

RECEIVED
JAN 14 1974
TOWN OF STERLING

Town of Sterling ZBA

Town of Sterling
1290 State Route 104A
Sterling, NY 13156

Zoning Board of Appeals
phone: (315)947-6245
Fax: (315)947-5119

ZONING BOARD OF APPEALS APPLICATION

14725 State Route 104, Martville, NY 13111

1. Address of property: _____
2. Tax Map #: 19.00-1-33, 19.00-1-35.111, 19.00-1-35.112
3. Property Dimensions: _____ Lot Frontage _____ Lot Depth _____ Total Sq. Ft.
4. Owner of record is: CNY Scrap Processing, LLC Phone: _____
2411 Wetmore Road, Branchport, NY 14418
(Address) (Village/Town) (State) (Zip)
5. Applicant's Name: Morley, Glenn, and Leslie Flynn Phone: _____
(1) 14761 State Route 104, Martville, NY 13111, Tax Parcel No. 19.00-1-29, and (2) Tax Parcel No. 19.00-1-30.1
(Address) (Village/Town) (State) (Zip)
6. Requesting Use Variance _____ Area Variance _____ Other _____
7. All existing uses on the property are: Unauthorized scrap processing facility
8. Proposed uses on the property, if application is approved are: N/A
9. Area Variance requested: Front _____ Rear _____ Side _____ Side _____
10. Date Building Permit was submitted: N/A Date Denied: _____

THE APPLICANT'S SIGNATURE BELOW INDICATES THE INFORMATION CONTAINED IN THIS APPLICATION AND ON ANY ACCOMPANYING DOCUMENTS IS TRUE AND ACCURATE.

MORLEY FLYNN Glenn Flynn Leslie Flynn
(Name of Applicant)

(Property Owner, if different)
Glenn Flynn Leslie Flynn Date: 1/19/2024
(Signature of Applicant)

Date: _____
(Signature of Owner, if different)



2600 Innovation Square
100 South Clinton Avenue
Rochester, New York 14604
nyenvlaw.com

JONATHAN R. TANTILLO
ATTORNEY AT LAW

585.546.8430
jtantillo@nyenvlaw.com

January 19, 2024

VIA HAND DELIVERY

Town of Sterling Zoning Board of Appeals
Town of Sterling Town Hall
1290 State Route 104A
Sterling, New York 13156

**RE: Appeal of Determination re: CNY Scrap Processing, LLC
14725 State Route 104, Tax Parcel Nos. 19.00-1-33, 19.00-1-35.111, 19.00-1-35.112**

Dear Zoning Board Members:

This office represents Morley, Glenn, and Leslie Flynn. The Flynn's are the owners of the various tax parcels which border 14725 State Route 104 (the "Property"). Glenn and Leslie Flynn own and reside at 14761 State Route 104, tax parcel no. 19.00-1-29, which borders the Property to the East. Morley, Glenn, and Leslie Flynn additionally own tax parcel no. 19.00-1-30.1, which borders the Property to the west and north. This letter is offered in support of the Flynn's' appeal (the "Appeal") of the November 20, 2023 decision (the "Town Board Decision") of the Town of Sterling (the "Town") Town Board (the "Town Board") which authorized the Town Supervisor to execute a Memorandum of Understanding (the "MOU") with CNY Scrap Processing, LLC ("CNY") which determined, based on a previous settlement agreement, that CNY could use tax parcels 19.00-1-35.111 and 19.00-35.112 as a scrap processing facility and junkyard. The MOU is attached hereto as **Exhibit "A."**

The Town Board Decision was premised on clear legal error, and to the extent that an appeal to the ZBA can be taken from that Decision, the Flynn's now do so. In the event that the ZBA determines that the appeal must be taken from the issuance of the subsequent building permit, the Flynn's will do so as well, but are filing the instant appeal out of an abundance of caution to preserve their rights. The Flynn's have been informed that no such permit has been issued, but in the event that such a permit has been issued, this appeal also encompasses that issuance.

The history of this property and the scrap processing facility operated by CNY has been well documented, and the subject of multiple lawsuits. As the ZBA is no doubt aware, this issue was brought before it on December 16, 2021 by Morley Flynn. The minutes of that meeting are attached hereto as **Exhibit "B."** As the ZBA held at that meeting, the Town "was in error in including the two additional properties, tax map #19.00-1-35.112 and #19.00-1-35.111, for the 2021-2022 building operating permit # 2021-007, and that the Code Enforcement Officer shall provide a corrected building/operating permit to include only tax map #19.00-1-33."



While a lawsuit was brought by CNY challenging that determination, the ultimate decision in that lawsuit was based on Morley Flynn's lack of standing to bring the underlying ZBA appeal, and the merits were not addressed. Standing is not at issue for the instant appeal, based on the status of Glenn and Leslie Flynn as applicants, and the additional ownership of tax parcel no. 19.00-1-30.1 by Morley Flynn.

The Town Board Decision is not controlling as to the decisions of the ZBA. The ZBA is a quasi-judicial board. *Allan and Allan Arts Ltd. v. Rosenblum*, 201 A.D.2d 136, 139 (2d Dep't 1994). *See also Commco, Inc. v. Amelkin*, 62 N.Y.2d 260, 268 (1984). As such, it is independent from the Town Board, which cannot control the ZBA's decisions. *Emmett v. Town of Edmeston*, 2 N.Y.3d 817, 818 (2004). Determinations as to whether or not a particular property or use is a valid preexisting nonconformity are within the sole jurisdiction of the ZBA. *TAC Peek Equities, Ltd. v. Town of Putnam Valley Zoning Bd. of Appeals*, 127 A.D.3d 1216, 1217 (2d Dep't 2015). Town Boards have "no jurisdiction to hear or determine" such applications. *Id* at 1217-18.

Nor does the existence of the settlement agreement provide support for the Town Board Decision. ZBA jurisdiction is exclusive and cannot be exercised by other administrative officers or by the legislative authority of the municipality. *In re Kalen*, 248 A.D. 777 (2d Dep't 1936); *Ober v. Metropolitan Life Ins. Co.*, 157 Misc. 869 (N.Y. City Ct. 1935); *113 Hillside Ave. Corp. v. Village of Westbury*, 27 A.D.2d 858 (2d Dep't 1967). A village or town board is not authorized to settle litigation so as to grant an application which has been denied by the zoning board of appeals. 1990 N.Y. Op. Atty. Gen. (Inf.) 45. The Attorney General's office in this opinion relied on the analogous facts found in *Commco v. Amelkin*. There, the Court of Appeals held that a Town Board may not circumvent or vitiate the exclusive power of the zoning board of appeals by issuing an approval outside the Town Board's authority through the settlement of a lawsuit. *Id* at 263.

The underlying facts of the appeal are unchanged from those which the ZBA addressed in December 2021. In 2011 CNY was issued a nonconforming use permit and transfer license from Wilbur's Junkyard to CNY for tax parcel no. 19.00-1-33. This permit was issued based on Town Board Resolution #2011-031, "authorizing the issuance of a non-conforming use permit and transfer license from Wilbur's Junkyard to CNY Scrap Processing for the purposes of addressing DEC violations and proceeding with the PDD process." All subsequent permits other than the challenged 2021 permit pertained solely to tax parcel no. 19.00-1-33. At no point between 2011 and the present has CNY Scrap Processing attempted to complete the PPD process as intended in Town Board Resolution #2011-031.

The Town Board Decision would allow an increase in size of CNY's operation from 3.7 acres to 19.62 acres. As per the Town of Sterling Land Use Regulations this expansion would require numerous steps allowing the Town Board, the Planning Board, neighboring landowners, and the community at large to weigh in on the issue. The details of these requirements are laid out in Article VIII, Use Regulations, Usage Table 3, and Article XII, Planned Development Districts (PDD) Section 12-4 Procedures for PDD Approval. None of these steps were taken.



The unlawful expansion of CNY's substantially intrusive scrap yard operations would adversely affect the Flynns as owners of the adjacent property, both by diminishing their property values and by adversely impacting their quality of life.

Thank you for your consideration.

Sincerely,

KNAUF SHAW LLP

A handwritten signature in black ink that reads "Jonathan R. Tantillo".

JONATHAN R. TANTILLO

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made by and between The Town of Sterling, 1290 State Route 104A, Sterling, New York 13156 (“Town”), CNY Scrap Processing, LLC, 2411 Wetmore Road, Branchport, New York 14418 (“CNY Scrap”), and Carrier Salvage & Recycling, LLC, 2440 Wetmore Road, Branchport, New York 14418 (“Carrier”), each a party hereto and collectively the “Parties” to the Memorandum of Understanding, the terms of which are as follows:

WHEREAS, the Town is a municipal corporation located in the County of Cayuga, State of New York, and has its office for conducting business located at 1290 State Route 104A, Sterling, New York 13156; and

WHEREAS, since approximately May 25, 2011, CNY Scrap has owned property known as 14725 State Route 104, Martville, New York, 13111 (hereinafter “the Property”), and operates a scrap processing facility and junk yard on the Property; and

WHEREAS, the Property consists 19.62 acres in total, and contains three parcels identified by the tax identification numbers 19.00-1-33, 19.00-1-35.111, and 19.00-35.112; and

WHEREAS, on or about February 24, 2015, CNY Scrap commenced a lawsuit against the Town in Cayuga County Supreme Court (Index #2015-206) wherein it challenged a Cease and Desist order issued by the Town’s Code Enforcement Officer with respect to scrap processing activities at the Property (“the Litigation”); and

WHEREAS, on or about October 14, 2020, the Parties agreed to discontinue the Litigation and executed a “Settlement Agreement and Release” (“Settlement Agreement”) a copy of which is attached hereto as Exhibit “A”, wherein the parties agreed, *inter alia*, that

CNY Scrap and Carrier would be permitted to use the property located at 14725-14735 State Route 104 as a Junkyard, as that term is defined in the Town's 2014 Land Use Regulations, as amended, and for those activities, including, and scrap processing activities, described in the April 27, 2020 letter from Peter Rolph, Esq. attached to the Settlement Agreement, in those areas of the property historically used for such activities, so long as they maintained compliance with the terms stated in the Settlement Agreement relative to hours of operation, scope of activities, maintenance of the property, etc.; and

WHEREAS, the Parties wish to clarify the terms of the Settlement Agreement to reflect the intention of the Parties when it was negotiated and executed that its terms and conditions apply to all three parcels (tax identification numbers 19.00-1-33, 19.00-1-35.111, and 19.00-35.112) and to remove any ambiguity regarding its interpretation;

NOW, THEREFORE, the Parties have reached the following understanding:

1. In the interest of further amplifying and clarifying the terms and scope of the aforementioned Settlement Agreement, without adding or removing any of the terms or conditions stated in the Settlement Agreement, and without altering or amending any of the terms or conditions stated in the Settlement Agreement, the parties now state their agreement and affirmation that the Settlement Agreement and its various terms and conditions shall apply and do apply to the entire Property, consisting of the aforementioned three parcels identified by the following tax identification numbers: 19.00-1-33; 19.00-1-35.111; and 19.00-35.112.

2. More specifically, CNY and Carrier may continue to use the Property consisting of the aforementioned three parcels (tax ID numbers 19.00-1-33, 19.00-1-35.111, and 19.00-35.112) in a manner consistent with its long historical use, for the purposes of operating a scrap processing facility and junkyard, subject to provisions of the Scrap Processing Law (New York


General Business Law Section 69), Junkyard Law (New York General Business Law Section 136), and such other rules and regulations of the Town of Sterling and/or the State of New York that may apply.

3. By Resolution dated 11/20/2023, 2023, a copy of which is attached hereto and incorporated by reference, the Sterling Town Board agreed to execute this Memorandum of Understanding and authorized the Town Supervisor to execute same on behalf of the Town.

Dated: 11/20/2023, 2023

TOWN OF STERLING

CNY SCRAP PROCESSING, LLC


By: Scott Crawford, Supervisor

By: _____

CARRIER SALVAGE &
RECYCLING, LLC

By: _____

EXHIBIT B

TOWN OF STERLING ZONING BOARD OF APPEALS
December 16, 2021

A meeting of the Town of Sterling Zoning Board of Appeals was held on Thursday December 16, 2021 at the Sterling Town Hall with the following members present:

- Richard Palmieri ~ Chairman
- Carolyn Waterman ~ Member
- Brad Dates ~ Member
- Charles Itzin ~ Member
- Brian Sturges ~ Member

Also Present: Mark & Holly Myers, Morley Flynn, Kevin and Shelley Carrier, Jonathan Anna, Peter Rolph, Susan Gately, Patricia Campbell, Lauren Crosssett, Marie Fitzgerald, Regina Setikas, Jay Robinson, Karen Haas, Leslie & Glenn Flynn, Cheryl House, Mary Myers, Paul & Anne Garland, Supervisor Scott Crawford, Joan Kelley and June Ouellette.

The meeting was called to order by Chairman Rich Palmieri at 7:04 pm.

PUBLIC HEARING

Mark Myers

Chairman Palmieri read aloud the legal notice and re-opened the tabled Hearing at 7:05 pm.

A request by Mark Myers for relief of Sterling Land Use Regulations Article 9-3 (A)(2) - Minimum square footage requirement for a single dwelling, will be heard regarding the construction of an apartment on property located at 809 State Route 104A, Sterling, NY 13156; Tax Map #9.00-1-29.

All those wishing to be heard in favor of or in opposition of said application may appear in person or by other representation at said time and place. By Order of the Zoning Board of Appeals, Lisa Somers, Clerk

Mark Myers explained to the ZBA members that he went to the Planning Board meeting on November 4th for their input on the process for approving his construction of an apartment within the restaurant he owns. They confirmed that apartments are not directly addressed within the LUR Use Chart and that the definition lacks a size requirement. An advisory opinion was formulated that the appropriate action would be a modification to the existing special use permit provided that the ZBA grants the requested area variance for minimum square footage. The ZBA members had received the Advisory Opinion from the Planning Board and accepted their decision as part of the documents to be considered during their deliberations. Mr. Myers stated that he had contacted the Health Department and supplied a copy of an email with Duane Ross dated 12/8/21 regarding the evaluation of the septic system, compliancy with Health requirements and whether the door needs to be solid. Copies of revised floor plans for the redesign of the living space was supplied for Board review; living space approximately 525 square feet. Member Dates asked about the timeline for construction of the changes, to which Mr. Myers replied it would be ASAP but he would need to work around scheduled radiation therapy. Member waterman clarified that if he received the area variance then he would need to return to the planning board for modification of a special use permit. Member Dates questioned whether the space would be used as a rental, to which Mr. Myers replied it wouldn't he and his wife plan to reside in the apartment. Chairman Palmieri asked for any public comments from the audience, there were none and the Public Hearing was closed at 7:12 pm.

A motion was moved by Member Dates to allow an apartment at least 500 square feet pending Department of Health approval and septic system review. The motion was seconded by Member Sturges, all were in favor without further discussion and the motion carried. Mark Myers stated that he would be in Florida through February and would appear before the Planning Board in March.
Resolution 2021-05

BE IT RESOLVED, by the Zoning Board of Appeals for the Town of Sterling, upon the facts presented and the determination made, that the request to allow an apartment of at least 500

square feet, as is presented on submitted building floor plans dated 12/16/2021, on property located at 809 State Route 104A, Sterling, NY 13156; Tax Map #9.00-1-29, is hereby GRANTED with the following express conditions:

- 1.) Cayuga County Department of Health approval;
- 2.) Review and modification, if deemed necessary by professional engineer, of existing septic system to accommodate the increased usage.

Roll call vote was taken:

Richard Palmieri, Chairman Aye

Charles Itzin, Member Aye

Brad Dates, Member Aye

Carolyn Waterman, Member Aye

Brian Sturges, Member Aye

5 AYES 0 NAYES 0 ABSTENTIONS - REQUEST APPROVED

PUBLIC HEARING

Morley Flynn

Chairman Palmieri read aloud the legal notice and opened the Hearing at 7:14 pm.

An Appeal for an Interpretation has been requested by Morley Flynn for the allowable land uses regarding business operation of CNY Scrap Processing, LLC on property located at 14725 State Route 104, Martville, NY 13111; Tax Map #19.00-1-35.111 and 19.00-1-35.112.

All those wishing to be heard in favor of or in opposition of said application may appear in person or by other representation at said time and place. By Order of the Zoning Board of Appeals, Lisa Somers, Clerk

Chairman Palmieri asked Mr. Flynn to approach the Board to explain his appeal. An attorney for CNY Scarp Processing, Peter Rolph, interrupted the proceeding claiming that the appeal shouldn't be heard because the time for filing had already passed and asked the ZBA to speak. Chairman Palmieri asked him to sit down because the applicant had the floor currently and the appeal would be heard. Mr. Flynn thanked the Board for their time and proceeded to explain the request he had filed initially in May and again in November. He had supplied the ZBA members with many documents processed by the Codes Office, Town Board, Cayuga County Real Property, Planning Board, Cayuga County Supreme Court and attorney correspondence. He outlined the history of usage and ownership of the three properties currently owned by CNY Scrap Processing as follows:

~ Property tax map # 19.00-1-33 was originally owned by John Wilbur and operated as a junkyard that was continually out of compliance with the Town's 1969 Regulations of Automobile Junk Yards.

~ Between 2003 and 2005, the Town attempts to bring the property into compliance with issuance of various violation citations ending with a court appearance ticket and subsequent Stipulation and Consent Order to remove all junk from property #19.00-1-33 in 2006.

~ The Town Board, by resolution # 2006-139, recognizes the property as non-conforming, pre-existing but must be maintained as per the original junkyard law in September 2006. The two properties (#19.00-1-35.111 and #19.00-1-35.112) surrounding the lot are not as of yet owned by John Wilbur and not included in the permit.

~ In February of 2011, Kevin and Shelley Carrier approached the Planning Board after having been in front of the Town Board to pursue the purchase and expansion of the Junkyard to encompass three properties - #19.00-1-33, #19.00-1-35.111 and #19.00-1-35.112. The properties had many violations of 6NYCRR 360 issued by the DEC which the Carriers were actively addressing; they asked the Town for some leeway to continue the existing non-conforming use permit and transfer the license from Wilbur to CNY Scrap Processing before addressing the Town's Zoning regulations. The LUR Use Chart dictates that Junkyard/recycling facilities are not permitted within any zoning district in the Town unless an approved PDD is established. Meeting minutes of 2/7/11 include a resolution #2011-02 which "recommends the continuation of the grandfathered,

non-conforming use status of Wilbur's Junkyard in the applicants name for the purposes of addressing existing DEC and Sterling Town Violations before proceeding with the PDD process. In March of 2011 the Town board issued by Resolution #2011-031 a non-conforming use permit and transfer license from Wilbur's Junkyard to CNY Scrap Processing with no inclusion of the two additional properties purchased by the Carriers.

~ Between 2011 and 2014 the permit is annually renewed for property #19.00-1-33 only.

~ In 2015 a letter is drafted by CEO Applebee enumerating the history and issues of non-compliance wherein he revokes the permit and license and orders a cease and desist of operation of the scrap processing facility under compliance is achieved. A lawsuit is filed yet the court has no ruling, instead mediation efforts commence.

~ In 2020 the Town enters into a Settlement Agreement which allows the scrap processing operation to commence with use of all three properties. Notification to the public and adjoining property owners was never made.

~ In January of 2021, the Code Enforcement Officer issued a new permit # 2021-0007 that included the additional properties (#19.00-1-35.111 and # 19.00-1-35.112) allowing the uses and licensing of a scrap processor and junkyard.

Morley Flynn next addressed the issue of public notification of the settlement agreement by the Town Board and the Permit issued by the CEO, to which he stated that no public notice had been made of either decision. There had not been public meetings or public hearings held, all discussions of the settlement seemed to have been between attorneys and various Town Officials over several years, and the CEO's issuance of the permit in January of 2021 was performed during normal work hours and procedures. ZBA Member Charlie Itzin asked Mr. Flynn how he found out about the decision. Morley Flynn responded that the activity occurring on the property initiated a search of Facebook postings, where he came across a copy of the permit and immediately filed an Appeal with all Offices of the Town in May of 2021 to which he received no formal response. He then filed another appeal in November of 2021 which the ZBA received and responded by scheduling tonight's Hearing. The accumulation of the relevant documents submitted as evidence were obtained by FOIL's and searches of public court documents, as well as what has been collected and kept over several years of the Flynn family dealing with Mr. Wilbur and now the Carrier's. Mr. Flynn concluded his presentation by stating that the original parcel (#19.00-1-33) is the only parcel that was considered as pre-existing non-conforming and was allowed to continue as a junkyard in the Town. The two additional parcels were never part of the junkyard although illegally used for accumulation of tires and other junk which the Town processed violations and court action to correct. The LUR does not allow for the extension or expansion of non-conforming uses to adjoining parcels, and the settlement agreement that attempts to include them for purposes of use by the business is unlawful. He further stated that the settlement agreement is not even a Court sanctioned judgement, and by its acceptance, the Town Board acted outside of their authority by giving interpretive relief of the regulations, as well as foregoing the prescribed approval process of PDD formation. Several sections of the LUR have not been considered during the handling of these properties, they are as follows:

1. Article VIII, Use Regulations, Table 3, Item #35 Junkyard/Recycling Facility - requires approval of PDD in all zoning districts.
2. Article XIV, Non-Conformities - non-conformities shall not be extended or enlarged.
3. Article XII, Planned Development Districts - Application never submitted, therefore review process and subsequent approval never realized.
4. Article IV, Zoning Board of Appeals - Paragraph 2 of the settlement agreement violates this section through interpretive relief.

Chairman Palmieri asked Mr. Flynn to define what outcome his Appeal is asking for. He replied that he would like for the ZBA to validate the cease-and-desist orders filed by the CEO and Court, and find that the CEO was in error when issuing the permit to CNY Scrap Processing in January of 2021 by inclusion of the two properties # 19.00-1-35.111 and #35.00-1-35.112, and furthermore to invalidate the issued permit and reissue correctly for property #19.00-1-33 only.

The attorney for Kevin and Shelley Carrier, Peter Rolph, countered the arguments presented by stating that the appeal was not timely and therefore should not have been heard by the ZBA, and should not be acted upon by the ZBA. The appeal must be made within 60 days of the date that the CEO's decision was issued, which was in January, making this appeal untimely. He also stated that there needs to be an aggrieved party - no statement has been made as to the damages perceived by the use of the property. The Carrier's were not notified of the action, receiving a letter of the legal notice for the public hearing this past week which left them no time to prepare a defense to the allegations of the applicant. Kevin and Shelley Carrier provided photos of the properties in question detailing the activities and condition of the present in contrast to the historical usage of the property. The photos illustrated that the current business operation is contained to the original area of disruption but has been cleaned up and operates much more efficiently with established stockpiles and roadways. The aerial photo with overlaid property lines shows that the original junkyard spilled over onto all three of the properties as well as utilized ingress/egress areas encompassing frontage of two of the three properties - in other words the usage has always been historically intertwined. They stated that they purchased the properties after talking with the Town Board and Planning Board, with the understanding that they intended to use all three properties for the business of scrap processing. The Planning Board minutes for meeting held on 2/7/11 supports that discussion by describing the property to be purchased as 22+/- acres, instead of the acreage of only parcel #19.00-1-33. Kevin Carrier elaborated on the clean-up efforts with more than 30,000 tires removed since their purchase and the constant monitoring by the DEC to remove a multitude of violations issued over the years, as well as sensitivity to the wetlands. The settlement agreement is binding on the Town and allows CNY Scrap Processing to conduct business on the three properties with detailed description of the allowable uses, and was established by reviewing stacks of paperwork generated over years of discussion involving the Town, Courts and the DEC.

Chairman Palmieri began a discussion amongst the Board members that the focus of the appeal is whether the junkyard permit and use applies to a single parcel versus all three parcels owned by the Carriers. This appeal had a large submission of paperwork supporting their allegation, and the Town's records also supplied ample background information on the various court actions and activity of the Codes Office. The members discussed how and when the two additional parcels were added as part of the junkyard, keeping in mind that their appearance in the documentation is key. The initial permit and resolutions by the Planning Board and Town Board in 2011 all discuss various points to be considered by the ZBA - the pre-existing non-conforming status of Wilbur's Junkyard parcel # 19.00-1-33, plans of CNY Scrap Processing to purchase and expand the business, and formation of a PDD. Members had reviewed Google Earth photos which allows the viewer to see a range of years allowing for a comparison and evaluation of changes in the properties. Various permits, letters and violations issued over the years by the Codes Office were also discussed which seemed to treat the properties differently with acceptance of #19.00-1-33 as the pre-existing and allowed junkyard, and the other two parcels receiving violations for non-compliance with zoning and orders to remedy and clean-up. Chairman Palmieri introduced Real Property information (description from Image Mate and RP-5217 Report) that assigned property classifications of junkyard for #19.00-1-33, rural vacant for #19.00-1-35.112, and one family residential (210) for #19.00-1-35.111 - contained on the sale paperwork files at Cayuga County and signed by Shelley Carrier. The current usage by the owners appears to have elevated all the properties to a junkyard usage without process of zone change with the Town. The Carriers responded that they have not changed anything other than general cleaning up all of the properties with the assistance and guidance of the DEC and reorganizing the business area along the frontage for efficiency, safety and appearance. ZBA Member Brad Dates stated that historically all permits issued have been for property #19.00-1-33 until 2021 wherein the two additional properties were added by hand writing, yet no rationale exists in the paperwork for those additions. This change signals a red flag and merits further scrutiny by the Board. Kevin Carrier interjected that the Town Board and Planning Board were aware of the intended uses starting back in 2011 as is

evidenced by Planning Board minutes dated 2/7/11 and subsequent resolutions by both Boards. The clean-up process is therein referenced with plans to combine the properties once finished - the merger simply never happened over that timeframe and was instead addressed during the settlement negotiations. The recent settlement agreement between the Town and CNY Scrap identifies the parcels as the "Property" located at 14725-14735 State Route 104. Member Dates responded by stating that the minutes refer to a PDD process to combine the parcels and not a merger - two very different processes, neither of which were ever completed. Town Supervisor Scott Crawford explained that the settlement discussions encompassed different Town Board members because it took place over a number of years, but that the general impression was that the Town board recognized a footprint of use within the settlement agreement and not tax parcel identification numbers. The CEO added the additional tax #'s after referencing the Town Zoning Map to clarify the properties discussed within the settlement, and sought advice from the Town Attorney to do so. The Town Attorney was not directly involved in the negotiations, instead the Town's Insurance (NYMIR) attorneys handled the settlement, which is who provided clarification of which parcels were discussed to the CEO via the Town Attorney. He further stated that the permit was issued with additional parcels to be done in the spirit of the settlement. ZBA Member Carolyn Waterman restated for affirmation that the permit issued by the CEO in January of 2021, through the combination of the three tax parcels, appropriately represents CNY Scrap Processing and was confirmed as such by the Attorneys.

Morley Flynn asked to address the Board again and submit an additional document. He said in response to earlier statements by the attorney, that the appeal application contained a letter wherein he states the ways that the expansion affects him and the Town. His extended family owns all of the surrounding parcels and the negative impacts are to property values and quality of life which they have repeatedly reasserted over the years. He also communicated that the blatant disregard of the Town's laws creates a precedent for further abuses by industry. A letter was introduced and provided to the ZBA to provide evidence as to the intention of usage for the parcels other than #19.00-1-33. The letter was written by CEO Greene in 2006, and instructs Mr. Wilbur to remove all of the junk items on property #19.00-1-35.112; activity occurring simultaneously as discussion to allow grandfathered, non-conforming use with the then current Zoning Ordinance, and decision to issue junkyard permit to property #19.00-1-33 only. He pointed out that since these actions were occurring at the same time, the additional parcels were not simply left out, but purposely not included. ZBA Member Carolyn Waterman reviewed the purchase of the three parcels by John Wilbur with the initial purchase of the junkyard property in 2006, then subsequent purchases in 2008 and 2009 by quit claim for the two additional parcels; therefore, ownership previous to the LUR- are all then non-conforming? Debate ensued that the previous Zoning Ordinance established zoning districts not allowing the junkyard use and that the only property issued a non-conforming status permit was #19.00-1-33, the others were found to be non-compliant with Town zoning as evidenced by CEO Greene's letter in 2006 and the subsequent permits issued for only one property. Chairman Palmieri added that the Real Property Transfer Report supports differing property classifications that are more consistent with the Town's zoning than an acceptance of pre-existing status.

Without further discussion or questions from the Board, Chairman Palmieri opened the Hearing for public comments as follows:

1.) Kevin Carrier - The Town Officials, the attorneys representing all parties did due diligence in the review of all records and zoning laws and drafted a comprehensive settlement agreement which is binding to all parties involved. This appeal should not be heard because it is outside of the legal parameters allowed for grievance proceedings by being several months past the allotted sixty days. He respects Mr. Flynn's position but declared that legally he has no standing.

2.) Leslie Flynn - The Flynn family has been damaged by the activity of the junkyard and its illegal expansion for many years when John Wilbur owned it and since the purchase by the

Carriers, and they have filed complaints, sent letters, and attended all meetings associated with these properties. They received no notification or information regarding either the settlement agreement or the issuance of the permit in 2021.

3.) Attorney Peter Rolph - Explained that the settlement agreement was not an avenue to circumvent the Town's zoning, and was drafted and negotiated with best intentions for everyone involved after diligent review of years of documents pertaining to the use and activity of the property. Chairman Palmieri replied that there is also ample documentation of the necessity for the establishment of a PDD which was not mentioned in the settlement agreement.

4.) Glenn Flynn - Stated that none of the actions taken by the Town Board or the Codes Office were open to the public, all discussions were done behind the scenes without public meetings or notice of public hearings. The property has been involved in debate for decades, and although it may not have been required it should have been handled as such in consideration of the residents of the Town.

With no further comments from the public, and no phone calls or correspondence received by the clerk, Chairman Palmieri closed the Public Hearing at 8:28 pm.

The ZBA members began their deliberations with the following statements:

~ Chairman Palmieri stated that the PDD process was never commenced which is a thread that was discussed with intentions of the initial purchase by the Carriers and carries through to today as the only approval process which allows the land use of a junkyard on the two parcels not zoned for the use and never having received pre-existing non-conforming status permits from the Town.

~ Member Charlie Itzin - The three properties that were discussed in 2011 as requiring PDD approval was because they were non-compliant with the Town's zoning laws for the intended usage. It seems obvious that the Town was not opposed to that intention by issuing the transitional permit to allow time for clean-up of DEC and Town property maintenance violations before proceeding with the PDD. The settlement agreement is not compliance with zoning - they are two separate things, and the Town Board doesn't have authority to waive the zoning regulations.

~ Member Brad Dates - The settlement agreement does not clearly define the "Property" as it is referenced throughout the document. The assumption made by all participants to use street address of the two frontage properties and reference to properties owned, rather than clear and widely accepted use of parcel tax identification numbers, was an unfortunate oversight by the attorneys involved in drafting the document because it lacks clarification and direct correlation to the historically used identification of involved parcels as being # 19.00-1-33, #19.00-1-35.111, and #19.00-1-35.112. The addition of the two properties in hand writing, in 2021 is a substantial change and begs the question of what didn't happen to properly address issuance of a permit by the Codes Office

~ Member Brian Sturges - Stated his agreement with the statements and observations of fellow Board members. He added that in ten years' time, Mr. Carrier should have made time to combine the properties at the County as he had stated during the meeting as something he never got around to, or should have commenced the PDD process as was discussed with the planning board in 2011.

~ Member Brad Dates - As the ZBA, then was the permit designed properly by the CEO. Discussion and consensus amongst the members that the additional properties were added as a possible after thought because of being written by hand, and that a PDD approval was needed to change the zoning usage status of those properties.

~ Member Brian Sturges - The planning board minutes and resolution of 2011 gave a grace period to commence the PDD process after prioritizing the DEC sanctions and clean-up of the property, but 10 years seems like an excessively long period of time, and was possibly disregarded in favor of a mediated settlement with the Town.

~ Member Carolyn Waterman - Asked the members what the ramifications are to the property owner if the two properties are removed from the permit. The Codes Office would probably initially issue violations for those properties because of the illegal use and non-compliance with the zoning regulations. She was concerned over the advisement from the NYMIR attorneys and the Town

Attorney regarding the settlement and the issuance of the permit, and their assumption that basically usurped the zoning law.

~ Chairman Palmieiri stated that the interpretation of the ZBA would possibly enact a correction of the permit issued and initiate violations from the Codes office, but the property owners have recourse through filing an Article 78 or by commencing the PDD approval which is ultimately decided upon by the Town Board whom apparently favors the project by signing the settlement agreement.

The Members agreed that their discussion was complete and a motion was moved by Member Dates that the Code Enforcement Officer was in error in including the two additional properties, tax map #19.00-1-35.112 and #19.00-1-35.111, for the 2021-2022 building operating permit # 2021-007, and that the Code Enforcement Officer shall provide a corrected building/operating permit to include only tax map #19.00-1-33. The motion was seconded by Member Itzin, all were in favor with one abstention and the motion carried. Member Waterman's final comments for the record was that the settlement agreement specifies 14725-14735 as property permitted to be used as activities of junkyard and scrap processing as those being historically used.

Resolution 2021-06 - As Filed with Sterling Town Clerk 's Office on 12/23/21.

ZONING BOARD OF APPEALS
TOWN OF STERLING

IN THE MATTER OF THE APPLICATION OF
Morley Flynn
FOR AN INTERPRETATION

RESOLUTION 2021-06

WHEREAS, the Applicant, Morley Flynn, has appealed to the Zoning Board of Appeals for an Interpretation of the allowable land uses regarding business operation of CNY Scrap Processing, LLC on property located at 14725 State Route 104, Martville, NY 13111; Tax Map #19.00-1-35.111 and #19.00-1-35.112, and,

WHEREAS, notice of public hearing was duly published in the official newspaper of the Town of Sterling at least (5) days prior to the date of such public hearing, and all additional notices thereof having been made as required by law, and,

WHEREAS, a public hearing was held on Thursday December 16, 2021 upon the above referenced matter, and,

WHEREAS, at said hearing all those interested in said appeal were heard either in favor of or in opposition there to, and,

The Board has relied on verbal representations made by the applicant during the course of these proceedings as noted in the applicable Board Minutes.

NOW THEREFORE, the Zoning Board of Appeals does hereby express the following Opinion in support of their Determination:

An Appeal was heard by the ZBA to interpret the allowable land uses for specific properties in which the Code Enforcement Officer of the Town had issued a permit, which is alleged to be incorrect because the permit had been issued for uses that were prohibited by the Land Use Regulations within that Zoning District. The applicant provided substantive evidence of the history of land use and associated permits and actions by the Town, court proceedings documentation, settlement agreement through mediation, and supporting sections of the Town's Land Use Regulations. He asserted that the Town Board, by accepting the settlement agreement with CNY Scrap Processing LLC, usurped the legislative intent of the Land Use Regulations and exceeded their authority by giving interpretive relief which is an appellate jurisdiction assigned expressly to the ZBA. Specifically, Article 8-7, Table 3 Activity # 35 Junkyard/Recycling facility not permitted in any district, allowable in an

approved PDD; and Article 14-2, Non-conforming use of land shall not be extended or enlarged; regulations of the Town that were disregarded in totality by the settlement agreement between CNY Scrap Processing and the Town of Sterling and therefore considered unlawful.

The owners of CNY Scrap Processing LLC also made statements for the Board to consider attesting to the history of usage for junk and salvage purposes encompassing all three properties that they had purchased, the involvement of the DEC in monitoring the clean-up activity of a multitude of pre-existing violations, discussions with Town Board and Planning Board (meeting minutes of 2/7/11) which encompassed the entirety of 22 acres +/-, and the determinations made within the settlement agreement dated 10/8/20 which they allege is binding upon both parties.

The Board Members considered the evidence presented and deliberated the following findings of fact:

- ~ Focus of a single parcel versus three parcels. The abundance of documents pertaining to the parcels by either address, tax map number or other reference is consistent throughout the documentation as having been separate, non-conforming, in violation of use for specific zoning district, and requiring a PDD approval for future use a junkyard.
- ~ Cayuga County Real Property information and transactions (RPTR-5217) contradicts the purported property classifications that suggests an elevation in property use/value without process through the Town.
- ~ Successive 10+ year history of building permits issued by the Town for property identified as #19.00-1-33 only; the addition of properties # 19.00-1-35.111 and # 19.00-1-35.112 was recently added informally by hand writing.
- ~ Notification of settlement agreement determination and issuance of Town building permit to the public is unknown, the subsequent time of appeal does not begin until an aggrieved party receives actual notice of the decision, therefore the statute of limitations appears to be flawed and insufficient in this appeal.
- ~ The settlement agreement is not in lieu of Town zoning regulations.
- ~ CEO letter to John Wilbur, dated 5/8/06, regarding a signed Court Stipulation and Consent Order supports the belief that the two additional parcels were not part of the junkyard, ever, in that he was ordered to remove everything from those properties.
- ~ The discussions between the property owners, Kevin and Shelly Carrier, and the Planning Board via meeting minutes of 2/7/11 states that they "have been before the Town board with plans for purchasing the Wilbur Junkyard (19.00-1-33) off of State Route 104 and filing a PDD to operate their expanding business - CNY Scrap Processing LLC." A recommendation by the Planning Board was proffered by resolution #2011-02 as follows "recommend the continuation of the grandfathered, non-conforming use status of Wilbur's Junkyard in the applicants name for the purposes of addressing the DEC and Sterling Town Violations before proceeding with the PDD process."
- ~ Town of Sterling Resolution #2011-031 Non-Conforming Use Permit & Transfer License, dated March 30, 2011, "RESOLVED, that this Board authorize the issue of a non-conforming use permit and transfer license from Wilbur's Junkyard to CNY Scrap Processing." This resolution #2011-031 did not include mention of a PDD, and was only for parcel #19.00-1-33.
- ~ The settlement agreement refers to the "Property" without a clear and definitive description. Possible oversight an assumption by the parties involved with the mediation.

In deference to the afore mentioned reasons, the Members of the ZBA were in unanimous agreement that the issuance of a building permit for the three parcels was incorrect, noncompliant, and incongruous with the intentions of the Town's Land Use Regulations for property development and zoning.

NOW THEREFORE, upon a motion duly made by Member Dates and seconded by Member Itzin, BE IT RESOLVED, by the Zoning Board of Appeals for the Town of Sterling, upon the facts presented and the determination made, that the Code Enforcement Officer was in error in including the two additional properties, tax map #19.00-1-35.112 and #19.00-1-35.111, for the 2021-2022 building operating permit # 2021-007, and that the Code Enforcement Officer shall provide a corrected building/operating permit to include only tax map #19.00-1-33.

Roll call vote was taken:

Richard Palmieri, Chairman		Abstained
Charles Itzin, Member	Aye	
Brad Dates, Member		Aye
Carolyn Waterman, Member		Aye
Brian Sturges, Member		Aye

4 AYES 0 NAYES 1 ABSTENTIONS

MINUTES

A motion to approve meeting minutes for November 3, 2021 was moved by Member Sturges and seconded by Member Itzin, all were in favor and the motion carried.

ADJOURN

On a motion by Member Itzin and seconded by Member Dates, the meeting was adjourned at 9:27 PM.

Unapproved Minutes,
Respectfully submitted,

Lisa Somers,
ZBA Clerk