



## TOWN OF POESTENKILL

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### Zoning Board of Appeals

### ZONING BOARD OF APPEALS October 29, 2020 Minutes Poestenkill Fire Hall

#### Attendees:

Paul Jamison, Chairman  
 Kevin McGrath  
 Tim Hoffay  
 Nicole Heckelman  
 Susan Kalafut  
 Frank Burzesi, Alternate

#### Applicants:

<u>Louis Basle</u>	<u>Code Interpretation (Non-conforming)</u>
69 Abbott Drive	125.-11-17.11 (14 Abbott Drive)

Chairman Jamison read proposed resolution of Interpretation as follows:

Mr. Basle asked the Zoning Board of Appeals for an interpretation of Code 150-76 as it applies to Kevin Kronau's excavation business at 14 Abbott Drive. The business is in the R (residential) Zone where such use would generally not be permitted, but it is acknowledged that the use of the property as an excavation company pre-dated the introduction of zoning regulations and is therefore is permitted as a pre-existing, non-conforming use. However, Mr. Basle alleges that Mr. Kronau has impermissibly enlarged the business, extended the use beyond the permitted excavation business into other business and placed the use on a different portion of the lot than it was originally located, none of which are allowed by Code 150-76, a. Mr. Basle also claims that the property is not screened as required by the Town Code 150-29 and by the conditions of a Special Use Permit allowing apartments to be located on a portion of the original property which was subdivided. The Zoning Board of Appeals has considered each of these items and concludes the following:

The alleged additional uses are:

1. **Equipment Sales:** Chip Kronau has numerous construction equipment items listed for sale on his website. These are primarily used items and Mr. Kronau claims that they have been used in the operation of his business. The items listed on the website are primarily listed as "used" with a few exceptions. There is no "showroom" or lot, and no salespeople are employed by the business. We determine that this use is not separate from the use as an

2. excavation business and is therefore permitted, so long as it continues in the manner described, i.e. primarily as a means of getting rid of no longer needed equipment, and
3. **Equipment Service:** Mr. Kronau acknowledges that he is a NYS licensed service shop, but again, that this is only so that he may service equipment owned by the business. We determine that this use is not separate from the use of the excavation business and is therefore permitted, so long as it continues to service only the equipment owned by the permitted excavation company.
4. **Real Estate:** Kevin Kronau claims that he no longer operated his real estate business from this location. We determine that the real estate business is a separate use from the excavation business and that Mr. Kronau would need to seek the appropriate permission from the Town if he wished to operate a real estate business from the 14 Abbott Drive property.

The claim that the use was placed on a different portion of the lot from the original location relates to the demolition of an original structure and the construction of a new one to house certain aspects of the excavation business. Although this move seems questionable to some Members of the current Board, Mr. Kronau presented a copy of the building permits and that window is long since closed. We, therefore, determine that the new location is permissible so long as it does not undergo further changes, and

The claim that the screening of the property does not conform to requirements of the Town Code and/or prior Special Use Permit, both of which require significant screening of the business from the road and neighboring properties, to be valid. Since this issue has not been addressed by the Town Code Enforcement Officer, we defer determination on that issue to him and request that Mr. Kronau comply with the CEO's decision. With regard to the complaint about noise, we have directed Mr. Kronau to the Town Code 150-29, Noise and NYS Environmental Conservation Law, 6NYCCR, Subpart 217-3, both which describes the limitation on noise which apply to him as well as the fines which may be assessed if he is found to be out of compliance.

Chairman Jamison made a motion to accept the resolution, motion was seconded by Member Hoffay and discussion was open for comments by Members. Member Heckelman read NYS Environmental Conservation Law, 6 NYCRR, Subpart 217-3, titled Heavy Duty Vehicle Idling Law, noting that idling is for no more than five minutes at a time, with this regulation enforced by DEC Conservation Officers and listed fines from \$500 to \$18,000 in case of first violation.

Motion was approved by five (5) ayes, zero (0) nays and zero (0) abstentions.

Mr. Basle thanked the Board for their efforts and stated that if a Special Use Permit is issued in the future, it will be monitored. He also said that if the process had been done correctly forty (40) years.

Joseph Hitchcock

137.-1-23.12

Code Interpretation (Retail Use)

160 Lynn Rd.

Mr. Hitchcock's attorney has not arrived but is expected. Meeting moves on to other business in an effort to give Ms. Mandel-Clemente time.

**Meeting Minutes:**

The Board reviewed the October 13, 2020 meeting minutes. Chairman Jamison requested deletion of sentence on page 2, third paragraph. Motion to accept the minutes as revised made by Member Heckelman, seconded by Member McGrath and was approved with a vote of four (4) ayes, zero (0) nays and one (1) abstention Member Kalafut

**Organizational:**

Clerk Kane advised the Board:

- 1) An Area Variance application is include the night's packet for the November 10, 2020 meeting;
- 2) Revised Contact List
- 3) Continuing Education may be obtained by various CDRPC webinars that run through December.

Wood Processing: There was much discussion between Board Members and Town Board Member, June Butler, who continues to seek comments and suggestions on her proposed Code revision regarding wood processing in the Town. Once she compiles all information, it will be presented to Town Board as a Proposed Law and a Public Hearing would be scheduled for public comments.

Key Hole Lots: There was much discussion between Board Members and Town Board Members, June Butler and Harold Van Slyke, regarding clarifying the written Code on Key Hole Lots. Board Members are encouraged to forward comments and suggestions to Town Board Member, Harold Van Slyke.

Joseph Hitchcock  
137.-1-23.12

Code Interpretation (Retail Use)  
160 Lynn Rd.

Ms. Mandel-Clemente has not arrived and Mr. Hitchcock stated she would not be attending and asks for the issue to be held over until next month. Much discussion amongst the Board and it is noted that the sixty-two days (62) noted in the Code to present Board's determination will not expire until the next week. However, as it was the Planning Board that requested the interpretation and is in need of the Board's decision for its' meeting on November 4<sup>th</sup>, the Board proceeds. Chairman Jamison reads proposed resolution as follows:

It is the Zoning Board of Appeals interpretation that Joseph Hitchcock's firewood processing business does not qualify to apply for a Special Use Permit as a "Retail" use. The Town Code defines "Retail" as an "activity involving the sale of goods or services carried out for profit." and like most businesses, Mr. Hitchcock's business consists of multiple activities, and while one of those activities may involve the sale of firewood, the primary activity for which the property is currently being used involves the cutting and splitting of logs which have been delivered from other locations, into firewood. The Town Code does not attempt to define all possible uses, but mainly those which are specifically permitted in one of the Zones. That

“Light Processing”, which is permitted in a Commercial/Light Industry zone, but not the RR1 residential zone, is defined in the Code as “A use involving the manufacture and/or processing of a product, but not producing noisy or otherwise objectionable disturbances such as vibration, dust, odors or heavy truck traffic, and not involving the use of heavy machinery.” The cutting and splitting of logs into firewood is the processing of a product, but since it does produce noisy disturbances, heavy truck traffic and involves the use of heavy machinery, the firewood processing activity should be considered as simply Industry/Processing, i.e. even more intensive than Light Industry/Processing (which is already prohibited in the RR1 Zone), and not “Retail”. If Mr. Hitchcock would like to apply for a “Retail” Special Use Permit for the portion of his business which is limited to sales activity, such as receiving customers to engage in retail sales transactions of *already processed firewood*, he would be eligible to do so.

Motion made by Chairman Jamison, is seconded Member Heckelman and was approved with a vote of three (3) ayes, two (2) nays and zero (0) abstentions.

There being no further business, a motion to adjourn the meeting was made by Member Heckelman, seconded by Member Heckelman and was approved by five (5) ayes, zero (0) nays and zero (0) abstentions. The meeting was adjourned at 7:45 pm.

Respectfully submitted,

Lynn E. Kane, Secretary