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May 4, 2018

Town of Newburgh Zoning Board of Appeal
308 Gardnertown Road
Newburgh, New York 12550

VIA EMAIL and
OVERNIGHT DELIVERY

RE: Appeal of WCC Tank Technologies
2102 Route 300, Town of Newburgh

Dear Chairman Scalzo and Honorable Board Members,

This firm represents Mr. James Manley, owner of 19 Forest Road, Wallkill, New York 12589. We submit this correspondence to the Board in response to the submission of WCC Tank Technologies, Inc. (hereafter, "WCC") dated May 4, 2018. WCC's submission can be dealt with in short shrift.

First, WCC argues that Hydrovac trucks can be parked "inside" on the premises because this Board found in its April 3, 2017 Decision ("Decision"), that the March 1982 use variance did authorize the premises to be used in support of underground and above ground fuel storage tank excavation. However, WCC overlooks that it has already represented to this Board that it will use/lease these Hydrovac trucks for excavation services regardless of whether a "tank" is involved in the excavation project. To be sure, the 1982 variance permitted the premises solely to be used for WCC's tank lining business—not general excavation or truck leasing. Hence, whether the Hydrovac truck(s) are parked "inside" or "outside" on the premises is beside the point, inasmuch as they are not to be there in the first place.

Second, WCC does not address our contention that its reliance upon *Angel Plants, Inc. v. Schoenfeld*, 154 A.D.2d 459 (2nd Dept. 1989) and *Scarsdale Shopping Center Associates, LLC v. Board of Appeals on Zoning for City of New Rochelle*, 64 A.D.3d 604 (2nd Dept. 2009) is erroneous. Those cases teach that a premises which has received a use variance is no longer considered a pre-existing, non-conforming use, and, therefore, any expansion of their existing business, for zoning purposes, is treated on equal footing with conforming uses (subject to any limitations imposed by the original use variance). They certainly do not hold that a premises which has received a

use variance is then permitted, willy-nilly, to create a new business. However, that is exactly what WCC, admittedly, intends to do—i.e., turn the premises which supported a tank lining business to now supporting a general excavation business and a truck leasing business.

Third, WCC fails to address the gravamen of why its request for a use variance fails.

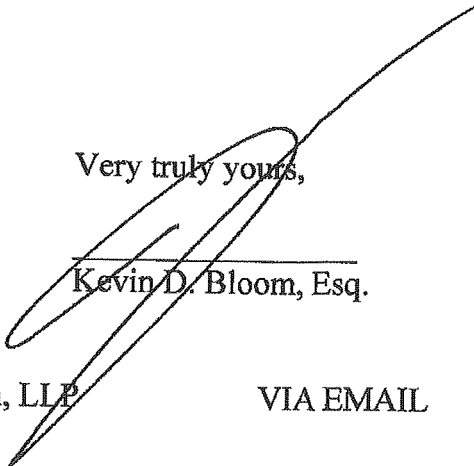
Foremost, it fails to address the fact that its acquisition of the Hydrovac trucks was self-created—i.e., WCC failed to come before the Board to determine if the premises permitted the support of these trucks under the 1982 use variance prior to acquiring them.

Also, glaringly absent from WCC's submissions is any financial information, such as the original purchase price of the property, the expenses and carrying costs of the property, the present value of the property, the taxes, the amount of any mortgages or other encumbrances, the amount of income presently realized, if any, or an estimate as to what a reasonable return on the entire property or any portion should be, which is required information to be presented to this Board. *See, DeFeo v. Zoning Bd. of Appeals of Town of Bedford*, 28 N.Y.S.3d 111, 115 (2nd Dept. 2016). Rather, WCC submits 2 pages of what appears to be an "asset detail" sheet (pages 21 and 22) with no explanation as to how the Board is to interpret them under *DeFeo*.

Lastly, WCC fails to address how the limited use of the premises under the 1982 variance for tank lining, which struck a balance between the applicant's economic hardship at that time, and the overall residential character of neighborhood, would not be upended by adding additional commercial vehicle traffic to and from the premises as part of WCC's new business operations, along with their attendant noise, dust, and exhaust fumes. Unquestionably, these consequences of WCC's new business operations would alter the character of the neighborhood and WCC's conclusory statement that "[a]ny expansion of the business would be minor and will not impact the property itself in any way" is just folly.

For the foregoing reasons, this Board should interpret the 1982 variance such that it does *not* permit WCC to use the premises for the parking and storage of Hydrovac trucks as a permitted expansion of its existing business; and, therefore, a building permit should not issue for a new garage to house them. Moreover, WCC's request for a use variance to support 4 Hydrovac trucks for excavation work on projects other than tanks, and, to support WCC's leasing of its 4 Hydrovac trucks to another company, should be denied in all respects. Therefore, WCC's appeal from the Notice to Remedy should be denied in all respects.

Very truly yours,



Kevin D. Bloom, Esq.

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VIA EMAIL

cc- Client

VIA EMAIL