

**Shaun Shanahan**

**Building Commissioner**

ZONING DETERMINATION

1/21/2020



**Town of Chelmsford**  
**Building Department**  
50 Billerica Road  
Chelmsford, MA 01824-2777

*Certified mail/ electronic mail*

*Attorney Barry Bachrach*

*RE : 54 Richardson RD*

*This office is in receipt of your notice pertaining to various zoning violations dated January 13 2020, (enclosed) received from the Law Office of Barchrach and Barchrach representing the North Chelmsford Water District.*

*This office has investigated the complaints and has determined. That the violations listed in the complaint are pre-existing Non-Conforming Conditions these conditions have been continuous, and the use has never been vacated and therefore under the zoning by-laws continue to be in compliance with pre-existing non-conforming properties in the Town of Chelmsford.*

*This Office has also engaged Town Council for their legal opinion regarding this Matter and expects their findings to be presented to the board as additional proof of this pre-existing non-conforming property*

Respectfully Submitted.

Shaun Shanahan

Building Commissioner

Cc: Paul Cohen, Select Board Members

# BLATMAN, BOBROWSKI & HAVERTY, LLC

ATTORNEYS AT LAW

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PAUL J. HAVERTY  
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January 22, 2020

**Via Email**

Shaun Shanahan, Building Commissioner  
Town of Chelmsford  
50 Billerica Road  
Chelmsford, MA 01824

RE: Request for Zoning Enforcement – 54 Richardson Road

Dear Mr. Shanahan;

You have asked for our review of a request for zoning enforcement regarding the Town's use of the Department of Public Works ("DPW") facility located at 54 Richardson Road (the "Property"). Specifically, you have asked for our determination on how the request for zoning enforcement submitted on behalf of the North Chelmsford Water District (the "NCWD") is impacted by a prior request for zoning enforcement from the NCWD relating to this property that was the subject of a decision of the Chelmsford Zoning Board of Appeals in 2006, which was the subject of an appeal to the Superior Court that was resolved through a Stipulation of Dismissal dated November 10, 2010. Because this Stipulation of Dismissal was made with prejudice, and addressed the same issues contained in the current request for zoning enforcement filed by the NCWD, it is our determination that the current request for zoning enforcement is barred by the doctrine of *res judicata*.

On January 11, 2006, the NCWD filed a request for zoning enforcement with the Chelmsford Building Inspector relating to the DPW's use of the Property. This request for zoning enforcement contained several purported zoning violations, including a claim that the use of the Property as a "sanitary landfill, solid waste disposal site, refuse treatment and disposal facility, land filling of sludge and septage and storage of sludge and septage." The current request for zoning enforcement filed by the NCWD claims that the DPW has "created a sanitary landfill and/or solid waste disposal site by the admitted dumping of asphalt and wood chips, as well as dumping other unknown wastes at 54 Richardson Road, in violation of Section 195-73(1) of the Town's Zoning Bylaws. This appears to be a reiteration of previously rejected claims of zoning violations. I recommend that you request additional information from the NCWD to determine with greater certainty whether these claims differ from the prior allegations, or whether they are related to the same activities.

The NCWD's 2006 letter also claimed that the DPW was "in violation of Section 195-73(3) of the Bylaws, which precludes a '[m]otor vehicle repair facility' unless the DPW acquires a Special Permit from the Planning Board." The current zoning enforcement request filed by the NCWD claims that the DPW is "allowing the Fire Department to operate a motor vehicle repair facility at 54 Richardson Road, without its having a special permit, in violation of Section 195-73(3) of the Town's Zoning By-Laws." This claim is identical to the previously adjudicated claim raised by the NCWD, which has already been unfavorably adjudicated against them. Accordingly, the NCWD may not raise this claim in a new zoning enforcement request. For the same reasons, the NCWD's claim that the use of the Property for repair of municipal vehicles violates Section 195-73(2) of the Bylaws is also invalid.

The NCWD also claims that the washing of fire department vehicles constitutes a violation of Section 195-73(5) of the Bylaws. Because the washing of vehicles is typically a part of servicing and maintaining them, this use is consistent with the repair use authorized by the Board's prior decision. You should check with the DPW to ensure that such vehicle washing has been part of the servicing and maintenance of vehicles that has been determined to constitute a pre-existing nonconforming use by the Board. Furthermore, without additional information, it is not possible to opine whether the incidental washing of fire department vehicles would constitute a "car, truck and equipment washing facility" as stated in Section 195-73(5).

Finally, the NCWD alleges that the parking of vehicles for National Grid and/or Asplund Tree Service at the Property constitutes a contractor's yard use in violation of Section 195-08 of the Bylaws. The 2006 request for zoning enforcement filed by the NCWD alleged that "the DPW regularly allows private contractors to utilize the Richardson Road site for storage and use of private contractor's equipment, excavation fill and other materials." This claim was rejected by the Board in its earlier decision.

For the reasons discussed above, it appears that the claims raised by the NCWD in their zoning enforcement request are repetitious of claims raised in a prior request for zoning enforcement, one which were rejected upon appeal to the Board, and which were then the subject of a final Stipulation of Dismissal, with prejudice, after appeal to the Superior Court. Accordingly, the NCWD may not re-litigate these issues by filing a new request for zoning enforcement.

If you have any questions regarding this correspondence, please feel free to contact me.

Very Truly Yours,

  
Paul J. Haverly

Cc: Paul Cohen (via email)



Bachrach & Bachrach

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January 13, 2020

Hand Delivered and Electronic Mail

Shaun Shanahan  
Building Commissioner  
Town of Chelmsford  
50 Billerica Road  
Chelmsford, MA 01824

Re: **ZONING VIOLATIONS**  
Town of Chelmsford  
54 Richardson Road  
North Chelmsford, MA

Dear Mr. Shanahan:

I represent the North Chelmsford Water District which owns property abutting 54 Richardson Road which is owned by the Town of Chelmsford ("Town"). The Town is subject to, and in violation of, the use regulations of the Aquifer Protection Overlay District and the use regulations of a Public District. Specifically, the Town is in violation of the following provisions:

1. The Town has created a sanitary landfill and/or solid waste disposal site by the admitted dumping of asphalt and wood chips, as well as dumping other unknown wastes at 54 Richardson Road, in violation of Section 195-73(1) of the Town's Zoning By-Laws.
2. The Town is generating and/or storing toxic and/or hazardous materials and/or waste by allowing the Fire Department mechanic to repair the Fire Department vehicles at 54 Richardson Road, in violation of Section 195-73(2) of the Town's Zoning By-Laws, as well as the Town's allowing Asplund Tree Service LLC, which is doing work for National Grid in the Towns of Westford and Chelmsford to store dozens of trucks at 54 Richardson Road.

Shaun Shanahan  
Building Commissioner  
Town of Chelmsford  
January 13, 2020  
Page 2

3. The Town is allowing the Fire Department to operate a motor vehicle repair facility at 54 Richardson Road, without its having a special permit, in violation of Section 195-73(3) of the Town's Zoning By-Laws.
4. The Town is allowing the washing of vehicles at 54 Richardson Road, without a special permit, in violation of Section 195-73(5) of the Town's Zoning By-Laws.
5. The Town is allowing dozens of trucks, which are owned by Asplund Tree Service LLC which is doing work for National Grid in Towns of Westford and Chelmsford, to park at 54 Richardson Road, in violation of the use regulations of a Public District as set forth in Schedule 1 of the Town's Zoning By-Laws; specifically, the prohibited use of motor vehicle storage, as defined in Section 195-108 of the Town's Zoning By-Laws, and the prohibited use of 54 Richardson Road as a Contractor's Yard, Outside, as defined in Section 195-108 of the Town's Zoning By-Laws.

In light of the above violations, the Building Commissioner must immediately issue a cease and desist order to Town requiring it to cease and desist from further committing the above cited violations.

Sincerely,



Barry Bachrach

BB/rlb

Cc: Bruce Harper, Sr.  
Paul Cohen  
Board of Selectmen