



**Zoning Board of Appeals**  
Department of Planning & Community Development  
City Hall - Roosevelt Square  
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Ernest D. Davis,  
Mayor

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Chair

**MINUTES NOTICE**

**ZONING BOARD OF APPEALS**

**PUBLIC HEARING**

A **Special meeting** of the Zoning Board of Appeals will be held on Thursday, **January 29, 2015 at 7:30 p.m.** in the Mayor's Conference Room, First Floor, City Hall, Mount Vernon, New York at which time and place the Board shall consider the following:

**ITEM # 1 ROLLCALL**

**Chairman Davison**

**Vice Chair Anderson**

**Board Member Afonso**

**Board Member Castillo**

**Board Member Sloan-Fullan**

**Board Member Scully**

**ITEM # 2 ADMINISTRATIVE ACTIONS**

**2.1 Interpretations – On appeal from an order, requirement, decision or determination made by an administrative official charged with the enforcement of this chapter, or on request from any official, agency or board of the city, or on the Board of Appeals own initiative, the Board of Appeals is authorized to decide any questions involving the interpretation of any provision of this chapter. Interpretations shall be made in accordance with the intent of the particular provision being interpreted.**

0 South Terrace Avenue (Section 164.83, Block 1059, Lot 13) Located in the I-Industrial Zone. Per the Assessment Department the address is 0 South Terrace Ave, not 216 South Terrace Avenue

The Planning Board seeks clarification regarding the Zoning Codes definition of what qualifies as manufacturing, fabrication, finishing or assembling of products, in fully enclosed buildings.

**SEQRA Determination:** This action is a "Type II" therefore, ending the SEQRA process.

**The Chair reads the item into record. He explains that the Zoning code specifically provides that the Zoning Board of Appeals is authorized to decide any questions involving the interpretations of any provision of this Chapter. The reason why where here, is that we received a memorandum from the Chairman of the Planning Board and this has become the bases of our discussion.**

**Here's the communication we received on January 9<sup>th</sup>, from the Planning Board.**

**Dear Chairman Davison and Zoning Board Members:**

**At a regular scheduled meeting of the Planning Board held on January 7, 2015, a discussion arose during the public session which has led this Board to seek an interpretation as to whether the proposed use is "as-of-right". Furthermore, the Planning Board respectfully requests that the Zoning Board expedite this interpretation since the applicant may have received conflicting information regarding this matter. Accordingly, the Planning Board would like to continue reviewing this application as expeditiously, as possible and respectfully request that the interpretation be sent back to us prior to our next meeting which will be held on February 4, 2015. Thank you in advance for your consideration of this matter. By way of procedure I would like to hear from the applicant.**

**Staff Long suggests that we hear from the Building Commissioner first, to give a little background about the case.**

**Commissioner Warren – The applicant came in about three or four months ago to the Building Department to file an application to move their business from Oak Street to MacQuesten Parkway. This is a rock crushing facility. Right now, it's on the border of Yonkers and Mt. Vernon, most of their property is in Yonkers. They are locating their business within the Industrial Zone, which we have two, one on the Canal Street side and the other one on MacQuesten Parkway. As it stands, we only have one type of I Zone. I authorized a Plan Examiner's Report, sending them to the Planning Board, so that they would have this in the public view; the reason for that, is in our Zoning Code we have a special use permit for asphalt plants, which is something a bit more egregious in using that parallel I use the Commissionership to send them to the Planning Board. Once they got to the Planning Board the Planning Board deliberated and had a question concerning whether the use was actually authorize in our zoning code and wanted to get an interpretation from the Zoning Board.**

**Chairman Davison – Any members of the Board have any questions for the Commissioner, before we move on? I would like to turn to the applicant.**

**Mr. Marrone – The Co-owner of Metro Green Company. He gives a brief description of his business. He explains that they have been in business since June, 2009. They are licensed by the Westchester County solid waste commissions, the Westchester County Department of Health, New York State DEC registration. We have had no valuations or complaints from the neighborhood in regards to dust.**

**Board Member Skully - What is the suppression of dust.**

**Mr. Marrone -The percentage bases, I can't answer that. The Westchester County Department of Health has standards yearly on a yearly inspection and we pass that. We use a sprinkler system and suppress dust the same as in a lumber yard. We have to submit every six months how much material we take in and how much we distribute.**

**Board Member Sloan-Fullan - If neighbors did complain and they would come to you to do a better job, what would you do?**

**Mr. Marrone - What every their request is, we would have no choice but to meet there needs. The Department of Health has come every year and we have exceeded their requirements.**

**Chairman Davison - Mr. Tedesco is going to speak if the proposed use is as of right.**

**Mr. Tedesco - We believe that this application is in the right zoning code in Mt. Vernon and it's a principle use and the activities are an accessory use. We are in compliance with the code.**

**Chairman Davison – Is there anyone here tonight who would like to speak in regards to this application?**

**Michael Zaris - Representing a number of local businesses in the area and we have concerns in regards to this application. Unitex is one of the businesses. I'll try to summarize the concerns. The City code states that this facility should be in an enclosed building according to the zoning code for this type of business.**

**Other members of the public speak in regards to the dust and noise and have express that they may have to relocate if this application is approved. It could contaminate their equipment and product. The also expressed the concerns in regards to the truck traffic.**

**Chairman Davison - Let the record show that any who wanted to speak has had that opportunity. The applicant now has the opportunity to address the issues raised.**

**Mr. Marrone – Addresses the concerns in regards to the truck traffic. Our average truck traffic into our yard is not all day, there's traffic in the AM and PM. We have the ability to be flexible with where we enter and exit the facility. In regards to the environmental, we can't proceed with this project in regards with the bank, unless phase one of the environmental is done. If from findings from phase one, due to the prior use of the project shows contaminations or any soil that's unsuitable to build on, we have to by law do a phase two which will be done by a soil mediation environmental company, so in regards to the soil that's contaminated now we won't be able to proceed in regards with the bank.**

**Chairman Davison – This concludes the public session and the Board will render a determination. We have heard a very clear presentation from the applicant and have also heard a lot of testimony from neighboring businesses. The Planning Board wants an interpretation as to whether the proposed use as we've heard it here tonight, is as-of- right.**

**Board Member Skully – I would like to thank the applicant for making presentation tonight and the business owners for coming out and expressing their thoughts on this application. With respect to the inquiry; concerning the interpretation of the code I would point to 267.16 which explicitly says that any use not specifically listed as permitted shall be deemed be prohibited, so the only question for this Board is whether or not this use is one of the uses that are in the code. Initially, the applicant has asked us to look under the section identified as manufacturing, which specifically states that in order to qualify in that section the activity would have to be within a closed environment and certainly that's not the case here. I also think that the applicant has also asked to consider whether or not this use would be permitted as of right under N and it is my position it does not. With respect to our responsibly as a Board, we have to interpret the code and typically the application of the code would be defined as what's in the code and applied to that specific activity. With respect to what's being proposed, none of the uses that have been described fits into any section of our industrial use. Given that fact, that it's an industrial activity, we can certainly stipulate the fact or agree that it is industrial, but that in of itself does not make it as-of- right, and certainly the City Council which is the appropriate body has the responsibly to define the types of uses or the types of activities that they will permit in the industrial zone. The mere fact that this specific activity is industrial it doesn't mean that it's as-of- right at the extent that the City Council can properly exclude certain types of industrial activities and our responsibly as a Board is not to expand on that interpretation. We have to be very liberal with respect to that interpretation and since this specific use does not define as one of the numerated uses it would be my position, that this is not an as-of-right activity, it is industrial in scope and nature. Is there any member of the Board would like to add to this. If not I would make a motion for this application to be (deemed not as of right).**

**Board Member Sloan-Fullan – Second the motion. Five voted in favor. One abstained.**

**Note:** Work Sessions will be open to the public but closed to public participation subject to the Open Meetings Law, [§ 105 of the New York State Public Officers Law, Article 7].

**Note:** Items listed on the agenda are subject to change and amendments and/or additions may be placed on the agenda.

**Note:** The next regular meeting of the Zoning Board of Appeals, is scheduled to be held on Tuesday, February 17, 2015).

Wendy Davis  
Zoning Board Secretary

cc: Mayor Ernest D. Davis  
Jaime Martinez, Acting Commissioner  
Susanne Marino, Deputy Commissioner  
George Brown, City Clerk  
Corporate Council  
William Long, Planning Administrator

Building Department  
Lobby  
Press  
Hina Sherwani, Assistant