

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

**RESOLUTION NO. 2016-6**

**ALLIED RECYCLING, INC.  
RECONSIDERATION OF CERTIFICATE OF NON-CONFORMING USE RIGHTS  
AND OTHER RELATED MATTERS  
(On Remand from the Superior Court of New Jersey)**

**WHEREAS**, the Zoning Board of Adjustment of the Township of Southampton (“Zoning Board”), through its adoption of Resolution 2014-8Z, previously granted Applicant Allied Recycling, Inc. (“Allied”) a Certificate of Non-Conforming Use, pursuant to *N.J.S.A. 40:55D-68*, delineating and restricting its non-conforming use rights related to the operation of an “auto-salvage yard” (with long-term storage of junked materials as an ancillary-use activity) and denying Allied’s request that such rights include the operation of a full-scale junkyard with scrap-metal recycling, 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; and

**WHEREAS**, Allied, thereafter, filed a prerogative writ lawsuit challenging the Zoning Board’s determination in Resolution 2014-8Z in the Superior Court of New Jersey, Law Division, which matter was adjudicated before the Honorable Ronald E. Bookbinder, A.J.S.C. (the “Court”); and

**WHEREAS**, the Zoning Board of Adjustment, through its adoption of Resolutions 2014-11 and -12, made specific determinations that the proposed full-scale junkyard with scrap metal recycling activity was not “substantially similar” to its historic use as a traditional “auto-salvage yard” (with long-term storage of junked materials as an ancillary-use activity); and

**WHEREAS**, Allied, thereafter, filed a second lawsuit challenging the Zoning Board’s “substantially similar” use determination in Resolutions 2014-11 and -12 in the Superior Court of New Jersey, Law Division, which matter has not been adjudicated before the Court; and

**WHEREAS**, the Court, after hearing the subject matter of the first lawsuit, issued written tentative opinions of August 21, 2015 and January 12, 2016 and implementing orders, and specifically concluded:

The Court again concludes that the remainder of the record overwhelming reveals that the property was used continuously as an auto salvage yard and an all purpose junkyard that accepted and paid customers for scrap metal.

(1/12/16, Tentative Opinion at 10); and

**WHEREAS**, the Court ordered a remand to the Zoning Board of the matter and issued the following instructions:

The Court again reiterates that its holding is limited and makes no determination as to the extent, intensity and incidents of this use, and remands the matter back to the Board to reevaluate the quality and intensity of the use in light of the decision. Upon determining the quality of the use, the Board must then determine whether the intended use is substantially similar to the historic use. The Board may seek additional information from the applicant, or undergo this analysis.

(1/12/16, Tentative Opinion at 10); and

**WHEREAS**, while the Zoning Board respectfully disagrees with the Court's Opinion and implementing orders, described above (and as previously adjudicated in prior judicial decisions involving Allied's existing and proposed use of the subject property), and further reserves its right to appeal after this matter concludes to a final and appealable judgment, the Zoning Board acknowledges that it must abide by the Court's judicial determinations; and

**WHEREAS**, after considering the entire comprehensive administrative record ("Record") presented before it at numerous public hearings, the Zoning Board adopts this Resolution to comport to the Court's Opinion and implementing Orders on the remand; and

**WHEREAS**, the Zoning Board has determined that no reasons exist to justify a reopening of the Record, which is already fully complete and comprehensive; and

WHEREAS, the Zoning Board, after carefully considering all of the evidence presented, finds, with respect to the specified issues on the remand, the following:

1. Allied is the owner of the 12.66-acre property located at 440 New Road (Block 2401, Lot 36.02), and situate in the Rural Development Zoning District of the Township of Southampton. A non-conforming use junkyard business (“junkyard”) operates at the subject property and its legal rights, pursuant to *N.J.S.A. 40:55D-68*, are the subject matter of this land-use litigation.

2. Nonconforming use rights must be determined as of June 8, 1982, when the Rural Development Zoning District standards were adopted to permit residential and agricultural use, but did not permit the operation of a junkyard. (See, Court’s Tentative Opinion, 8/21/15 at 3).

3. The Record indicates the following with respect to historic “scrap-metal recycling” activity at the junkyard:

A. Dan Giberson (“Giberson”), the predecessor-in-interest, testified that his parents started operating a small-scale junkyard on the subject property in the early 1960’s. (T. 3/14/13 at 27-28; T. 9/19/13 at 55, 58). Describing the scope of the initial junkyard operation, Giberson testified:

He hauled cars, he hauled aluminum, you name it, metal-wise, junk-wise, it went out there and he would take that to Camden or Trenton. And he would come back every day [at] five, six o’clock in the morning, load up the trucks and bring them to Vincentown and haul them again – or trucks, cars, metal, junk, whatever.

(T. 3/14/13 at 31) (See also, Court’s Tentative Opinion, 7/10/14 at 33). Giberson further testified:

Like I said, get[ting] back to my dad, Stokie’s here had tomato cans and they’d run over them with the steel tractors to get the cans, to get the metal...That’s what started it...Might have been 20 automobiles back in the day to junk.

(T 9/19/13 at 58-59). (See, Court's Tentative Opinion, 7/10/14 at 34). Giberson further testified that other miscellaneous junk materials would be accepted at the junkyard, including cars, aluminum, refrigerators, washing machines, TV's and wooden boats. (T 9/19/13 at 56-59).

B. Fred Myers testified that he owned an alarm company and would take refuse or scrap from his business to the junkyard from 1973-1998, including alarm equipment, cabinets, and conduit from commercial jobs, cable, fire alarms, standby batteries, and hardware. (See, Court's Tentative Opinion, 7/10/14 at 28). Myers testified that such junk was delivered in a service van, every couple of months. (See, Court's Tentative Opinion, 7/10/14 at 28).

Myers also testified that Freeman Poinsett (a prior junkyard operator at the site) had 3-4 employees and did not usually buy scrap metal, but would accept it. (See, Court's Tentative Opinion, 7/10/14 at 29).

C. In terms of the usage of a weight-scale at the junkyard (which the Zoning Board deems critical in evaluating the overall scope and intensity of any scrap-metal recycling activity), the following testimony was adduced at the July 10, 2014 public hearing (T. 7/10/14 at 43-44):

Mr. Murphy: I have a question for you. When you took your metal there, did they weigh it before you put it on the pile?

Mr. Myers: Most of that metal at that time was for the longest time I guess early on the scrap yard didn't weigh a lot of it and then they would weigh only certain things. Yes, they'd weigh certain things like cable, copper.

Mr. Murphy: When they would weight it was like a little scale or truck scale?

Mr. Myers: Some kind of a scale.

Mr. Murphy: Do you remember if it's small, big? Did you drive your truck over it?

Mr. Myers: A small scale, medium.

Mr. Coleman: Could you put your truck on it?

Mr. Myers: No.

Mr. Murphy: You wouldn't drive across it unload your stuff and leave and get weighed again?

Mr. Myers: It's small material, not vehicles, like copper cable.

Mr. Myers further opined on cross-examination by Board Member Robbins (T. 7/10/14 at 47)

(See, Court's Tentative Opinion, 7/10/14 at 38):

Mr. Robbins: So you would drive in there in your van and Freeman or somebody would have had like a little portable scale or something, like a bar scale, you'd put the stuff on the scale?

Mr. Myers: Scrap metal as I indicated before he didn't usually buy that. He took it early on but all the other materials that you just push [i.e.] the metal scrap cabinets and so forth out into their pile of scrap metal on the ground and then certain items like copper cable you weighed on the small scale.

Mr. Robbins: Even then copper, I'm assuming maybe brass?

Mr. Myers: Not in our business, just copper cable.

Mr. Myers: Copper had value.

Mr. Robbins: And he would pay you for that based on the weight, but the other stuff, the cabinets really had --it was a place for you to dispose of it essentially. You weren't really getting money for it?

Mr. Myers: Yes.

D. David Blyer testified that the previous owners of the junk-yard did not have a scale that you drive onto with a car, but that they had a scale about the size of a dining room table. (See, Court's Tentative Opinion, 7/10/14 at 31). Blyer also testified that he was paid for copper wire, dating back prior to 1982. (See, Court's Tentative Opinion, 7/10/14 at 31).

E. Michael Evans testified that he saw Eddie Fuller (a prior junkyard operator) place

light iron inside of cars before they were crushed. And that Freeman Pointsett would load three cars on a six point truck to haul them to Trenton and Camden. (See, Court’s Tentative Opinion, 7/10/14 at 30). Evans could not quantify the percentage of automobile parts to scrap metal. (See, Court’s Tentative Opinion, 7/10/14 at 30).

F. Stephen Jenkins testified that back in 1980 there was 90 percent cars, 10 percent other material, which testimony the Court found to be credible. (See, Court’s Tentative Opinion, 7/10/14 at 32, 33).

4. Allied began leasing the junkyard property from Giberson sometime in 2010 and made significant changes to its existing operation, “including removal of thousands of tires, and installing fencing and security light, and installing a weight scale.” (See, Court’s Tentative Opinion, 7/10/14 at 3). As acknowledge by Thomas Grabysiak, Allied’s principal (“Grabysiak”), such changes were made to transition the junkyard operation from a traditional “auto-salvage” junkyard (with incidental long-term storage of junked materials) to a full-scale auto-salvage junkyard with scrap-metal recycling activity. (T. 3/14/14 at 41-46).

5. This new weight-scale, installed by Allied on or about 2010, caused the Township Building Inspector to issue a notice of zoning violation for failure to obtain a site plan approval. (See, Court’s Tentative Opinion, 7/10/14 at 3). Allied, thereafter, filed a development application with the Zoning Board seeking site plan approval and any other required variance relief, pursuant to *N.J.S.A. 40:55D-70(d)(1)* or (2). Allied also sought site plan approval for other related junkyard improvements as part of the application.

6. The new weight-scale is significantly larger than the existing weight-scale historically used at the junkyard property, which was “small” and approximately the size of a “dining room table” according to Allied’s fact witnesses, David Blyer and Fred Myers. Trucks could be

weighed on this new weight-scale, allowing for a significant intensification and expansion of scrap-material recycling activity. With the new and larger weight-scale at the junkyard, scrap-metal can be processed with much greater efficiency and in significantly larger quantities in comparison to a pre-existing smaller weight-scale, the size of a dining room table.

7. Gabrysiak testified since he cleaned up the junkyard and brought in his new equipment, including the new and larger weight-scale, the current use of the junkyard is now 50% auto-salvage and 50% scrap-metal recycling. (T. 6/10/14 at 46-48).

8. Neither Allied, Giberson or any of Allied's fact witnesses presented any evidence of financial records to prove that any scrap-metal recycling activity occurred at the junkyard, on or before June 8, 1982, the date upon which nonconforming use rights would have vested.

9. Considerable testimony was adduced on the Record from a substantial number of nearby residents to the junkyard indicating their personal recollection that when Allied took over the junkyard in 2010, they noticed a significant change in character of use activity at the junkyard.

These changes included:

- A. A significant increase of truck traffic hauling scrap-metal to/from the junkyard;
- B. A significant increase in noise from the operation of heavy construction equipment onsite to create large and tall stockpiles of "white metals", which piles are sorted and processed for resale; and
- C. A significant increase in turnover of materials accepted/sold at the junkyard.

**NOW, THEREFORE, BE IT RESOLVED** that the Zoning Board of Adjustment of the Township of Southampton, on the \_\_\_\_\_<sup>th</sup> day of May, 2016, based upon the findings of fact described above, does hereby reach the following conclusions (in accordance with the Court's remand instructions):

1. Nonconforming use rights at the Allied junkyard are restricted to auto-salvage (and incidental long-term storage of junked materials) and use of an existing smaller-sized scale on

the property, approximately the size of a dining room table, to engage in the business of scrap-recycling of copper cable and wire and other similar materials, such as those described herein. Such scrap-metal recycling may constitute no more than 10% of the business activity conducted by Allied in terms of revenue.

2. The Zoning Board reincorporates its findings of fact and conclusions of law in Resolutions 2014-11 and -12 (copies attached hereto and incorporated herein by reference as Exhibits “A” and “B”) as to whether Allied’s existing use activities are “substantially similar” in use to the nonconforming use rights described in the preceding paragraph #1. This reevaluation of the base-line nonconforming use rights by the Zoning Board on this remand from the Court does not alter or require a modification to the findings and conclusions of law set forth in Resolutions 2014-11 and -12.

3. The Zoning Board further reincorporates its finding of fact and conclusions of law in Resolution 2014-7 (copy attached hereto and incorporated herein by reference as Exhibits “C”) as to its decision to deny the use variance as requested by Allied on its application, for relief in the alternative.

4. Lastly, the Zoning Board adopts Resolution 2016-\_\_\_\_\_ with respect to denial of variance relief, pursuant to *N.J.S.A. 40:55D-70(d)(2)*, for the expansion of a nonconforming use for the reasons set forth therein.

4. The Zoning Board hereby adopts this Resolution with a reservation of rights to appeal the Court’s prior judicial determinations in this matter at the time this land use litigation matter becomes fully ripe for appeal.



**ROLL CALL VOTE**

Those in Favor of Board's Determination: \_\_\_\_\_

Those Opposed to Board's Determination: \_\_\_\_\_

Those Abstaining: \_\_\_\_\_

**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 meeting on May \_\_\_\_,.

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

**Attested:**

  
**STEPHEN ZOLTOWSKI, CHAIRMAN**

  
**SHERI HANNAH, SECRETARY**

Dated: May 12, 2014  
Date of Approval: May 12, 2014  
Date of Memorialization: May 12, 2014