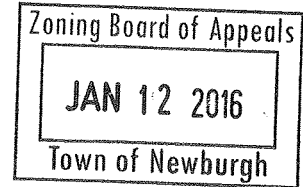




JACOBOWITZ AND GUBITS LLP  
COUNSELORS AT LAW

January 12, 2016



Gerald N. Jacobowitz  
David B. Gubits  
Howard Protter  
Donald G. Nichol  
Larry Wolinsky  
J. Benjamin Gailey  
Mark A. Krohn\*  
John C. Cappello  
George W. Lithco  
Michele L. Babcock  
Sanford R. Altman  
Gary M. Schuster  
William E. Duquette  
Kara J. Cavallo  
Marcia A. Jacobowitz  
F. Bryan Paz  
Andrea L. Dumais  
Alanna C. Iacono  
Jennifer S. Echevarria  
Kelly A. Pressler  
Peter R. Eriksen\*\*  
John H. Thomas, Jr.\*\*  
Carmee G. Murphy\*\*

Hon. James E. Manley, Jr., Chairperson  
and Zoning Board of Appeals Members  
Town of Newburgh Zoning Board of Appeals  
Old Town Hall  
308 Gardnertown Road  
Newburgh, New York 12550

Re: DRA Fidelco Request for Special Use Permit and Interpretation  
Summit Lane, Newburgh Expansion, Town of Newburgh  
68 Stewart Avenue, Town of Newburgh  
Tax Map No. Section 97, Block 1, Lot 47.2  
Our File No.: 11247-003

Dear Chairperson Manley and Zoning Board of Appeals Members:

Enclosed please find a check in the amount of \$200 which, together with; this letter setting forth new facts and documentation received from the Town of Newburgh Code Compliance Department; the prior information and documentation provided in the October 1, 2015, request for interpretation; and the letter of December 9, 2015, constitute the application of DRA Fidelco for the above-referenced special permit and interpretation.

This letter, and the new information attached, clarifying the issue regarding the history of the use of the parcel supports, an interpretation and the issuance of the special use permit requested and a determination that the property as proposed to be used for a 29 unit permitted multi-family development with a building having a 2,974 sq. ft. footprint as nonconforming accessory storage for exclusive use of the tenants, is the same or a more restricted nature of use than a 2,974 sq. ft. permitted daycare center with 3,772 sq. ft. of nonconforming barn/storage buildings.

During the November 24, 2015, meeting on the prior application, the attorney for the Zoning Board of Appeals correctly stated that the Town of Newburgh, unlike most municipalities throughout New York State, provides only for specific accessory uses as permitted with a principal use. Therefore, although providing accessory storage for tenants of a multi-family dwelling unit is customary and incidental to such residential use, since such storage area is not listed as a permitted accessory use

SILVER & LESSER, P.C.\*\*  
Barry Silver  
Sol Lesser

\*LLM IN TAXATION  
\*\*OF COUNSEL

158 Orange Avenue  
P.O. Box 367  
Walden, NY 12586  
tel. (845) 778-2121  
fax (845) 778-5173

548 Broadway  
Monticello, NY 12701  
tel. (845) 791-1765  
fax (845) 794-9781

JACOBOWITZ.COM

Hon. James E. Manley, Jr., Chairperson  
and Zoning Board of Appeals Members  
Re: DRA Fidelco Request for Special Use Permit and Interpretation  
Our File No.: 11247-003

January 12, 2016  
Page 2

either for multiple dwelling unit developments or daycare centers, the applicant must seek this interpretation and special use.

The prior nonconforming storage component on the property occupied a footprint of 3,772 sq. ft. under the current proposed accessory storage use will be reduced to a footprint of 2,974 sq. ft. under the current application.

As I noted in the prior application, that the Town Zoning Code Section 185-19A(3) applies to "all buildings and uses" existing on the date of the chapter. This provision does not contain a limitation as it relates to particular buildings. Accordingly, your determination should be based upon the entire use of the property and it is appropriate for this Board to grant a special use permit for this proposed conversion.

I also understand there was a question raised regarding whether or not the storage use occurring in conjunction with the daycare center in the barn building was a legal, preexisting, nonconforming use. At the November 24, 2015, hearing, Code Enforcement Officer Canfield stated that a landscape business existed within the barn building which was located in the R3 zoning district and nonconforming. Mr. Canfield could not recollect for sure if a permit had been issued for the landscape business.

I have reviewed the records of the Code Enforcement Department, and from all indications and documentation provided, there was no need for the landscape business that used the barn buildings, obviously designed solely for storage, to obtain a building permit since those buildings existed prior to Town zoning being adopted and were intended for storage, could only be used for storage, and such buildings were never abandoned.

The relevant history of the use of the buildings is as follows:

In 1991, the owners of the property which was located at that time in an I-B zoning district, submitted an application for a use variance to the Town Zoning Board of Appeals seeking to convert the single family home located on the property to a daycare center. That use variance was granted. A copy of the use variance decision and resolution is attached to this letter.

On May 5, 1992, a certificate of occupancy was issued to "convert one fam residence to daycare center". At the time, the barn buildings were located on the site. (A copy of the certificate of occupancy is attached.)

Sometime not long thereafter, the Town re-zoned the property to R-3 residential zoning, which lists daycare centers as a permitted use, which is the zoning that exists now.

Hon. James E. Manley, Jr., Chairperson  
and Zoning Board of Appeals Members  
Re: DRA Fidelco Request for Special Use Permit and Interpretation  
Our File No.: 11247-003

January 12, 2016  
Page 3

A the time that the building was converted from single family which would permit accessory storage barns to a daycare center and certainly at the time the zoning was changed to R-3 which permitted daycare centers but not storage buildings accessory to the daycare center, those barn buildings became nonconforming.

Sometime towards the end of 1996, the property was purchased by the Newburgh Jewish Community Center for the Newburgh Jewish Family Services and Daycare Center.

At that time, the engineering consultant for the Newburgh Jewish Community Center contacted the Code Compliance Department and Planning Board and summarized his discussions in a letter dated December 4, 1996. A copy of said letter and plan accompanying the letter are attached hereto.

This letter stated that the Code Compliance Department concluded the sketch plan depicting the primary uses, parking facility, etc. for the Jewish community daycare center posed no significant change in use and did not require site plan review and approval by the Planning Board. The letter was served as notification to engineers, client, attorney, that no further approvals or permits other than a sign permit were required by the Town of Newburgh prior to them moving their daycare center facilities and offices to the subject location. The plan attached to that letter depicts a barn and a woodshed located on the property.

Since barns and woodsheds are not habitable for either a daycare center or an office, it can only be determined that those buildings were pre-existing, nonconforming accessory storage that were permitted to continue to be used for storage.

Subsequent to 1996, the Code Compliance Office issued several letters including one dated December 17, 2003, to DRA Fidelco LLC, stating that there was a valid CO for the property and no open violations against the property existed. I enclose a copy of that letter, as well as letters from August 30, 2011, and November 1, 2012; both also concluding that there were no open violations on the property.

Given the fact that the location of the barn and woodshed, which only could be used for accessory storage, were continually on the property during the entire time-frame mentioned, whether they were used by a landscaping business, or any of the owners of the daycare center, is not relevant to the fact that those buildings existed and were usable for storage only.

Therefore, this Board must conclude that the pre-existing, nonconforming use of the property for storage was a valid pre-existing, nonconforming use. And, once again, the changes proposed by the applicant constitute an overall equivalent or more restrictive use of the site.

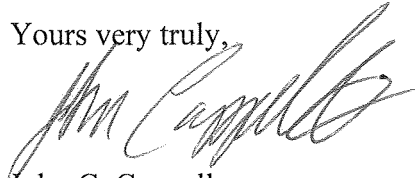
Hon. James E. Manley, Jr., Chairperson  
and Zoning Board of Appeals Members  
Re: DRA Fidelco Request for Special Use Permit and Interpretation  
Our File No.: 11247-003

January 12, 2016  
Page 4

Based upon these facts and all the information submitted to this Board, we respectfully request that you render an interpretation and issue a special use permit allowing the applicants to utilize the 2,974 sq. ft. daycare center as accessory storage to their conforming multi-family residential development.

I respectfully request that the Board place this matter on its next available agenda for a public hearing and consideration. I also hereby, on behalf of my client assent to an extension of the time to make a determination on the pending use variance application to allow the Board to consider this application. Thank you.

Yours very truly,



John C. Cappello

JCC/je  
Enclosures

cc: David Donovan, Esq. (via email)

TOWN OF NEWBURGH

ZONING BOARD OF APPEALS

IN THE APPLICATION OF Joseph Scala

Section 97  
Block 1  
Lot 47

DECISION AND RESOLUTION

The application of Joseph Scala seeks a use variance to permit the operation of a day care center upon premises located at 68 Stewart Avenue, an IB Zoning District in the Town of Newburgh.

The Applicants, having submitted this application, paid the required fees, provided a true copy of the property description, submitted a plot plan and list of property owners within three hundred feet, the matter having been properly noticed for public hearing and caused to be published by the Chairman of the Board; and the hearing having been conducted, the Board thereupon entered into deliberative session and does find as follows:

1. That the procedural requirements of the General Municipal Law and the Town Law of the State of New York, the Zoning Law of the Town of Newburgh and the regulations of this Board have been complied with in all respects.

2. The Applicant states that the premises was being

4. Mr. Scala stated that he is entering into a joint venture with other persons currently operating a day care center in the Town of Newburgh. These persons are seeking to expand their operation and move it to the subject premises.

5. Although, the Zoning Board of Appeals notes that the Town Board is contemplating revising the zoning law of the Town of Newburgh to permit such operations within this area, the Board does not base its finding on that issue.

6. The Board does find however, pursuant to the applicants testimony that the persons who should do operate such day care center will not wait until the public hearing process has been completed. A variance is, accordingly, needed now in order to preserve the joint venture.

THERE BE NO FURTHER FINDINGS,

The applicant is hereby granted a special permit allowing him

1. To maintain and operate a day care center upon the aforementioned premises;

2. That during the time such day care center is operated shall, at all times, conform to all Federal, State and County regulations concerning the operation of such day care center;

3. That this special permit shall remain in force and effect until such time as the applicant or his tenants cease operation of a day care center on the premises.

Dated: Newburgh, New York

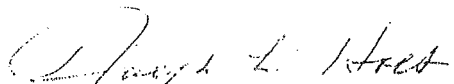
*Ralph L. Holt*  
-----  
RALPH L. HOLT Chairman

VOTING ON THE APPLICATION OF

Joseph Scala

MEMBER	VOTE	
	YES	NO
PAUL BLANCHARD	X	
GRACE CARDONE	X	
DOUGLAS W. CARLE	X	
JOHN DELESSIO	X	
RICHARD RASKIN	X	
LOUIS SCALFARI	X	
RALPH L. HOLT	X	

5/6/91

  
RALPH L. HOLT Chairman

ZONING BOARD OF APPEALS  
MINUTES

JULY 25, 1991

PRESENT :               Ralph L. Holt, Chairman  
                  Debbie Evans, Secretary  
                  Jeffrey Shapiro, Attorney  
                  Richard Raskin  
                  John DeLessio  
                  Grace Cardone  
                  Douglas Carle  
                  Louis Scalfari  
                  Paul Blanchard (Absent)

Application of : Joseph & Debra Scala

Applicants are seeking an use variance to operate a Day Care Center, located on Stewart Avenue, in the Town of Newburgh, in an I-B Zoning District.

All mailings were in order.

Applicants were represented by Joseph Saffioti, Attorney.

Mr. Saffioti stated to the board that this property has been up for sale for the past year, and finally has a purchaser who wishes to lease the property and use as a Day Care Center. Economic times requires Day Care Centers.

Mr. Holt stated that this application would have to go before the Planning Board.

Mr. Holt asked if there would be any residences residing at night.

Mr. Saffioti stated no, this will be strictly for Day Care.

Mr. Holt asked about the terms of the lease.

Mr. Scala stated that the lease would run for five years with options, to buy is negotiable.

Mr. Raskin asked how many children will be attending this Day Care Center.

Mr. Saffioti stated that he was unsure at this time. The State will give the maximum quota of children.



Mr. Holt asked what are the ages of the children.

Mr. Saffioti stated the children would range from six months and up.

Mr. Holt asked if there would be any changes made to the house.

Mr. Saffioti stated no, this is an old barn house which has been converted.

Mr. Holt asked what is going to happen to the horses, pool and tennis courts, located at the present time on the property. The children will need a place to play.

The horses will be moved with the Scala's. This house sits far back in from the road, which is very important, and the property will be completely fenced in.

Mr. Scala wanted to state to the board that all of their questions tonight should be directed to the State of New York.

Mr. Saffioti stated that with the re-zoning, Stewart Avenue will be changed to an R-3 Zoning District, which would make this a permitted use.

Mr. Scala's purchasers could not possibly lease the house if they had to wait for the re-zoning, which would take too long.

Mr. Holt asked if Mr. Scala has given any thought to subdividing this property.

Mr. Scala stated no, at this point in time, I wish to use this property for a Day Care Center.

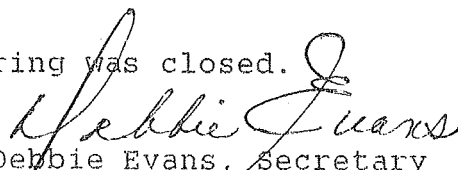
Mr. Carle asked if there is an existing operation (Day Care Center) located in the Town of Newburgh.

Mr. Scala stated yes, that the purchasers are seeking a better and larger location.

Mr. Frank Crostic, residing at #2 Benson Avenue, asked if there would be any new structures, located on the property.

Mr. Scala stated no.

There were no further questions, hearing was closed.

  
Debbie Evans, Secretary  
Zoning Board of Appeals

# TOWN OF NEWBURGH

*Crossroads of the Northeast*

OLD TOWN HALL  
132 GARDNERTOWN ROAD  
NEWBURGH, NEW YORK 12550

CIRO V. DILORENZO

ENFORCEMENT OFFICER

BUILDING AND ZONING INSPECTOR

TELEPHONE 914-564-7801

FAX LINE 914-564-7802

## CERTIFICATE OF OCCUPANCY

Building Permit No: 9555

Location: STEWART AVENUE, 68 (BUILDING BLOCKS DAY CARE)

Sec-Blk-Lot: 97-1-46.0 *42.2*

CO No: 4458

CO Date: 5/ 5/92

THIS CERTIFIES that the structure described herein, conforms substantially to the approved plans and specifications heretofore filed in this office with Application for Building Permit dated: 1/14/92, pursuant to which Building Permit was issued, and conforms to all the requirements of the applicable provisions of the law.

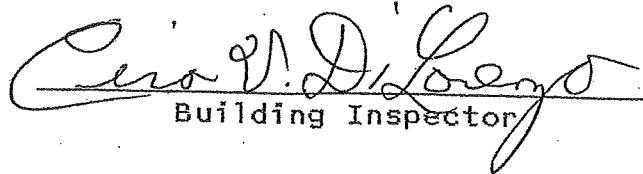
The structure for which this certificate is issued is as follows:

Material: FRAME	Number of Stories: 1.0	Number of Families: 0
Dimensions of Building: 40' X 40'	Dimensions of Lot: 400' X 300'	
Use of Building: CONVERT 1 FAM.	Number of Bedrooms: 0	Heating Plant: ELECTRIC
Number of Toilets: 2	Number of Bathrooms: 2.0	

Remarks: RECEIPT#A 10447-92

CONVERT 1 FAM. RESIDENCE TO DAY CARE CENTER

This certificate is issued to: SCALA, JOSEPH S./BUILDING BLOCKS DAYCARE for the aforesaid structure.

  
Building Inspector

(The Certificate of Occupancy will be issued only after affidavits or other competent evidence is submitted to the Superintendent of Buildings that the completion of the construction in compliance with the State Building Construction Code and with other laws, ordinances or regulations affecting the premises, and in conformity with the approved plans and specifications. A final electrical, plumbing, heating or sanitation certificate or other evidence of compliance may be required before the issuance of the Certificate of Occupancy).

# Vincent J. Doce Associates

PLANNERS, SURVEYORS, ENGINEERS  
PROJECT CONSULTANTS - LAND CONSULTANTS  
15 NEW ROAD • NEWBURGH, NEW YORK 12550  
TELEPHONE 914 - 561-1170

December 4, 1996

Town of Newburgh  
Code Compliance Department  
132 Gardnertown Road  
Newburgh, New York 12550

Attn: Gerald Canfield - Code Compliance Supervisor

Re: Future Home - Newburgh Jewish Community Center  
Jewish Family Services & Day Care Center  
68 Stewart Avenue, Town of Newburgh, NY  
Section 97 Block 1 Lot 47

Dear Sir:

Enclosed herewith please find 2 copies of the Site Sketch I had prepared for the above and reviewed with you Thursday 11/21/96 at your office. Said review was held at the request of John P. Ewasutyn, Planning Board Chairman, who had reviewed the same Site Sketch previously with me on 11/20/96.

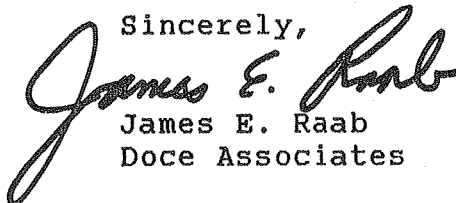
After you had reviewed the sketch and questioned me on certain particulars such as, primary uses, parking facilities and hours of operation, you determined, as did Mr. Ewasutyn before you, that the occupancy of the subject parcel by the Jewish Community Center posed no significant change in use and did not require site plan review and approval by the Planning Board.

Therefore, this letter will serve as notification to my clients and their attorney that no further approvals or permits, other than a sign permit, shall be required by the Town of Newburgh prior to them moving their day care facilities and offices to the subject location. Please keep this letter in your files as a record of our meeting.

If you have any questions or additions to what I have stated in this letter please contact me so I may advise my clients properly.

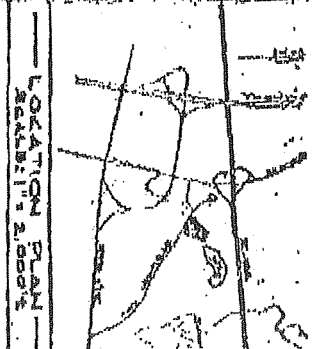
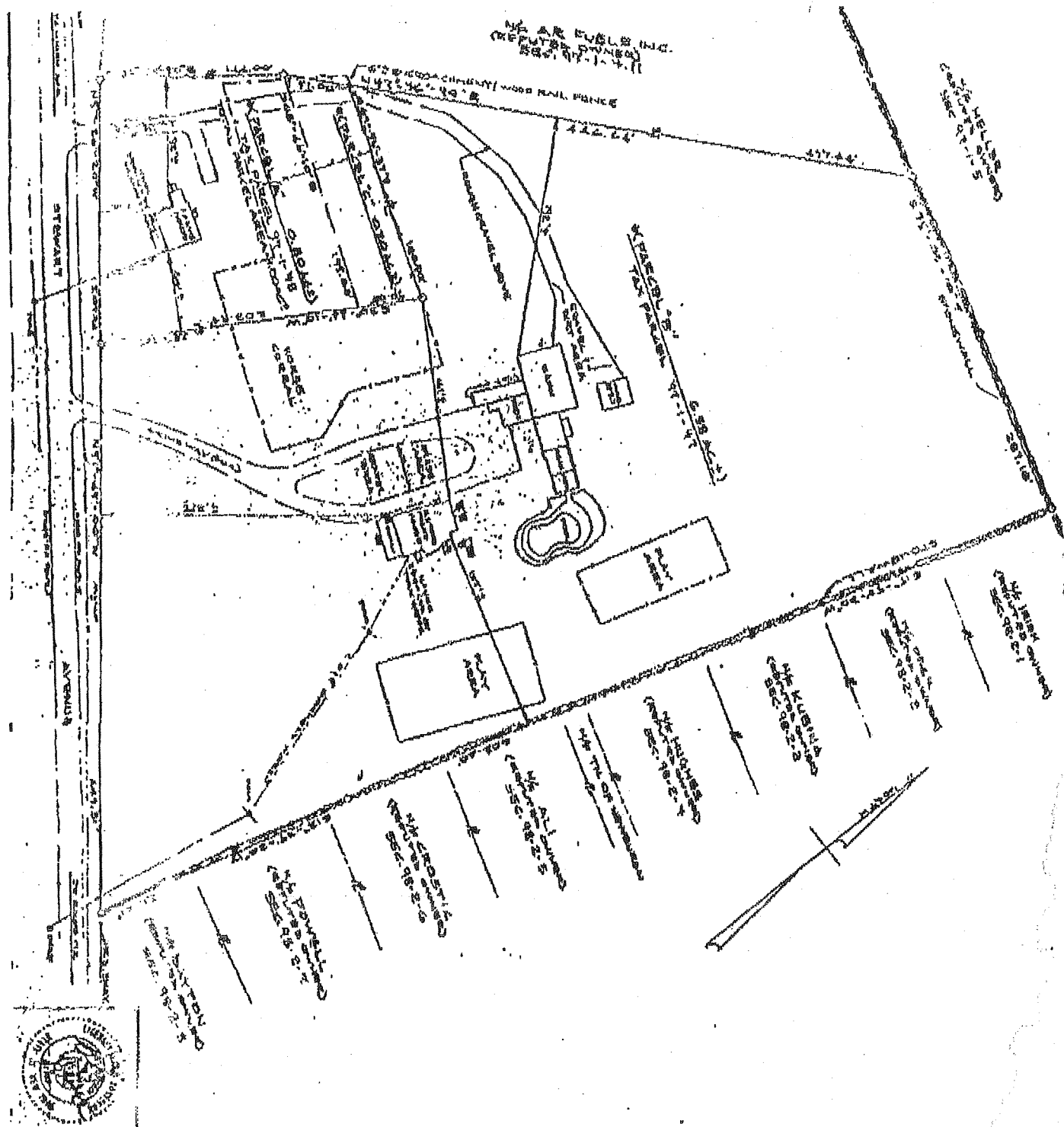
Thank you for your time and full cooperation in this matter.

Sincerely,

  
James E. Raab  
Doce Associates

JER/jer

cc: A. Ross NJCC/enc  
L. Wolinsky/enc



SPACES 1/8" = 1' AS PER  
FIELD MAP NO. 8494.

UNLESS OTHERWISE ALTERED OR  
NOTICED TO THE CONTRARY THE  
LINES AND BOUNDARIES SHOWN  
HEREON ARE THE RESULT OF A  
SURVEY MADE BY THE SURVEYOR  
ON THE DATE AND AT THE PLACE  
HEREIN SPECIFIED.

I HEREBY CERTIFY TO THE FACT  
THAT THE SURVEY WAS MADE  
BY ME OR UNDER MY CLOSE  
PERSONAL SUPERVISION AND  
THE RESULTS WERE CORRECTLY  
PLOTTED AND CALCULATED.  
IN WITNESS WHEREOF I HAVE  
HEREUNTO SET MY HAND AND  
SEAL AT THE CITY OF NEW YORK  
ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_  
19\_\_\_\_.

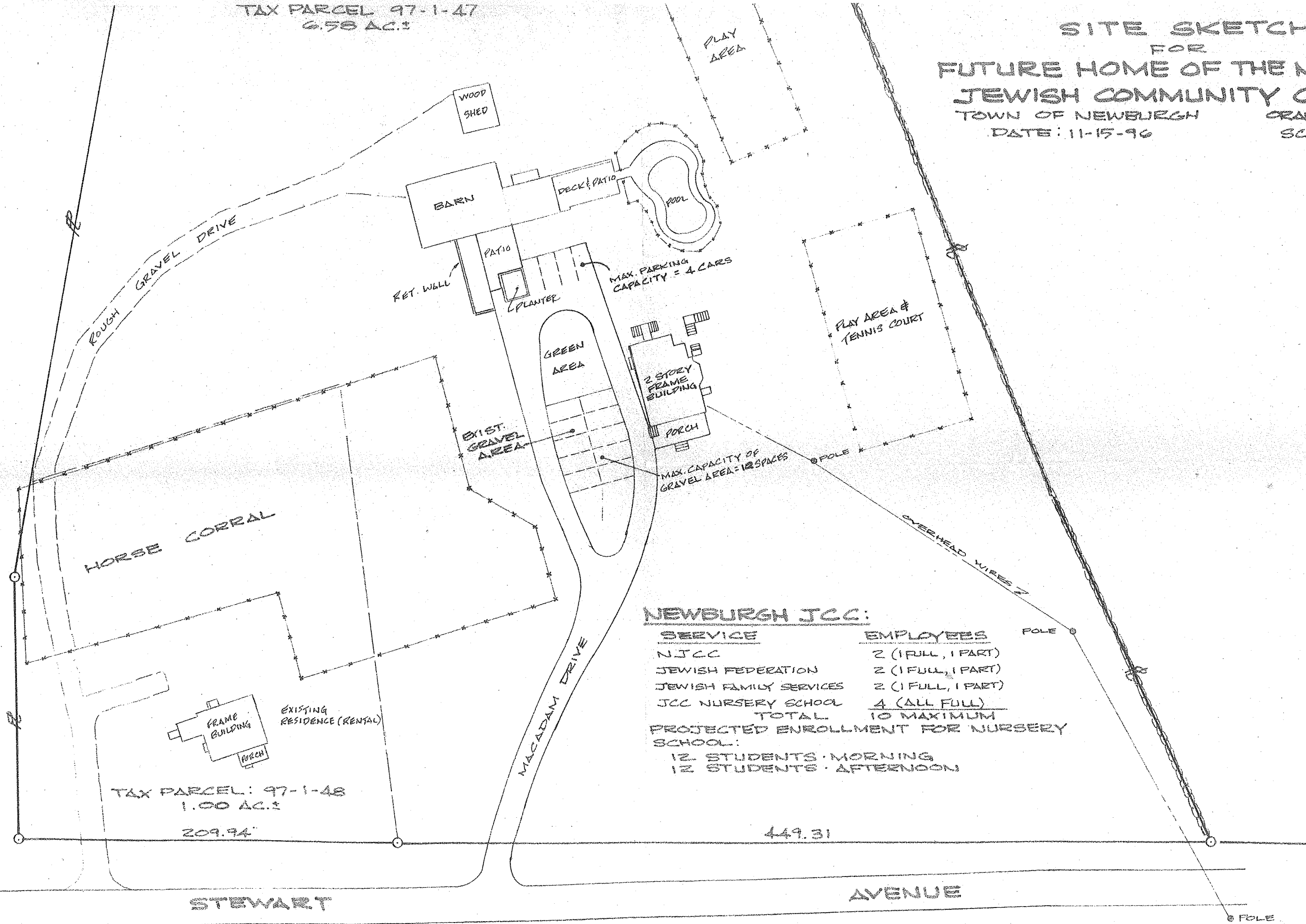
SUBJECT: [Illegible]  
SECTION: [Illegible]  
PAGE: [Illegible]

**FEDERAL SURVEYING  
AND ENGINEERING SOCIETY**  
MEMBER  
[Illegible Name]  
[Illegible Address]

VISITANT: [Illegible]  
DATE: [Illegible]

TAX PARCEL 97-1-47  
6.58 AC.±

**SITE SKETCH**  
FOR  
**FUTURE HOME OF THE NEWBURGH**  
**JEWISH COMMUNITY CENTER**  
TOWN OF NEWBURGH  
ORANGE CO., NY  
DATE: 11-15-96  
SCALE: 1"=50'



**NEWBURGH JCC:**

SERVICE	EMPLOYEES
NJCC	2 (1 FULL, 1 PART)
JEWISH FEDERATION	2 (1 FULL, 1 PART)
JEWISH FAMILY SERVICES	2 (1 FULL, 1 PART)
JCC NURSERY SCHOOL	4 (ALL FULL)
<b>TOTAL</b>	<b>10 MAXIMUM</b>

PROJECTED ENROLLMENT FOR NURSERY SCHOOL:  
12 STUDENTS · MORNING  
12 STUDENTS · AFTERNOON

TAX PARCEL: 97-1-48  
1.00 AC.±

Town of Newburgh  
Code Compliance Department  
308 Gardnertown Road  
Newburgh, NY 12550  
(845) 564-7801

12/17/2013

HILL N DALE ABSTRACTERS  
PO BOX 547  
GOSHEN, NY 10924

Owner: DRA Fidelco Newburgh, LLC  
Address: 68 Stewart Ave  
SBL# 97-1-47  
Title # 50526

To Whom it May Concern:

This letter is in answer to your inquiry regarding the above mentioned parcel.

Our files indicate that the above named structure was built prior to the Town adopting the Zoning Ordinance in 1956. Therefore, there is no Certificate of Occupancy for this structure, nor is one needed.

Please be advised that the above named road is a public road.

In searching our records we find no other open violations against the property. No inspection of the premises has been performed and the statement concerning our records should not be relied upon as meaning no violations in fact exist.

Enclosed are Certificate of Occupancies for Converting a House into a Day Care, Alterations for Offices, an Addition and an In Ground Pool

If there are any further question or concerns regarding this matter, please contact our office at the number above.

Respectfully,

  
Gerald Canfield  
Code Compliance Department

Abstract# AB-2013-420  
Code # CO BZ

# TOWN OF NEWBURGH

*Crossroads of the Northeast*

---

OLD TOWN HALL  
308 GARDNERTOWN ROAD  
NEWBURGH, NEW YORK 12550

CODE COMPLIANCE DEPT.  
TELEPHONE 845-564-7801  
FAX LINE 845-564-7802

08/30/2011

SUPERIOR DATA SERVICES  
3 WEST MAIN STREET  
ELMSFORD, NY 10523  
TITLE # STONE (21587)11-24821

LOCATION: 68 STEWART AVENUE  
SEC-BLK-LOT: 97-1-47.0-0  
OWNER: NEWBURGH JEWISH COMMUNITY CENTER  
SUBJECT: CO, ROAD & VIOLATIONS

To Whom It May Concern:

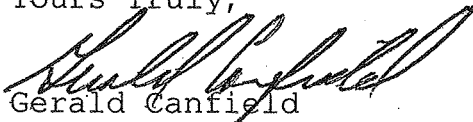
This letter is in answer to your inquiry regarding the above-mentioned property. Enclosed, please find a copy of the Certificate of Occupancy that was issued for this building.

In checking our files, we find no record of any open violations against this property. No inspection of the premises has been performed and the statement concerning our records should not be relied upon as meaning no violations in fact exists.

Please be advised that the above-mentioned road is a public road.

Also enclosed are Certificate of Occupancies for an Addition, Alterations and an In Ground Pool.

Yours Truly,

  
Gerald Canfield  
Code Compliance Department

GC:ams  
Ref:11-253

# TOWN OF NEWBURGH

*Crossroads of the Northeast*

OLD TOWN HALL  
308 GARDNERTOWN ROAD  
NEWBURGH, NEW YORK 12550

CODE COMPLIANCE DEPT.  
TELEPHONE 845-564-7801  
FAX LINE 845-564-7802

11/01/2012

EMPIRE STATE RESEARCH  
5 CRYSTAL COURT  
GREENWOOD LAKE, NY 10925  
TITLE # ROYAL/902880

LOCATION: 68 STEWART AVENUE  
SEC-BLK-LOT: 97-1-47.0-0  
OWNER: NEWBURGH JEWISH COMMUNITY  
SUBJECT: CO, ROAD & VIOLATIONS

To Whom It May Concern:

This letter is in answer to your inquiry regarding the above-mentioned property. Enclosed, please find a copy of the Certificate of Occupancy that was issued for this building.

In checking our files, we find no record of any open violations against this property. No inspection of the premises has been performed and the statement concerning our records should not be relied upon as meaning no violations in fact exists.

Please be advised that the above-mentioned road is a public road.

Also enclosed are Certificate of Occupancies to convert into a Day Care, Alterations to Day Care/ Offices, an In-Ground Pool and an Addition. A sign permit(#9554) was issued in 1992 this was closed out as COMPLETED.

According to our records the last Fire Inspection done was on 8/15/2012 there were no Violations at the time of the inspection.

Yours Truly,



Gerald Canfield  
Code Compliance Department

GC:ams  
Ref:12-384