

**ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF SOUTHAMPTON**

**RESOLUTION NO. 2013- 10**

**CONCERNING THE APPLICATION OF  
ALLIED RECYCLING, INC.  
CERTIFICATE OF NON –CONFORMING USE DENIAL**

**WHEREAS**, Allied Recycling, Inc. applied to the Zoning Board of Adjustment of the Township of Southampton for Minor Site Plan Approval and Variance Approval {N.J.S.A. 40:55D-70(d)} for property located at 440 New Road, known as Block 2401, Lot 36.02 (the “Property”) on the Official Tax Map of the Township of Southampton, for the purpose of installing a weight scale and refurbishing existing buildings at the existing junk yard; and

**WHEREAS**, the Property is located in the Rural Development Zone; and

**WHEREAS**, junk yards are not listed as a permitted use in the Rural Development Zone; and

**WHEREAS**, a Certificate of Filing from the New Jersey Pinelands Commission, dated January 2, 2013, was submitted by the Applicant; and

**WHEREAS**, by e-mail letter dated May 15, 2013, the Applicant’s attorney amended the previously filed application requesting that in addition to the previously submitted application requests for relief, the application is further amended to request, in the alternative, a Certificate of Non-Conforming Use pursuant N.J.S.A. 40:55D-68 as well as, alternatively, a (D)(1) Use Variance; and

**WHEREAS**, the application for a (D) variance and minor site plan approval was deemed complete by the Board on March 14, 2013; and

**WHEREAS**, public hearings to consider the application were held by the Zoning Board of Adjustment on March 14, 2013 and September 19, 2013, after appropriate public and personal notice was provided to all property owners within 200 feet of the Property and published in the Official Newspaper of the Township, as required by the land development regulations of the Township of Southampton and the statutes of the State of New Jersey<sup>1</sup>; and

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<sup>1</sup> The March 14, 2013 Public Hearing was adjourned at 11:00 p.m. and continued to April 11, 2013. The Applicant’s attorney waived all time requirements for Board action. At the April 11, 2013 Board meeting, the Allied Application was continued to the May 9, 2013 meeting date at which time the Applicant’s attorney represented that the Applicant would amend its application and apply for a certificate of non-conforming use and a (d)(1) variance. The Application was then carried to June 13, 2013. With only four (4) members in attendance at

**WHEREAS**, the Applicant presented evidence to the Board through testimony, plans and other evidence; and

**WHEREAS**, the following exhibits were introduced by the Applicant at the March 14, 2013 and September 19, 2013 Public Hearings:

- A-1 - Color rendering of site plan;
- A-2 - 1963 aerial photograph of Property, without Falcon Drive;
- A-3 - 1965 aerial photograph of Property, without Falcon Drive;
- A-4 - 1970 aerial photograph of Property, without Falcon Drive;
- A-5 - 1995 aerial photograph of Property, with Falcon Drive;
- A-6 - 1993 Resolution of the Southampton Planning Board approving minor subdivision of Block 2401, Lot 36.01, into Lot 36.01 (21.751 acres) and the Property (Lot 36.02 -12.666 acres);
- A-7 - 1993 Minor Subdivision Plan prepared by Lord, Anderson and Worrell;
- A-8 - Photograph of screening taken on March 8, 2013;
- A-8 - April 4, 2013 Letter of Thomas J. Coleman, III, Board Solicitor to Michael Ridgway, Applicant's Attorney (misidentified as a second Exhibit A-8);
- A-9 - April 16, 2013 Letter from Michael Ridgway to Thomas J. Coleman in response to April 4<sup>th</sup> letter;
- A-10 - Sampling of receipts for materials taken off the Property;
- A-11 - 2007 aerial photograph;
- A-12 - 2000 aerial photograph from the Delaware Valley Regional Planning Commission; and

**WHEREAS**, the following exhibits were introduced by the Public at the September 19, 2013 Public Hearing:

- B-1 - Photograph of large purple truck taken on August 14, 2013;
- B-2 - Photograph of truck;
- B-3 - Photograph of loaded truck;
- B-4 - Photograph of same truck taken at 1:30;

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the June 13<sup>th</sup> meeting, the Applicant's attorney requested that the Application be rescheduled to the August 8, 2013 meeting, as the Applicant's professionals were not available for the July meeting date. The Board dismissed the Application, without prejudice, at its August 8, 2013 meeting because the Applicant was not present do to its attorney being ill. Pursuant to a September 17, 2013 Court Order, the matter was remanded back to the Zoning Board for further consideration.

B-5 - Photograph of Pennsylvania truck;

B-6 - Photograph of debris piles; and

**WHEREAS**, the Board after carefully considering the evidence presented by the Applicant in support of its application, as amended, and after the meeting was opened to the public for their questions, comments and input, has made the following findings of fact:

1. The Applicant is the owner of the Property located at 440 New Road in the Rural Development Zoning District of the Township of Southampton. The Property is 12.666 acres +/- in area. A junk business has operated from the property for a considerable number of years and the Township has issued licenses for a junk yard since 1967. The Applicant identifies the current use of the Property as a junk/salvage/recycling yard.

2. The Applicant is proposing to install a weight scale and refurbish existing buildings. The weight scale was installed without the Applicant first obtaining the required approvals or permits.

3. The existing junk business is a non-conforming use in the Rural Development Zone and the Applicant filed an Application for minor site plan approval and a (D) variance for its proposal. After the March 14, 2013 public hearing, the Applicant amended its application to also request in the alternative a certificate of non-conforming use and a (D)(1) variance.

4. Proper notice of the application, as amended, has been given, based upon the certified list from the Office of the Southampton Tax Assessor.

5. Michael Ridgway, Esquire, represented the Applicant from the filing of the Application, including the March 14, 2013 and September 19, 2013 Public Hearings. Dan Giberson, Thomas Gabrysiak, James Miller and Michael Ivins testified on behalf of the Applicant at the September 19, 2013 Public Hearing in which the Board conducted a Special Meeting on the Applicant's request for a Certificate of Non-Conforming Use.

6. At the September 19, 2013 public hearing, Mr. Ridgway read into the record the definitions of junk yard and junk, as provided in Section 4-4.1 and Chapter 12, respectively, of the Township Ordinances. Mr. Ridgway then reviewed the standards for the issuance of a Certificate of Non-Conforming Use.

7. Mr. Giberson testified at the September 19, 2013 Public Hearing as follows:

- a. The Property has been in his family since 1947 with the history of owners including his parents, Mr. Eddie Fuller, Shiny Pointset and than Freeman Pointset;
- b. Over the years, tomato cans, automobiles, tv's and wooden boats were taken to the site;
- c. The Applicant still has not paid me;
- d. Tires started when Mr. Fuller operated the junk yard;
- e. The junk yard can only cover 3.5 acres.

8. Mr. Gabrysiak provided the following testimony at the September 19, 2013 Public Hearing:

- a. The Applicant purchased all of the stock of Last Chance Salvage from Mr. Pointset on July 27, 2012;
- b. The Applicant had rented the Property since 2010 prior to its purchase;
- c. When the stock was acquired from Mr. Pointset, the Property was a mess and the Applicant has been cleaning up the Property ever since;
- d. A review of receipt of materials from prior to the Applicant's leasehold occupancy of the Property indicates that tires, light iron, cars, No. 1 steel, aluminum, wood and other debris, copper, brass wiring and plumbing parts were removed from the Property;
- e. Significant pounds were taken off site;
- f. The NJDEP classified us as a junk yard and is making us more environmentally friendly;
- g. We are a scrap metal and recycling center.

9. Mr. Miller testified at the September 19, 2013 Public Hearing as follows:

- a. A certificate of non-conformity should be granted because the use as a junk yard has continued since 1963, the definition of junk yard includes a reference to any other material considered junk and a reference to selling or exchanging;
- b. Recycling is one of the activities that goes on at a junk yard;

- c. The use proposed by the Applicant is the same as was used by prior owners and is consistent with the definition of junk yard in the Township Ordinances;
- d. The only change is the change in ownership of the use;
- e. The scale modernizes the use, it does not change it;
- f. The site is particularly suited for a recycling center.

10. Mr. Ivins provided the following testimony at the September 19, 2013 Public Hearing:

- a. When Mr. Pointset had the Property, it looked like Sanford and Sons and now the Property has been cleaned up;
- b. He personally took items to the junk yard, including, old washing machines, transmissions, wife fencing and old metal.

11. The following testimony was provided during the public portion of the September 19, 2013 Hearing:

- a. Bruce Gsell who testified that the prior operation was very small and it was locals dropping off stuff;
- b. John Wishart, Falcon Drive, who testified that it was previously a small junk yard and more heavily wooded than it is now;
- c. Ben Lerner, Falcon Drive, who testified that he moved to Falcon Drive 34 years ago and he is concerned that the site is now an industrial site and a fire hazard to the community;
- d. Kathleen Wishart, Falcon Drive, who asked questions regarding the 1993 subdivision and the differences regarding the Planning Board and the Zoning Board;
- e. Patricia Topham, New Road, who presented a series of truck photographs, and testified that the trucks now coming to the site are oversized and create a safety concern for school bus drop offs as these oversized trucks take up the entire street;
- f. Lawrence Burke who testified that there is now debris where there was none five years ago;

- g. Nancy King who testified that there are now out of state trucks coming to the site to drop off materials and in the past she never saw the refrigerators, microwave ovens, and other household appliances that she now sees at the site;
- h. Steven Jenkins, New Road, who testified that the Applicant has cleared out brush and trees that previously existed on the site;
- i. Penny Sundstram, who testified that there are now piles of debris at the site that did not previously exist;
- j. J. P. Price, who testified that there is more going on at the site now in comparison to the prior operations.

12. Thomas J. Scangarello, the Board's Professional Planner, opined that this is a (D)(2) Expansion of a Non-Conforming Use Variance.

**AND WHEREAS**, based upon the above factual findings, the testimony provided by the Applicant's witnesses and the testimony of the public, the Zoning Board of Adjustment has come to the following conclusions regarding the Applicant's request for a Certificate of Non-Conforming Use:

1. The Applicant has not provided sufficient information demonstrating that its current use is identical to the prior use of the Property, warranting the issuance of a Certificate of Non-Conforming Use.

2. The Applicant has not identified with sufficient specificity the amount and type of items taken in at the Property by its predecessors in comparison to the Applicant's operations of the business.

3. The Applicant has not provided sufficient information as to the prior operations of the business as including a recycling center as the Applicant now conducts on the Property.

4. With the amount of tires that the Applicant testified was removed from the Property, it is apparent that a substantial amount of the prior business was related to automobiles and the Applicant has not provided testimony demonstrating that its business is equally reliant upon automobiles.

**NOW, THEREFORE, BE IT RESOLVED** by the Zoning Board of Adjustment of the Township of Southampton, on the 19th day of September, 2013, that this Board hereby denies

the issuance of a Certificate of Non-Conforming Use, as requested by the Applicant pursuant to N.J.S.A. 40:55D-68.

**ROLL CALL VOTE**

Those in Favor of Issuing the Requested Certificate: 2  
Those Opposed to Issuing the Requested Certificate: 4  
Those Abstaining: 1

**CERTIFICATION**

I hereby certify that this foregoing Resolution is a true memorializing resolution, as adopted by the Zoning Board of Adjustment of the Township of Southampton in accordance with its decision at its special meeting on September 19, 2013.

**THE ZONING BOARD OF ADJUSTMENT  
OF THE TOWNSHIP OF SOUTHAMPTON**

**Attested:**

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**STEPHEN ZOLTOWSKI, CHAIRMAN**

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**SHERI HANNAH, SECRETARY**

Dated: \_\_\_\_\_  
Date of Approval: \_\_\_\_\_  
Date of Memorialization: \_\_\_\_\_