-68. A landowner “may apply in writing for the issuance of a certificate certifying that the use or structure existed before the adoption of the ordinance which rendered the use or structure nonconforming.”

“The party seeking to continue the non-conforming use bears the burden of proving the nature of the use's character at the time the ordinance was adopted making it non-conforming.” *Eltrym Euneva, LLC v. Keansburg Plan. Bd. of Adjustment*, 407 N.J. Super. 432, 437 (Law. Div. 2008); *see also*, *N.J.S.A.* 40:55D-68; *See also*, *S & S Auto Sales, Inc. v. Zoning Bd. of Adjustment for Borough of Stratford*, 373 N.J. Super. 603, 624 (App. Div. 2004).

An applicant must demonstrate “more than a ‘mere intention’ to establish a use.” and a board should only reject a request to certify such use if the application lacks “substantial evidence”. *Eltrym Euneva, LLC*, 407 N.J. Super. at 437; *see also*, *Paruszewski v. Twp. of Elsinboro*, 297 N.J. Super. 531, 537 (App. Div. 1997) *aff'd* 154 N.J. 45 (1998). Courts have relied on “historical

use evidence” to prove the pre-existing, nonconforming nature of a building and the non-abandonment of said use. *See Eltrym Euneva, LLC*, 407 N.J. Super. 432 at 443.³²

In *Eltrym*, the applicant obtained public records from the Borough and presented them as evidence. In *Paruszewski v. Twp. of Elsinboro*, the Appellate Division held that to establish entitlement to a pre-existing nonconformity, the entitlement “may not be established by nebulous and imprecise evidence which indicates at most intermittent use at indefinite times.” *See Paruszewski*, 297 N.J. Super. at 538. Therein, the zoning board found both the applicant’s and his father’s testimony to be imprecise and (potentially) disingenuous, while that of the opponents (which actually included the governing body as an objector) was clear and strong. In that case, the proponent sought to have his farm declared a pre-existing use as an airstrip (as an accessory use). However, testimony was presented that planes taking off/landing from his field were extremely rare and remarkable events. On that basis, the board did not find a pre-existing nonconformity (as an air strip).

B. The Evidence Establishes that an Auto Body Repair Shop with Outdoor Storage is a Pre-Existing Nonconforming Use on Lot 12 and Lot 14

The uncontroverted evidence demonstrates the existence of an auto body shop on Lot 14 since at least 1930 (*Statement of Facts* ¶¶15(b) and 42-59) and the existence of other Public Garages, such as Ridgewood Taxi on the back third of the Lot 14, since the 1950s. *See Statement of Facts* ¶¶54-59. Mr. Saavedra, Mr. Montick, and Mr. Lydon testified to the existence of Ridgewood Auto Body on Lot 14, as far back as 1942, which use as an autobody shop continued through Barry’s Ridgewood Auto Body, and the present as Mountain View Auto Body. *See*

³² In addition to historical evidence, the continued existence of a preexisting nonconformity over time may be evidence that the land is particularly suited for that nonconformity *See Burbridge v. Governing Body of Twp. of Mine Hill*, 117 N.J. 376, 536 (1990).

Statement of Facts ¶¶42-59. There was also uncontroverted testimony that the rear third of Lot 14, occupied by Ridgewood Taxi was ultimately utilized by E&J Mechanical and then Mountain View Auto, and that all such operations fall within the definition (and use) of Public Garage. *See Statement of Facts* ¶¶54-59.

The documentary evidence, such as the Sanborn maps, ads soliciting new employees (auto body painter), advertisements promoting the auto body businesses, photos, and reports from fire/police all demonstrate, without debate that an auto body shop existed, in continuous use upon Lot 14 since 1930. *See Statement of Facts* ¶15(b)³³.

Similarly, there is uncontroverted evidence that an auto body shop, with outdoor storage existed on Lot 12 since at least 1962, when Ridgewood Vehicle moved to the 246 South Broad Street location (from elsewhere in town). *See Statement of Facts* ¶¶15(b)³⁴ and 60-67. This conclusion is supported by official government records (including Mr. Montick's father's 1963 land use application to erect a fence on Lot 12), his applications and this Board's Resolutions of 1979 and 1987, newspaper articles, photographic evidence, and fire reports from 1963, 1974, and 1987, all identifying the operations on Lot 12 as Ridgewood Vehicle, and as an auto body shop. *See Statement of Facts* ¶¶61-64.

The auto body shop uses on both lots included outdoor storage (*Statement of Facts* ¶¶57-59 and 65-67), and such uses continued (from at least 1967) through the present, without abandonment or event an intent to abandon (even though certain intermittent activities on Lot 14 occurred through the years). *See Statement of Facts* ¶¶79-93.

³³ *See* A-50, A-50A/B, A-51, A-52, A-53A, A-54, A-55A, A-56, A-57, A-58, A-59, A-60, A-61, A-62, A-63, A-64, A-65A, A 69 A/B, A-70A, A-80, and A-81.

³⁴ *See* A-53A, A-66, A-77, A-78, and A-83.

Outdoor storage continued on both lots continued, without abandonment or interruption. *See Statement of Facts* ¶¶57-59, 65-67, 69-70, 80-84, and 91-92. As testified to by Mr. Daniel and as exhibited in photographic evidence from 2021, the outdoor storage continues on Lot 12 and Lot 14 through the present. *See Statement of Facts* ¶¶83-84 and 91-92. The Objector's Planner agreed that he was not aware of any evidence "presented that outdoor storage has been discontinued." *See Statement of Facts* ¶97 and FN29. Accordingly, the substantial evidence presented leads to a conclusion that auto body repair shops, with outdoor storage existed on Lot 12 since at least 1962 and on Lot 14 since at least 1930, and which uses as auto body repair shops have not been abandoned.

C. All Activities on Lot 12 and Lot 14 were a Subset or Activities of a Single Use, Public Garage, and Not a Separate Use

The term "auto body repair shop" has never been defined in the Village's Zoning Ordinances and is, in fact, subsumed within the definition of "public garage", which term has been defined in the Village's Zoning Ordinances since at least 1945. *See Statement of Facts* ¶¶21-31. A cursory review of the Village's Ordinances, from 1945 onward demonstrates that auto body repair shops, automotive repair shops, automotive mechanic shops, automobile storage, muffler shops, and related motor vehicle repair facilities are included within the Ordinances' definition of "public garage" and, therefore, any change in operations from an autobody shop, to repair shop, or vehicle storage facility or otherwise, is no change in use at all. *See Stop and Shop Supermarket Co. v. Board of Adjustment of Twp. Of Springfield*, 162 N.J. 418 (2000).

The Supreme Court decision in *Stop & Shop*, is particularly relevant in this application and analysis and dictates that the Board must rely on the definition of the use as it existed at the time the use (as an auto body repair shop (Public Garage)) began.

In 1994, Stop & Shop sought to open a supermarket on the site of an old Saks Fifth Avenue, which had (in 1956) been granted a use variance to permit parking on the residentially zoned portion of the lot and in 1968 to permit construction of an addition of the store on the same portion of the lot. A portion of the property (comprised of different lots) was zoned commercial and another portion was zoned residential. The Zoning Officer advised Stop & Shop that it could not rely on the use variances previously granted to Saks and that it needed to seek a new variance, rezoning of the property, or an appeal of the Zoning Officer's decision before the ZBA. The Officer contended that the proposed use was not of the same/similar kind and/or nature as to what had occurred with Saks. Ultimately, Stop & Shop appealed to the Board, which sustained the Officer's determination.

The *Stop and Shop* decision is instructive because the Ordinance in effect when Stop & Shop applied for relief treated clothing retailers and food retailers the same. The Court noted that³⁵ the "the Springfield zoning ordinance does not distinguish between types of 'retail and service stores,' the category under which both supermarkets and department stores fall." It was not until the matter was already on appeal in the Appellate Division that Springfield revised the zoning ordinances to differentiate between the two types of retailers.

The Court noted that the definition of the Ordinance (back at the time when the use was permitted), which in that case covered "retail and service stores" was determinative of whether two activities were of the same use (or not). The Court went on to hold that a supermarket and clothing retailer were the **same** use because Springfield's ordinance treated them as such, back when the use began.

³⁵ Just like the Public Garage definition at issue in this request, the Zoning Ordinance does not distinguish between different Public Garage activities and, thus, a change between any one of those activities is not a change in use, but a change between permitted Public Garage activities.

Here, the Objectors have also gone to great lengths to allege that there have been changes in the uses on Lot 14 through the years, arguing that auto body shops, auto repair shops, muffler shops, repair garages (for a commercial companies own vehicles) are distinctly different uses and, thus, that any change in use between them, served as an abandonment of the auto body shop usage. This contention is simply wrong. The Code dictates the use, not the objectors, and all of these activities fall within the Code's definition of Public Garage.

A change in operations form an auto body repair shop, to automotive repair shop, to automotive mechanical shop, to service garage (or anything in between) is not a change in use, pursuant to the Village of Ridgewood's Zoning Ordinances because all such activities are the same use, "public garage" as the term has been defined. *See Statement of Facts* ¶¶39-41, 56, and FN13. The term "public garage" as demonstrated in this Position Statement is an umbrella term, subsuming numerous activities. *See Statement of Facts* ¶¶26-36 and 39-41. The Zoning Ordinance does not parse out the subsidiary activities further and, thus, as instructed by the *Stop & Shop* decision, all subsidiary activities are one use; i.e., they are all public garages. The Objector's Planner agreed.

Another fatal flaw in the objectors' analysis is that they wish to rely on subsequent changes in the Code to base a claim that these subsequent changes redefined what the Applicant's "grand total rights were." Those rights are, however, based upon the 1965 Code's definition of Public Garage and the interaction among any activities included therein and not changed after that date, in accordance with the *Stop & Shop* case.

The different operations are really a subset of "public garage" and, thus, changing between any one of those operations is not tantamount to a change in use. *See Stop & Shop, supra*. Accordingly, even when Ridgewood Taxi or E&J Mechanical operated out of a portion (the rear

building) on Lot 14, those operations were not a change in use, but a change within the same use (as a public garage). Any such change, therefore, could not be evidentiary of an intent to abandon the use, as an auto body repair shop because all operations at issue, were a subset of public garage.

D. Res Judicata Establishes the Existence of the Pre-existing Nonconforming Uses

Res Judicata applies to decisions of planning and zoning boards, which findings of fact and conclusions of law are, thus, accorded the same finality as those of a court. *See Stop and Shop Supermarket Co. v. Board of Adjustment of Twp. Of Springfield*, 162 N.J. 418 (2000).

Inimical to the Court's findings on the *res judicata* issue before the Court was the following:

The Ordinance in effect when Stop & Shop applied for relief treated clothing retailers and food retailers the same ("the Springfield zoning ordinance does not distinguish between types of 'retail and service stores,' the category under which both supermarkets and department stores fall."). It was not until the matter was already on appeal in the Appellate Division that Springfield revised the zoning ordinances to differentiate between the two types of retailers.

The 1956 Resolution held that "the residence zoned portion of the subject premises [does] not lend [itself to] the construction of houses" and the Board found in 1968 that "since the store is located where it is, the area into which the applicant seeks to extend the store is no longer suited for residential use." With respect to both of these findings, the Court held "**the Board could not reasonably be permitted to contradict its earlier findings that residential development of the residentially zoned portion of the property was inappropriate because 'it would abut immediately on a business zone' and that the 'highest and best' use the property would be for an integrated development.**" The Court further added that the passage of time would only serve to strengthen these holdings, since the commercial property had continued to operate (for 40 years) near the residential premises.

The Court found that "the 1956 variance that permitted Saks to use the residentially-zoned portion of its property for parking accessory to its department store use, and the 1968 variance that permitted Saks to expand its building into the residentially-zoned portion of the property, are applicable and may be relied on by S&S in its proposed use of the property for a retail supermarket." (emphasis added).

The resolutions relevant to this Application were consistent in that they routinely found that whether the operations were occurring on Lot 12 or Lot 14, depending on the application, that the existing operation on site was an auto body repair shop.

The prior resolutions and land use proceedings involving Lot 12, demonstrate the existence of auto body repair shop with outdoor storage (at least as far back as 1963 and up through at least 1987). *See Statement of Facts* ¶¶68-73. A key finding of the Board occurred in 1979 (and presumably 1963) when it approved of an application to erect a fence around Lot 12, which fence was proposed to deter vandalism and theft, for what (common sense dictates) was the storage of vehicles and/or parts outside. *See Statement of Facts* ¶¶69-71. The Board, in the 1979 Resolution, determined that the site was in use as an automobile repair shop (a subset of public garage), which it expressly found to be a **permitted use** in the zone (at that time). The Resolution of Approval, dated November 18, 1987 (A-85), determined that (because the zoning had changed from B-2 to R-3, which did not permit public garages) the one building on site was a pre-existing non-conforming use as an auto body repair shop.

With respect to Lot 14, the Board, through its prior decisions, also found that an auto body repair shop existed on the lot for some time. *See Statement of Facts* ¶¶74-78. The Board's 1974 resolution (dated September 25, 1974) found there was a nonconforming auto body repair shop on the majority of Lot 14 and that the owner had the right to continue that use. *See Statement of Facts* ¶¶74-78. More specifically, the Board found the use to be a "non-conforming auto body repair shop" which "pre-existing nonconforming use would be enlarged or otherwise extended . . ." by the requested relief (emphasis added). Even though the application was denied, the Board determined that the auto body repair shop use could continue.

The Board's prior findings of fact and conclusions of law, which clearly establish the existence of pre-existing nonconforming uses with outdoor storage on Lot 12 and Lot 14, and the Applicant's right to continue those uses, are entitled to finality, such that they should not be relitigated. To that end, the Board cannot now contradict its prior findings of facts and conclusions of law, establishing auto body repair shops with outdoor storage as a preexisting nonconforming use on both lots.

E. The Use as an Auto Body Repair Shop, with Outdoor Storage has not been Abandoned

Abandonment of a nonconforming use requires proof of “(1) an **intention** to abandon, and (2) some **overt** act or failure to act which carries a significant implication that the owner neither claims nor retains any interest in the subject matter of the abandonment.” *S & S Auto Sales, Inc.*, 373 N.J. Super. at 613-14(emphasis added). Generally, an objector must first come forward with “sufficient evidence of temporal or physical abandonment to require the property owner to sustain its ultimate burden on the issue.” *Berkeley Square Ass'n, Inc. v. Zoning Bd. of Adjustment of City of Trenton*, 410 N.J. Super. 255, 268 (App. Div. 2009). Once the initial showing has occurred, the ultimate burden shifts to the property owner/applicant to demonstrate the existence of the legal nonconforming use and non-abandonment.

Even if an illegal expansion of a pre-existing nonconforming use were to have occurred (which is denied), the illegal expansion **does not** eliminate the existence of the pre-existing nonconforming use. *See Poulathas*, 282 N.J. Super. at 313. To the contrary, the preexisting nonconforming use remains intact; it is still the intent of the landowner, which dictates whether a nonconforming use has been abandoned.

Temporary Use of property for some purpose, other than the pre-existing nonconforming use, will not invalidate the nonconforming use provided the property owner did not **intend** to abandon the use.³⁶

Case law holds that “*N.J.S.A. 40:55D–68* does not authorize land use boards to deprive a nonconforming user of the right to resume the use after a temporary cessation without regard to whether the owner intended to abandon the use. The intent must be continuing and definite, and the owner bears the burden of proof by competent evidence.” *S & S Auto Sales, Inc.*, 373 N.J. Super. at 624. The Court in *S&S* further noted that to determine intent, all relevant circumstances should be taken into account and that

“[t]he passage of time is one factor, and the longer the time of cessation the greater the weight attributable to that factor. But when the passage of time of nonuse is adequately explained by the owner, the subjective intent to resume the nonconforming use is continuing and definite and is substantiated as such by the owner's actions, there is no change or attempted change in use, and the character of the property is not changed, then the passage of time, whether or not deemed ‘prolonged,’ cannot deprive the owner of the right to the nonconforming use. *Id.*”³⁷

Accordingly, the question for the Board, which must be answered in the negative, is whether there was ever an intent to abandon and whether there were overt acts, which evidence the abandonment.

Any attempt by the Objectors to obfuscate the facts in evidence, by intimating that temporarily allowing third-parties to utilize a portion of Lot 14 for storage of vehicles (a Public Grage anyway) or failing to obtain a Certificate of Occupancy or a license to operate an auto body shop, is in anyway evidentiary of an abandonment of (or an intent to abandon) the preexisting

³⁶ The failure to maintain or procure a license (or certificate) is not determinative of whether an activity is a preexisting nonconforming use. See *Fred McDowell, Inc. v. Bd. of Adjustment of Twp. of Wall*, 334 N.J. Super. 201, 225 (App. Div. 2000).

³⁷ In this case the Court found that based upon the parties’ testimony, there was no intent to abandon the use even when they physically used the site inconsistently, because there was no change in use. Similarly, no change in use occurred in here, because all activities that occurred are that of a Public Garage.

nonconforming use as an auto body shop, is a red herring and inconsistent with case law.³⁸ *See Fred McDowell, Inc.*, 334 N.J. Super. at 225.

Here, the evidence establishes that neither the Applicant nor any of the prior owners, including Mr. Montick, intended to ever abandon the preexisting nonconforming use as an auto body repair shop with outdoor storage, on either Lot 12 or Lot 14 or ever discontinued it either.³⁹ *See Statement of Facts* ¶¶79-84 for Lot 12 and ¶¶79 and 85-93 for Lot 14. In fact, there is absolutely no evidence that the auto body use on Lot 12 was ever interrupted, let alone abandoned.

Any change in the operations on Lot 14 from an auto body repair shop was not a change in use (as discussed in the prior section) and at all relevant times, such changes had been intended to be and were in fact, temporary. At all times, the owner (whether the Applicant or a prior owner) intended to continue the auto body repair shop use on Lot 14. *See id.* Further demonstrating the lack of intent to abandon or any overt act in furtherance thereof is the within Application, which was filed by the Applicant in September of 2022, while Shuart was temporarily storing items. *See Statement of Facts* ¶90. In fact, Mr. Daniel also testified that the Applicant wanted to repaint the building and did repaint the building while Shuart stored vehicles on the property.⁴⁰ *See Statement of Facts* ¶89 and FN24. During that time (i.e. while painting was ongoing), the Applicant filed an

³⁸ Any testimony on the part of Mr. Steck to that effect must be discredited as biased and goal oriented because Mr. Steck admitted that activities such as an auto repair, auto body, muffler shop, were all included within the definition of “Public Garage” and, thus, that changing between any one of those activities would not be a change in use (or evidence of abandonment).

³⁹ Despite this clear evidence, and the fact that the Objectors’ Planner had acknowledged the two-part test for abandonment and the fact that the use did not change and was still that of a public garage, he still nonetheless inexplicably opined that the use had been abandoned. This unwillingness to conceive even the simplest and clearest facts is evidence of his lack of credibility.

⁴⁰ Importantly, the only evidence in the record is that Shuart stored vehicles on a portion of Lot 14; there is no evidence of office use or otherwise. Moreover, Shuart’s activities were that of a Public Garage (as defined by the Code) and, thus, any change in activity between Shuart, Barry’s, Ridgewood Taxi, and/or Mountain View Auto Body is not a change in use, but a change within the same use.

application to expand the body shop in that lot and continued with their application to the present day. Clearly there is no intent to abandon.

IV. Conclusion

The Applicant respectfully submits that the evidence presented overwhelmingly establishes that the use of the Properties (both Lot 12 and Lot 14), with the exception of the footprint of the residential structure that previously existed on Lot 14, is (1) a pre-existing nonconforming use pursuant to *N.J.S.A.* 40:55D-5 (and Code § 190-3) as an auto body repair shop, with outdoor storage.⁴¹

The evidence further supports a determination that (2) the use as an auto body repair shop, with outdoor storage, has not been abandoned, and, therefore, that (3) the use as of the Property as an auto body repair shop, with outdoor storage “may be continued” in accordance with *N.J.S.A.* 40:55D-68 and Code § 190-126. Accordingly, the Applicant is entitled to a Certificate of Nonconforming Use for Block 3905, Lot 12 and Lot 14 as an auto body repair shop, with outdoor storage pursuant to *N.J.S.A.* 40:55D-68 and Code § 190-126(G).

⁴¹ For the reasons expressed herein, the Applicant also submits that the testimony from the Objector’s Planner should be discredited on account his bias and lack of credibility.