

ZONING BOARD OF APPEALS
238 Main Street, Cold Spring, New York 10516

June 10, 2019

7:30 P. M.

Regular Monthly Meeting

Pledge of Allegiance

Approval of Minutes:

- May 13, 2019

Public Hearing:

Old Business:

New Business:

Ricky & Mark Ventura, 1 Lane Gate Road

TM# 38.-3-28

(The applicants are seeking interpretation of Town Code Section 175-23 that the existing uses on the premises are pre-existing legally non-conforming uses permitted pursuant to the Code as well as an appeal of April 23, 2019 Stop Work Order issued by the Code Enforcement Officer. The property is approximately 9.542 acres and situated in a "Highway Commercial" (HC) Zoning District in the Town of Philipstown.)

**ZONING BOARD OF APPEALS
May 13, 2019
MINUTES**

The Zoning Board of Appeals for the Town of Philipstown held their regular monthly meeting on Monday, May 13, 2019, at the Philipstown Town Hall, 238 Main Street, Cold Spring, New York.

PRESENT: Robert Dee - Chairman
Paula Clair - Member
Granite Frisenda - Member
Vincent Cestone - Member
Adam Rodd - Attorney (Drake Loeb PLLC)

ABSENT: Leonard Lim - Member

****PLEASE NOTE that these minutes were abstracted in summary from being present at the meeting and sound recording. If anyone should seek further clarification, please review the sound recording.**

Chairman Robert Dee opened the meeting at 7:30 P. M. with the Pledge of Allegiance.

Minutes

Chairman Robert Dee: All right. First order of business is, let's see, approval of the minutes from April 8th. Anybody have any changes to the minutes? April 8th? Or corrections? No?

Vincent Cestone: I make a motion to accept them.

Glenn Watson: I think if you look on page 9 in the middle of the page or towards the bottom of the page there's some text attributed to Miss Clair that I think was something I said.

Chairman Robert Dee: Okay.

Paula Clair: Oh really?

Glenn Watson: It was long winded and over explanatory so-

Paula Clair: Yeah, it's probably not me.

Tara Percacciolo: Yeah, I see exactly where you're talking about. Probably, yes.

Chairman Robert Dee: Alright, let me get there, hold on (inaudible). Number 9, all right. Go ahead what's, where is it? Which?

Glenn Watson: I think it's a fairly sizable paragraph, the bottom half says Mrs., Miss Claire Clair.

Paula Clair: Yeah.

Chairman Robert Dee: For Paula Clair?

Glenn Watson: Yeah but I, I'm sure that- it talks about their daughter living in a cottage 25 feet from the septic system.

Tara Percacciolo: Right here. This is just-

Chairman Robert Dee: Oh yeah.

Tara Percacciolo: This is just a continuation.

Chairman Robert Dee: 'The house I now live in is, is probably 25 feet to the septic system'.

Paula Clair: Right, right.

Chairman Robert Dee: So, we'll, we'll correct that. All right any other, any other corrections? Alright, make a motion?

Vincent Cestone: I make a motion to accept them as corrected.

Chairman Robert Dee: I second it. All in favor?

Vincent Cestone: Aye.

Paula Clair: Aye.

Granite Frisenda: Aye.

Kristan Connolly, Route 403, Garrison

Chairman Robert Dee: Aye. All right. Next is the continuation of public hearing for Kristan Connolly, Route 403, Garrison. The application, applicant is seeking a variance for relief from section 175-36B1, which disallows construction of dwellings on slopes that exceed 20%. The lot, which pre-existed the current zoning as a separate building lot that conformed to the previous zoning is legally non-conforming. The topography, when considered in conjunction with the setback requirements imposed by the current zoning, is such that there is no place upon which one can build and avoid slopes that exceed 20%. Continuation of public hearing. Okay. I think last month I asked you for the Zoning Board, or no I'm sorry not Zoning Board, the Conservation Board approval and Mr. Watson supplied is with that tonight and in reading the approval, there's a bunch of contingencies he has to follow and all like that so, it looks like they did a pretty thorough job, the Conservation Board, of going through this and making sure that

everything is, fits their needs and meets the Conservation Board's needs. So, that's accepted. The second thing on it was I, Ms. Clair, you had asked for something, a planting-

Paula Clair: I didn't, I don't remember asking for a planting, were, was it me or somebody else?

Chairman Robert Dee: That was you. Unless I'm mistaken.

Glenn Watson: I don't remember. There was considerable discussion about the planting plan.

Chairman Robert Dee: It was you. It was talking about (inaudible) you asked for a planting design.

Paula Clair: Oh, okay.

Chairman Robert Dee: Okay, there's your planting design. Okay. Now, I think you went over everything last month.

Glenn Watson: Well I just wanted to-

Chairman Robert Dee: Go ahead, update, go ahead.

Glenn Watson: Take a moment. We did get together with Max Garfinkle.

Chairman Robert Dee: Okay.

Glenn Watson: (Inaudible) and what you have now is 3 sheets (inaudible).

Chairman Robert Dee: You got to do stand up, live.

Glenn Watson: As I said, we did work with Mr. Garfinkle to come up with a planting plan and this, it's, we've turned it into you. It calls for native species. It calls for some no mow grass, longer grass that will help impede the water and the runoff. And basically, we've identified specific plants, we've identified specific seed mixes, all of which are designed to grow in this atmosphere and to help, in this climate rather, and help, particularly on the steeper slopes, impede the water and impede the flow of the water. So, and of course we did the wet, the wetlands permit, which you mentioned, so I think we satisfied that. We did look at alternate paving which was one of, the third thing I think that was a discussion and to be perfectly frank we have not changed it for a couple of reasons. The choice that we originally had was paving or not paving, with, but have a gravel surface and a gravel surface is considered an impermeable surface but it will, it does slow some of the water and we have designed so that the runoff from the gravel surface will run into these dams and will be trapped before it gets too far and then into that leaching basin where it will get some more settlement before the water drains out. As a very, the, Mr. Connolly did some research into permeable surfaces and what, and I've checked with my office with regard, the engineers in my office, with regard to that. The permeable surfaces that would typically be affordable are not designed to be on the slope of this driveway as steep as

it is. The ones that are affordable really make this thing an impossible task; it's, what'd you say, over a hundred thousand dollars.

James Connolly: Yes.

Glenn Watson: It's and it's just really a significant amount of money for this project and just not something that can be afforded. But, again-

Chairman Robert Dee: How long is that driveway? Any idea?

Glenn Watson: Well I have the information somewhere.

Chairman Robert Dee: Guesstimate?

Glenn Watson: Guesstimate.

Chairman Robert Dee: It looks pretty long (inaudible).

Glenn Watson: 600 feet?

Chairman Robert Dee: No? Okay.

Glenn Watson: Let me see. I-

Chairman Robert Dee: It's long, we'll go with that.

Glenn Watson: Okay.

Chairman Robert Dee: For a hundred thousand dollars it must be long.

Granite Frisenda: Well that stuff is very expensive.

Chairman Robert Dee: I'm sorry?

Granite Frisenda: That stuff's really expensive.

Chairman Robert Dee: Yeah?

Granite Frisenda: Permeable blacktop.

Glenn Watson: Yeah and you know I still have, I may have said this the last time, I still have my doubts about permeable blacktop. I mean I think that when somebody sands a driveway it gets in the holes and the voids in there and I and it get clogs up. So I think it is effective maybe for a period of time and unless you go out there with a vacuum cleaner every year I think you've got to eventually you basically have an impermeable surface.

Chairman Robert Dee: Right.

Glenn Watson: There are probably a dozen engineers that use it and sell it and would argue with me but I have, but I have a really strong feeling in that regard.

Chairman Robert Dee: Okay.

Glenn Watson: At any rate, we, I think we've done everything we can. We did look, I did look at the detail of this barrier and it is built into the ground and it is basically a clay barrier that holds, keeps, directs the storm I mean the sewage down into the ground as opposed to migrating below and into the wetland. We, I just wanted to point out that we did, where it's the closest to the wetlands we did reserve, that's a reserve area which, typically they don't get used, I mean, so. I can't say they'll never get used because that's what they're there for, but we, we've designed the system to be to the southwest which is a little further away from the wetlands and we also added a, an extra lateral or two in there so that there will be a better spread on the effluent. With that I hope you will consider the five reasons and if you look at that it would be, I think you'll find that it's within those parameters. We have a reasonable case and to be perfectly frank, I'll close with saying that we've tried to do everything we could to mitigate potential impacts on all the things and we've looked at it and we've relooked at it. We've responded to all of the different boards and reviewers and responded as positively as we could and got their approvals. So, we think we've done a good job and we also believe that if we don't get an approval that's this or similar to this, we basically have been stripped of any value of our property.

Chairman Robert Dee: Okay.

Glenn Watson: Thank you.

Chairman Robert Dee: I appreciate the Conservation Board because I read it and they really went through it, you know they got like 14 conditions on here that you'll have to go along with and everything else like that so, they really put some time into it which is, it's good because that's, that makes us happy, you know what I'm trying to say? They're happy with that so. Is there anybody in the audience that wants to talk to this application? No? Okay. Let's go, at this time I'd like to go over the five factors. Is there any questions from anybody on the board at this time? All right. Number one, what possible deterrent would the variance have on nearby properties? The Connolly's seek to build a single-family home on this parcel. There will be no detriment to nearby properties. The properties most affected are those directly across Cat Rock Road. The proposed dwelling will present a view to those owners that is much the same as that currently presented to the subject property. Yeah, I viewed the area and I agree with that 100%. 1b, what impact would the variance have on the character of the neighborhood? Well, land to the west, north and west is undeveloped state land. Land to the east and south is developed single-family residences on lots that are similar in size to the subject property. The proposed single-family home will be similar in scale to the nearby buildings. It is unlikely that similar variances will be requested because the existing lots are either already developed, part of the Parks system or restricted from further development. I agree with that also, you know, when looking at it. Number two, if you didn't get the variance how else could you build and what would you want to accomplish, how would you accomplish your goal? It would be impossible to develop the

property under the current zoning without a variance. The variance sought is one of two that might be considered. The other would be a variance from the rear setback. Well we discussed that and we decided that we're going to go, the best or efficient means would be go with this variance, the one you're asking for.

Glenn Watson: And just the other, the other point that it didn't occur to me to say the last time nor in my answers in the, to these questions was that if we move the property all the way to the back the Connolly's wouldn't have a back yard. They would, they would be, do their family picnic in the front yard and they would and so this leaves them really a, not a very big spot but at least some spot to have some real family privacy.

Chairman Robert Dee: Okay. Number three, what is the Code requirement you seek to vary? Section 175-36B1 limits the type of construction that may occur on land with slopes that exceed 20%. The home, porch, and garage that the Connolly's plan to build will cover approximately 2866 square feet, which is approximately, of which approximately 2325 square feet or 81% of the home will be on slopes that exceed 20%. The property is what it is, you know, what I'm trying to say is that's just, there really is no place that I could see on that property, other place that you could build a house.

Glenn Watson: Yeah and we did look at that back other area where it was all rock and-

Chairman Robert Dee: Yeah and we discussed that and all like that, said there was rock and everything. What impact or effect will the variance have on the current physical and environmental conditions in the area? If the variance is granted, the applicants will convey the property to their contract vendee, who will construct the home on the land. There will be grading, paving, removal of vegetation. Normal drainage patterns will not be changed beyond the property. As originally presented, there might have been impacts on wetlands. However, the Connolly's home and site plan have been reviewed and approved by the Putnam County Department of Health, the Philipstown Conservation Board and the Philipstown Planning Board. These reviews resulted in changes in the Connolly's plans, which were specifically incorporated to minimize the impacts associated with the proposed construction. Yeah, like we say from last month I was glad you went there and worked out a plan with them as far as planting and all like that on the area. Number five, is the variance requested as a result of "self-created hardship"? The need for the variance is not self-created. The property existed legally under the previous Zoning Code, which did not restrict construction on steep slopes. The hardship was a direct result of the adoption of the current zoning code in 2011. There was a lot of hardships in 2011 that changed, a lot of different properties and all like that.

Glenn Watson: It went from 2 to 10 in some places.

Chairman Robert Dee: It made a lot of properties that had to come here for variances approved. Are there any questions on any of these from anybody? Board members? Anybody have any questions? Alright at this time I'll call for roll call vote.

Glenn Watson: Did you close the-

Chairman Robert Dee: A motion, oh I'm sorry, yes. Motion to close the public hearing?

Vincent Cestone: I'll make that motion.

Granite Frisenda: I'll second.

Chairman Robert Dee: All in favor?

Vincent Cestone: Aye.

Paula Clair: Aye.

Granite Frisenda: Aye.

Chairman Robert Dee: Aye. Alright. Now I make a motion for a vote. Mr. Cestone?

Vincent Cestone: I vote to approve.

Chairman Robert Dee: Vote to approve. Mr.-

Granite Frisenda: I vote to approve.

Chairman Robert Dee: Approve. Mr. Lim, I'm sorry, Paula?

Paula Clair: I vote to approve as well.

Chairman Robert Dee: I'm sorry?

Paula Clair: I vote to approve.

Chairman Robert Dee: Vote to approve. And I vote to approve. Makes it unanimous and, you know, when the resolution comes you can start, get your permit and all like that.

Glenn Watson: Thank you very much.

Chairman Robert Dee: Alright, thank you. Any other business for tonight? Old business? New business? Any business? Okay, that's good. Anybody make a motion to adjourn?

Vincent Cestone: I'll make that motion.

Chairman Robert Dee: I'm sure. Second it?

Granite Frisenda: Second.

Chairman Robert Dee: All in favor?

Vincent Cestone: Aye.

Paula Clair: Aye.

Granite Frisenda: Aye.

Chairman Robert Dee: Aye. Okay, thank you.

(The meeting adjourned at 7:47 pm by a unanimous decision.)

NOTE: These minutes were prepared for the Zoning Board of Appeals and are subject to review, comment, emendation and approval thereupon.

DATE APPROVED: _____

Respectfully submitted,

Tara K. Percacciolo
Secretary

APPEAL # _____ Tax Map # 38-3-28

Final hearing date _____ Zoning Board decision APPROVED / DENIED _____

Date application submitted May 14, 2019

Application fee \$ _____ Escrow \$ _____ Received by _____

To the Zoning Board of Appeals, Town of Philipstown, New York.

I (we), Ricky and Mark Ventura

residing at 1 Lane Gate Road, Cold Spring, New York

Telephone: home _____ business _____

HEREBY appeal the decision of (name and title) Greg Wunner

whereby he/she issued Stop Work Order dated 4/23/2019

GRANTED _____ DENIED _____ a BUILDING PERMIT _____ a CERTIFICATE OF OCCUPANCY _____

Appeal seeks reversal of determination by Greg Wunner and interpretation of Section 175-23 as it applies

To Use the premises as a pre existing legally nonconforming use of a contractor's yard

For property at tax map # 38-3-28 in zoning district Highway Commercial

WHEN FILLING OUT APPLICATION, ATTACH ADDITIONAL PAGES AS NECESSARY TO ANSWER QUESTIONS.

1. LOCATION OF PROPERTY: (Give 911 address and a map and detailed narrative giving directions to the property using road names, such as Route 9 or 9D, Old Albany Post Road, East Mountain Road South, etc. and landmarks such as Garrison School, North Highlands Fire House, Highlands Country Club, etc:

The property is located on the southern corner of Lane Gate Road and Route 9.

2. NAMES AND ADDRESSES OF ADJOINING PROPERTY OWNERS (Include those opposite on streets/highways. Use additional sheets if necessary. This information may be obtained in the Town assessor's office)

See attached pages.

(b) a VARIANCE from the Zoning Code is requested:

(1) An exact statement of the details of the variance requested is:

n/a

(2) The grounds on which this variance should be granted are:

n/a

(c) a SPECIAL USE PERMIT is requested:

(1) The reason the permit is requested:

n/a

(2) An exact statement of use for which the permit is requested:

n/a

(3) The facts showing the use is permitted as a SPECIAL USE under the code and the ability of the applicant to comply with all requirements of the code for granting of a special use permit:

n/a

3. PROVISIONS OF ZONING CODE INVOLVED (give Article, Section, Sub-section, paragraph by number. Do not quote text of code)

Article VI, Section 175-23
Article IX, Section 175-68

4. PREVIOUS APPEAL (If there have been any previous appeals for this property or any portion thereof, set forth the appeal number, date, relief sought and the ZDA decision resulting)

TYPE OF APPEAL:

- an INTERPRETATION of the Zoning Code or Maps and appeal of 4/23/19 order, requirement, decision, interpretation or determination by Greg Wunner.
 a VARIANCE from the Zoning Code
 a SPECIAL USE PERMIT under the Zoning Code

This appeal is made pursuant to Philipstown Code Section 175-59(A) and Town Law Section 267-b(1).

5. DETAILS OF APPEAL (Complete only that section which applies to the appeal you are submitting)

(a) INTERPRETATION of the Zoning Code is requested

(1) An exact statement of the interpretation requested is:

See attached cover letter

STATE OF NEW YORK, COUNTY OF

being duly sworn, says I have read the foregoing appeal and papers attached; that the statements and representations made therein are true to the best of my knowledge and belief



Sworn before me this 14th day of May 2019



MICHAEL F. SIRIGNANO
Notary Public, State of New York
No. 4709295
Qualified in Westchester County
Commission Expires January 31, 2027

SUBMISSION REQUIREMENTS: (1) For a VARIANCE or INTERPRETATION please submit (7) individual packets
(2) For a SPECIAL USE PERMIT please submit (19) individual packets

each packet containing one each of the below listed items. These items are very specific and MUST be complied with exactly

1. Completed appeal form
2. Deed to property
3. Denied application for Building Permit or Certificate of Occupancy
4. Building plans with ONE ORIGINAL professional seal and signature
5. Survey prepared by NYS licensed surveyor, showing all property lines, structures and dimensions to property lines. One survey with ORIGINAL professional seal and signature
6. Certificates of Occupancy for any existing structures
7. Contour maps as required by conditions



Town of Philipstown

38 Main Street, PO Box 155
Cold Spring, NY 10516
Office (845) 265-5202 Fax (845) 265-2687

* Stop Work Order *

Work must cease immediately.

Owner Information
VENTURA RICKY NELSON
1 LANE GATE RD

Date: 4/23/2019

Re-Inspection Date: 04/30/2019

Re: 1 LANE GATE RD
Parcel ID: 38-3-28

PLEASE TAKE NOTICE that 1 Lane Gate Road (TM # 38-3-28) is located in the HC (Highway Commercial) zone south of the intersection of East Mountain Road South and Route 9.

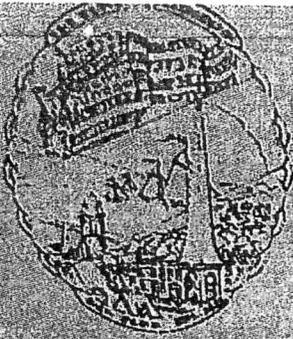
On April 22, 2019 a site inspection was performed from the right-of-way of 1 Lane Gate Road which revealed the property was being used for the processing of vegetative material, demolition and construction debris, soil, dirt, gravel and rock, including rock crushing, and the stockpiling of the processed material on the property and the same not being shown on the Planning Board approved site plan dated October 20, 1983 (revised).

PLEASE BE ADVISED, that the Code of the Town of Philipstown section 175-68 E. (2) states "All required site improvements and landscaping shall be properly installed and continuously maintained" and section 175-68 E. (3) states "Any violation of the conditions of a site plan approval shall be deemed a violation of this chapter, and shall be subject to enforcement action as provided herein."

FURTHER PLEASE BE ADVISED, the code of the Town of Philipstown section 175-50 B. "prohibits the processing of soil, dirt, gravel and rock, including rock crushing in all zoning districts south of the intersection of East Mountain Road South and Route 9".

YOU ARE ORDERED to answer or correct this violation to the satisfaction of the Zoning Administrative Officer by:

1. Cease and desist immediately the use of the property for processing of vegetative material, demolition and construction debris, soil, dirt, gravel, and rock including rock crushing, and the stockpiling of the processed material on the property immediately.
2. Obtaining all necessary Wetlands permits and Storm Water Pollution Prevention Plan.
3. Restoring the property in compliance with Planning Board approved site plan dated October 20, 1983 (revised)
4. Removing all stockpiled materials and restoring the grade and site to pre-development conditions and



Town of Philipstown

38 Main Street, PO Box 155

Cold Spring, NY 10516

Office (845) 265- 5202 Fax (845) 265-2687

* Stop Work Order *

by stabilizing the disturbed areas with seed and straw and by;

5. Scheduling an inspection with this office to verify compliance with the Planning Board approved site plan dated October 20, 1983 (revised) by September 30, 2013

You may contact my office at (845) 265-5202.

Greg Wunner

Zoning Administrator

Code Enforcement Officer

If you have any questions, do not hesitate to contact me.

Greg Wunner

Michael Fuller Sirignano
Attorney and Counselor at Law

*Old Post Road Professional Building
892 Route 35, P. O. Box 784
Cross River, New York 10518*

*Tel: (914) 763-5500
Fax: (914) 763-9589
michael@sirignano.us*

May 14, 2019

Via Hand Delivery

Robert Dee, Chairman and
Members of the Zoning Board of Appeals
Town of Phillipstown
238 Main Street
P. O. Box 155
Cold Spring, New York 10516

Re: Zoning Interpretation Request
Premises: 1 Lane Gate Road, Cold Spring, NY (Tax ID 38-3—28)

Dear Chairman Dee and
Members of the Zoning Board of Appeals:

This letter is respectfully submitted on behalf of Ricky Ventura and Mark Ventura (the "Applicants"), owners of property located at 1 Lane Gate Road, in the Town of Philipstown, New York (the "Premises") in support of Applicants' appeal from the 4/23/19 Stop Work Order issued by Greg Wunner (copy attached) and, further, seeking an interpretation from the Town of Philipstown Zoning Board of Appeals ("ZBA") that the existing uses on the Premises, which include a "contractor's yard" and uses that are accessory, customary and incidental thereto, are pre-existing legally con-conforming uses permitted pursuant to the Town of Philipstown Zoning Code ("Zoning Code"). Currently, the Premises is classified in the Highway Commercial ("HC") Zoning District and is designated on the Map of the Tax Assessor of the Town of Philipstown, Section 38., Block 3, Lot 28. The Premises is an approximately 9.542 acre lot and currently improved as a contractor's yard with related facilities and residence.

The Premises was acquired by August Ventura on or about 1979 and he obtained Site Plan approval from the Town of Philipstown Planning Board ("Planning Board") on November 23, 1983 for use as a "Contractor's Yard" amongst other uses and related accessory uses (Resolution PB #16-83). As demonstrated herein, the uses on the Premises since its approval in 1983, and subsequent building permits and certificates of occupancy issued thereafter, have continuously included, but are not limited to, rock crushing and the processing of vegetative material, demolition and construction debris, soil, dirt and gravel in connection with the Applicants' contracting business.

Michael Fuller Sirignano

Attorney and Counselor at Law

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On March 14, 2011, Mr. Ventura submitted an Amended Site Plan application to the Planning Board seeking approval to permit certain improvements to the Premises and permission to install a wetlands sales area to showcase wetland materials to be sold on the Premises. At that time, the Site Plan application was forwarded to the Planning Board by the Building Department for review. The Planning Board conducted a site visit. The Site Plan application has not been withdrawn by the Applicant, nor denied or deemed abandoned by the Planning Board.

Most recently, on April 23, 2019, Greg Wunner of the Town of Philipstown Building Department ("Building Department") issued a Stop Work Order that alleges the Premises is being unlawfully used for the processing of vegetative material, demolition and construction debris, soil, dirt, gravel and rock, including rock crushing, and the stockpiling of the processed material on the Premises. It is this order, requirement, decision, interpretation and determination that is the subject of this appeal.

This appeal is directly related to the legally pre-existing non-conforming status of the Premises, which is a constitutionally protected property right. See *People v. Miller*, 304 NY 105, 107 (1952). Accordingly, this appeal request seeks a formal determination from the Zoning Board of Appeals confirming the legally pre-existing non-conforming status of the Premises. Such a determination is vital considering that certain misinformation has been circulated as to the uses on the Premises, as well as the Zoning Code provisions in effect in 1983, when the Premises obtained Site Plan approval for a "Contractor's Yard" and accessory uses thereto.

**The Uses On The Premises Constitute Legal Pre-Existing
Non-Conforming Uses Pursuant To The 1983 Site Plan Approval
& Related Building Permits & Certificates of Occupancy**

In or around 1979, August Ventura, the father of Ricky and Mark Ventura, purchased the Premises, which was then a farm, and began to develop a reputable and successful contractor's business that always included concrete and fill processing. To date, the Premises has been used as a Contractor's Yard.

Since 1979 the Applicants have received seven Building Permits and a Certificate of Occupancy to use the Premises as a Contractor's Yard. In addition, the Applicants obtained Site Plan approval from the Planning Board in 1983, which specifically permitted the use on the Premises for a building contractor's yard. It is important to note that in addition to a building contractor's yard, the Zoning Code in effect at this time also permitted the manufacturing, processing or assembling of goods, wholesale businesses and as well as uses that are accessory to principally permitted uses in the underlying zone. As discussed herein below, incidental to these permitted uses is the periodic crushing of rock and processing of materials in connection with the Applicants' off-site contracting activities. The Applicants have established a reputable business in the Town and have abided by all prior approvals. As demonstrated below, the uses on the Premises have been continuous and therefore constitute legal pre-existing non-conforming uses.

Michael Fuller Sirignano

Attorney and Counselor at Law

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The following events have taken place since acquisition of the Premises by August Ventura in or around 1979:

- 1979 – Building Permit application approved for use as a Contractor’s Yard: At this time, the uses on the Premises included a concrete processing/sale company.

- 1981 – Building Permit issued Contractor’s Yard: The uses on the Premises included storing of heavy equipment, work trailers and concrete forms, as well as the stockpiling of processed materials, and wood, and the periodic crushing and screening of these materials for sale.

- 1983 – Building Permit issued for use as a Contractor’s Yard: The same uses continued on the Premises but with the addition of an auto parts store, auto body shop, woodworking shop.

- 1983 – Site Plan Approval issued for use as a Contractor’s Yard: The same uses continued on the Premises but with the addition of an auto parts store, auto body shop, woodworking shop.

- 1984 – Building Permit issued for use as a Contractor’s Yard: Same as above.

- 1985 - Building Permit issued for use as a Contractor’s Yard.: Same as above.

- 1986 – Building Permit issued for uses a Contractor’s Yard: Same as above.

- 1987 – Building Permit issued for use as a Contractor’s Yard: Same as above.

- 1987 – Certificate of Occupancy issued for use as a Contractor’s Yard: Same as above.

Michael Fuller Sirignano

Attorney and Counselor at Law

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As outlined above, on May 19, 1979, August Ventura applied to the Town of Philipstown Building Department for a Building Permit to “use premises as contractor’s yard + garage.” Importantly, the Building Permit application is marked “APPLICATION APPROVED” on May 19, 1979 and was accordingly approved by the Town of Philipstown Building Inspector. Subsequently on October 17, 1981, as well as on dates in 1983, 1984, 1985, 1986 and 1987 the Premises was repeatedly issued Building Permits for a “contractor’s yard + garage”. As mentioned above, on November 23, 1983, the Planning Board approved August Ventura’s Site Plan application for use of the Premises as a contractor’s yard.

During this period August Ventura used the property to store heavy equipment, trailers, concrete forms and to periodically crush and process materials such as concrete/rock for use off-premises on his construction projects. The foregoing operations were in furtherance and the materials, including concrete, rock, construction debris and wood, were processed on site for resale in connection with the approved contractor’s yard use. In fact, the rock crusher was brought on the Premises periodically approximately three or four times a year, such use clearly being incidental for the principally permitted use of a contractor’s yard. To date, the Premises has been continuously used for these purposes, including period rock crushing.

A review of the Town of Philipstown Zoning Code applicable in 1983 illustrates that the contractor’s yard was a principally permitted use within the Industrial District, which is the District in which the Premises was classified in until it was rezoned to the HC District in 2011 (subsequent the 2011 Site Plan Application). The following uses were principally permitted on the Premises pursuant to the 1968 Zoning Code that was in effect in 1983.

- Line 35 – Painting, plumbing, electrical, sheet metal, carpentry, woodworking, blacksmith, welding and machine shops without the limitations of Lines 33 and 34.

- Line 37 – Establishment for the manufacture, processing or assembling of goods without the limitations of Line 36.

- Line 38 – Warehousing and wholesale businesses; building contractor’s yards and garages; lumber and building materials yards and storage buildings; freight and materials trucking yards, terminals and garages; bus terminals, yards and garages (emphasis added).

See Schedule A, Permitted Uses.

Clearly, the use of the Premises as contractor’s yard was permitted within the Industrial Zoning District. However, the 1968 Zoning Code does not define a “Contractor’s Yard” nor does

Michael Fuller Sirignano

Attorney and Counselor at Law

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it limit the uses that are encompassed within or accessory to a contractor's yard. It is important to point out that at no time prior to 2005 does the Zoning Code limit or define a term contractor's yard. This particularly given the almost yearly review of the uses on the Premises between 1979 and 1987.

As demonstrated above, uses permitted on the Premises at the time of all relevant approvals included the use as a building contractor's yard, manufacturing, processing or assembling of goods in addition to wholesale businesses and accessory uses thereto. It is well settled in New York that when interpreting the language of a statute or regulation, the municipality must give meaning to its words in context of their particular setting and the words associated with them in the statute. See *MHG Enterprises, Inc. v. New York*, 91 Misc.2d 842, 399 NYS2d 832 (1977). Furthermore, it is a well established rule of statutory interpretation that in interpreting statutes, the courts must consider other statutes relating to the same subject matter. See *Putnam Valley v. Slutzky*, 283 NY 334, 28 NE2d 860 (1940).

As mentioned above, the periodic crushing of rock has been continuously operated on the Premises during this time. Such activity, which was conducted approximately 3-4 times per year, is certainly accessory to the building contractor's yard use. Notwithstanding, that the manufacturing or processing of goods, such as concrete, rock and wood are principally permitted uses within the zone, this activity was intermittent and clearly accessory to the principally permitted and main business of a building contractor's yard on the Premises. It has been firmly held in New York that an accessory use is a use that is "clearly incidental to, and customarily found in connection with the principal use." *New York Botanical Garden v. Bd. of Standards & Appeals of City of New York*, 92 NY2d 413, 419, 694 NE2d 424, 427 (1997). In addition, the 1968 Zoning Code principally permitted such accessory uses that were "customary and incidental to any aforesaid permitted use", including uses accessory to a building contractor's yard. See Exhibit E.

Moreover, in New York, it has been firmly held that zoning ordinances must be **strictly construed in favor of property owners and against municipalities** because zoning regulations are in derogation of common law property rights. See *Raritan Development Corp. v. Silva*, 91 NY2d 98, 667 NYS2d 327 (1997); *Chrysler Realty v. Howard Orneck*, 196 AD2d 631, 601 NYS2d 194 (2d Dept. 1993). Furthermore, *any ambiguity* in the language of a Zoning Code *must* be resolved in favor of the property owner. See *Allen v. Adami*, 39 NY2d 275, 277, 347 NE2d 890, 892 (1976).

In this instance the controlling 1968 Zoning Code does not define a "Contractor's Yard" and therefore its meaning is inherently ambiguous and its definition must be inferred from the similar permitted uses. See *Putnam Valley v. Slutzky*, 283 N 334. Most important, because the zoning code in effect at this time permitted the use of a building contractor's yard as well as the manufacturing, processing or assembling of goods in addition to wholesale businesses as well as those uses accessory thereto, the periodic rock crushing and fill processing conducted on the premises continuously during these years must be deemed accessory, customary and incidental to the primary use of the Premises as a building contractor's yard. Therefore, rock crushing is an

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accessory use to the building contractor's yard pursuant to the 1968 Zoning Code. Over the course of time of the several years of the above mentioned approvals, the Building Department and the Planning Board were cognizant of the uses on the Premises and nonetheless permitted the use as a building contractor's yard and the accessory rock crushing activities.

On August 4, 2005, the Town amended the Schedule A of Permitted Uses applicable within the Industrial District to add the following prohibitions for the first time:

- Line 36 – Establishments for the manufacture, processing or assembling of goods when occupying not more than 10,000 square feet of floor area. *However, such establishments for the manufacture of concrete or asphalt or the manufacture, processing or assembling of goods made from concrete or asphalt are prohibited. The processing of dirt, soil, gravel and/or rock, or rock crushing is prohibited.*
- Line 37 - Establishing for the manufacture, processing or assembling of goods without the limitations of Line 36. *However, such establishments for the manufacture of concrete or asphalt or the manufacture, processing or assembling of goods made from concrete or asphalt are prohibited.*
- Line 39 – Warehousing and wholesale businesses; building contractor's yards and garages; lumber and building materials yards and storage buildings; freight and materials trucking yards, terminals and garages; bus terminals, yards and garages. *However, such uses may not include the manufacture of concrete or asphalt or the manufacture, processing or assembling of goods made from concrete or asphalt are prohibited, The processing of dirt, soil, gravel and/or rock, or rock crushing is prohibited.*

(L.L. No. 3-2004) (emphases added). Tellingly, L.L. No. 3-2005 was the first instance that the Town placed any limitations with regard to the above cited permitted uses, thereby grandfathering such pre-existing permitted and accessory uses. In fact, these limitations are clear evidence that in the past the Town has not prohibited rock crushing on building contractor's yards. Therefore, we respectfully submit that the uses described above, which existed on the Premises since at least 1983, constitute pre-existing legally non-conforming uses.

Zoning Code Section 175-23(A) states:

Continuation. Any use, any building or other structure, or any lot, which existed lawfully (including by variance), on the effective date of this chapter or any

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amendment thereto, and which fails to conform to one or more of the provisions of this chapter or such amendment thereto may be continued, subject to the provisions and limitations hereinafter specified. Any business owner or tenant *may continue to operate an existing business, or any business in the same use category as the existing business, in a zone where it is not permitted by this chapter*, and may sell or transfer it to another owner or tenant who shall be permitted to operate the same business, or any business in the same use category as the existing business, in the future (emphasis added).

Here, the current uses have been continuously operated on the Premises as evidenced above for approximately the last 35 years pursuant to the host of approvals issued by the Town (outlined above) since *a least* the 1979 Building Permit Approval and are therefore legally non-conforming uses. The Applicants have obtained multiple approvals to utilize their property for the use as a building contractor's yard with the accessory activities described hereinabove. We respectfully submit that these continuous uses and activities have been reviewed by the Town and approved on numerous instances such that they must continue as principally permitted and/or pre-existing legal non-conforming uses.

Conclusion

It is patently clear that the 1968 Zoning Code principally permitted the Applicants' building contractor's yard use together with the intermittent accessory uses that have continued on the property for over 35 years. The Town has on numerous occasions reviewed, inspected and approved the Applicants' business operation. Based upon the evidence presented in this interpretation request and as will be further discussed before you, we ask the Zoning Board of Appeals to determine that the existing uses on the Premises constitute principally and/or accessory pre-existing legally non-conforming uses.

Please find enclosed two checks made out to the Town of Philipstown in the amount of \$200 representing the ZBA application fee \$1,000 representing the escrow deposit. We look forward to presenting this evidence to your Zoning Board at its June meeting.

Very truly yours,

Michael Fuller Sirignano

MFS/cp
Enclosure

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May 14, 2019

Via Hand Delivery

Robert Dee, Chairman and
Members of the Zoning Board of Appeals
Town of Phillipstown
238 Main Street
P. O. Box 155
Cold Spring, New York 10516

Re: Zoning Interpretation Request
Premises: 1 Lane Gate Road, Cold Spring, NY (Tax ID 38-3—28)

Dear Chairman Dee and
Members of the Zoning Board of Appeals:

This letter is respectfully submitted on behalf of Ricky Ventura and Mark Ventura (the "Applicants"), owners of property located at 1 Lane Gate Road, in the Town of Philipstown, New York (the "Premises") in support of Applicants' appeal from the 4/23/19 Stop Work Order issued by Greg Wunner (copy attached) and, further, seeking an interpretation from the Town of Philipstown Zoning Board of Appeals ("ZBA") that the existing uses on the Premises, which include a "contractor's yard" and uses that are accessory, customary and incidental thereto, are pre-existing legally con-conforming uses permitted pursuant to the Town of Philipstown Zoning Code ("Zoning Code"). Currently, the Premises is classified in the Highway Commercial ("HC") Zoning District and is designated on the Map of the Tax Assessor of the Town of Philipstown, Section 38., Block 3, Lot 28. The Premises is an approximately 9.542 acre lot and currently improved as a contractor's yard with related facilities and residence.

The Premises was acquired by August Ventura on or about 1979 and he obtained Site Plan approval from the Town of Philipstown Planning Board ("Planning Board") on November 23, 1983 for use as a "Contractor's Yard" amongst other uses and related accessory uses (Resolution PB #16-83). As demonstrated herein, the uses on the Premises since its approval in 1983, and subsequent building permits and certificates of occupancy issued thereafter, have continuously included, but are not limited to, rock crushing and the processing of vegetative material, demolition and construction debris, soil, dirt and gravel in connection with the Applicants' contracting business.