

ZONING BOARD OF APPEALS
CITY OF YONKERS, NEW YORK

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In the Matter of

UNITED PARCEL SERVICE and

TUCKAHOE OWNERS LLC,

RE: 555 TUCKAHOE ROAD

Block 4038, Lots 101, 102, 103 and 104

NOTICE OF APPEAL

----- X

**TO: Zoning Board of Appeals
City of Yonkers, New York**

PLEASE TAKE NOTICE that the undersigned, Appellants hereby appeal pursuant to Section 43-144 A and B of the Zoning Code of the City of Yonkers to the Zoning Board of Appeals of the City of Yonkers from certain written interpretations of the City of Yonkers Zoning Code by the Commissioner of Housing and Buildings, dated May 1, 2020, a copy of which interpretations are annexed hereto as Ex A.

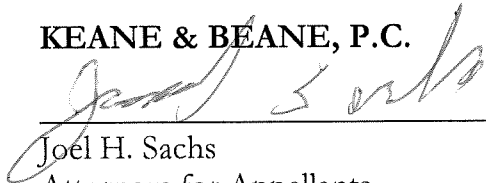
The grounds for such appeal are set forth in Exhibit B, dated April 23, 2020 and in such other documents as will be submitted by appellants to the Zoning Board of Appeals prior to the hearing before the Zoning Board of Appeals in accordance with the rules of the Zoning Board of Appeals.

PLEASE TAKE FURTHER NOTICE that pursuant to Section 43-144- C of the Zoning Code of the City of Yonkers, the filing of the within Notice of Appeal shall stay all proceedings in furtherance of the actions appealed from.

Dated: White Plains, New York
June 25, 2020

KEANE & BEANE, P.C.

By:



Joel H. Sachs
Attorneys for Appellants

Winchester Homeowners Association, Grassy
Sprain Civic Association, Sprain Lake Knolls Civic
Association and Clare Gallagher, Frances
Piccolino, Caroline Abirou and Dolores Solano

445 Hamilton Avenue, 15th Floor
White Plains, New York 10601
(914) 946-4777

To: Zoning Board of Appeals
City of Yonkers
87 Nepperhan Avenue
Yonkers, New York 10701

Hon Vincent Pici, Commissioner, Department of Housing and Buildings
City of Yonkers
87 Nepperhan Avenue
Yonkers, New York 10701

Hon. Roman Kozicky and Members of the Planning Board
City of Yonkers
87 Nepperhan Avenue
Yonkers, New York 10701

Del Bello, Donnellan Weingarten Wise & Wiederkehr
1 N Lexington Ave, White Plains, New York 10601
Attorney for United Parcel Service and Tuckahoe Owners LLC

EXHIBIT A

From: Vincent Pici <Vincent.Pici@yonkersny.gov> Date: May 1, 2020 at 6:01:04 PM EDT To: "Sachs, Joel H." <JSachs@kblaw.com> Cc: yonkers mayor <mayor@YonkersNY.gov>, Anthony Merante <anthony.merante@yonkersny.gov>, Lee Ellman <lee.ellman@YonkersNY.gov>, Chris DeSantis <chris.desantis@YonkersNY.gov>, Miranda Leonetti <miranda.leonetti@YonkersNY.gov>, Frank Longobardi <francis.longobardi@YonkersNY.gov>, Denise Egiziaco <denise.egiziaco@yonkersny.gov>, Bianca Troche <Bianca.Troche@yonkersny.gov>, Louis Albano <louis.albano@yonkersny.gov>, Matt Gallagher <matt.gallagher@yonkersny.gov>, Alain Natchev <alain.natchev@YonkersNY.gov> Subject: RE: Letter to Commissioner Pici re UPS

Mr Sachs

In response to the specific questions in your April 23rd correspondence, please find the following:

1. Please note the fueling facility was not the focus of the current application. However, since it was part of the overall site plan this item came up during the site plan review process. Fuel storage tanks are regulated by 43-37.B which requires fuel storage to be underground 12 feet from the property boundaries. However Section 43-32 B The approving agency may, when reasonable, waive compliance or modify the supplemental requirements. The type, size and the location of the tanks is subject to Planning Board site plan approval and their action will be based on recommendation of YFD. The tank storage and dispensing facility are also are subject to Building and fire code requirements. A separate building permit application will be required for the tank and pump installation. In this case the proposed dispensing system is proposed to be connected to an above ground storage tank. Therefore if the Planning Board and Fire Department are in agreement that this installation is acceptable the Planning Board is empowered to waive the underground tank requirements as per 43-32. If they choose not to exercise their authority a variance from the aforementioned provisions of Section 43-37.B would be required for the above ground tank. Alternatively the applicant may elect to install underground tanks. In either case the fuel pumps are required to be 25 feet from the property boundary or a variance would be required.

2. As you noted the proposed use of a distribution center is a permitted use, I do not consider this a "major refueling facility" the proposed fueling function is incidental to the use as a distribution facility. In addition CM zone also allow subject to supplemental requirements "truck service stations and repair facilities" are permitted. Therefore the fueling function is permitted.

3. That is correct. UPS was issued a temporary Certificate of Occupancy last fall, upon completion of their Phase I construction, and was utilizing the facility for intended purposes during the holiday delivery season.

I believe the above are responsive to your inquiry.

Regards,

Vince

EXHIBIT B

KEANE & BEANE P.C.
ATTORNEYS AT LAW

■ Main Office
445 Hamilton Avenue
White Plains, NY 10601
Phone 914.946.4777
Fax 914.946.6868

■ Mid-Hudson Office
200 Westage Business Center
Fishkill, NY 12524
Phone 845.896.0120

■ New York City Office
505 Park Avenue
New York, NY 10022
Phone 646.794.5747

April 23, 2020

VIA FEDERAL EXPRESS

Hon. Vincent Pici
City of Yonkers
Commissioner Department of Housing and Development
87 Nepperhan Avenue
Yonkers, New York 10701

Re: 555 Tuckahoe Road - Proposed UPS Facility

Dear Commissioner Pici:

Our law firm has been retained by Winchester Village and we are coordinating our representation with Sprain Lake Knolls Civic Association, Grassy Sprain Civic Association, Bryn Mawr Ridge Coop and Grassy Sprain Village Coop. We have also reached out to Toll Brothers Inc. which is proposing a high-end residential development immediately north of Winchester Village. Over one thousand families would be adversely impacted by the UPS proposal.

Our clients have a number of homeowner associations, civic associations, condos and coops in regard to the proposed UPS facility at 555 Tuckahoe Road. Our clients have a number of major legal, land use, environmental and legal issues concerning the proposed facility. As the initial interpreter of the City's Zoning Code, we request a written interpretation as to the following three issues:

1. UPS seeks to install two 12,000 gal fuel storage tanks aboveground on the premises. Under the Zoning Code, are aboveground fuel storage tanks permitted? OUR CLIENTS BELIEVE THEY ARE NOT.
2. The subject property is located in the CM Zoning District where a Distribution Center such as being proposed by UPS is a permitted use. Is a major refueling facility consisting of at the very least of 24,000 gallons of fuel and 4 to 6 fuel pumps a permitted use in the CM Zoning District? OUR CLIENTS BELIEVE IT IS NOT.
3. In January 2020, the attorney for UPS advised the Planning Board that it has been operating the facility with approximately 80 package trucks on the site. This statement was repeated to the Planning Board at its March 2020 meeting. Moreover, active construction is proceeding on the site, both inside the

Hon. Vincent Pici
April 23, 2020
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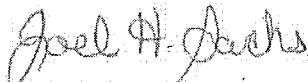
building and outside. Has a C of O been issued by your Department to allow UPS to operate a Distribution Center on the site?. If not, has there been or will there be a Notice of Violation issued by your Department.? OUR CLIENTS BELIEVE THAT NO C of O HAS BEEN ISSUED FOR THIS USE AND NO NOTICE OF VIOLATION HAS BEEN ISSUED.

Our clients request you respond to the above questions with your interpretation of the applicable provisions of the Yonkers Zoning Code no later than May 1, 2020. Should you fail to respond to these three questions, we will assume that you agree with positions of our clients on these three questions.

If you do respond and our clients do not agree with your interpretation on these three questions, our clients reserve their right to pursue appropriate legal remedies against the City of Yonkers and UPS.

P.S. Due to the pandemic, please respond to this letter by email to jsachs@kblaw.com. Thank you.

Very truly yours,


Joel H. Sachs

JHS/sb

cc: Mayor Michael Spano
Councilman Anthony Merante
Clients

ZONING BOARD OF APPEALS
CITY OF YONKERS, NEW YORK

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In the Matter of

UNITED PARCEL SERVICE and

TUCKAHOE OWNERS LLC,

AFFIDAVIT OF SERVICE

RE: 555 TUCKAHOE ROAD

Block 4038, Lots 101, 102, 103 and 104

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STATE OF NEW YORK)

)SS.:

COUNTY OF WESTCHESTER)

Stacie Baumgartner, being duly sworn, deposes and says:

I am not a party to this action, am over 18 years of age and reside at c/o Keane & Beane, P.C., 445 Hamilton Avenue, 15th Floor, White Plains, New York 10601.

On the 25th day of June, 2020, I served a true copy of the annexed NOTICE OF APPEAL in this action by overnight delivery service, by depositing a true copy thereof in **Federal Express ("Federal Express")** wrapper, bearing the below stated address, and delivering same into the exclusive care and custody of **Federal Express** for overnight delivery, prior to the latest time designated by **Federal Express** for overnight delivery to the following:

To:

Zoning Board of Appeals
City of Yonkers
87 Nepperhan Avenue
Yonkers, New York 10701

Hon Vincent Pici, Commissioner,
Department of Housing and Buildings
City of Yonkers
87 Nepperhan Avenue
Yonkers, New York 10701

Hon. Roman Kozicky and Members of the Planning Board
City of Yonkers
87 Nepperhan Avenue
Yonkers, New York 10701

Stacie Baumgartner
Stacie Baumgartner

Sworn to before me this
25th day of June, 2020

Monique M. Mascunana

Notary Public

MONIQUE M. MASCUNANA
Notary Public, State of New York
No. 01MA6003807
Qualified in Dutchess County
Commission Expires March 09, 2022

ZONING BOARD OF APPEALS
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To:


Zoning Board of Appeals
City of Yonkers
87 Nepperhan Avenue
Yonkers, New York 10701

Hon Vincent Pici, Commissioner,
Department of Housing and Buildings
City of Yonkers
87 Nepperhan Avenue
Yonkers, New York 10701

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87 Nepperhan Avenue
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Stacie Baumgartner

Sworn to before me this
25th day of June, 2020


Notary Public

MONIQUE M. MASCUNANA
Notary Public, State of New York
No. 01MA6003807
Qualified in Dutchess County
Commission Expires March 09, 20 22