

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

DECISION

For relief as follows:

- *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 decision¹" dated March 11, 1982. A copy of that Decision and Resolution is appended to this decision.

¹ 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.² 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

² 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 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)?

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.

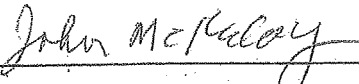
9. Did the March 1982 use variance allow the premises to be used for and in support of outdoor work activities conducted by the employees and agents of the business in furtherance of the uses identified in "1" above?

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, 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 - 9 2017



ANDREW J. ZARUTSKIE, CLERK

TOWN OF NEWBURGH