

Bloom & Bloom, P.C.
ATTORNEYS AND COUNSELORS AT LAW

DANIEL J. BLOOM
PETER E. BLOOM
KEVIN D. BLOOM *
KATHLEEN L. BLOOM
*ALSO ADMITTED IN FLORIDA

530 BLOOMING GROVE TURNPIKE
P.O. BOX 4323
NEW WINDSOR, NEW YORK 12553
TELEPHONE (845) 561-6920
FAX: (845) 561-0978
E-MAIL: BLOOMBLOOM@hvc.rr.com

January 19, 2017

Town of Newburgh
Attention: Supervisor Gil Piaquadio
1496 Route 300
Newburgh, New York 12550

VIA OVERNIGHT
DELIVERY

Town of Newburgh Code Compliance Department
Attention: Mr. Gerald Canfield
308 Gardnertown Road
Newburgh, NY 12550

VIA OVERNIGHT
DELIVERY

Town of Newburgh Planning Board
308 Gardnertown Road
Newburgh, NY 12550

VIA OVERNIGHT
DELIVERY

Town of Newburgh Zoning Board of Appeals
308 Gardnertown Road
Newburgh, NY 12550

VIA OVERNIGHT
DELIVERY

RE: Section / Block / Lot 3-1-21.31 a/k/a 2102 Rte. 300, Wallkill, New York 12589
("the premises")

Dear Sir or Madam:

This law firm represents Susan D. Carroll, a Town of Newburgh resident taxpayer.

The purpose of this letter is to comply with Town Law § 268 (2). Hence, our client requests that you take all available measures to correct, remove, abate and/or enjoin the following violations which relate to the premises.

- I. The occupant(s) on the premises are operating a business which is not a “full tank lining business”.¹

On March 11, 1982 the Town of Newburgh Zoning Board of Appeals (“Board”) approved a use variance for the premises so as to permit “the operation of a full tank lining business from premises located off Route 300 at Robles Lane, an AR Zone in the Town of Newburgh”. *See*, Exhibit 1, pg. 1. According to the testimony of the Applicant given by him to the Board prior to granting the variance, he described his “full tank lining business” to be one where “[w]e drive to a sight or location to where a tank is leaking, we repair the leaks and [then] put in fiber glass lining.” *See*, Exhibit 2, pg.1. This Board credited that characterization in granting the variance finding “the actual relining of fuel storage tanks is not done on the premises”, however “all equipment and supplies required for such a service, are kept or stored upon the premises.” *See*, Exhibit 1, ¶3.

Now, the occupant(s) are violating their use variance to operate a tank lining business, and they are now operating a “Hydrovac Excavating” business on the premises. According to the website maintained by the occupants, www.hydrovacinc.com, Hydro Excavation (“HE”) utilizes pressurized water and a vacuum system on board a large truck to remove dirt and soil from a particular location. A picture of one of the trucks used by the occupants to perform HE is attached hereto as Exhibit 3.

The occupant(s) currently utilize at least 3 HE trucks for the business. These trucks leave and arrive at the premises sometimes 6 times per day. Such trucks also discharge the dirt and soil collected offsite onto the premises. In the process of discharging the dirt and soil from the trucks, the engines used to do so are: (a) so loud that it makes sleep impossible; and (b) emit diesel fumes which are noxious. Moreover, once the soil is discharged by the trucks onto the ground, the soil is then pushed, graded, and distributed over the premises by the occupants using mechanized “Bobcat” equipment.

- II. Violation of Chapter 83 of the Town Code - Clearing and Grading

By reason of operating the HE business, the occupant(s) have allowed filling in excess of 400 cubic yards of fill on the rear southwest corner of the premises without receiving a clearing and grading permit. In addition, the clear cut of that area has a reduced buffer, and, therefore soil erosion is now occurring into a retention pond which

¹ Our client is using the term “occupant(s)” in that we do not know whether the activity complained of herein is being done by and/or at the direction thereof and/or with the permission of the owner of the premises and/or an affiliate and/or a subsidiary and/or a corporate entity of the owner of the premises.

was created by the occupant(s). The retention pond contains a pipe to an unknown location.

III. Violation of Section 185-15.1 of the Town Code

There are multiple cargo containers on the property.

IV. Violation of Section 185-21 of the Town Code.

The occupant(s) have failed to comply with term and condition # 6 of their existing use variance.

Additionally, because the occupant(s) have unlawfully commenced their HE business, they have not properly addressed the requirements of Section 185-21 of the Town Code. The HE business has resulted in more dust production, exhaust fumes and noise.

V. Violation of Section 185-30 of the Town Code

There is the outdoor storage of vehicles, trailers, building supplies, machinery equipment on the premises by the occupant(s). These items are stored in the front yard of the premises, and they are closer than 50 feet to both side lot lines, and the rear lot line. They are also not properly screened.

VI. Violation of Section 185-31(1) of the Town Code

Land is being covered with fill that is discharged from the HE trucks. Specifically, the fill is discharged from the HE trucks and then pushed, graded and distributed over the premises by the occupant(s).

VII. Section 185-57.1 Stormwater Management Plan

The aforesaid significant clearing, grading of land and soil has occurred without site plan approval. As such, the regulatory authority has not had an opportunity to properly vet the environmental, health, safety and welfare impacts of the occupant(s) conduct.

Very truly yours,


Kevin D. Bloom, Esq.

TOWN OF NEWBURGH
ZONING BOARD OF APPEALS

In the Application of
WILLIAM C. CONKLIN.

DECISION AND
RESOLUTION.

The application of WILLIAM C. CONKLIN seeks a use variance to permit the operation of a full tank lining business from premises located off Route 100 at Nobles Lane, an A-1 Zone in the Town of Newburgh.

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 200.

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.

7. 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.

8. 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 deisel fuel,
2. an in ground fuel storage tank of 3000 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.

DEED: Newburgh, New York
March 11, 1982.

Richard N. Ash
Att. Coun.

VOTING APPLICATION OF WILLIAM C. CONKLIN

RICHARD RASKIN

VOTE

AYE

RALPH L. HOLY

VOTE

AYE

DOUGLAS CARLE

VOTE

AYE

JOHN P. DELESSIO

VOTE

AYE

JAMES A. SARVIS

VOTE

AYE

DATED: March 11, 1982.
Newburgh, New York

Richard Raskin
Acting

PRESENT: Richard Raskin, Acting Chairman
Charles W. Beck, Jr. Attorney
Doris A. Beck, Secretary
James A. Farvin
Douglas Carlo
John F. DeLassio
Paul Blanchard

Application of: William C. Conklin

Mr. William C. Conklin seeks a use variance to permit the operation of a full tank lining business from premisses located off Route 1000 at Hobbes Lane, an AR Zone in the Town of Newburgh. All mailings were in order.

Mr. Raskin: Do these 6000 gal. tanks currently exist in the ground now.

Mr. Conklin: Yes... I put them in the ground and then found out I couldn't use them. I do relining of underground storage tanks... New Jersey, New York and Delaware.

Mr. Raskin: What would be stored in these tanks.

Mr. Conklin: Fuel.

Mr. Raskin: How much equipment do you plan on having.

Mr. Conklin: There are two tractor trailers, straight tractor and pick ups. They are travelling factories. We drive to a sight or location to where a tank is leaking, we repair the leaks and put in a fiber glass lining.....

Mr. Raskin: The material that lines the tanks, do you plan on keeping that on the sight.

Mr. Conklin: Yes.

Mr. Raskin: What does that consist of.

Mr. Conklin: It's a polyester material.

Mr. Raskin: It is in a granular form or is it in a liquid form.

Mr. Conklin: It's like a pudding.

Mr. Raskin: Where would you store that.

Mr. Conklin: On the property.

Mr. Raskin: Where.

Mr. Conklin: Outside.

Mr. Raskin: How many would you have at one given time.

Mr. Conklin: Ten, fifty gallon drums.

Mr. Raskin: Is this flammable or toxic.

Mr. Conklin: No it's non-toxic, but you can't eat it.

It's non-toxic if you breath it.

Mr. Raskin: What is the chemical use.

Mr. Conklin: It's a polyester TL3-80. These drums are already prepared, there is no mixing.

Mr. Raskin: Your lot is an acre and a half.

Mr. Conklin: Yes.

Mr. Conklin explained to the board the overall acreage that he owns, and additional land he is in the process of becoming titled too. His means of ingress and egress was demonstrated to the Board according to the map submitted and presented to the Board.

Mr. Raskin: How many people do you employ.

Mr. Conklin: I have nine right now. Office help and drivers.

Mr. Raskin: When would the trucks go out.....approximately the same time every day?

Mr. Con-

Mr. Conklin: Usually...right now both of the trucks are out on sight and they don't return until the job is completed. They come back to the site fill up.....load up and go to another location. They are a travelling factory. They do not run in and out at night. Office area was pointed out to the Board. The tanks are in full view of the office so there is no supervision needed for the tanks. The chemicals are stored outside until I, Mr. Conklin, can get enough money to erect a storage area. These chemicals are not explosive... they are flammable. Under high temperatures in the summer these drums do not have to be stored in a cooling system. These drums are hauled in by a common carrier. There are no restrictions to how they are handled. Fuel will be stored in the tanks....6000 gal. diesel fuel and 3000 unleaded.

Mr. Beck: Mr. Conklin, is there an office on this site where your entire business is conducted.

Mr. Conklin: Yes.

Mr. Beck: The people that you use in the conduct of your business, is not done specifically on the site, they go to another location.

Mr. Conklin: Yes. They load the trucks and go to the particular area in need of our service.

Mr. Beck: How long has your business been conducted from this site.

Mr. Conklin: I moved into my office on the 11th of November, 1981. I was on Stewart Avenue prior to that with Ira D. Conklin & Sons.

Mr. Haskin: Do you store any other chemicals on the site other than what you mentioned.

Mr. Conklin: Yes Acetone. They are stored in drums in a covered area. That is explosive and flammable...it is in the same category as gasoline. It is highly explosive.

Mr. Beck: Are there any other agencies, such as fire inspector, etc., you must satisfy as to storage of these drums other than the Town of Newburgh Building Inspector.

Mr. Conklin: No, not to my knowledge. I use common sense to the storing of these drums and my years of experience.

Further questions were asked of Mr. Conklin regarding other locations in the Town of Newburgh for his business.

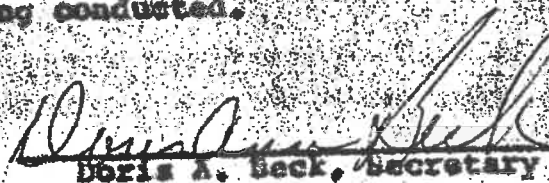
There were STRONG OBJECTIONS from the audience. Objections were heard from Joan Perry, Mary Lou Bateman and Peter Chass.

Mr. Joseph Hudd, a workman, spoke in favor of this operation and the safety of the operation.

Hearing closed.

I CERTIFY that the foregoing is a full and complete transcript of the hearing conducted.

March 2th, 1982.


Doris A. Beck, Secretary

PRESENT: RALPH HOLT, Chairman
CHARLES W. BECK, JR., Attorney
DORIS A. BECK, Secretary
Richard Raskin
Douglas Carle
John P. DeLassio
James A. Sarvis

Re: Re-scheduled hearing for William D. Conklin.

Present: William D. Conklin
Gilbert Rashbaum, Attorney

This was a continuation of the January hearing and the adjacent owners were given notice of this hearing.

Mr. Rashbaum submitted maps to the board and additional questions were asked of both parties, Mr. Conklin and Mr. Rashbaum. Mr. Wextel and Mr. Smith were also present. They are owners of additional properties that Mr. Conklin is under contract to purchase. Mr. Wextel and Mr. Smith discussed the difficulties in selling these lots, which Mr. Conklin desires to purchase, because of underground springs and swamp areas.

Discussion regarding the pole barn which will be erected within the next year, if this application is granted, will be used for storing equipment, tools, two tractor trailers and two straight trucks. Fencing and landscaping was also discussed. Objections from the audience ^{were} heard. Joan Perry, Mr. Spinuzzi and Donald Gustapen strongly objected to the approval of this application. Mr. Vandermark, adjacent neighbor, did not object to this application. The neighbors objected to the flammable Acetone and gasoline which would be stored on the premises. They also objected to the storing of used drums on the property creating an eye-sore for them to look at. Also possible

pollution of their wells.

There were no further discussions, hearing was closed.

I CERTIFY that the foregoing is a full and complete transcript of the hearing conducted.

March 8th, 1982.



Doris A. Beck, Secretary

