



# CATANIA, MAHON & RIDER, PLLC

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August 1, 2022

**VIA HAND DELIVERY AND E-MAIL** ([zoningboard@townofnewburgh.org](mailto:zoningboard@townofnewburgh.org))

Town of Newburgh Zoning Board of Appeals (ZBA)  
21 Hudson Valley Professional Plaza  
Newburgh, NY 12550

Attn: Siobhan Jablesnik, Acting Secretary to the ZBA

RE: Continued Commercial Use of WCC/Conklin Property  
2102 Route 300: S-B-L 3-1-21.31 (the "Property")  
Our File No.: 15236-67082



Dear: Chairman Scalzo and Members of the ZBA:

I represent Douglas Casscles and his entities D. Cass Jr. & Associates, LLC and BlackRock Excavating Corporation ("BlackRock" or "Applicant")<sup>1</sup> and he is looking to continue the commercial operations at the Property in accordance with a use variance previously granted by the ZBA on March 11, 1982 (the "1982 Use Variance").

### **INTRODUCTION**

BlackRock is currently under contract to purchase the Property from 2102 Partners, LLC, who currently operates its construction contracting business (WCC Tank Lining) out of the Property pursuant to the 1982 Use Variance. The entire Property is approximately 4.3 acres and

<sup>1</sup> Mr. Casscles is the only person with any ownership interest in either entity.

zoned AR.<sup>2</sup> WCC is attempting to relocate its business off the Property. BlackRock would like to operate its similar, but less intense, business at the Property.

BlackRock is a small, residential septic and sewer company that performs light excavation necessary to replace/repair a homeowner's septic/sewer system. BlackRock's services also include tank lining, water main installation and repairs as well as drainage and site work. All of BlackRock's work is conducted off-site at the various job sites. The Property, with its existing building, will serve as a morning meeting place for the crew, an office, a repair shop for the vehicles, and a storage area for BlackRock's vehicles and equipment. The crew will generally meet at approximately 7:30 am each morning and reconvene at approximately 5:30 pm at the end of the day. BlackRock is looking to employ approximately ten (10) people, with most employees spending a majority of the day off-site. The list of BlackRock's current equipment and vehicles is attached as **Exhibit A**.

The Property will be used in much of the same manner as contemplated under the 1982 Use Variance and subsequent interpretations of the 1982 Use Variance by the ZBA in 2017 and 2018. BlackRock would also like to improve the appearance of the Property. BlackRock is not proposing any new buildings. BlackRock would like to remove the shipping containers and drains and add landscaping. Thus, we believe BlackRock's proposed use is less intrusive and consistent with the 1982 Use Variance and subsequent interpretations issued by the ZBA.

### **PRIOR ZBA DETERMINATIONS**

#### The 1982 Use Variance

In 1982 the William C. Conklin obtained a use variance to permit the operation of a fuel tank lining business from the Property. A copy of the ZBA's March 11, 1982 use variance (the "1982 Use Variance") is attached as **Exhibit B**. According to the 1982 Use Variance, the actual re-lining was not done on site, but all equipment and supplies required for such service were stored on the Property. The 1982 Use Variance was granted along with the following structures associated with the approved use: (1) an in-ground 6,000 gallon diesel fuel storage tank, (2) an in-ground 3,000 gallon gasoline fuel storage tank, (3) an in-ground 550 gallon storage tank for acetone, (4) a 50 foot by 60 foot building, (5) a 25 foot by 25 foot stockade enclosure, and (6) a chain link fence. The 1982 Use Variance also permitted the storage of up to twenty (20) drums. Finally, the 1982 Use Variance, also required an evergreen green belt buffer of approximately twenty-five (25) feet.

BlackRock's business is very similar to the use approved in the 1982 Use Variance. BlackRock replaces and repairs septic and sewer systems, including septic tanks. BlackRock's services also include tank lining. BlackRock's actual operations take place off-site, but all of its

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<sup>2</sup> Applicant is also purchasing the adjoining tax parcel (21.61), but that adjoining parcel is, and will remain, vacant.



equipment and supplies would be stored on the Property. BlackRock does not need the in-ground storage tanks for diesel, gasoline or acetone. It is merely requesting the placement of two 500 gallon above ground diesel storage tanks next to the existing building. In lieu of the 25 foot by 25 foot stockade enclosure, BlackRock is asking to install mafia block storage bins in the rear of the Property to store item 4, sand and stone. A copy of the proposed site plan is included with the application materials.

BlackRock is also interested in cleaning up the Property. The shipping containers and drums would be removed because they are not needed by BlackRock. Fencing could be added/replaced to help screen the equipment, and additional evergreen trees could be planted. This is an opportunity for the Town to re-create the site plan that was relied upon in 1982 so that all parties are aware of the specific parameters associated with the 1982 Use Variance.

#### The 2017 Interpretation

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In the 2017 application before the ZBA, specific questions arose as to whether certain uses were permitted under the 1982 Use Variance. Unfortunately, no one was able to locate the site plan referenced in the 1982 Use Variance. So there is no clear indication of what the site was supposed to look like pursuant to the 1982 Use Variance.

The ZBA issued its findings at a meeting held on March 23, 2017 and via a Decision, dated April 3, 2017. A copy of the ZBA's April 3, 2017 determination (the "2017 Determination") is attached as **Exhibit C**. Notably, the 2017 Determination concluded that the 1982 Use Variance allowed the Property to be used for and in support of underground and aboveground fuel storage tank excavation. BlackRock's business deals mostly with the excavation of residential and commercial septic tanks. Both businesses require excavating equipment in order to access the underground tanks. In addition, although the 2017 Determination concluded that the outdoor storage of heavy equipment was not authorized under the 1982 Use Variance, it did authorize the outdoor parking of pick-up trucks. BlackRock's excavating equipment is much more traditional. BlackRock does not require the storage of hydro-excavation trucks. In addition, BlackRock's operations does not require the outdoor storage of drums.

#### The 2018 Interpretation

In the 2018 application, WCC appeared before the ZBA for an interpretation to allow the construction of a 30 foot by 50 foot building addition, and the parking of hydro-excavation trucks within the enlarged building. The request was denied. A copy of the ZBA's May 24, 2018 determination (the "2018 Determination") is attached as **Exhibit D**.

Here, BlackRock is not seeking to park hydro-excavation trucks. Although, BlackRock does engage in tank lining as part of its off-site business operations, BlackRock does not own any hydro-excavation trucks.

**THE REQUESTED INTERPRETATION & CONCLUSION**

We are requesting an interpretation from the ZBA that BlackRock's proposed continued commercial use, as described herein and identified on the proposed site plans, is permitted; because it is consistent with the 1982 Use Variance and subsequent 2017 and 2018 Determinations by the ZBA.

In furtherance of our above, please also find the following:

1. A completed ZBA Application with proxy statement.
2. The Code Compliance Officer's Disapproval Letter.
3. Eleven copies of the proposed site plan.
4. The Deed for the property.
5. Photographs of the property.
6. The Assessor's List of surrounding property owners.
7. A short-form EAF<sup>3</sup>
8. A receipt for the application fee and public hearing fee.

Feel free to contact me with any questions or comments. Thank you.

Very truly yours,

  
JOHN W. FURST, ESQ.

JWF/2144602

Enclosures

Cc: BlackRock Excavating Corporation (via e-mail only)

*Pursuant to IRS Regulations, any tax advice contained in this communication or attachments is not intended to be used and cannot be used for purposes of avoiding penalties imposed by the Internal Revenue Code or promoting, marketing or recommending to another person any tax related matter.*

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<sup>3</sup> Since the Applicant is asking the ZBA to interpret its prior Use Variance and subsequent interpretations, we believe this constitutes a Type II Action under SEQRA; thus, no environmental review under SEQRA is necessary. See 6 NYCRR 617.5(c)(37).



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# EXHIBIT A

# BlackRock Excavating Corporation

22 Vidi Drive Salisbury Mills NY 12577 (845) 549-4924

[www.blackrockdigs.com](http://www.blackrockdigs.com)

To: Gerald Canfield  
Town of Newburgh Code Compliance  
21 Hudson Valley Professional Plaza  
Newburgh, New York 12550

From: Black Rock Excavating Corporation

CC: D.Cass Jr. and Associates

Via: Delivery – Hand Deliver

Pages: 1

Date: May 9, 2022

Re: Current Equipment & Vehicle List

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## Vehicles:

2022 Ford F-750
2019 Ford F-350
2019 Peterbilt 348
2016 Ford F-550
2001 Freightliner FL70

## Equipment:

2021 Kubota R640
2021 Mortiz Equipment Trailer
2020 Kubota U35
2020 Kubota KX080
2019 Sure-Trac Equipment Trailer
2019 Caterpillar 299D2
2017 Winston Equipment Trailer



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# EXHIBIT B



TOWN OF HERBURN  
LOCAL BOARD OF APPEALS

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In the Application of  
WILLIAM C. CONELIN,

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DECISION AND  
RESOLUTION.

The application of WILLIAM C. CONELIN seeks a use variance to permit the operation of a full tank lining business from premises located off Route 100 at Sobies Lane, an 12 zone in the Town of Herburn.

The applicant having submitted his application with short environmental assessment form annexed, paid the required fee, provided a true copy of the property description, submitted a plot plan and list of property owners within three hundred (300) feet, the matter was noticed for public hearing and notice thereof was mailed by the applicant to said owners and was caused to be published by the Chairman of the Board and forwarded to the Orange County Planning Department for its review, and the hearing being conducted the Board thereupon entered into executive session and by motion duly made, seconded and passed adjourned consideration the application for the purpose of obtaining additional information, data and clarification, the application was then scheduled for the next regular meeting



of the Board and the Chairman gave notice of the continuation of the hearing to the adjacent owners entitled to such notice and to such persons as had appeared at the initial hearing, and the adjourned hearing being conducted the Board thereupon entered into executive session and does find as follows:

1. That the procedural requirements of the Law of the State of New York, the Zoning Ordinance of the Town of Newburgh, and the regulations of this Board have been complied with in all respects.

2. The applicant is the owner of a 5.082 acre parcel and is the purchaser under contract for adjacent lands being an additional 3.4 acres. The parcel is presently improved by the applicant's residence and pool, a structure being approximately 150 foot by 25 foot and being utilized as garage, office and shed, two underground storage tanks, and parking for a variety of motor vehicles. At the time of this application the applicant is in violation of the Ordinance and this Board will not consider any self-imposed hardship that fact may impose.

3. The applicant seeks a use variance to permit the operation of applicant's fuel tank lining business from subject parcel, which also contains applicant's residence. Though the actual relining of fuel storage tanks is not done on the premises, all equipment and supplies required for such a service, are kept or stored upon the premises.



4. The applicant seeks specific permission for (1) an underground fuel storage tank of 6000 gal. capacity for diesel fuel, (2) an underground fuel storage tank of 3000 gal. capacity for unleaded gasoline, (3) an underground storage tank of 550 gal. capacity for bulk storage of acetone, (4) a 50 foot by 60 foot pole building, (5) a 25 foot by 25 foot stockade enclosure for the storage of empty barrels and (6) a chain link enclosure fence located along the entrance way of Route 300.

5. That up until November of 1981, applicant's business was conducted from the Ira D. Conklin property on Stewart Avenue in the Town of Newburgh. That property was insufficient for the operation of both businesses and applicant moved his operation to the present location, subject parcel. Any hardship that may be suffered by the applicant as a result of his present operation and changes will not be considered by this Board as the same is deemed to be self imposed and created.

6. The subject parcel, being the acreage in title to the applicant plus the additional parcels subject to contract of sale, was previously the subject of a subdivision for residential development. The testimony presented to the Board, however, indicates that the land is not suited for residential use by reason of the very low ground and underground springs and that, though on the market for many years, it has not been marketable for residential use, though the one owner stated that he has had four offers that would involve various commercial uses. This



board is satisfied from the evidence presented that the subject parcel, as hereinbefore described, cannot be utilized for residential purposes.

2. That at both public hearings a number of area residents voiced objections to the granting of the relief sought by this application, those objections may be summarized as follows:

- a. that the granting of a use variance for this parcel will "open the door" for an onslaught of variance application and/or will set a precedent,
- b. from a neighbor to the effect that such use will decrease property values and that she does not want to look at it.

3. That each application for a variance of any kind is individual and is heard upon its own merits. There is no precedent set by the granting or denial of any variance application. Applications for variance have traditionally been based upon the needs of an individual owner, not the past record of considerations of the zoning Board of Appeals.

That if this Board properly discharges its obligations, the subject parcel should have no effect upon values of surrounding properties and should not represent an annoyance for its neighbors.

THERE BEING NO FURTHER FINDINGS REQUIRED of this Board, the Building Inspector is hereby authorized to issue a permit to



WILLIAM C. CONKLIN, as follows:

1. an in-ground fuel storage tank of 6000 gal. capacity for diesel fuel.
2. an in-ground fuel storage tank of 1000 gal. capacity for unleaded gasoline,
3. an in-ground storage tank of 550 gal. capacity for acetone,
4. a 50 foot by 60 foot pole building,
5. a 25 foot by 25 foot stockade enclosure,
6. a chain link fence enclosure,
7. business use of the accessory building.

Subject however, to the following terms and conditions:

1. the fuel storage tanks shall be located as shown on the accompanying site plan,
2. the acetone storage tank shall be located no nearer than 50 foot from any property line and no nearer than 10 foot from any structure and such location shall be subject to the approval of the Fire Inspector of the Town of Newburgh,
3. the pole building shall be located as shown on the accompanying site plan, the size of which may be increased if needed by the applicant,
4. the stockade enclosure shall not be located at any point less than 150 foot set back from any property line and at no time shall the storage of empty drums exceed twenty (20) such drums,
5. the chain link fence shall be located and constructed in accord with the provisions of the Zoning Ordinance,
6. that along the northerly line of subject parcel, beginning at a point adjacent to the accessory building and continuing to a point 200 foot along the westerly line, applicant shall provide a green belt buffer covering a depth of twenty-five foot from each said line planted with a screen of ever-green having a uniform height of not less than



five feet above ground level at the time of planting and set in a double staggered row spaced eight feet apart on each row, said screening to be properly and effectively maintained.

BAZED: Newburgh, New York  
March 17, 1982.

*Thomas W. Case*  
*Co. Chief*



VOTING APPLICATION OF WILLIAM C. COMPTON

RICHARD RASKIN	VOTE	AYE
RAIPH L. HOLF	VOTE	AYE
DOUGLAS CARLE	VOTE	AYE
JOHN P. DALESSIO	VOTE	AYE
JAMES A. SARVIS	VOTE	AYE

DATED: March 11, 1982.  
Newburgh, New York

  
William C. Compton  
Dec. Clerk



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# EXHIBIT C

RECEIVED  
APR 03 2017  
TOWN OF NEWBURGH  
TOWN CLERKS OFFICE

5

Section 3, Block 1, Lots 21.61 & 21.31

TOWN OF NEWBURGH: COUNTY OF ORANGE  
ZONING BOARD OF APPEALS

-----X

*In the Matter of the Application of*

TOWN OF NEWBURGH CODE COMPLIANCE  
DEPARTMENT

*For relief as follows:*

**DECISION**

- *An interpretation of the extent of the uses that were permitted pursuant to a Decision and Resolution granting a use variance issued by the Town of Newburgh Zoning Board of Appeals dated March 11, 1982.*

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**Background**

This matter involves the interpretation of the parameters of a 1982 Decision and Resolution issued the Town of Newburgh Zoning Board of Appeals ("ZBA").

Specifically, the Town of Newburgh Code Compliance Department ("Code Compliance") has made application to the Town of Newburgh Zoning Board of Appeals ("ZBA" and/or the "Board") pursuant to Town Code Section 185-54(A)(1) seeking an interpretation "regarding whether the following [enumerated] onsite uses and/or activities which fall within, and [are] permitted under, the use variance granted in the decision<sup>1</sup>" dated March 11, 1982. A copy of that Decision and Resolution is appended to this decision.

<sup>1</sup> See Application of Town of Newburgh Code Compliance, dated January 19, 2017.



The Decision and Resolution issued by the ZBA in March of 1982 granted a use variance to permit the operation of a "fuel tank lining business" at premises located off Route 300 on Robles Lane. The said property is identified on the Town Tax Map as Section 3, Block 1, Lot 21.61. It is located in the AR Zoning District.

It appears that business activities have been ongoing on the premises for the 35 +/- years since the issuance of the use variance by the ZBA. Based upon information provided to the Board during the public hearing process, it further appears that, over the course of the past several years, neighbors residing in the vicinity of the property have made complaints to Code Compliance that the activities currently being conducted on the premises are different from and therefore not permitted by the use variance issued by the ZBA in March of 1982.

Code Compliance now seeks guidance from the ZBA as to the scope of the use variance granted in 1982.

#### The Application Before the Board

In an application dated January 19, 2017, Code Compliance, pursuant to Section 185-54(A)(1) of the Code of the Town of Newburgh, has requested an interpretation regarding whether certain uses and/or activities fall within, and are permitted under, the terms of the use variance. Code Compliance states in their application that they have made no determination as to whether or not the uses for which they now seek guidance are actually occurring on the premises. Rather, the interpretation is requested "in order to decide whether the alleged uses and/or activities are permitted and, if not, whether enforcement action is appropriate, necessary or required."

The specific uses for which Code Compliance seeks guidance on the issue of whether or not they were encompassed by the 1982 use variance are as

follows:

1. The use of the Premises for and in support of the following off-site services:
  - a. Underground and aboveground fuel storage tank reconditioning, including lining;
  - b. Underground and aboveground fuel storage tank testing;
  - c. Underground and aboveground fuel storage tank excavation;
  - d. Underground and aboveground storage tank compliance; and
  - e. Hydro-excavation business.
2. Outdoor storage of heavy equipment, including ploughs, land-grading equipment etc.;
3. Depositing on the surface of the Premises a slurry consisting of soil and related materials that have been liquefied using highly-pressurized water injected into the ground and simultaneously extracted by a powerful combined vacuum and storage device (known as a "Hydrovac,;" which was constructed by Presvac Systems of Burlington, Ontario);
4. Operating of the Hydrovac device on the Premises for the depositing of the soil slurry onto the surface of the Premises with resultant mechanical and operational noise;
5. Outdoor parking of pickup truck(s) operated by a business;
6. Outdoor parking of semi-truck(s) and trailer(s) operated by a business;
7. Outdoor parking of a 2004 Freightliner truck(s) on which is mounted a Hyrovac device;
8. Outdoor presence on the surface of the Premises of storage



- containers, shipping containers and the like mobile/portable enclosures designed for storing items and materials; and
9. Outdoor work activities conducted by the employees and agents of the business in furtherance of the uses identified in "1" above.

**Materials Considered By the Board**

1. Application of Code Compliance dated January 19, 2017 to which the Decision and Resolution issued in March of 1982 was attached ;
2. Submission of Kevin D. Bloom, Esq. counsel for Susan D. Carroll, Lawrence S. Van De Mark and Claudia Van De Mark;
3. Affidavit of Susan D. Carroll duly sworn February 14, 2017;
4. Affidavit of Joan L. Perry duly sworn February 7, 2017;
5. Various photographs of the premises in question which are on file in the ZBA office;
6. Multiple items of correspondence from the public all of which are on file in the office of the ZBA and all of which assert that the use presently made of the premises is different from the use approved by the ZBA in March of 1982;
7. Extensive public comment received during the public hearing;

In rendering the determination herein, the ZBA was not able to review and/or consider the original application seeking the use variance that was ultimately granted in March of 1982 or review and/or consider any materials, such as a site plan, that may have been submitted with the application and would have



assisted *this* Board in determining the exact information considered in 1982 in rendering the use variance as that information could not be located by Code Compliance.<sup>2</sup> While it would have been helpful to have this information, the Board is constrained to proceed based upon on the information and materials that have been submitted and that are described above.

### Public Hearing

A public hearing was held on February 23, 2017 notice of which was published in *The Mid-Hudson Times* and *The Sentinel* and mailed to adjoining property owners as required by Code. Extensive public comment was received and considered by the Board. The minutes of the Board meeting are on file in the ZBA office.

### SEQRA

Requests for interpretations are designated as Type II actions under SEQRA. {see 6 NYCRR 617.5(31)} As such, this application is not subject to review under SEQRA.

### GML 239 Referral

Requests for interpretations are not required to be referred to the Orange County Planning Department for review and report.

### Decision

Prior to addressing each item for which Code Compliance seeks guidance, the Board wishes to repeat and emphasize that it is constrained to render

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<sup>2</sup> See transcript of February 23, 2017 ZBA meeting at pages 2-3.



this Decision based upon the information that has been submitted for consideration which information does *not* encompass the entirety of the information that would have been considered by the ZBA prior to the issuance of the use variance in March of 1982. Subject to this important caveat, and based upon the information given to the Board, and further based upon all of the testimony given at the public hearing and upon consideration of all of the written materials submitted referenced hereinabove, and after due consideration and deliberation, the Board hereby finds and answers the inquiries of Code Compliance as follows:

**1(a) Did the March 1982 use variance allow the premises to be used for and in support of underground and aboveground fuel storage tank re-conditioning, including lining?**

The Board finds that the 1982 use variance did authorize use of the premises for this specific use.

**1(b) Did the March 1982 use variance allow the premises to be used for and in support of fuel storage tank testing?**

The Board finds that the 1982 use variance did authorize use of the premises for this specific use.

**1(c) Did the March 1982 use variance allow the premises to be used for and in support of underground and aboveground fuel storage tank excavation?**

The Board finds that the 1982 use variance did authorize use of the premises for this specific use.

**1(d) Did the March 1982 use variance allow the premises to be used for and in support of underground and aboveground fuel storage tank compliance?**

The Board finds that it has insufficient evidence to make a determination if the 1982 use variance authorized the use of the premises for this specific use.



**1(e) Did the March 1982 use variance allow the premises to be used for and in support of a Hydro-excavation business?**

The Board finds that the 1982 use variance did not authorize use of the premises for this specific use.

**2. Did the March 1982 use variance allow the premises to be used for and in support of the outdoor storage of heavy equipment, including ploughs, land-grading equipment etc.?**

The Board finds that the 1982 use variance did not authorize use of the premises for this specific use.

**3. Did the March 1982 use variance allow the premises to be used for and in support of the depositing on the surface of the premises a slurry consisting of soil and related materials that have been liquefied using high-ly-pressurized water injected into the ground and simultaneously extracted by a powerful combined vacuum and storage device (known as a "Hydrovac," which was constructed by Presvac Systems of Burlington, Ontario)?**

The Board finds that the 1982 use variance did not authorize use of the premises for this specific use.

**4. Did the March 1982 use variance allow the premises to be used for and in support of the operation of the Hydrovac device on the premises for the depositing of the soil slurry onto the surface of the premises, with resultant mechanical and operation noise?**

The Board finds that the 1982 use variance did not authorize use of the premises for this specific use.

**5. Did the March 1982 use variance allow the premises to be used for and in support of the outdoor parking of pickup truck(s) operated by a business?**

The Board finds that the 1982 use variance did authorize use of the premises for this specific use.



6. Did the March 1982 use variance allow the premises to be used for and in support of the outdoor parking of semi-truck(s) and trailer(s) operating by a business?

The Board finds that it has insufficient evidence to make a determination if the 1982 use variance authorized the use of the premises for this specific use.

7. Did the March 1982 use variance allow the premises to be used for and in support of the outdoor parking of a 2004-freightliner truck(s) on which is mounted a Hyrdovac device?

The Board finds that the 1982 use variance did not authorize use of the premises for this specific use.

8. Did the March 1982 use variance allow the premises to be used for and in support of the outdoor presence on the surface of the premises of storage containers, shipping containers and like mobile/portable enclosures designed for storing items and materials?

The Board finds that the 1982 use variance did not authorize use of the premises for this specific use.

9. Did the March 1982 use variance allow the premises to be used for and in support of outdoor work activities conducted by the employees and agents of the business in furtherance of the uses identified in "1" above?

The Board finds that the 1982 use variance did authorize use of the premises for the specific uses described in connection with items 1(a), 1(b), 1(c) and did not authorize use of the premises for this specific uses described in connection with items 1(d) and 1(e).

The foregoing constitutes the decision of the Board. As reflected in the meeting minutes, each item set forth above was voted on independently and the results of each vote was unanimous among the five (5) Board members who.



were present at the meeting on March 23, 2017 when the vote was held.

Dated: 4/3/17

John McKelvey  
John McKelvey, Vice-Chair  
Town of Newburgh ZBA

*By roll call a motion to adopt the decision was voted as follows:*

AYES:       Member Darrell Bell  
              Member John McKelvey  
              Member John Masten  
              Member Richard Levin  
              Member Darrin Scalzo

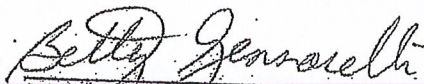
NAYS:       None

ABSENT:     Chair James Manley  
              Member Michael Maher



STATE OF NEW YORK )  
 )ss:  
COUNTY OF ORANGE )

I, BETTY GENNARELLI, Secretary to the Zoning Board of Appeals of the Town of Newburgh, do hereby certify that the foregoing is a true and exact copy of a Decision rendered by the Zoning Board at a meeting of said Board held on February 28, 2013.



BETTY GENNARELLI, SECRETARY

TOWN OF NEWBURGH ZONING BOARD OF APPEALS

I, ANDREW J. ZARUTSKIE, Clerk of the Town of Newburgh, do hereby certify that the foregoing Decision was filed in the Office of the Town Clerk on

APR - 3 2017



ANDREW J. ZARUTSKIE, CLERK

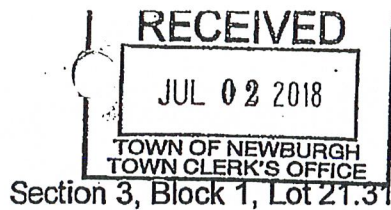
TOWN OF NEWBURGH



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# EXHIBIT D





TOWN OF NEWBURGH: COUNTY OF ORANGE  
ZONING BOARD OF APPEALS

-----X  
*In the Matter of the Application<sup>1</sup> of*

WCC TANK TECHNOLOGY, INC.

**DECISION**

*For relief as follows:*

- *An appeal of the February 1, 2018 determination of the Town of Newburgh Code Compliance Department by requesting an interpretation that the use proposed by the applicant, i.e., the indoor parking and storage of vehicles with mounted hydrovac equipment, is a permitted use pursuant to a use variance granted in March of 1982;*
- *Reversal of the Order to Remedy issued by the Town of Newburgh Code Compliance Department on December 7, 2017;*
- *Alternatively, the grant of a use variance allowing the indoor parking and storage of vehicles with mounted hydrovac equipment.*

-----X  
**Introduction**

WCC Tank Technology, Inc. seeks relief as follows: (1) An interpretation

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<sup>1</sup> In March of 1982 the Town of Newburgh Zoning Board of Appeals issued a Decision and Resolution wherein a use variance was granted to the property in question permitting the operation of a fuel tank lining business subject to the terms and conditions set forth in the said Decision and Resolution. A copy of this Decision and Resolution is attached hereto as Exhibit "A." Thereafter, in January of 2017, the Town of Newburgh Code Compliance Department made application to this Board pursuant to the applicable provisions of the Town Code seeking an interpretation of whether certain uses and/or activities enumerated in the Code Compliance request "fall within and [are] permitted under, the use variance granted in the Decision" issued in March of 1982. This Board issued its decision in connection with the application of Code Compliance on April 3, 2017. A copy of this Decision is annexed hereto as Exhibit "B."



that the use proposed, i.e., the indoor parking and storage of vehicles with mounted hydrovac equipment is a permitted use pursuant to a use variance granted in March of 1982; (2) Reversal of the Order to Remedy issued by the Town of Newburgh Code Compliance Department on December 7, 2017; or (3) Alternatively, the grant of a use variance allowing the indoor parking and storage of vehicles with mounted hydrovac equipment.

The property is located at 2102 Route 300 and is in the AR Zoning District. It is identified on the Town of Newburgh tax maps as Section 3, Block 1, Lot 21.31.

A public hearing was held on April 26, 2018, notice of which was published in The Mid-Hudson Times and The Sentinel and mailed to adjoining property owners as required by Code. Extensive public comment was received and is reflected in the meeting minutes which are incorporated herein by reference.

### Law

Section 185-11 of the Code of Ordinances of the Town of Newburgh [Zoning], entitled "Utilization of Bulk Table," requires compliance with the bulk and use regulations set forth in the bulk and use schedules set forth within the zoning ordinance.

The use presently conducted on the premises is not permitted in the AR zoning district.

However, pursuant to a use variance granted by this Board in March of 1982, the use of the property as a "fuel tank lining business," subject to the terms and conditions set forth in the Decision and Resolution granting the use variance was permitted. This use is only allowed as a result of the said use variance as it is not otherwise permitted in the AR Zoning District. The issue before the Board is whether or not the 1982 use variance allows the parking and storage of hy-



drovac trucks on the premises.

In this regard, the law is clear that a use for which a use variance has been granted constitutes a conforming use and, as a result, no further use variance is required for the expansion of that use<sup>2</sup>. The law is equally clear that the use of the property further remains subject to the terms of the use variance that was granted and, where the board of appeals has previously determined that the development is limited by the terms of the previously issued variance, a zoning board may not subsequently disregard that determination<sup>3</sup>.

In April of 2017, this Board determined, *inter alia*, that the 1982 use variance did not allow the premises to be used in support of a hydro-excavation business; that the 1982 use variance did not authorize the premises for the outdoor storage of heavy equipment; and did not allow the premises to be used for the outdoor parking of trucks which are mounted with a hydrovac device.

The current application asks that the Board render an interpretation that the *indoor* parking and storage of vehicles mounted with hydrovac equipment is permitted pursuant to the terms and conditions of the 1982 use variance or, alternatively, a use variance be granted expanding the terms of the 1982 use variance to encompass the indoor parking and storage of said vehicles.

### **Materials Considered**

In rendering its determination hereunder, each Board member has personally visited the subject premises and has received and reviewed the following:

1. Order to Remedy issued by the Town of Newburgh Code Compliance

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<sup>2</sup> See NYS McKinney's *Practice Commentaries* to New York State Town Law Section 267-b and the cases cited therein.

<sup>3</sup> See NYS McKinney's *Practice Commentaries* to New York State Town Law Section 267-b and the cases cited therein



- Department dated December 7, 2017;
2. Administrative Interpretation and Determination issued by the Town of Newburgh Code Compliance Department dated February 1, 2018;
  3. The March 1982 Use Variance Decision and Resolution issued by the Town of Newburgh Zoning Board of Appeals;
  4. The April 2017 Decision issued by the Town of Newburgh Zoning Board of Appeals in response to an application made by the Town Code Compliance Department;
  5. Application for an interpretation of the ordinance dated March 29, 2018 together with the attachments thereto;
  6. Application for a use variance dated March 29, 2018 together with the attachments thereto;
  7. Correspondence from the applicant's attorneys, Drake Loeb, PLLC, dated March 29, 2018 supplementing the above applications and setting forth their arguments in favor of the requested interpretation, a request in the alternative for the issuance of a use variance as well as an appeal from an Order to Remedy issued by the Town of Newburgh Code Compliance in March of 2018;
  8. Correspondence from the applicant's attorney, Drake Loeb, PLLC, dated May 4, 2018 together with the attachments thereto;
  9. Correspondence dated April 26, 2018 submitted by RBT, Certified Public Accountants, on behalf of the applicant;
  10. Correspondence from Bloom & Bloom, P.C., Attorneys at Law, submitted on behalf of James Manley, an owner of neighboring property;
  11. Multiple items of correspondence authored by neighboring property owners submitted in opposition;
  12. Oral testimony submitted both in support and in opposition to the appli-



cations before the Board, which testimony is reflected on the meeting minutes, incorporated herein by reference.

### **Background**

After receiving all the materials presented by the applicant and hearing the testimony of Steven Gaba, Esq., Michael Bodendorf, P.E., of Hudson Land Design Professional Engineering, P.C., Ira Conklin, a Principal in WCC Tank Technologies, Inc. and the property owner 2102 Partners LLC., Thomas Weddell, C.P.A., Bob Dietz, President of WCC Tank Technologies, Inc. at the public hearing held before the Zoning Board of Appeals on April 26, 2018, as well as further testimony from the applicant's attorney Steven Gaba, at the Board meeting held on May 24, 2018, the Board makes the following findings of fact:

1. The applicant is the owner of a 4.3+/- acre lot (tax parcel 3-1-21.31) located at 2102 Route 300.
2. The applicant's property is located in the AR zoning district.
3. The Town Code Compliance Department has issued an Order to Remedy ("OTR"), dated December 7, 2017. The OTR directs the applicant to desist from operating the hydrovac business on the premises and to further desist from parking hydrovac vehicles on the premises.
4. The lot is currently improved by an existing commercial tank lining business. This use is not allowed in the AR Zoning District. However, pursuant to the terms and conditions of a 1982 use variance, the



premises are permitted to be utilized as a fuel tank lining business subject to the terms and conditions of the said 1982 use variance.

5. On February 1, 2018, the Town Code Compliance Department issued an administrative interpretation and determination wherein it found that the “parking, storing and housing of trucks with mounted hydrovac equipment inside the new building addition will be in support of a hydro-excavation business and is not authorized by the use variance, notwithstanding other potential uses of the such vehicles. The Board’s determination with regard to outdoor parking logically carries over to indoor parking.”
6. The applicant has now appealed the February 1, 2018 determination by Code Compliance and seeks an interpretation from this Board providing that the terms and conditions of the 1982 use variance permit the indoor parking and storage of vehicles with mounted hydrovac equipment or, alternatively, a use variance permitting the premises to be used for the indoor parking and storage of vehicles with mounted hydrovac equipment.
7. The applicant states that the hydrovac business has been or will be discontinued at the premises. This application seeks permission to park and store these vehicles on the premises.
8. The application also seeks the reversal of an Order to Remedy issued by the Town Code Compliance Department stating that the operation of a hydrovac business as well as the parking of hydrovac vehicles represent an impermissible expansion of the use allowed by the terms of the 1982 use variance.



9. The applicant's proposal is set forth on a set of photographs and plans prepared by Hudson Land Design dated September 8, 2017. Those photographs plans are hereby incorporated into this decision and a set shall remain in the zoning board's file in this matter.

10. Many members of the public were heard during the public hearing. The meeting minutes are incorporated herein by reference.

After hearing the testimony at the public hearing and considering the materials received by the Board and after viewing the subject site, the Board decides as follows:

**SEQRA**

Requests for interpretations are Type II actions under the implementing regulations of the State Environmental Quality Review Act and, as such, no SEQRA determination is required in connection with the request for an interpretation. Further, in view of the fact that the requested use variance and the application to reverse the Order to Remedy were both denied, there was no "action" as that term is defined in the SEQRA regulations and a determination of significance pursuant to those regulations is therefore not required.

**GML 239 Referral**

Requests for interpretations and/or reviews of or appeals from Orders to Remedy are not matters that are reviewable by the Orange County Planning Department. The use variance component of the application was referred to the Orange County Department of Planning and a report was issued on April 23,



2018 finding that consideration of the use variance application was for "local de-termination."

### **Interpretation Request**

The Board has carefully considered all of the materials presented for and against the requested interpretation. The Board notes that its April 2017 Decision found that the outdoor parking and storage of vehicles mounted with hydrovac equipment was not allowed pursuant to the terms and conditions of the 1982 use variance issued by this Board. The Board further notes that its April 2017 Decision was issued in response to specific questions posed by the Town Code Compliance Department and the fact that the Board did not address the issue of indoor parking of said vehicles could not be construed in any way as permitting such parking but as simply reflective of the fact that this specific inquiry was not made to the Board.

Upon review of the specific terms and conditions of the 1982 use variance, and upon consideration of all of the materials, both written and oral, that have been submitted, the Board determines that the indoor parking of said vehicles was not authorized pursuant to the terms and conditions of the 1982 use variance. Therefore, the determination issued by the Town of Newburgh Code Compliance dated February 1, 2018 is affirmed.

### **Use Variance Request**

#### **Findings**

In reviewing the facts presented for the requested use variance, the Board



considered the standards for determining whether the applicant has sustained its burden of proof as required by Town Law Section 267-b (2)(b). Each standard has been considered essential to our decision, for a failure to satisfy any one is fatal to this application for a use variance.

***(1) Lack of Reasonable Return***

Section 267-b (2) of the Town Law of the State of New York provides that no use variance shall be granted by a board of appeals without a showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove unnecessary hardship, an applicant must demonstrate to the board that for each and every permitted use under the zoning regulations for the particular district where the property is located that the applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence.

The testimony and proof submitted to the Board in this regard was inadequate. The "financial information" submitted by RBT and the testimony submitted by Thomas Weddell, CPA, was insufficient to meet the "dollars and cents" burden imposed by law to which this Board must adhere.

Based upon the evidence and testimony before it, the Board concludes that the applicant has therefore not satisfied its burden, by dollars and cents proof or otherwise, with regard to this factor.

***(2) Unique Hardship***

Section 267-b (2) of the Town Law of the State of New York provides that no use variance shall be granted by a board of appeals without a showing by the



applicant that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.

With regard to the “unique hardship” issue, the Board finds that the hardship is in fact unique given that a use variance was previously issued to the premises and the hardship alleged by the applicant therefore does not apply to a substantial portion of the neighborhood.

### ***(3) Character of the Neighborhood***

Section 267-b (2) of the Town Law of the State of New York provides that no use variance shall be granted by a board of appeals without a showing by the applicant that the requested use variance, if granted, will not alter the essential character of the neighborhood.

With regard to the “character of the neighborhood” issue, the Board notes that the premises are located in an AR Zoning District and that the essential character of the neighborhood surrounding the premises is residential. This Board, in April of 2017, determined that the use variance granted in March of 1982 was limited to its specific terms and specifically did not permit an expansion of the business use beyond that of a fuel tank lining business. Further, the Board has already determined that the outdoor parking of this equipment is contrary to the terms of the 1982 use variance.

Upon review and consideration of the substantial testimony received in this regard, it is the Board’s determination that the granting of the relief requested would result in the alteration of the essential character of the neighborhood in the vicinity of the subject premises.



***(4) Self Created Nature of the Hardship***

Section 267-b (2) of the Town Law of the State of New York provides that no use variance shall be granted by a board of appeals without a showing by the applicant that the alleged hardship has not been self-created.

The testimony adduced at the hearing was that the hardship was self-created as the applicants have full knowledge of the terms, provisions and limitations of the use variance issued in March of 1982.

After hearing the testimony at the public hearing and considering the materials received by the Board and after viewing the subject site, and in employing the criteria set forth in Town Law 267-b (2), and based upon the foregoing, the Board hereby denies the application for a Use Variance.

**Request to Reverse the December 7, 2017 Order to Remedy**

In light of the Board's determination to affirm the February 1, 2018 administrative interpretation of the determination issued by the Town Code Compliance Department and further in light of the Board's determination to deny the requested use variance, and for the reasons set forth in each of those determinations, the Board hereby affirms and sustains the Order to Remedy heretofore issued on December 7, 2017.

**Decision**

Based upon the foregoing, the Board hereby determines as follows:

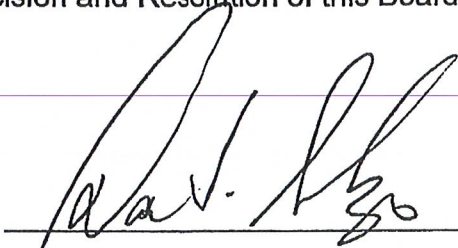


- a. The administrative interpretation of the determination issued by the Town Code Compliance on February 1, 2018 is affirmed and sustain;
- b. The use variance request is denied;
- c. The Order to Remedy issued December 7, 2017 is affirmed and sustained.

The foregoing constitutes the Decision and Resolution of this Board.

Dated:

5/24/18



Darrin Scalzo, Chair  
Town of Newburgh ZBA

*By roll call a motion to adopt the decision was voted as follows:*

AYES: Chair Darrin Scalzo  
Member Darrell Bell  
Member John Masten  
Member John McKelvey  
Member Anthony Marino  
Member Richard Levin  
Member Peter Olympia

NAYS: None



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STATE OF NEW YORK )  
 )ss:  
COUNTY OF ORANGE )

I, BETTY GENNARELLI, Secretary to the Zoning Board of Appeals of the Town of Newburgh, do hereby certify that the foregoing is a true and exact copy of a Resolution maintained in the office of the Town of Newburgh Zoning Board of Appeals, said resulting from a vote having been taken by the Zoning Board at a meeting of said Board held on May 24, 2018

  
\_\_\_\_\_  
BETTY GENNARELLI, SECRETARY

TOWN OF NEWBURGH ZONING BOARD OF APPEALS

I, ANDREW J. ZARUTSKIE, Clerk of the Town of Newburgh, do hereby certify that the foregoing Decision was filed in the Office of the Town Clerk on JUL 02 2018

  
\_\_\_\_\_  
ANDREW J. ZARUTSKIE, CLERK

TOWN OF NEWBURGH





# TOWN OF NEWBURGH

*Crossroads of the Northeast*

ZONING BOARD OF APPEALS

21 Hudson Valley Professional Plaza

Newburgh, NY 12550

OFFICE OF ZONING BOARD

TELEPHONE 845-566-4901

FAX LINE 845-564-7802

## APPLICATION

DATED: July 29, 2022

TO: **THE ZONING BOARD OF APPEALS**  
THE TOWN OF NEWBURGH, NEW YORK 12550

I (WE) D. Cass Jr. & Associates, LLC PRESENTLY

RESIDING AT NUMBER 22 Vidi Drive, Salisbury Mills, NY 12577

TELEPHONE NUMBER (845) 649-1882

HEREBY MAKE APPLICATION TO THE ZONING BOARD OF APPEALS FOR THE FOLLOWING:

- USE VARIANCE
- AREA VARIANCE (S)
- Prior Variance INTERPRETATION ~~OF THE ORDINANCE~~
- SPECIAL PERMIT

1. LOCATION OF THE PROPERTY:

3-1-21.31 (TAX MAP DESIGNATION)

2102 Route 300 (STREET ADDRESS)

AR (ZONING DISTRICT)

2. PROVISION OF THE ZONING LAW APPLICABLE, (INDICATE THE SECTION AND SUB-SECTION OF THE ZONING LAW APPLICABLE BY NUMBER; DO NOT QUOTE THE LAW).

Interpretation of 1982 Use Variance and subsequent interpretations by the ZBA in 2017 and 2018.



3. IF VARIANCE TO THE ZONING LAW IS REQUESTED:

- a) APPEAL IS MADE FROM DISAPPROVAL BY THE TOWN BUILDING INSPECTOR OR BUILDING PERMIT APPLICATION. SEE ACCOMPANYING NOTICE DATED: July 26, 2022
- b) OR DENIAL (REFERRAL) BY THE PLANNING BOARD OF THE TOWN OF NEWBURGH OF AN APPLICATION TO THE BOARD, SEE ACCOMPANYING NOTICE DATED: \_\_\_\_\_

4. DESCRIPTION OF VARIANCE SOUGHT: N/A

~~5. IF A USE VARIANCE IS REQUESTED: STRICT APPLICATION OF THE ZONING LAW WOULD PRODUCE UNNECESSARY HARDSHIP IN THAT: N/A~~

- a) UNDER APPLICABLE ZONING REGULATIONS THE APPLICANT IS DEPRIVED OF ALL ECONOMIC USE OR BENEFIT FROM THE PROPERTY IN QUESTION BECAUSE:  
\_\_\_\_\_  
\_\_\_\_\_

**(ATTACH WITH THIS APPLICATION COMPETENT FINANCIAL EVIDENCE ESTABLISHING SUCH DEPRIVATION)**

- b) THE HARDSHIP IS UNIQUE AND DOES NOT APPLY TO A SUBSTANTIAL PORTION OF THE DISTRICT OR NEIGHBORHOOD BECAUSE:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- c) THE VARIANCE WOULD NOT ALTER THE ESSENTIAL CHARACTER OF THE NEIGHBORHOOD BECAUSE:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- d) THE HARDSHIP HAS NOT BEEN SELF-CREATED BECAUSE:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



6. IF AN AREA VARIANCE IS REQUESTED: [N/A](#)

a) THE VARIANCE WILL NOT PRODUCE AN UNDESIRABLE CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD OR A DETRIMENT TO NEARBY PROPERTIES BECAUSE:

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b) THE BENEFIT SOUGHT BY THE APPLICANT CAN NOT BE ACHIEVED BY SOME METHOD, FEASIBLE FOR THE APPLICANT TO PURSUE, OTHER THAN AN AREA VARIANCE, BECAUSE:

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c) THE REQUESTED AREA VARIANCE IS NOT SUBSTANTIAL BECAUSE:

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d) THE PROPOSED VARIANCE WILL NOT HAVE AN ADVERSE EFFECT OR IMPACT ON THE PHYSICAL OR ENVIRONMENTAL CONDITIONS IN THE NEIGHBORHOOD OR DISTRICT BECAUSE:

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e) THE HARDSHIP HAS NOT BEEN SELF-CREATED BECAUSE:

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7. ADDITIONAL REASONS (IF PERTINENT):

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[See attached narrative](#)

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PETITIONER (S) SIGNATURE

STATE OF NEW YORK: COUNTY OF ORANGE:

SWORN TO THIS 28 DAY OF July 2022



NOTARY PUBLIC

JOSEPH RICH WOJCIECHOWSKI  
Notary Public - State of New York  
NO. 01WO6234965  
Qualified in Orange County  
My Commission Expires Jan 31, 2023

NOTE: NYS GML Section 239-m (3) for proposed actions that are within 500 feet of the properties or thresholds listed in the statute the Zoning Board of Appeals is required to send a copy of the complete application to the Orange County Department of Planning to be reviewed prior to Zoning Board of Appeals decision. And also NYS GML Section 239-NN requires notification for any proposed actions, to the Municipal Clerk, within 500 feet of the Border of that adjoining County, Town or City.

**(ALL MATERIALS REGARDING THE APPLICATION MUST BE SUBMITTED TO THE ZONING BOARD OFFICE FOR REVIEW NO LATER THAN 13 DAYS PRIOR TO THE HEARING DATE OR THEY MAY NOT BE CONSIDERED THE NIGHT OF THE MEETING).**

(NOTE: BOARD MEMBERS MAKE SITE VISITS TO ALL THE PROPERTIES)



TOWN OF NEWBURGH  
ZONING BOARD OF APPEALS

PROXY

2102 Partners, LLC, DEPOSES AND SAYS THAT

<sup>it has offices</sup>  
~~HE/SHE RESIDES~~ AT 2102 Route 300, Wallkill

IN THE COUNTY OF Orange AND STATE OF New York

AND THAT <sup>it</sup>~~HE/SHE~~ IS THE OWNER IN FEE OF 2102 Route 300

Section 3, Block 1, Lot 21.31 and 21.61

WHICH IS THE PREMISES DESCRIBED IN THE FOREGOING APPLICA-

TION AND THAT <sup>it</sup>~~HE/SHE~~ HAS AUTHORIZED D. Cass Jr. & Associates, LLC and its attorney

TO MAKE THE FOREGOING APPLICATION AS DESCRIBED THEREIN.

DATED: July 29, 2022

*Robert J. Cass Jr.*

OWNER'S SIGNATURE

*Mary Beth Maio*

WITNESS' SIGNATURE

STATE OF NEW YORK: COUNTY OF ORANGE:

SWORN TO THIS 29 DAY OF July 2022

*Mary Beth Maio*  
NOTARY PUBLIC







## TOWN OF NEWBURGH

*~Crossroads of the Northeast~*

**CODE COMPLIANCE DEPARTMENT**  
21 HUDSON VALLEY PROFESSIONAL PLAZA  
NEWBURGH, NEW YORK 12550

TELEPHONE 845-564-7801  
FAX LINE 845-564-7802

### NOTICE OF DISAPPROVAL OF BUILDING PERMIT APPLICATION

Date: 07/26/2022

Application No. 22-0761

To: 2102 Partners LLC  
PO BOX 590  
Walkkill, NY 12589

SBL: 3-1-21.31  
ADDRESS: 2102 Route 300

**ZONE: AR**

PLEASE TAKE NOTICE that your application dated 07/26/2022 for permit to change the occupancy from WCC Tank to Black Rock Excavating on the premises located at 2102 Route 300 is returned herewith and disapproved on the following grounds:

Town of Newburgh Municipal Code:

1) 185-54-A-1: The meaning of any portion of the text of this chapter or of any condition or requirement specified or made under the provisions of this chapter. (Is this proposed use permitted under the previously approve use variance of 1982 and the interpretation of 2018)

  
Joseph Mattina

Cc: Town Clerk & Assessor (500')  
File

ORANGE COUNTY CLERK'S OFFICE RECORDING PAGE

THIS PAGE IS PART OF THE INSTRUMENT - DO NOT REMOVE

TYPE IN BLACK INK: NAME(S) OF PARTY(S) TO DOCUMENT



WILLIAM C. CONKLIN
TO
2102 PARTNERS LLC

SECTION 3 BLOCK 1 LOT 21.31
+ 21.61
RECORD AND RETURN TO:
(name and address)

JONATHAN E. KOSCHEI, ESQ,
81 BONA VENTURE AVE
WALLKILL, NY 12589

THIS IS PAGE ONE OF THE RECORDING

ATTACH THIS SHEET TO THE FIRST PAGE OF EACH
RECORDED INSTRUMENT ONLY

DO NOT WRITE BELOW THIS LINE

INSTRUMENT TYPE: DEED MORTGAGE SATISFACTION ASSIGNMENT OTHER

PROPERTY LOCATION

- 2089 BLOOMING GROVE (TN)
2001 WASHINGTONVILLE (VLG)
2289 CHESTER (TN)
2201 CHESTER (VLG)
2489 CORNWALL (TN)
2401 CORNWALL (VLG)
2600 CRAWFORD (TN)
2800 DEERPARK (TN)
3089 GOSHEN (TN)
3001 GOSHEN (VLG)
3003 FLORIDA (VLG)
3005 CHESTER (VLG)
3200 GREENVILLE (TN)
3489 HAMPTONBURGH (TN)
3401 MAYBROOK (VLG)
3689 HIGHLANDS (TN)
3601 HIGHLAND FALLS (VLG)
3889 MINISINK (TN)
3801 UNIONVILLE (VLG)
4089 MONROE (TN)
4001 MONROE (VLG)
4003 HARRIMAN (VLG)
4005 KIRYAS JOEL (VLG)
4289 MONTGOMERY (TN)
4201 MAYBROOK (VLG)
4203 MONTGOMERY (VLG)
4205 WALDEN (VLG)
4489 MOUNT HOPE (TN)
4401 OTISVILLE (VLG)
4600 NEWBURGH (TN)
4800 NEW WINDSOR (TN)
5089 TUXEDO (TN)
5001 TUXEDO PARK (VLG)
5200 WALLKILL (TN)
5489 WARWICK (TN)
5401 FLORIDA (VLG)
5403 GREENWOOD LAKE (VLG)
5405 WARWICK (VLG)
5600 WAWAYANDA (TN)
5889 WOODBURY (TN)
5801 HARRIMAN (VLG)
CITIES
0900 MIDDLETOWN
1100 NEWBURGH
1300 PORT JERVIS
9999 HOLD
NO PAGES 6 CROSS REF.
CERT. COPY ADD'L X-REF.
MAP# PGS.
PAYMENT TYPE: CHECK
CASH
CHARGE
NO FEE
Taxable
CONSIDERATION \$ 390,000 -
TAX EXEMPT
Taxable
MORTGAGE AMT. \$
DATE
MORTGAGE TAX TYPE:
(A) COMMERCIAL/FULL 1%
(B) 1 OR 2 FAMILY
(C) UNDER \$10,000
(E) EXEMPT
(F) 3 TO 6 UNITS
(I) NAT.PERSON/CR. UNION
(J) NAT.PER-CR.UN/1 OR 2
(K) CONDO

Donna L. Benson
DONNA L. BENSON
ORANGE COUNTY CLERK

RECEIVED FROM: Will n Dale

RECORDED/FILED
09/29/2005/ 09:54:17
DONNA L. BENSON
County Clerk
ORANGE COUNTY, NY
FILE # 20050103002
DEED C / BK 11954 PG 0472
RECORDING FEES 213.00
TTX# 002027 T TAX 1,560.00
Receipt#479088 joanned





**Bargain and Sale Deed**  
**With Covenant Against Grantor's Acts**

HN 35759

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT -- THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY

THIS INDENTURE, made the 19<sup>th</sup> day of September in the year 2005

**BETWEEN**

WILLIAM C. CONKLIN  
10014 169th Road  
Live Oak, FL 32060

party of the first part, and

2102 PARTNERS LLC  
PO Box 7146  
Newburgh, NY 12550

party of the second part,

**WITNESSETH**, that the party of the first part, in consideration of

TEN dollars,  
lawful money of the United States, and other good and valuable consideration paid

by the party of the second part, does hereby grant and release unto the party of the second part, the heirs, or successors and assigns for the party of the second part forever,

**ALL** that certain plot, piece or parcel of land, with the buildings and improvements thereon erected situate, lying and being in the

Town of Newburgh, County of Orange, and State of New York, being more particularly described on Schedule A.

BEING AND INTENDED TO BE the same premises conveyed by the following deeds from William C. Conklin:

1. Deed dated 11/6/1980, recorded 11/10/1980 in Liber 2179 cp 298.
2. Deed dated 5/12/1982, recorded 5/14/1982 in Liber 2222 cp 151.
3. Deed dated 5/12/1982, recorded 5/14/1982 in Liber 2222 cp 154.

**HILL-N-DALE ABSTRACTERS, INC.**  
20 SCOTCHTOWN AVENUE  
P.O. BOX 547  
GOSHEN, NEW YORK 10924  
(845) 294-5110  
FAX (845) 294-9581

**TOGETHER** with all rights, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof,

**TOGETHER** with the appurtenances and all the estate and rights of the party of the first part in and to said premises,

**TO HAVE AND TO HOLD** the premises herein granted unto the party of the second part, the heirs of successors and assigns of the party of the second part forever.

**AND** the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been incumbered in any way whatever, except as aforesaid.

**AND** the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. The word "party" shall be construed as if it reads "parties" whenever the sense of this indenture so requires.

**IN WITNESS WHEREOF**, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

  
WILLIAM C. CONKLIN



## Schedule A Description

Title Number **HN 35759 - A**

Page 1

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of Newburgh, County of Orange and State of New York being shown and designated as Lots 1 & 2 on map "Subdivision, Lands of Conklin" dated 2/14/89, last revised 11/1/89 and filed in the Orange County Clerk's Office as Map #9809.

Excepting so much of said lands as are shown as "Parcel A to become part of lot 2" on said map 9809.

---

Acknowledgment for Use Outside of New York State

STATE OF FLORIDA }  
COUNTY OF SUWANNE } ss.:

On the 19<sup>th</sup> day of September, in the year 2005, before me, the undersigned, personally appeared

WILLIAM C. CONKLIN

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual(s) made such appearance before the undersigned in the

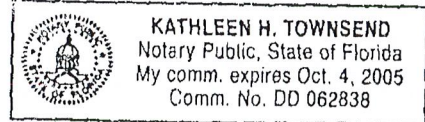
Live Oak, Florida

*(insert the city or other political subdivision and the state the acknowledgment was taken)*

Kathleen H. Townsend

Notary Public

Commission expires:





**ACKNOWLEDGMENT**

**STATE OF NEW YORK  
COUNTY OF**

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) so acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**STATE OF NEW YORK  
COUNTY OF**

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year \_\_\_\_\_, before me, the undersigned, a Notary Public in and for said State, personally appeared

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) so acted, executed the instrument.

\_\_\_\_\_  
Notary Public

**Bargain and Sale Deed  
With Covenant Against Grantor's Acts**

\_\_\_\_\_  
William C. Conklin

**TO**

2102 Partners LLC  
\_\_\_\_\_

SECTION: 3  
BLOCK: 1  
LOT: 21.31 and 21.61  
COUNTY OR TOWN: T/O Newburgh

**STREET ADDRESS:**  
2102 NYS Route 300  
Wallkill NY 12589

**RETURN BY MAIL TO:**

Jonathan E. Koschei  
PO Box R  
81 Bona Venture Avenue  
Wallkill, NY 12589



Looking west





Looking towards Route 300





Leaking Fast





Leaking North

## *Short Environmental Assessment Form*

### *Part 1 - Project Information*

#### Instructions for Completing

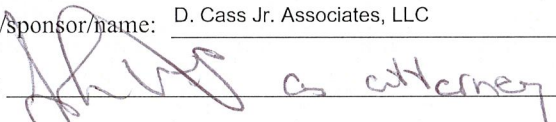
**Part 1 – Project Information.** The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

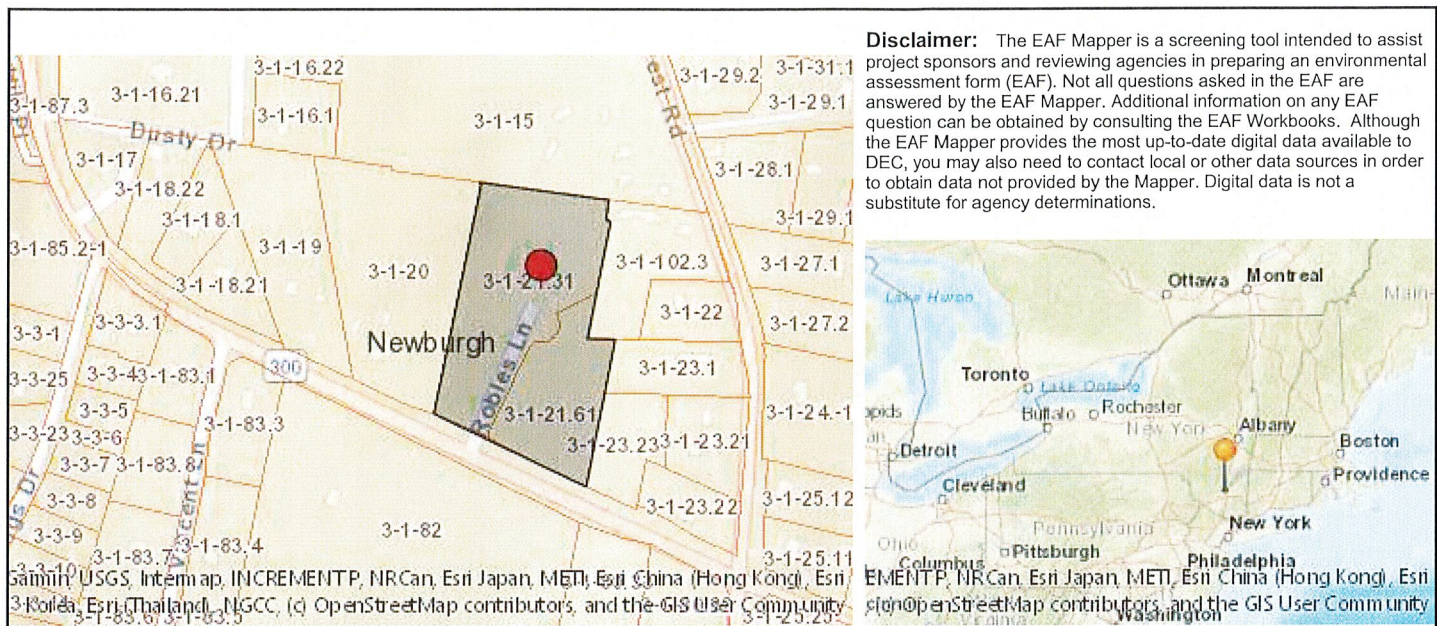
<b>Part 1 – Project and Sponsor Information</b>			
D. Cass Jr. & Associates, LLC			
Name of Action or Project: BlackRock Excavating Corporation			
Project Location (describe, and attach a location map): 2102 Route 300, Wallkill, NY			
Brief Description of Proposed Action: Applicant is looking to continue existing commercial operations pursuant to 1982 Use Variance and subsequent interpretations by the ZBA in 2017 and 2018.			
Name of Applicant or Sponsor: D. Cass Jr. & Associates, LLC		Telephone: 845-649-1882	
		E-Mail: Blackrockdigs@yahoo.com	
Address: 22 Vidi Drive			
City/PO: Salisbury Mills		State: NY	Zip Code: 12577
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			NO <input type="checkbox"/>
			YES <input type="checkbox"/>
2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval:			NO <input type="checkbox"/>
			YES <input type="checkbox"/>
3. a. Total acreage of the site of the proposed action?		_____ 4.33 acres	
b. Total acreage to be physically disturbed?		_____ 0 acres	
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor?		_____ 6.530 acres	
4. Check all land uses that occur on, are adjoining or near the proposed action:			
5. <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input checked="" type="checkbox"/> Commercial <input checked="" type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify):			
<input type="checkbox"/> Parkland			



	NO	YES	N/A
5. Is the proposed action, a. A permitted use under the zoning regulations? b. Consistent with the adopted comprehensive plan?	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation services available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ _____	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places?  b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory?	NO	YES	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____	NO	YES	
	<input type="checkbox"/>	<input checked="" type="checkbox"/>	
	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply:		
<input type="checkbox"/> Shoreline <input checked="" type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input checked="" type="checkbox"/> Suburban		
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
16. Is the project site located in the 100-year flood plan?	NO	YES
	<input checked="" type="checkbox"/>	<input type="checkbox"/>
17. Will the proposed action create storm water discharge, either from point or non-point sources?	NO	YES
If Yes,	<input checked="" type="checkbox"/>	<input type="checkbox"/>
a. Will storm water discharges flow to adjacent properties?	<input type="checkbox"/>	<input type="checkbox"/>
b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)?	<input type="checkbox"/>	<input type="checkbox"/>
If Yes, briefly describe: _____ _____		
18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)?	NO	YES
If Yes, explain the purpose and size of the impoundment: _____ _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility?	NO	YES
If Yes, describe: _____ _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste?	NO	YES
If Yes, describe: _____ _____	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</b>		
Applicant/sponsor name: <u>D. Cass Jr. Associates, LLC</u> Date: <u>July 29, 2022</u>		
Signature: <u></u> Title: _____		





**Disclaimer:** The EAF Mapper is a screening tool intended to assist project sponsors and reviewing agencies in preparing an environmental assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Although the EAF Mapper provides the most up-to-date digital data available to DEC, you may also need to contact local or other data sources in order to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.

Part 1 / Question 7 [Critical Environmental Area]	No
Part 1 / Question 12a [National or State Register of Historic Places or State Eligible Sites]	No
Part 1 / Question 12b [Archeological Sites]	Yes
Part 1 / Question 13a [Wetlands or Other Regulated Waterbodies]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
Part 1 / Question 15 [Threatened or Endangered Animal]	No
Part 1 / Question 16 [100 Year Flood Plain]	No
Part 1 / Question 20 [Remediation Site]	No

**AFFIDAVIT OF POSTING(S) OF  
NOTICE OF PUBLIC HEARING  
AT THE PROPERTY**

STATE OF NEW YORK: COUNTY OF ORANGE:

I Douglas Cassels Jr, being duly sworn, depose and say that I did on or before

August 11, 2022, post and will thereafter maintain at

2102 Route 300 3-1-21.31 AR Zone in the Town of Newburgh, New York, at or near the front

property line(s) and within view of each fronting street a copy(ies) of the Notice of Public Hearing, which

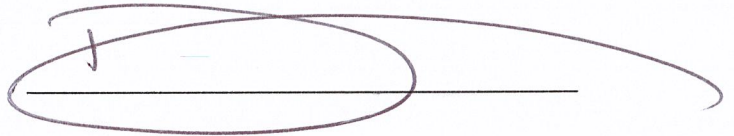
notice was in the form attached hereto.

The applicant shall maintain and update notice(s) (with amended information if there is any change to the information contained in the original Notice of Hearing) until after the Public Hearing is closed. The Notice must then be removed and property disposed of within ten (10) days of the close of the Public Hearing. Failure to follow the required procedure may result in the Public Hearing being held open for additional time.

Sworn to before me this 2<sup>nd</sup>

day of August, 2022.

**JULIE A. DURKIN**  
Notary Public, State of New York  
No. 01DU6314887  
Qualified in Dutchess County  
Commission Expires 11/17/2022





SIGN POSTING PUBLIC HEARING AUGUST 25, 2022  
2102 ROUTE 300





3-1-21.31  
AR

# BlackRock Excavating Corporation

22 Vidi Drive Salisbury Mills NY 12577 (845) 549-4924

[www.blackrockdigs.com](http://www.blackrockdigs.com)

To: Gerald Canfield  
Town of Newburgh Code Compliance  
21 Hudson Valley Professional Plaza  
Newburgh, New York 12550

From: Black Rock Excavating Corporation

CC: D.Cass Jr. and Associates

Via: Delivery – Hand Deliver

Pages: 2

Date: May 9, 2022

Re: 2102 Route 300, Wallkill NY 12589 (Newburgh, NY 12550) , S-B-L: 3-1-21.31

Dear Mr. Canfield:

The property is located in the Town of Newburgh jurisdiction, Orange County, State of New York and has a current property class 449, other storage.

This letter clarifying the intended use of the parcel is being submitted by Black Rock Excavating Corporation (BlackRock) who is the proposed primary and sole tenant of the property in reference; 2102 Route 300, Wallkill NY 12589. BlackRock is solely owned by Douglas E. Casscles Jr., and should the purchase of the building be successful, it will be purchased under a holding company LLC, also solely owned by Douglas E. Casscles Jr., tentatively named D.Cass Jr. and Associates.

BlackRock is a small, residential septic and sewer company that performs light excavation; a necessary service to correct a homeowner's septic issue. Our services include residential septic and sewer installations and repair and tank lining, water main installation and repairs, drainage and sitework. We have attached a list of the current fleet of vehicles and equipment to be stored on the property. BlackRock's intended use is primary office space and storage for our vehicles, equipment, and materials. Our materials are non-hazardous and do not require any special insurance or permitting for storage. All of our work is conducted off-site at the homeowner's property.

The hours of operation are 7:30am to 6:00pm with the following breakdown of normal operations within:

7:00AM – 7:30AM	Mobilization of Equipment and Materials
7:30AM	Leave Location
8:00AM – 5:00PM	Daily Office Operations (1-3 employees)
4:00PM	Return to Location
4:30PM – 6:00PM	End of Operations



# **BlackRock Excavating Corporation**

22 Vidi Drive Salisbury Mills NY 12577 (845) 549-4924

[www.blackrockdigs.com](http://www.blackrockdigs.com)


BlackRock does not intend on creating any significant noise or light pollution, nor any dramatic changes to the landscape of the property. Our intention is to beautify the existing landscape, limit any visual obstructions, and correct any existing issues that may be present.

Our intended use would not have a negative visual impact of the neighborhood or region, nor does it propose any health or safety problems. The proposed usage allows us to utilize the property to its best current ability under your guidance of the zoning allowance.

If you have any further questions, please reach out to me directly on my cell phone, (845) 649-1882 or email [blackrockdigs@yahoo.com](mailto:blackrockdigs@yahoo.com).

---

Respectfully Submitted,

A handwritten signature in black ink, consisting of a large, stylized loop with a vertical line through it, followed by a horizontal line extending to the right.

Douglas Casscles Jr.  
President, Black Rock Excavating Corp.  
President, D.Cass Jr. and Associates (pending)

# BlackRock Excavating Corporation

22 Vidi Drive Salisbury Mills NY 12577 (845) 549-4924

[www.blackrockdigs.com](http://www.blackrockdigs.com)

To: Gerald Canfield  
Town of Newburgh Code Compliance  
21 Hudson Valley Professional Plaza  
Newburgh, New York 12550

From: Black Rock Excavating Corporation

CC: D.Cass Jr. and Associates

Via: Delivery – Hand Deliver

Pages: 1

Date: May 9, 2022

Re: Current Equipment & Vehicle List

---

## Vehicles:

2022 Ford F-750
2019 Ford F-350
2019 Peterbilt 348
2016 Ford F-550
2001 Freightliner FL70

## Equipment:

2021 Kubota R640
2021 Mortiz Equipment Trailer
2020 Kubota U35
2020 Kubota KX080
2019 Sure-Trac Equipment Trailer
2019 Caterpillar 299D2
2017 Winston Equipment Trailer