



TOWN OF STERLING
Office of Code Enforcement

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Scrap Processing
 Attn: Shelly Carrier
 14725 State Route 104
 Martville NY 13111

Via Certified Mail

February 5, 2015

CNY Scrap Processing LLC
 Attn: Shelly Carrier
 14725 State Route 104
 Martville, New York 13111

**Re: Non-Conforming Use Permit
 14725 State Route 104**

Dear Ms. Carrier:

I am in receipt of CNY Scrap Processing LLC ("CNY Scrap")'s application for renewal of a Non-Conforming Use Permit for operation of a "junkyard" at the property located at 14725 State Route 1043 in the Town of Sterling. For the reasons set forth herein, CNY Scrap's application for Non-Conforming Use permit is denied, and CNY Scrap is hereby directed to cease and desist from any further operation of its scrap processing facility at the subject property until it has complied with the conditions herein.

Background

The following provides a summary of the history of the subject property as it relates to CNY Scrap's application for renewal of its Non-Conforming Use Permit:

March 3, 1969 – Town of Sterling adopts "Ordinance No. 2 of the Town of Sterling for the Regulation of Automobile Junk Yards."

February 10, 2005 – Town cites John Wilbur for the following violations: failure to apply for or be granted a junkyard license; failure to pay annual junkyard license fee; failure to install proper fence or gate; vehicles not stored/work not being performed within enclosure; and keeping 2+ vehicles in state of disrepair on the premises.

September 29, 2005 – Town issues Appearance Ticket to John Wilbur for Property Maintenance Code and Zoning Law violations.

January 4, 2006 – Stipulation and Consent Order between Town and John Wilbur signed by Justice Peter Blauvelt requiring John Wilbur to remove all junk

from his property, and giving the Town Code Enforcement Officer the right to enter the premises, upon notice, to inspect and ensure compliance.

September 18, 2006 – Sterling Town Board adopts Resolution #2006-139 recognizing the John Wilbur property as a “nonconforming, pre-existing lot provided it be maintained as per the original junkyard law” (emphasis added).

January 12, 2011 – DEC letter to Kevin Carrier regarding violations of 6 NYCRR 360 (“Solid Waste Management Facilities Regulations”). “At a minimum, all the waste tires and construction and demolition debris must be removed from the site. In addition, all drums containing fluids must be properly characterized and managed accordingly and sent to an authorized facility for disposal.”

February 7, 2011 – Town of Sterling Planning Board adopts Resolution 2011-12 recommending the “continuation of the grandfathered, non-conforming use status of Wilbur’s Junkyard in the applicants [sic] name for the purposes of addressing existing DEC and Sterling Town Violations before proceeding with the PDD process.”

February 22, 2011 – Town Board adopts Planning Board’s February 7, 2011 recommendation and passes Resolution #2011-031 authorizing the issuance of a non-conforming use permit and transfer license from Wilbur’s Junkyard to CNY Scrap Processing for purposes of addressing DEC violations and proceeding with the PDD process.

June 17, 2011 – DEC Notice of Violation to Kevin Carrier regarding the following violations: 1,000+ waste tires without a permit (ECL 27-2303(9)); fluid spillage and spoil contamination (ECL-2303(10)); fluids not stored in proper containers (ECL 27-2303(6)); improperly stored lead acid batteries (ECL 27-2303(7)). “Schedule of Compliance” attached requiring violations be addressed by September 1, 2011.

January 30, 2014 – DEC letter to Kevin Carrier regarding Notice of Violation of ECL Section 27-2303 and 6 NYCRR Part 360 for failure to submit a Vehicle Facility Dismantling Facility mandatory Annual Report including self-certification for 2012, along with proposed Consent Order and \$1,000 fine.

June 2, 2014 – DEC Notice of Violation to Kevin Carrier regarding following violations: failure to submit annual reports (ECL 27-2303(1)); failure to properly store fluids (ECL 27-2303(6)); illegal storage of 1,000+ waste tires without permit (ECL 27-2303(9)); failure to prevent fluids from entering ground and/or waters (ECL 27-2303(10)); failure to prepare and implement contingency plan (ECL 27-2303(17)). DEC attached a “Schedule of Compliance” requiring that the violations be corrected by August 30, 2014.

June 23, 2014 - Town of Sterling adopts “Town of Sterling Land Use Regulations.”

October 1, 2014 – DEC Notice of Violation to Kevin Carrier regarding the following violations: no annual reports for 2012 or 2013; illegal storage and disposal of 1,000+ waste tires; and stained soils have not been removed.

January 28, 2015 – DEC inspects and reports that the facility is compliant for all of the items observed and with its schedule of compliance. DEC also reports that CNY Scrap submitted its 2012 and 2013 annual reports, and removed tires to under 1,000 on-site.

Findings

As you know, I conducted a consensual inspection of the property on January 21, 2015. During my inspection, I observed that you have expanded your use of the property beyond that of a “junk yard,” as the term is defined in Ordinance No. 2 of Town of Sterling For the Regulation of Automobile Junk Yards (1969) (“1969 Junk Yard Law”), for which you were given a transfer license to operate by Town Board Resolution dated February 22, 2011. Your use of the property has expanded beyond a “junk yard” to a scrap processing facility. Section 1 of the 1969 Junk Yard Law specifically provides that “the term junk yard shall not be construed to mean an establishment having facilities for processing iron, steel or nonferrous scrap and whose principal produce is scrap iron steel or nonferrous scrap for sale for remelting purposes only.” As such, your use of the property violates the 1969 Junk Yard Law and your transfer license, and you are hereby directed to cease and desist operation of a scrap processing facility until such time as you are in compliance with the Town of Sterling Land Use Regulations adopted by the Town Board on June 23, 2014 (“Land Use Regulations”).

With respect to your use of the subject property as a junk yard, you are in violation of the terms of your non-conforming use permit and transfer license granted by the Town Board due to your failure to apply for a PDD. On February 22, 2011, the Town Board adopted the Planning Board’s February 7, 2011 recommendation and passed Resolution #2011-031 authorizing the issuance of a non-conforming use permit and transfer license from Wilbur’s Junkyard to CNY Scrap for purposes of addressing DEC violations and proceeding with the PDD process. As noted above, CNY Scrap has addressed the DEC violations to the satisfaction of the DEC at this time. However, you have failed to apply for a PDD which was a condition imposed by the Town Board when the non-conforming use permit and transfer license were granted. Due to your failure to apply for the PDD, your permit and transfer license are hereby revoked, and you are hereby ordered to cease and desist from any further operation of a junk yard at the subject property until you are in compliance with the Land Use Regulations.

The Town of Sterling reserves all rights to pursue any and all enforcement action allowed by law. In this regard, please be advised that pursuant to Section 2-8 (“Violations”) of the Land Use Regulations, “[i]n case...land is used in violation of this article or of any other local law, ordinance or other regulation made under authority conferred thereby, the proper local authorities of the town, in addition to other remedies, may institute an appropriate action or proceedings to prevent such...use to restrain, correct or abate such violation, to prevent the occupancy of said...land or to prevent any illegal act, conduct, business or use in or about such premises...”

Please be further advised that pursuant to Section 2-9 (“Fines and Penalties”) of the Land Use Regulations:

For any and every violation of the provisions of these Regulations:

- A. The owner, general agent, or contractor of a building or premises where such violation has been committed or shall exist;

- B. The owner, general agent, contractor, lessee, or tenant of any part of a building or premises in which part such violations have been committed or shall exist; and
- C. The general agent, architect, building contractor, or any other person who knowingly commits, takes part, or assists in any such violation, or who maintains any building or premises in which any such violation shall exist, shall be liable, upon conviction thereof, to a fine or penalty not to exceed (two hundred fifty dollars) \$250.00 or by imprisonment for a period not to exceed six (6) months or by both such fine and imprisonment. Each week's continued violation shall constitute a separate, additional violation.

Thank you for your cooperation in this matter. Please contact me if you have any questions regarding the foregoing.

Sincerely,



Bruce Applebee
Code Enforcement Officer
Town of Sterling