

TOWN OF MILAN
ZONING BOARD OF APPEALS
DUTCHESS COUNTY, NEW YORK

Wilcox Memorial Town Hall
20 Wilcox Circle
Milan, NY 12571

Tel. (845) 758-5133
www.milan-ny.gov
Fax. (845) 758-0445

NOTICE OF PUBLIC HEARING
TOWN OF MILAN ZONING BOARD OF APPEALS

NOTICE IS HEREBY GIVEN that the Zoning Board of Appeals of the Town of Milan will hold a public hearing at the request of Stanley and Madeline Zatwarnicki seeking an area variance to allow an accessory dwelling unit on 2.38 acres where 5.00 acres are required pursuant to Table B, Schedule of Area and Bulk Regulations of the Town of Milan Zoning Ordinance and a special use permit to construct an accessory dwelling unit above an existing garage pursuant to Article VIII of the Town of Milan Zoning Ordinance.

The property is located at 257 Milan Hollow Road, tax grid number 6470-00-576241, in the A5A Zoning District.

SAID HEARING will be held on Wednesday, April 25, 2012 at the Milan Town Hall, 20 Wilcox Circle, at which time all interested persons shall be given the opportunity to be heard. The meeting starts at 7:00 p.m. and this application will be heard in the order at which it appears on the agenda.

By Order of the ZBA Chairman

TOWN OF MILAN
ZONING BOARD OF APPEALS
APPLICATION

Date Received: 3/26/12
Review by ZEO: gc
Application Complete: gc
Public Hearing: _____

To Be Completed by Applicant:

Request for (Circle One): Area Variance Use Variance Interpretation Special Permit

Other: _____

Name of Applicant: Samuel LORE

Complete Address: 1 Old Mill Rd Red Hook N.Y. 12571

Telephone # 845-758-2712 Cell Phone # 845-418-0777

E-Mail KJLORE@frontier.net ext 11 KEITH SAM-CELL

Is the subject property in your name? Yes No

If no, property owners name/telephone number LORE Land Development 845-758-2712

Property owners complete address: 1 Old Mill Rd Red Hook NY 12571

Complete Address of Property: 400 Round Lake Rd.
MILAN, NY Rhinebeck schools

Grid Number: 133600-6470-00-411639
437672
443637 Zoning District: RSA

What is the size of the property: 11.04 acres

Are there currently structures on the property? Yes No
If yes, are there valid Certificates of Occupancy for those structures? Yes No
If yes, as: Commercial Residential Other: _____

Has the property been before the Zoning Board of Appeals before? Yes No
If yes, please provide name of applicant and date: SAM LORE 2008

Is the property within 500 feet of a state or county road, state parkway, boundary of the Town of Milan? Yes No If yes, which one? CR 53

Premises affected are situated on the N/A side of _____ road or street.

Applicant's Name Samuel Lore

Date: 3/23/12

Request for Interpretation
~~AREA/USE VARIANCE~~

To be completed by the Applicant:

Variance Request: Cite the section of the zoning ordinance you are requesting a variance from:

Fill in section
requesting
interpretation
from.

Section: (i.e. Table B)	Pertaining to: Side Setback/Shed	From: 50 feet	To: 25 feet)
<u>TABLE "A"</u>	<u>Permitted use</u>		

Briefly explain the nature of the variance request, what you wish to accomplish, and why you need the variance: The only category in Milan's zoning book relative to our use of the listed property [Landscaping materials] is called "Commercial Greenhouse and Nursery including office and sales yard." Landscape materials such as topsoil and wall stone and decorative boulders are items we sell. Saw materials are imported only and made into these products for sale. I have enclosed a copy of Table "A" showing this to be a permitted use in this zone. Also, I have met on-site with DCC and all activities were compliant with them.

It will be necessary for the Zoning Board of Appeals and/or Planning Board members, Town consultants, Town officials to visit the site in order to properly evaluate your application. Please call the Zoning Office at 758-5133, extension 21, if you do not agree with this. Kindly make it easy to find your property by identifying any landmarks, etc.

Table A
Schedule of Use Regulations

Land Use	Supplementary ¹ Regulations Reference	District						(Floating Zone) LI
		R5A	A3A	R2A	HA	HB	LC	
Public/Institutional Uses (cont'd)								
Clinic, medical		--	B	B	B	P	--	--
Educational institution	§ 200-29	B	B	--	--	--	--	--
Hospital		B	B	--	--	B	--	--
Library		P	P	P	P	P	--	--
Nursing or convalescent home		B	--	B	--	B	--	--
Place of religious worship		P	P	P	P	P	--	--
Public utility substation		--	--	--	--	--	--	--
Sanitarium, sanatorium		B	--	--	--	--	--	--
School, elementary		B	B	--	B	--	--	--
School, nursery		B	B	B	B	B	--	--
School, secondary		B	B	--	B	--	--	--
School, vocational		B	--	--	--	--	--	--
Commercial Uses								
Amusement and recreation services		--	--	P	B	P	--	P
Antique store		--	--	P	P	P	--	P
Apparel and accessory store		--	--	P	P	P	--	P
Automobile sales area		--	--	P	--	P	--	P
Automobile wash		--	--	P	--	P	--	P
Bakery		--	--	P	P	P	--	P
Bank		--	--	P	B	P	--	P
Bar or tavern		--	--	P	B	P	--	P
Bed-and-breakfast		P	P	P	P	P	--	P
Building material, including lumberyards and storage of equipment		--	--	P	--	P	--	P
Business services		--	--	P	P	P	--	P
Cargo trailer, camping sales and rental		--	--	P	--	P	--	P
Construction equipment sales and rental		--	--	P	B	P	--	P
Construction equipment sales and rental		--	--	P	--	P	--	P
Convenience store		--	--	--	P	P	--	P
Craft shop		--	--	P	P	P	--	P
Credit agencies other than banks		--	--	--	P	P	--	P
Day-care center	§ 200-24	--	B	B	B	B	--	B
Drive-in business, excluding drive-in outdoor theater	§ 200-25	--	--	--	--	B	--	P

Appendix C
State Environmental Quality Review
SHORT ENVIRONMENTAL ASSESSMENT FORM
For UNLISTED ACTIONS Only

PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)

1. APPLICANT/SPONSOR SAMUEL LORE	2. PROJECT NAME _____
3. PROJECT LOCATION: 400 Round Lake Rd Municipality MILAN County Dutchess	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) South side of Round Lake Rd (City Rte 53) Adjacent to Iroquois Pipe Line	
5. PROPOSED ACTION IS: <input type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration N/A	
6. DESCRIBE PROJECT BRIEFLY: RAW material import of Landscape materials, cleared and sculptured for RESALE	
7. AMOUNT OF LAND AFFECTED: Initially 2 acres Ultimately 3 acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If No, describe briefly	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input checked="" type="checkbox"/> Residential <input checked="" type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other Describe: _____	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes, list agency(s) name and permit/approvals: _____	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, list agency(s) name and permit/approvals: N/A	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No N/A	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: SAMUEL LORE Date: 3/23/12 Signature: _____	

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment

TOWN OF MILAN

ZONING BOARD OF APPEALS
APPLICATION

Date Received: 11-24-10
Review by ZEO: _____
Application Complete: _____
Public Hearing: _____

To Be Completed by Applicant:

Request for (Circle One): Area Variance Use Variance Interpretation Special Permit

Other: _____

Name of Applicant: CORBALLY, GARTLAND & RAPPLEYEA, LLP, on behalf of Edward Eiffert, as authorized agent of JAMES MURPHY (see attached authorizations)

Complete Address: 118 North Road, Milan, New York 12571

Telephone # 845-454-1110 Cell Phone # _____

E-Mail keh@cgrlaw.com

Is the subject property in your name? Yes No

If no, property owners name/telephone number James Murphy

Property owners complete address: 152 Carpenter Hill Road, Pine Plains, NY 12567

Complete Address of Property: Route 199, Milan, New York

Grid Number: 6671-00-073607 Zoning District: A5A

What is the size of the property: 109.52 acres

Are there currently structures on the property? Yes No
If yes, are there valid Certificates of Occupancy for those structures? Yes No
If yes, as: Commercial Residential Other: _____

Has the property been before the Zoning Board of Appeals before? Yes No
If yes, please provide name of applicant and date: _____

Is the property within 500 feet of a state or county road, state parkway, boundary of the Town of Milan? Yes No If yes, which one? Route 199

Premises affected are situated on the East side of Route 199 road or street.

RECEIVED
10:25AM
NOV 24 2010
TOWN OF MILAN
TOWN CLERK

Corbally, Gartland & Rappleyea, LLP o/b/o
Applicant's Name Eiffert, authorized agent of Date: November 23, 2010
James Murphy

AREA/USE VARIANCE

To be completed by the Applicant:

Variance Request: Cite the section of the zoning ordinance you are requesting a variance from:

Section: (i.e. Table B)	Pertaining to:	From:	To:
<u>Table A</u>	<u>Building Material</u>	<u>50 feet</u>	<u>25 feet</u>
	<u>including storage</u>		
	<u>of vehicles and</u>		
	<u>equipment</u>		

Briefly explain the nature of the variance request, what you wish to accomplish, and why you need the variance: _____

SEE ATTACHED ADDENDUM

It will be necessary for the Zoning Board of Appeals and/or Planning Board members, Town consultants, Town officials to visit the site in order to properly evaluate your application. Please call the Zoning Office at 758-5133, extension 21, if you do not agree with this. Kindly make it easy to find your property by identifying any landmarks, etc. _____

Applicant's Name Corbally, Gartland & Rappleyea, LLP o/b/o
Eiffert, authorized agent of Date: November 23, 2010
James Murphy

USE VARIANCE

(To be completed by the applicant)

1. Reasonable Return: (Prove and Document) The property is unable to provide a reasonable return from any of the permitted usages in this zone because _____

SEE ATTACHED ADDENDUM

2. Unique Circumstances: Show that your circumstances are unique to the neighborhood or district conditions: _____

SEE ATTACHED ADDENDUM

3. Essential Character of Locality: Why do you feel granting this variance will not alter the essential character of the locality: _____

SEE ATTACHED ADDENDUM

4. Self-Created Hardship: Have you created an "unnecessary hardship" or acquired the property knowing of the existence of the condition that requires a variance: _____

SEE ATTACHED ADDENDUM

Appendix C

State Environmental Quality Review

SHORT ENVIRONMENTAL ASSESSMENT FORM

For UNLISTED ACTIONS Only

PART I - PROJECT INFORMATION (To be completed by Applicant or Project Sponsor)

1. APPLICANT/SPONSOR Corbally, Gartland & Rappleyea, LLP 0/b70 Edward Eiffert, authorized agent of James Murphy	2. PROJECT NAME
3. PROJECT LOCATION: Municipality <u>Town of Milan</u> County <u>Dutchess</u>	
4. PRECISE LOCATION (Street address and road intersections, prominent landmarks, etc., or provide map) Route 199, Lot # 073607	
5. PROPOSED ACTION IS: <input checked="" type="checkbox"/> New <input type="checkbox"/> Expansion <input type="checkbox"/> Modification/alteration	
6. DESCRIBE PROJECT BRIEFLY: Construct 30' x 120', or preferably 60' X 160' metal/wood storage shed to house building material, mainly insulation, and equipment.	
7. AMOUNT OF LAND AFFECTED: Initially <u>.002%</u> acres Ultimately <u>.002%</u> acres	
8. WILL PROPOSED ACTION COMPLY WITH EXISTING ZONING OR OTHER EXISTING LAND USE RESTRICTIONS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If No, describe briefly Requires use variance because in A5A district	
9. WHAT IS PRESENT LAND USE IN VICINITY OF PROJECT? <input checked="" type="checkbox"/> Residential <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Agriculture <input type="checkbox"/> Park/Forest/Open Space <input type="checkbox"/> Other Describe: 109.52 acres located in Residential A5A zone, in close proximity to HA district.	
10. DOES ACTION INVOLVE A PERMIT APPROVAL, OR FUNDING, NOW OR ULTIMATELY FROM ANY OTHER GOVERNMENTAL AGENCY (FEDERAL, STATE OR LOCAL)? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If Yes, list agency(s) name and permit/approvals: Access permit may be needed, but unknown at this time.	
11. DOES ANY ASPECT OF THE ACTION HAVE A CURRENTLY VALID PERMIT OR APPROVAL? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, list agency(s) name and permit/approvals: Building permit issued 10/26/09, but Stop Work Order issued 9/27/10, and renewal of building permit denied.	
12. AS A RESULT OF PROPOSED ACTION WILL EXISTING PERMIT/APPROVAL REQUIRE MODIFICATION? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor name: <u>Corbally, Gartland & Rappleyea, 0/b70 Murphy</u> Date: <u>11/23/10</u> Signature: <u>[Signature]</u> <u>0/b70 Eiffert</u>	

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment

OVER

PREFACE

This is a request for an interpretation and/or use variance from the following actions and/or determinations of the Town of Milan Code Enforcement Officer (CEO):

1. Stop Work Order dated 9/27/10: Demand made to Stop Work based upon the alleged failure to obtain approvals for work being performed. However, Building Permit #35-09 (referred to in Stop Work Order) was issued on October 26, 2009, which remained in effect at the time of the Stop Work Order (See, Exhibit "A"). An interpretation of this Order and a direction to the CEO to rescind said Order is sought.
2. Alleged Revocation of Building Permit #35-09: No record exists of the revocation of this permit. Applicant seeks an interpretation as to its status and, if determined to be revoked, Applicant seeks a use variance to permit the project.
3. Failure to Renew Permit #35-09: Upon timely application, CEO denied application for renewal (See, Exhibit "B"). Applicant seeks an interpretation of this action, given that the initial permit was never revoked. In the alternative, Applicant seeks a use variance to permit the project.

THE PROPERTY AND PROPOSED PROJECT

The property is of considerable size, consisting of 109.52 acres located to the East of Route 199 in the Town of Milan. It is zoned A5A, and is adjacent to a parcel zoned HA.

Applicant seeks to construct a 30' by 120' (approx. 3600 sq.ft) metal/wood storage shed on the property which will store barrels of insulation, vehicles, and equipment associated with Applicant's business of installing insulation.¹

On or about October 26, 2009, prior to purchasing the shed or commencing construction, Applicant applied for and obtained a building permit from the former CEO for the Town of Milan, Donald Smith (See, Exhibit "A").

¹See, last paragraph.

In reliance upon said building permit, Applicant purchased the shed, traveled to Michigan to pick it up (in pieces), and transported it back to the property, at a cost of approximately \$31,850. In further reliance upon said permit, in preparation for pouring the foundation, Applicant hammered rock at a cost of approximately \$56,000. In an effort to ensure the foundation would be poured in compliance with the Town Code, the Applicant requested the current CEO for the Town of Milan, Stephen Cole, inspect the site. Shortly after his inspection, CEO Cole issued a Stop Work Order, dated September 27, 2010 (See, Exhibit "B").

Despite the issuance of Building Permit #35-09, the Stop Work Order states no approvals were obtained for the work being performed, an incorrect statement, making the Order invalid.

Because Applicant's Building Permit was due to expire on October 26, 2010, application was made on October 25, 2010, to renew said permit which was denied (See, Exhibit "C").

REQUEST FOR AN INTERPRETATION

The Stop Work Order dated September 27, 2010, must be deemed null and void because it incorrectly states no approvals were obtained for the work performed. To the contrary, the work was authorized by Building Permit #35-09.

In addition, the request for an extension of Building Permit #35-09 was improperly denied, given that no record exists of its revocation.

REQUEST FOR A USE VARIANCE

In the alternative, request is made for a use variance to permit construction of a storage shed as described in the attached application.

In good faith reliance upon Building Permit #35-09, Applicant spent approximately \$87,850. Applicant cannot return the shed and cannot make alternate use of the hammered rock configured to accommodate the foundation of the shed.

When a property owner acts in good faith reliance upon an invalid permit, expenditures should be considered in determining whether the property owner has suffered "unnecessary hardship" warranting a use variance, as contemplated by Town Law §267-b(2). Jayne Estates, Inc. v. Raynor, 22 N.Y.2d 417 (1968). See also, Automotive Clutch Rebuilders, Inc. v. Long Beach, 59 A.D.2d 941 (2nd Dept. 1977)

(expenditures made in good faith may properly be considered on the question of the granting of a variance).

The expenditures incurred here, along with the unique characteristics of the property, such as its large size compared with surrounding properties and its proximity to Route 199, militate in favor of a variance. Albert v. Board of Stds. & Appeals, 89 A.D.2d 960 (2nd Dept. 1982).

Critically, the granting of a use variance will improve the essential character of the neighborhood. Numerous requests have been made of the Applicant to “clean up” the property located at 118-120 North Road and store its trucks and various supplies in a manner with limited visual impact. The use of .002% of this 109.5 acre property for construction of a shed will achieve this goal. This solution will meet the requested needs of the community by providing aesthetically pleasing and well hidden storage of those items.

Applicant cannot realize a reasonable return because it is now in possession of an unusable 30' by 120' shed and has hammered rock which serves no purpose other than to house the previously purchased shed. This hardship is unique to Applicant due to the issuance of a building permit upon which the Applicant justifiably relied.

The hardship is not “self-created” because the Applicant consulted with Town officials prior to making any expenditures and acted in good faith reliance upon Building Permit #35-09 (See, Exhibit “A”).

If a use variance is granted, Applicant seeks to increase the size of the proposed storage shed from 30' by 120' to 60' by 160', as depicted on the survey included with this application, by adding to the already purchased shed. Plans for both proposed sheds are included with this application.