

ZBA MEETING – MARCH 23, 2017 (Resumption for decision: 8:17 PM)

CODE COMPLIANCE DEPT. - 2102 ROUTE 300 (3-1-21.31) & PLANK ROAD, N.,
TOWN OF NEWBURGH (3-1-21.61) WALLKILL A/R ZONE

Applicant is seeking an Interpretation if on-site uses and/or activities fall within the intended scope and be permitted under the Zoning Board of Appeals' March 11, 1982 Decision and Resolution which granted a use variance to permit the operation of a fuel tank lining business.

Mr. Levin: Town of Newburgh, 2102 Route 300, North Plank Road, Interpretation if site (on-site) use and/or activities fall within the intended scope and be permitted under the Zoning Board of Appeals' March 11, 1982 Decision and Resolution which granted a use variance to permit the operation of a fuel tank lining business.

Mr. Donovan: So this application is obviously unique, this Board is called upon to render an interpretation with regard to a decision that was issued by the Town of Newburgh ZBA some thirty-five years ago in March of 1982 and to determine specifically whether or not a series of uses which Code Compliance doesn't confirm or deny are occurring on the premises, they're just seeking this Board's guidance as to whether or not they and I'll quote this "whether they would fall within and be permitted under the use variance granted in the decision issued in March of 1982?" The Board did seek a...and request some guidance on legal issues from me. I did provide some guidance indicating that the general law of use variances is if a use variance is granted and it is unlimited in scope the use becomes a permitted use subject to whatever site plan or bulk requirements that...that may be impacted. If it is a limited variance that is there's limitations placed on the grant of the variance then those limitations then those limitations have to be given effect by a future Board and modifications beyond those limitations would require an additional use variance. Now the Board does have a...you know, even more difficulty than the fact that this is thirty-five years old. You don't have the application from 1982 nor do you have the site plan that was submitted together with the application in 1982 so you're left with making the best you can with the facts and the information that you have. Based upon that my suggestion for the Board to consider is Code Compliance's has asked for approximately a...there's eight or nine different categories, Category 1 has a thru e. They've asked for guidance as to whether or not those individual items fall with and be permitted under the 1982 decision. My suggestion, if the Board is so inclined, is to address each one of those individually so there would be guidance given to Code Compliance. Understand that this...this whatever interpretation you issue is not the end of the story so a...likely not the end of the story let me put it that way, so it's my suggestion if it's that's what the Board is inclined to do that that you take each item individually and I can go through each of those items if that's what the Board would like.

Mr. Scalzo: I would like that.

Mr. Bell: I would like that.

Mr. McKelvey: Yeah.

Mr. Masten: Yes.

Mr. Scalzo: From what I recall from reading the a...minutes from a...the 1982 meeting plus the testimony we heard last week I don't believe they were doing above fuel...above ground fuel storage tank testing on the premises. They were...

Mr. Masten: They were off-site.

Mr. Scalzo: ...they were off-site.

Mr. McKelvey: Off-site.

Mr. Donovan: Well I think the question is for and in support of the following off-site services.

Mr. Scalzo: Oh, for and in support of off-site services then I would agree, yes.

Mr. McKelvey: Yes.

Mr. Levin: I would too.

Mr. Masten: Yes.

Mr. Donovan: So is there a motion to that effect?

Mr. Masten: I'll make a motion to it.

Mr. McKelvey: We need a second.

Mr. Levin: I'll second it.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: So 1 (c) the use of the premises for and in support of underground and above ground fuel storage tank excavation?

Mr. Scalzo: Again, as it's off-site I recall or my opinion from those meeting minutes is yes. I make a motion in agreement to that.

Mr. Levin: I'll second that motion.

Ms. Gennarelli: One second...

Mr. McKelvey: Roll call.

Ms. Gennarelli: Yeah, I'm sorry, one second, roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: Item 1 (d) use of the premises for and in support of the following off-site services, underground and above ground storage tank compliance?

Mr. Scalzo: I don't recall that phrasing in the use variance granted so I...I don't have an answer.

Mr. Donovan: So if you don't have an answer then I think that your answer is...I mean, basically I think you can say yes, it is; no, it isn't; or then we can't tell based upon the information submitted to us.

Mr. Bell: I can't tell.

Mr. Scalzo: If I'm basing it on the information provided to us then the answer is no.

Mr. McKelvey: Do we have a motion?

Mr. Scalzo: Well...

Mr. Bell: I can't tell.

Mr. Scalzo: Yeah, you know what? I can't tell.

Mr. Bell: I can't tell.

Mr. McKelvey: No.

Mr. Donovan: So, I don't mean to put words in your mouth, is it the motion would be there's insufficient evidence...?

Mr. Scalzo: Insufficient evidence...

Mr. Donovan: ...to make a determination as...

Mr. Scalzo: ...to make a determination...

Mr. Donovan: ...to whether this use is encompassed by the 1982 use variance.

Mr. Scalzo: I couldn't have said it better myself, Dave.

Mr. Levin: Very good.

Mr. Donovan: Someone would need to make that motion though.

Mr. Masten: I'll make that motion.

Mr. Levin: I'll second it.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: Item 1 (e) the use of the premises for and in support of hydro-excavation business?

Mr. Scalzo: That technology was not available in 1982.

Mr. Masten: That's right.

Mr. Scalzo: That is clearly a no.

Mr. Levin: No.

Mr. McKelvey: No.

Mr. Bell: No.

Mr. McKelvey: Do we have a motion?

Mr. Scalzo: I'll make a motion on the negative side there.

Mr. Bell: I'll second that motion.

Ms. Gennarelli: Roll call.

Darrell Bell: No. I'm sorry, Yes

Richard Levin: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: Item #2, whether or not the 1982 decision would permit outdoor storage of heavy equipment including plows, land grading equipment, etc.

Mr. Levin: I didn't read that in...when I read the old minutes, anything like that.

Mr. Scalzo: Well, actually I thought he did say he needed a few a...vehicles there.

Mr. McKelvey: I thought he did too.

Mr. Scalzo: Well it says plows, land grading equipment, etc. Grading equipment, no that, that was not included...

Mr. McKelvey: No.

Mr. Scalzo: ...I did not read any of that.

Mr. McKelvey: I think he said pick-up trucks (inaudible)...

Mr. Levin: Pick-up trucks.

Mr. Scalzo: Pick-up trucks.

Mr. Donovan: Well that that will be the subject of another paragraph. Number...paragraph...or item #2 is outdoor storage of heavy equipment including plows, land grading equipment, etc. and I know this is a difficult task but we're trying to answer the specific questions that Code Compliance has asked to allow Code Compliance to do whatever they determine is appropriate based upon...excuse me, the responses you provide.

Mr. Scalzo: Then a...no, I...I make a motion for a no on the land grading equipment including plows although there was heavy equipment (Inaudible) but no.

Mr. McKelvey: Do we have a second?

Mr. Bell: Second to this.

Ms. Gennarelli: Roll call.

Darrell Bell: No...Yes, I'm sorry.

Richard Levin: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: Item 3, is whether or not the 1982 use variance a...authorized 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?

Mr. McKelvey: That's a no.

Mr. Bell: Yes.

Mr. Levin: It wasn't in the...

Mr. McKelvey: No, it wasn't.

Mr. Levin: ...it didn't exist then.

Mr. McKelvey: No.

Mr. Scalzo: I second that.

Ms. Gennarelli: You were the first?

Mr. Scalzo: Was John...was John making a motion or was he just stating...?

Mr. McKelvey: No.

Mr. Donovan: I don't think either...

Mr. Scalzo: Then I'll make a motion of no

Mr. Levin: I'll second that.

Ms. Gennarelli: Richard is the second? Okay.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: Item 4, 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 operational noise.

Mr. Scalzo: No.

Mr. Scalzo: I'll make a motion for no.

Mr. Bell: That's on that video.

Mr. McKelvey: Do we have a...?

Mr. Levin: Second.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: Item #5, outdoor parking of pick-up truck or trucks operated by a business?

Mr. Scalzo: That one I'm going to go with yes Dave, I'll make a motion for a yes.

Mr. Masten: Yes.

Mr. Bell: Yes.

Mr. Masten: I'll second.

Ms. Gennarelli: Okay, one second, roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: Item #6, outdoor parking of semi-trucks, truck or trucks and trailer or trailers operated by a business?

Mr. Bell: They were parking it there...outside there.

Mr. Levin: I can see a semi-truck...they would have to...

Mr. Donovan: Well the question is whether or not it was authorized by the use variance decision a...that...that's the real question? That is the question that this Code Compliance is asking. Whether or not that activity would fall within and be permitted under the use variance granted?

Mr. Bell: I don't think it was actually.

Mr. Donovan: And if you think it's yes that's fine but I just it's...it's not your subjective thought as to whether or not it should be...it's whether or not it was authorized by the use variance decision.

Mr. Bell: Right.

Mr. Levin: I don't recall.

Mr. Bell: I don't recall any of that.

Mr. Scalzo: I...I can't determine that by the information provided.

Mr. Levin: I feel the same way.

Mr. Donovan: Is that a motion?

Mr. Levin: A motion that it's not determinable. Is that a word?

Mr. Donovan: It is now.

Mr. McKelvey: You just made it.

Mr. Donovan: Is there a second to that?

Mr. Masten: I'll second it.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: Item #7, outdoor parking of a 2004 Freightliner truck or trucks on which is mounted a Hydrovac device?

Mr. Scalzo: A...I would make a motion for a no.

Mr. Bell/Masten: I'll second that.

Ms. Gennarelli: I'm sorry, Richard was the second?

Mr. Donovan: Darrell.

Ms. Gennarelli: Darrell, okay.

Mr. Donovan: Right, I think I had that right.

Mr. Bell: Yes.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: Item #8, outdoor presence on the surface of the premises of storage containers, shipping containers and like mobile/portable enclosures designed for storing items and materials?

Mr. McKelvey: I don't think that was in the decision but...

Mr. Levin: I don't think it was there. I didn't read that.

Mr. Bell: I disagree with that.

Mr. Scalzo: No, I...

Mr. McKelvey: No.

Mr. Scalzo: ...I did not see storage containers, shipping containers and the like. I did see storage of tanks or for acetone...

Mr. McKelvey: Yeah.

Mr. Scalzo: ...and diesel fuel but not for...

Mr. Donovan: Well just to reflec...refresh your recollection in the decision item #1, was an in ground fuel storage tank of 6000 gal. capacity for diesel fuel; item 2, an in ground fuel storage tank of 3000 gal. capacity for unleaded gasoline; item 3, an in ground storage tank of 550 gal. capacity for acetone.

Mr. Scalzo: They are not storage containers.

Mr. Bell: Yes.

Mr. Scalzo: Shipping containers they are a...so...

Mr. Levin: It doesn't include that.

Mr. Scalzo: I'll make a motion on no.

Mr. Levin: I'll second that.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Donovan: And Item #9, outdoor work activities conducted by the employees and agents of the business in furtherance of the uses identified in "1" above and the only thing I would point out to the Board, Item #1 had paragraphs (a) thru (e), item (d), you indicated you had insufficient evidence to make a determination; item e, you indicated no, so I think a reasonable inference was that would apply to items (a), (b) and (c).

Mr. Levin: I think that was included....in the minutes.

Mr. Scalzo: So Dave, if I understood what you just said, we're looking at the evaluation we're looking at the evaluation of outdoor work activities encompassing all of the items of "1" and unless we meet all of them...

Mr. Donovan: Well that...

Mr. Scalzo: ...the answer is no.

Mr. Donovan: ...that...that's the question. I would suggest that...all I was trying to suggest you've already decided that (d) and (e) weren't authorized...right?

Mr. Levin: Yeah.

Mr. Donovan: So, if you wanted to say with regard to items (a), (b) and (c)...I think that that would be fair. You couldn't say it's authorized for (d) and (e) because you couldn't authorize employees or agents for activities that you said weren't allowed. Do you understand what I am saying?

Mr. Scalzo: Well (d) was undetermined and (e) was not allowed.

Mr. Donovan: But if it's...okay, I don't know that you can determine that they could have employees for a business that...for an activity that you haven't determined is permitted. Well...

Mr. Levin: Do I make the motion for approval of (a), (b) and (c)?

Mr. Donovan: I don't want you to do anything except what you want to do.

Mr. Scalzo: Yeah, Richard if you want to split them up that's fine.

Mr. Bell: Split them. Yeah, that's what we have to...

Mr. Scalzo: Split them up. Yeah for items "1" (a), (b) and (c).

Mr. Levin: I'm making a motion for approval of employees and agents of the business and furtherance the use identified in (a), (b) and (c) of item "1".

Mr. McKelvey: Do we have a second?

Mr. Levin: Is that properly said?

Mr. Scalzo: I'll second that. Yes.

Ms. Gennarelli: Okay, roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Scalzo: Now Dave because we did not address (d) and (e) in that do we need to also address those in another...?

Mr. Donovan: That would be in order.

Mr. Scalzo: Okay, Richard you did the first one so well.

Mr. Bell: (d) & (e).

Mr. Levin: The...I make the motion that we...

Mr. Scalzo: Would be no.

Mr. Levin: ...no, determining...no determination of item (d), underground and above ground storage tank compliance.

Mr. Scalzo: And (e).

Mr. Bell: (e).

Mr. Donovan: Well so my my only...

Mr. Levin: And (e), no (e) is a different one.

Mr. Donovan: But my only suggestion to the Board for the purposes of consistency if you determine if you don't have enough information to make a determination for "1" (d), you've determined that item "1" (e) is not a...encompassed by the variance then perhaps would be inconsistent to say you authorize outdoor work activities in conjunction with those...

Mr. Scalzo: With an item that we...

Mr. Donovan: Said that is not allowed.

Mr. Scalzo: Right.

Mr. Donovan: Did I say that too complicated...did I make it too complicated?

Mr. Scalzo: Betty will straighten it out in the minutes.

Ms. Gennarelli: I just type what you say.

Mr. Scalzo: That's what Dave says...not what I say.

Ms. Gennarelli: No, whatever you all say.

Mr. Levin: Would you kindly read what...

Mr. Donovan: So if I understand correctly the Board is looking to make a motion that Items "1" (d) and "1" (e) are not encompassed by the outdoor work activities because they're not permitted uses...or authorized by the 1982 use variance is the better way to state that...so someone would have...would have to offer that as a motion...

Mr. Levin: I'll make that motion.

Mr. Scalzo: And, I would second it.

Ms. Gennarelli: Roll call.

Darrell Bell: Yes

Richard Levin: Yes

John Masten: Yes

Darrin Scalzo: Yes

John McKelvey: Yes

Mr. Scalzo: I believe that's it Dave. Am I correct?

Mr. Donovan: That is correct. So for clarification this will be incorporated into a written decision that will be delivered...signed by the chairman, delivered to Code Compliance for their future and further use such as that may be.

Audience Member speaking

Mr. Donovan: So for purposes of clarification...we were...this Board was asked to render a determination as to what may have been or may not have been included in the 1982 use variance. This Board has now done that to Code Compliance. It's up to Code Compliance whether...what...what they do with that information.

Audience Member speaking

Mr. Donovan: I don't know if that answers your question it may not have been...

Audience Member speaking

Ms. Gennarelli: Excuse me, this is not going to be on the...you need to come up and talk to the microphone. I'm sorry.

Mr. McKelvey: Come to the mic please.

Ms. Gennarelli: And just...just identify yourself please for the record.

Mr. Dietz: Bob Dietz, I'm president of WCC Tank Technology, town resident for over...my whole life and I've worked there for thirty years. So I...I understand okay, yes we can have a tank lining business. I believe you also said...you didn't mention that it had to be either on the property, off the property, I don't think you put a stipulation on that. Am I correct?

Mr. Donovan: So what this Board did was asked very specific...answered very specific questions that were asked by Code Compliance.

Mr. Dietz: Right.

Mr. Donovan: Probably...let's be clear about this, not a satisfactory result to anyone.

Mr. Dietz: Oh no, I just don't understand about why the tractor trailer that is on the property why you didn't understand why you would need that because that's the equipment for the tank lining business. Without there is no tank lining business so you...you're actually saying I should be thinking I should be parking that someplace else.

Mr. Donovan: No I...no I think I...

Mr. Dietz: Am I wrong or am I just misunderstanding?

Mr. Donovan: Well you know what it's a technical so...so this Board is being asked is that allowed? Right? So...so typically what you look at is what's...what is in the original application in '82, which we don't have; what was on the site plan showed maybe a parking area, we don't have that; so this Board is confronted with looking at what's in the minutes, what's in the resolution and what they said is we can't tell. It may...may make perfect common sense...

Mr. Dietz: Yeah.

Mr. Donovan: ...but we can't tell based upon what we're looking at.

Mr. Dietz: I understand now. Thank you. Thank you.

PRESENT ARE:

DARRELL BELL
RICHARD LEVIN
JOHN MASTEN
JOHN MC KELVEY
DARRIN SCALZO

ABSENT:

MICHAEL MAHER
JAMES MANLEY

ALSO PRESENT:

DAVID A. DONOVAN, ESQ.
BETTY GENNARELLI, ZBA SECRETARY
JOSEPH MATTINA, CODE COMPLIANCE

(Time Noted – 8:38 PM)