

THE ZONING BOARD OF APPEALS
TOWN OF Washington
Dutchess County, New York

In the Matter of the Application of
GEORGE M. TAYLOR & SONS INC.
For an Interpretation of Town Code Section 391(3)

DECISION AFFIRMING THE DETERMINATION
OF THE CODE ENFORCEMENT OFFICER

APPLICATION

GEORGE M. TAYLOR & SONS INC. (hereinafter "Applicant") is the owner of two (2) parcels located at 23 Taylor Road and 24-32 Tinker Town Road, identified as Parcel Grid Nos. 7063-06-397993 and 7063-06-371999 (collectively, "the Property"). Applicant lawfully uses the Property for the operation of oil and propane gas businesses, which are legal nonconforming uses that have existed at the location since at least the 1940s.

The Applicant appeals from a *Notice of Apparent Violation* dated June 21, 2021 issued by the Code Enforcement Officer (hereinafter "CEO") wherein it is alleged that the Applicant uses the above-mentioned Property for the operation of a concrete business, including storage, maintenance, and operation of concrete delivery trucks, related equipment, and supplies without a special use permit or the issuance of a use variance. According to the CEO, the concrete business constitutes a substantial change of use from the existing legal nonconforming use pursuant to the Town of Washington Town Code (hereinafter "Town Code") Section 391. The Applicant requests an interpretation by the ZBA of the relevant Town Code provision.

PUBLIC HEARING

A duly-noticed public hearing on the above-referenced application was opened on January 18, 2022 and continued until April 19, 2022, at which time it was closed.

LAW

Section 390 of the Town Code, entitled "Nonconforming Uses, Buildings, and Lots," states "[i]t is the intent of this Local Law that

nonconformities should not be expanded except as indicated herein, that they should be brought into conformity as quickly as the fair interests of the parties permit, and that the existence of any present nonconformity anywhere in the Town shall not in itself be considered grounds for issuance of a variance

for any other use, lot, building, or other structure” (emphasis added). Moreover, ordinary repair and maintenance is permitted “provided such work does not increase the nonconformity.”

Town Code Section 391(3) states “[n]o nonconforming use of land, buildings, or other structures shall be changed to any use which is substantially different in nature or purpose from the existing nonconforming use, except to a use which is permitted in the district in which the land, building, or other structure is located, unless the Zoning Board of Appeals finds that the new use will have no greater injurious impact upon the surrounding area than the existing use.”

“[I]t is a well-settled principle of statutory construction that a statute or ordinance must be construed as a whole and that its various sections must be considered together and with reference to each other.” *Armonas v. Pratt*, 138 A.D.2d 697, 526 N.Y.S.2d 511 (2d Dept. 1988).

MATERIALS CONSIDERED

The ZBA received and considered the following materials in conducting its review:

1. Application to the Town of Washington Zoning Board of Appeals dated November 30, 2021, including the following attachments:
 - i. Consent to Inspection
 - ii. Owner’s Endorsement
 - iii. Property Deed documents dated April 14, 1941 and June 17, 1970;
2. ZBA Meeting Minutes for January 18, 2022;
3. Correspondence from Joshua Mackey, Esq., Applicant’s Attorney, dated February 9, 2022;
4. Correspondence from the Conservation Advisory Commission dated March 8, 2022;
5. Correspondence to Applicant from Sarah Wilson, Esq., Attorney to the ZBA, dated March 14, 2022;

6. Correspondence from the Conservation Advisory Commission dated April 11, 2022;
7. Correspondence from the Conservation Advisory Commission dated April 18, 2022;
8. All supplemental materials presented by the Applicant during the public hearing;
9. All oral statements made in connection with the application that are contained in the Meeting Minutes and incorporated herein by reference.

SEORA

This matter, which seeks an interpretation of an existing code provision, constitutes a Type II Action pursuant to 6 NYCRR 617.5(c) (37) of the State Environmental Quality Review Act. Consequently, no further environmental review is required.

GENERAL MUNICIPAL LAW

This application is not required to be referred to the Dutchess County Planning Department under Section 239 of the General Municipal Law.

RECORD OF FINDINGS

This matter having come to be heard before duly convened meetings of the Zoning Board of Appeals, and the facts, matters, and evidence produced by the Applicant, Applicant's counsel, the Town, and interested parties having been duly heard, received, and considered, and due deliberation having been had, the following is the record of findings:

1. The Applicant is the owner of the Property occupying 23 Taylor Road and 24-32 Tinker Town Road, represented by Thomas Taylor, Kevin Taylor, and Joshua Mackey, Esq., attorney for Applicant.
2. The Property is located in the RH1 residential zone; the permitted nonconforming commercial uses of the Property are limited to the storage and/or distribution of gasoline, fuel, oil, or liquid petroleum, which predate the pertinent changes to the Zoning Code in or about 1971 that thereafter prohibited commercial uses in the zone.

3. The operations of the concrete business at the Property are not consistent with the prior legal nonconforming uses related to the oil and propane businesses because the concrete business is substantially different and not a natural extension of the lawfully-permitted uses due to the following:
 - i. the concrete business is a separate company, namely R & R Concrete Services, LLC, as acknowledged by the Applicant;
 - ii. the cleaning of concrete and/or cement from the concrete trucks;
 - iii. the manufacturing of concrete (Mafia) blocks;
 - iv. the disposal onto the ground and surrounding area of residue concrete from the truck cleaning, as well as the potential for raw cement left on the trucks plus any additives that may be included to impact the area;
 - v. the noise associated with (1) cleaning the residue concrete from the trucks; (2) prolonged idling of trucks at the Property during cleaning or the making of concrete (Mafia) blocks; (3) the crushing of residual concrete on the ground; and (4) the equipment used to crush the residual concrete on the ground;
 - vi. the crushing of the residual concrete and its removal; and
 - vii. the potential to create cement and/or concrete dust that may impact neighboring properties and property owners.
4. Testimony at the public hearings acknowledged that the above-mentioned changes in use at the Property only occurred with the start of the concrete business.
5. The addition of the commercial concrete business at the Property is an unlawful expansion of the nonconforming use because it "is substantially different in nature or purpose from the existing nonconforming use" related to gasoline, fuel, oil, or liquid petroleum.
6. The "right to continue a nonconforming use does not include the right to extend or enlarge such a use." *Lindstrom v. Zoning Bd. of Appeals of Town of Warwick*, 225 A.D.2d 626, 639 N.Y.S.2d 447 (2d Dept. 1996) citing *Matter of Smith v. Board of Appeals of Town of Islip*, 202 A.D.2d 674, 676, 609 N.Y.S.2d 912 (2d Dept. 1994). "While nonconforming uses of property are tolerated, the overriding policy of zoning is aimed at their eventual elimination." *P.M.S. Assets, Ltd. v. Zoning Bd. of Appeals of Vill. of Pleasantville*, 98 N.Y.2d 683, 774 N.E.2d 204 (2002).

Secretary, Town of Washington

ZBA

I, Mary Alex, Clerk of the Town of Washington, do hereby certify that the foregoing Decision was filed in the Office of the Town Clerk on 10/21/22.



Mary Alex
Clerk, Town of Washington

RECEIVED
JUN 21 2022
