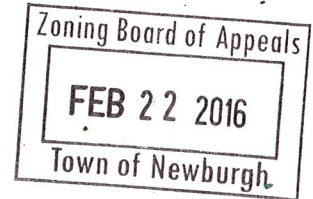




**JACOBOWITZ
AND GUBITS LLP**
COUNSELORS AT LAW



February 17, 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
Robert M. Lefland
Peter R. Eriksen**
John H. Thomas, Jr.**
Carmee G. Murphy**

Via Regular Mail and
Email: zoningboard@townofnewburgh.org

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: Additional Information Submitted in Support of
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:

I offer this information to expand and supplement the information provided in the January 12, 2016, submission which submission incorporated the information and documentation provided in the October 1, 2015, Request for Interpretation.

That October 1, 2015th application provided information not only supporting the Request for Special Use Permit to permit the change in use of the site from a conforming daycare center with 3,772 sq. ft. of nonconforming storage buildings to a 29 unit permitted multifamily development with a building have a 2974 sq. ft. footprint as accessory storage exclusively for tenants. It is the applicant's position that such proposed use will be of a same or more restricted nature to the prior non-conforming use of the parcel.

However, that initial application also requested an interpretation that the provision of storage space for exclusive use of the tenants is permitted either as accessory to, or as part of the permitted multi-family dwelling development. That interpretation would permit the conversion of the daycare building to tenant storage space with site plan approval by the Planning Board.

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

The Town of Newburgh Zoning Code defines accessory use as:

“a use recognized in Article IV, schedule of district regulations, as clearly incidental to a principal use (whether permitted by right or by special condition) and permitted only in conjunction with the principal use identified.”

Under a strict interpretation of that definition for multifamily developments in the Town of Newburgh only the following accessory uses would be permitted:

- Private garage or carport for not more than 4 vehicles;
- Keeping up to 5 (total) dogs or cats over 6 months of age;
- Off street parking as required by the principal use;
- Separate living quarters within the permitted structure for persons employed on the premises;
- Satellite earth stations in accordance with Section 185-40; and
- Home occupations.

Identified accessory uses “garden house, toolshed, wading or swimming pool, or tennis court” are not an accessory use permitted with multifamily dwellings.

Further, recreation facilities for adults, children’s playgrounds, parking garages for more than 4 vehicles, and services associated with multifamily developments, since not listed, would technically not be permitted as part of a multifamily dwelling.

“However, the supplementary regulations applicable to multiple dwellings and townhouses, Section 185-25, contradict the zoning and use table in several instances. For instance, in Section 185-25A, entitled Ownership, the code requires that “the entire site occupied by multiple dwelling or a townhouse development and related accessory structures shall be maintained in a singular or group ownership or common control throughout the life of the development.”

Section 185-25B2 requires that the Planning Board pay special attention during the site plan review to the “provision of recreation areas”.

How can a Planning Board pay special attention to such provision of recreation areas where recreation areas are not listed as a permitted accessory use to multiple developments and swimming pools or tennis courts which are commonly found in multiple developments are listed as accessory use but specifically not permitted with multifamily developments in accordance with the Town use table.

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

February 17, 2016
Page 3

Section 185-25C entitled Design Criteria, requires that “any parking or garage area, service, or drying yard or active recreation area shall be screened so as to adequately protect the view of neighboring properties as well as to ensure an attractive environment within the site.” According to the use tables, a garage area for more than 4 cars is not a permitted accessory use. There are no services permitted as accessory uses nor are there active recreation listed as a permitted accessory use.

It is clear and undisputable that multifamily dwelling developments within the Town of Newburgh and throughout the country often provide areas for additional storage for their tenants outside of the dwelling unit, whether they be in a basement area, separate room or area within the complex, or in a separate building. This is a “service” customarily offered to tenants similar to indoor parking areas, swimming pools, tennis courts, clubhouses, meeting rooms, exercise equipment, etc.

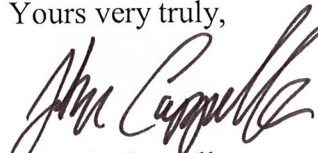
Since all the uses I identified above are typically provided in multifamily dwelling projects within the Town of Newburgh, even though they are not listed as a specific accessory use in the use table, one can only conclude that such uses are not necessarily accessory to but part and parcel of the use of multifamily development.

Therefore, the provision of such customarily provided storage areas within the former daycare facility should be considered part and parcel of the overall multifamily dwelling development and permitted subject to Planning Board review and approval.

Such an interpretation would be consistent with the review and approval process of multifamily dwellings throughout the Town. At the very least, the definitions and criteria set in the Town Zoning Code are ambiguous, and, as I am sure you are all aware, in New York State, since Zoning is considered in derogation of the common law, any ambiguities in the Zoning Code must be determined in favor of the property owner.

I look forward to presenting this letter and the other information provided in the application to your Board at the February 25, 2016 meeting.

Yours very truly,



John C. Cappello

JCC/je

cc: David Donovan, Esq. (via email: Donovan@dddllplaw.com)
Hon. Gerald Canfield, Code Compliance Office