

**DRAFT**

**Subject to revision upon receipt of public comment and further discussion by ZBA**

STATE OF NEW YORK  
ZONING BOARD OF APPEALS

TOWN OF NEW SCOTLAND

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In the Matter of the Application of

Tommell Livestock, LLC

**FINDINGS AND  
DECISION # 534**

For Use Variance #534

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APPEARANCES: **Robert Rosborough, Esq.**  
**Gabriel Levine, Esq.**

**Use Variance Application # 534.** Application submitted by Tommell Livestock, LLC to modify a use variance granted on November 24, 2020 to extend the one-year time limit to comply with the conditions as provided in §190-79. The parcel is located in the RA district at 173 North Rd. and is identified as tax parcel# 105.-3-6.10.

PREMISES: 173 North Road, New Scotland Tax Id. #105.-3-6.10

WHEREAS, On January 29, 2019, the Applicant filed an application for a use variance appealing a determination of the Town of New Scotland Building Inspector. The basis for the appeal was two-fold (1) a determination that a use variance previously granted by the Zoning Board of Appeals relative to the property allowing the operation of a automobile and truck repair garage was still in effect, or, in the alternative (2) for a renewal of the use variance granted in 2016 on the basis that “the facts and circumstances for the use and occupation of the Property remain substantially similar” to that previously granted and,

WHEREAS, the application was subsequently amended to include a request for a use variance to allow for the property to be used as a trucking terminal in connection with the Applicant’s agricultural transportation business in addition to an automobile and truck repair garage; and

WHEREAS, on November 24, 2020 the Town of New Scotland Zoning Board of Appeals issued a decision on the requested variance which (1) denied the requested use variance to allow for the use of a truck terminal in connection with the Applicant’s agricultural transportation business and (2) granted the application for a use variance to allow the property to be used as an automobile and truck repair garage with subject to the following conditions to mitigate its impact on the surrounding neighborhood and district:

1. A Site Plan application must be submitted to and approved by the Town of New Scotland Planning Board.

2. Limit of four vehicles stored outside of the garage awaiting repair or pick-up. This condition does not apply to employee vehicles.
3. All vehicles awaiting repair are to be located at rear of structure.
4. Hours of operation are limited to Monday through Friday 8:00 a.m. to 6:00 p.m. and Saturday 8:00 a.m. to 1:00 p.m. which are open to the public. Applicant is allowed to work inside garage after hours, but with no noise coming out of the garage. If an emergency occurs, the Applicant may take the vehicle in, for example, snow plows, garbage trucks. Town of New Scotland vehicles, County Sheriff cars, fire department cars and trucks are allowed to be worked on outside of public hours.
5. Doors to garage to remain closed during hours of operation.
6. All exterior lighting to be shielded and directed down to the ground.
7. While the Applicant may repair its own vehicles on the premises, the property shall not be used as the basis of operation for the Applicant's agricultural transportation business. The Applicant may only store its own vehicles awaiting repair or those vehicles recently repaired and awaiting removal from the site.
8. During site plan review, the Planning Board is requested to consider and require fencing and screening that it deems appropriate.

WHEREAS, the Applicant did not challenge or object to the ZBA's decision or conditions; and

WHEREAS, on July 20, 2021 the Applicant submitted an application for site plan review to the Town of New Scotland Planning Board with said Application introduced to the Planning Board at a meeting held on August 10, 2021; and

WHEREAS, pursuant to Section 190-79 of the Town of New Scotland Zoning Law, Applicant's use variance shall expire if the Applicant fails to obtain necessary building permits or comply with conditions of the variance within one year from the date of authorization; and

WHEREAS, pursuant to Section 190-79 of the Town of New Scotland Zoning Law, the Applicant's use variance will expire on November 24, 2021 if site plan approval has not been granted by the Planning Board; and

WHEREAS, the Applicant has brought the instant application seeking a modification of its November 24, 2020 approval to allow for additional time to obtain site plan approval, necessary building permits and meet conditions of the granted use variance; and

WHEREAS, in reviewing the instant application, as well as the Town of New Scotland Planning Board Minutes, and representations made by the Applicant to the Planning Board, the Zoning Board of Appeals makes the following findings:

- A. The Applicant could have requested a longer period to comply with the conditions of approval at the time of initial approval but did not do so.
- B. The Applicant has not provided good cause for its eight (8) month delay in submitting its site plan application for site plan approval from the Town of New Scotland Planning Board.
- C. The Applicant has been using the property for a commercial purpose without obtaining site plan approval.
- D. Based on a review of the Planning Board minutes from August 10, 2021, the Applicant has made certain representations to the Planning Board which were contrary to the Zoning

Board of Appeals' November 24, 2020 Decision requiring clarification of the conditions set forth therein and the scope of the permitted use including but not limited to:

1. The representation that the 1,000 -gallon fuel tank located at the back of the garage is incidental to the proposed public garage use despite a representation to the Zoning Board of Appeals at its November 24, 2020 meeting that the fuel tank is used to fuel trucks in connection with the Applicant's Agricultural Trucking Business;
2. That the Applicant may store trucks for its own repair outside the garage in addition to four customer vehicles awaiting repair that was permitted; and
3. That the Zoning Board of Appeals implicitly agreed that the stock pile of gravel was incidental to the use of a public garage.

NOW THEREFORE BE IT RESOLVED that based on the evidence and testimony received in relation to the instant application, the November 24, 2020 Decision of the Zoning Board of Appeals is hereby modified to allow the Applicant an additional four (4) months (until March 24, 2020) to obtain site plan approval, all necessary building permits and meet the conditions of the Zoning Board of Appeals November 24, 2020 Decision.

IT IS FURTHER RESOLVED that the Zoning Board of Appeals hereby amends the following conditions of its November 24, 2020 Decision as follows:

2. Applicant is limited to four (4) vehicles, inclusive of both customer and its own vehicles, to be stored outside of the garage awaiting repair or pick-up. This condition does not apply to employee vehicles.
3. All vehicles awaiting repair, inclusive of both customer and its own vehicles, are to be located at the rear of the structure.

IT IS FURTHER RESOLVED that the Zoning Board of Appeals hereby adds the following conditions in order to ensure that the property may only be used as a garage and cannot be used for purposes associated with the trucking terminal use that was previously denied:

9. Applicant is prohibited from maintaining an above-ground storage tank to hold gasoline or diesel fuel. This condition shall not prohibit an above-ground storage tank used for holding waste engine oil.

10. Applicant is prohibited from maintaining stockpiles of gravel, sand or any other similar material. Such stockpiles are inconsistent with the operation of a vehicle repair garage.

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Jeffrey Baker  
Chairman, Zoning Board of Appeals

Ayes:

Nays:

Abstain: