

**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