

VILLAGE OF AURORA, NEW YORK
ZONING BOARD OF APPEALS

DECISION – October 23, 2024

PROCEDURAL POSTURE:

Albert J. (“Jeff”) and Jerelyn Martin (herein referred to as the “Applicants”) are the owners of the subject parcel of real estate commonly known as at 46 Sherwood Road, in the Village of Aurora (Tax Map No. 182.09-1015) (hereinafter, the “Property”). The instant matter arises as a result of Applicants’ appeal to the Village of Aurora Zoning Board of Appeals (“ZBA”) for reversal of an Order to Remedy Violations, dated July 17, 2024 (the “Order to Remedy”), issued to Applicants by the Village of Aurora Code & Zoning Enforcement Officer (“ZEO”).

BACKGROUND:

According to the Village ZEO the Applicants have, for several years, kept two (2) storage containers that are considered Accessory Structures under the Code, on the Property (the “Containers”). On March 18, 2024, ZEO Robert Rhea brought a Complaint in Ledyard Town Court accusing Applicants of failing to comply with Section 405 P1 A.3.f. of the Village of Aurora Zoning Code, Local Law #1 of 2023 (the “Code”) by keeping accessory structures (in this case commercial containers) primarily intended for storage on the Property and requesting an order directing Applicant to remove the Containers from the Property. At that Court appearance, Applicants agreed to remove one (1) of the Containers, and to apply to the Aurora Community Preservation Panel (“CPP”) for a Certificate of Appropriateness to keep the other Container on the Property as a permanent structure (Application #24-21). No action was taken on the application by the CPP, and on July 3, 2024, the matter was directed back to the ZEO for a determination of legality with respect to the container.

On July 8, 2024, the ZEO issued an Order to Remedy alleging that the Containers violated the Code and directed Applicants to remove the containers from the Property no later than August 31, 2024.

On September 5, Applicants appealed to the ZBA for an interpretation of the Code to determine whether the ZEO erred in issuing the Order to Remedy.

FINDINGS OF FACT:

Section 405 P1 A.3.f of the Code states: An unattached accessory structure shall not be a building, structure or other assemblage of materials designed for, or customary used as, a

principal structure allowed under this law; nor shall an unattached accessory structure be a vehicle or a container primarily intended for commercial storage or transportation of goods, animals or people. (emphasis added)

EXHIBITS:

- A. Village of Aurora Zoning Law (“Zoning Law”)
- B. Emails between the ZEO and Applicants
- C. Village of Aurora v. Albert J. Martin Complaint
- D. CPP determination dated July 3, 2024, denying Applicant’s Application 24-21 for a Certificate of Appropriateness, together with draft minutes from the July 3, 2024 CPP meeting
- E. Code Enforcement Officer Robert Rhea’s letter to Applicant dated July 8, 2024 informing of CPP denial of Applicant’s Application for a Certificate of Appropriateness
- F. Village of Aurora Code Enforcement Officer Robert Rhea’s Order to Remedy Violations dated July 8, 2024
- G. Applicant’s Notice of Appeal under Village of Aurora Local Law #1-2023 dated September 5, 2024
- H. Village of Aurora Planning Board Minutes dated May 27, 2015, denying an application for site plan approval for a similar violation of Section 405 P1 A.3.f. of the Code

Each member of the ZBA has had the opportunity to review and consider each and every Exhibit referenced above and has reviewed each and every document carefully and fully. The ZBA held a public hearing, duly published and posted on 23 October, 2024, and at said hearing all who desired to be heard were heard and their testimony recorded, to wit ZEO Robert Rhea, Village resident Frank Losurdo, and applicant Jeff Martin.

RULING:

The Village of Aurora Zoning Board of Appeals hereby states that each of its members is familiar with the subject Property and the Application/Appeal. Each of its members is also familiar with storage containers such as the container at issue in the instant matter. After careful review of the Application/Appeal, the ZBA hereby finds that the language in Section 405 P1 A.3.f. of the Code is clear as it pertains to the instant Application and therefore reaffirms the ZEO’s Order to Remedy Violations, as the container is very plainly a container primarily intended for commercial storage or transportation of goods. Even if one may argue that such containers may be “re-purposed” for other uses, it is this ZBA’s determination that the containers are nonetheless primarily used as “shipping” containers for the transport of goods. Applicants

shall remove all violating structures in accordance with ZEO directive(s), but in any case, no later than 30 days from the filing of this Decision.

This Decision of the Village of Aurora Zoning Board of Appeals shall be promptly recorded in the Village Clerk's office and promptly transmitted to Applicants.

ZBA member Alexis Boyce made a motion to adopt this Decision. This motion was seconded by Brad Brokaw.

The question of the foregoing Resolution was duly put to a vote and upon roll call was as follows:

Alexis Boyce	Voting	AYE
Brad Brokaw	Voting	AYE
Laura Holland	Voting	AYE
Jeri Vargo	Voting	AYE
Chairperson Karen Hindenlang	Voting	AYE



Karen A. Hindenlang, Chair
Village of Aurora Zoning Board of Appeals

Dated: October 23, 2024