

TOWN OF USLTER  
ZONING BOARD OF APPEALS  
AUGUST 7, 2013

The regular monthly meeting of the Town of Ulster Zoning Board of Appeals was held at the Town of Ulster Town Hall on August 7, 2013 at 7:30 P.M.

Present:

Robert Porter- Acting Chairman  
George Carlson  
Elizabeth Kyriacou

A motion to approve the minutes from the July meeting was made by Mr. Carlson and seconded from Mrs. Kyriacou. All were in favor.

**Appeal of Notice of Violation- Buck's Recycling-**

Paul Gemma in favor of upholding the Order to Remedy; Mr. Gemma spoke of DEC violations and requested the Board put off the vote until more information from the DEC could be submitted.

Rosalind Stark asked the Board to uphold the Order to Remedy and have the site cleaned up.

James Muscato attorney for Mr. Mackenzie stated his firm has submitted a response to the Affirmation of Jason Kovacs. He requested the Board allow his client the chance to go back to the Town Board and reapply for his Junkyard License. He also stated the DEC issues are not relevant to the appeal. Mr. Mackenzie is currently working on the conditions of the site plan approval and has 3 years to complete.

Mr. Whitaker stated he has been on the site and does business with Mr. MacKenzie and the previous owners. The site has always been an junkyard, Mr. Mackenzie has cleaned the site up; he inherited the problems on the site and it will take time to come into compliance.

A motion to close the Public Hearing was made by Mr. Carlson with a second from Mrs. Kyriacou with all in favor.

A motion to adjourn was made by Mrs. Kyriacou with a second from Mr. Jacobsen; all were in favor.

**Action:** A motion to deny appeal was made by Mrs. Kyriacou with a second from Mr. Carlson with all in favor.

WHEREAS, the applicant, Don MacKenzie, seeks to appeal the Town of Ulster Building Inspector's Order to Remedy dated November 27, 2012, which alleges that (1) the use of the property at 1015 Route 213 as a Junk Yard is not a use as of right in the zoning district in which the property is located; (2) the Junk Yard does not have a valid Town

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license as required by Town Code Chapter 101; and (3) that the Junk Yard is not a valid, pre-existing non-conforming use; and

WHEREAS, applicant has timely filed a notice of appeal of the Building Inspector's Order to Remedy; and

WHEREAS, notice of a public hearing was published, and notification of the public hearing was posted, all in conformity with the Town of Ulster Town Code; and  
WHEREAS, a public hearing was held on June 5, 2013 and continued to August 7, 2013, at which date the public hearing was closed; now therefore

BE IT RESOLVED, that the Zoning Board of Appeals makes the following Findings of Fact and Conclusions of Law in this matter:

FINDINGS OF FACT

1. The subject property is located at 1015 Route 213.
2. The applicant is the property owner, who operates a junk yard on the subject property.
3. The applicant seeks an appeal of the Town of Ulster Building Inspector's November 27, 2012 Order to Remedy.
4. Applicant acquired the property at issue from the County of Ulster at a tax sale on or about April 18, 2007. At some point after he acquired the property, he began operation of a junk yard on said property.
5. Applicant has never been issued approvals by the Town of Ulster to operate a junk yard on said location. Applicant has not been issued approvals or permits by the DEC and/or DMV to legally dismantle motor vehicles or perform other tasks commonly required of junk yards or related operations.
6. The Town of Ulster Building Department issued the applicant an Order to Remedy dated January 3, 2011 alleging, *inter alia*, that (1) the use of the property identified as SBL 56.71-2-2 as a junk yard is not a use as of right in the zoning district in which the property is located; (2) the junk yard at SBL 56.71-2-2 does not have a valid Town license as required by Town Code § 101-4(A); and therefore (3) the junk yard at SBL 56.71-2-2 is no longer a pre-existing, non-conforming use.
7. Applicant filed an Appeal of said Order to Remedy with the Town of Ulster Zoning Board of Appeals on February 22, 2011, disputing all of the contentions aforesaid both procedurally and substantially.
8. The Town of Ulster and Applicant reached an Stipulation of Settlement on May 27, 2011 whereas the parties agreed, in summary, as follows:
  - A. Don S. MacKenzie withdrew his Appeal of the Order to Remedy dated January 2011.
  - B. The Town of Ulster Building Department withdrew the Order to Remedy dated

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- January 3, 2011 without prejudice.
- C. Don S. MacKenzie agreed to file an application for a site plan review and approval.
- D. Don S. MacKenzie agreed to make an application for a junk yard license, and to comply with all applicable requirements of Ulster Town Code Chapter 101, immediately following any grant of administrative approval for site plan and area variance.
9. The Town of Ulster and Applicant agreed that if Applicant failed to obtain the approvals and licenses within six months from May 27, 2011, the Town of Ulster reserved the right to issue a new Order to Remedy.
10. Applicant did apply for site plan approval from the Town of Ulster Planning Board, and received an approval on October 18, 2011.
11. On or about July 17, 2012, Applicant filed an application with the Town of Ulster for a Junk Yard license.
12. A public hearing on this application was held before the Town of Ulster Town Board on October 18, 2012. Applicant was present at the public hearing but did not speak. However, numerous neighboring property owners spoke in opposition to the Junk Yard, citing concerns about cleanliness of the site, environmental contamination, and the site being a nuisance to the community.
13. The Town of Ulster Town Board, after due deliberation, based upon the testimony received at the public hearing, and the report of Town of Ulster Building Inspector Paul Andreassen, denied the application of Don S. Mackenzie to operate a junk yard on premises having Tax Map No. 56.71-2-2, having determined that (1) there are dumpsters in front of the property that are not part of the approved site plan; (2) trees should be cut away from the fencing; (3) the fencing is in various degrees of disrepair/damage; (4) the masonry wall is not constructed pursuant to the approved site plan; and (5) there are no permits on file with the Town of Ulster Building Department.
14. Accordingly, on November 27, 2012, the Town of Ulster Building Inspector issued a new Order to Remedy, which is the subject of this appeal.
15. The Town of Ulster Building Inspector alleges that (1) the use of the property at issue as a Junk Yard is not a use as of right in the zoning district in which the property is located; (2) the Junk Yard does not have a valid Town license as required by Town Code Chapter 101; and (3) that the Junk Yard is not a valid, pre-existing non-conforming use. Applicant timely filed an appeal to the Zoning Board of Appeals, which is the subject of the instant proceeding.
16. At the public hearing in the instant appeal, the applicant and his attorney presented detailed information and history on the property, reviewed any feasible alternative considerations, and actively participated in discussion of any alternatives or conditions which would mitigate impacts.
17. Five (5) individuals from the public spoke at the hearing, and these five individuals requested that the Zoning Board of Appeals dismiss the applicant's appeal. The individuals stated that the area surrounding the subject property was residential in nature, that the subject site is an on-going environmental quagmire, with evidence of hazardous materials on the site as substantiated by the New York

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State DEC. The individuals all stated that the site has been an eyesore for many years.

18. One additional individual from the public spoke and stated that he has done business with the applicant, and the applicant is making progress in cleaning up the site, and that it is expensive to do the repairs that he is being asked to perform.
19. The applicant's attorney, Jeffrey Baker, Esq., presented an affidavit signed by one Frank Pronesti, who claims that he [Pronesti] operated a junk yard at the subject property continuously from 1977 to 2007, which applicant purchased the property.
20. The Town's attorney, Jason J. Kovacs, Esq., stated at the public hearing that he personally spoke to one Michael Moran, a former owner of the junk yard, who informed Mr. Kovacs that he operated a junk yard at the subject property from 1988 to 2000, when he and his business partner Frank Pronesti vacated the site, and that the site was vacant for at least a two year period.

CONCLUSIONS OF LAW

Based upon the above Findings of Fact, this Board concludes the applicant's appeal of the Building Inspectors' Order to Remedy dated November 27, 2012 should be DENIED.

The Board further concludes, based upon these same Findings of Fact and the entire record before the Board, that while a junk yard may have legally operated at the property in question from at least 1967, such use of the property as a junk yard lapsed in approximately the year 2000. It is undisputed that prior to Mr. MacKenzie's acquisition of the property in 2007, the last time real property taxes were paid on the site was 1996. In addition, the Board finds credible the Town Attorney's statement that one Michael Moran, the previous owner of the subject property, abandoned the junk yard in the year 2000, and that the site was vacant and the business was not operating for at least a two year period in early to mid 2000s. The property then stood vacant until 2007 when Mr. MacKenzie allegedly commenced operations.

Pursuant to Town Code Section 190-48(F), a non-conforming use which ceases for a continuous period of two (2) or more years or is changed to a conforming use shall thereafter be occupied and used only for a conforming use. However, a use which has ceased or suspended operations involuntarily, due to circumstances beyond the control of the owner or operator, may be reestablished within a period of five (5) years from the date of discontinuance."

The Board concludes that the property in question ceased to operate as a junk yard for a least two years, and there is no evidence that the use as a junk yard ceased or suspended operations involuntarily.

The junk yard, as a matter of law, is therefore not a pre-existing non-conforming use, and a Town of Ulster Junk Yard license is required to be obtained before a junk yard may be legally operating at the site.

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Therefore, Town Code Section 101-4, which applies to “new” junk yards, would apply to the property in question, and not the allegedly ministerial provisions of Section 101-14.

Furthermore, applicant did apply for a Junk Yard license pursuant to Town Code Section 101-4, and his application was denied by the Town Board in 2012. The Town Board based its decision on feedback from neighboring property owners and the poor condition of the site.

Applicant also failed to comply with the Stipulation of Settlement dated May 27, 2011 between the Town of Ulster and the applicant in which applicant was given six months from May 27, 2011 to obtain a Town-issued junk yard license. To this date, applicant has failed to obtain a license.

Neighboring property owners were concerned about the environmental contamination and public health aspects of the junk yard, opinions which were supported by later findings of contamination on the site. Similar testimony was elicited by residents at the public hearing held in this matter. Notably, only one area resident spoke in favor of the applicant.

Accordingly, this Board, as required by §8-0105 of the Environmental Law and Part 617 of Title 6 of the New York Codes, Rules and Regulations, SEQR, concludes that the activities proposed in this application constitute a “Type II Action”, and as such requires no further SEQR action.

Finally, this Board concludes and votes 3 to 0; Members Carlson, Kyriacou, and Porter voting aye; Chairman Crispell and Member Jacobsen being absent; that the Applicant’s appeal of Town of Ulster Building Inspector’s Order to Remedy dated November 27, 2012 is hereby DENIED, and the Order to Remedy is hereby reinstated.

Respectfully Submitted,

Mary O’Bryan-Secreto  
Zoning Board Secretary