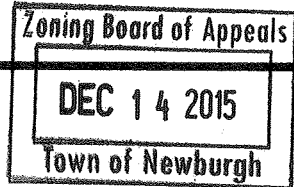


Betty Gennarelli



From: Laura Pawelski <lpx@Jacobowitz.Com>
Sent: Monday, December 14, 2015 11:53 AM
To: zoningboard@townofnewburgh.org
Cc: donovan@dddllplaw.com; John Cappello
Subject: Let to Hon. James E. Manley, Jr., Chairperson - Newburgh Zoning Board of Appeals re: DRA Fidelco Newburgh, LLC.
Attachments: 1IJ4473-Zoning Board of Appeals re DRA.PDF

Sent on behalf of John Cappello:

Please see attachment.

Thank you,

Laura Pawelski

Legal Assistant to the Municipal Team
Jacobowitz & Gubits, LLP
158 Orange Avenue
P.O. Box 367
Walden, New York 12586
Phone: 845-778-2121 ext. 211
Fax: 845-778-5173
E-mail: lpx@jacobowitz.com



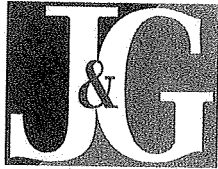
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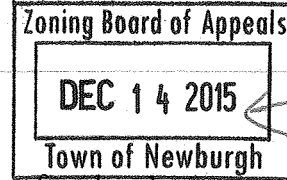
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**JACOBOWITZ
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COUNSELORS AT LAW

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received*



December 9, 2015

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Peter R. Eriksen**
John H. Thomas, Jr.**
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Via First Class 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 Gardiner Town Road
Newburgh, New York 12550

Re: DRA Fidelco Request for Interpretation
Summit Lane, Newburgh Expansion, Town of Newburgh
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 am writing this letter as a formal request to your Board to reconsider and re-vote on the above-referenced request of DRA Fidelco Newburgh, LLC, for an interpretation of it's proposal to demolish two pre-existing non-conforming barn type buildings used for storage and convert the existing daycare building for storage area for the exclusive use of tenants of the Summit Lane, Newburgh rental community.

At the November 24, 2015, meeting, the Board was dead-locked, three to three, on this issue. Pursuant to NYS Town Law Section 267a(13)(b) if a ZBA fails to attain an affirmative vote of a majority of all members the board is authorized to amend that motion within the time allowed for making a decision (60 days from close of hearing) without being subject to the rehearing process.

I was advised, the reason the three members voted against the interpretation was the lack of information regarding whether or not the existing storage use, most recently by a landscaping business, in the barn building constituted legal, pre-existing, non-confirming use.

Subsequent to that meeting, I did some research, and located a letter dated December 17, 2013, from the Town of Newburgh Code Compliance Dept. to Hill N Dale Abstracts replying to the request for a search of whether there were any existing

SILVER & LESSER, P.C.**
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JACOBOWITZ.COM

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

December 9, 2015
Page 2

violations on the property prior to DRA Fidelco's purchase of said property.

This letter indicated that the structures on the property were built prior to the Town adopting the zoning ordinance in 1956, and therefore, there was no certificate of occupancy for the structures, nor was one needed.

The letter further stated that there were no other open violations against the property. This letter had the following documents attached to it:

- A. Certificate of Occupancy issued May 5, 1992, for conversion of the one family residence on the property to a day care center.
- B. Certificate of Occupancy issued September 30, 1996, for an in-ground pool issued to First Realty Development, LTD.
- C. Certificate of Occupancy issued March 6, 1998, for alterations conducted on the daycare facility building by the Newburgh Community Jewish Center.
- D. Certificate of Occupancy issued July 30, 2002, to create an addition for the senior citizen and pre-school recreation room to the Newburgh Community Jewish Center.

A copy of the December 17, 2013, letter and attachments are attached hereto for your convenient review.

DISCUSSION:

The conversion of the existing single family to a daycare center in 1992 would have required approval and authorization from the Town Code Enforcement Department, as well as possibly the Town of Newburgh Planning Board. I have prepared a Freedom of Information Law (FOIL) request to the Town requesting any documents, plans, reports, and minutes of meetings discussing this conversion and have been advised that as of the date of this letter, no such documents were found in the files of the Town.

If in 1992 the barn type buildings, which clearly existed prior to and on that date, were not being used for storage, any approval of the daycare center would have been required addressing said use of this building.

Since those building were allowed to remain, it can only be concluded that the existence of the structures which were designed for and could only have been used for storage, were pre-existing,

Hon. James E. Manley, Jr., Chairperson
and Zoning Board of Appeals Members
Re: DRA Fidelco Request for Interpretation
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December 9, 2015
Page 3

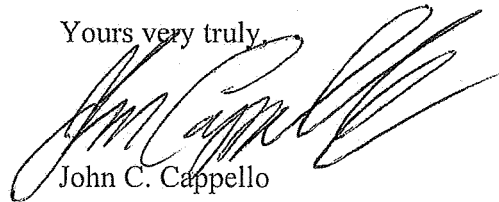
legal, non-conforming uses. Additionally, Code Compliance Department personnel were on the property in 1992, 1996, and 2002 to conduct inspections and issue certificates of occupancy for the structures on this site, they never once cited the existence or use of these barn structures in conjunction with the daycare center facility as an illegal use.

The mere existence of the buildings demonstrates that there was never an intent to abandon the use of these buildings for storage, therefore, they are legal, existing, non-conforming buildings devoted to a non-conforming use.

In conclusion, the December 17, 2013, letter which acknowledges the structures on the parcel existed prior to zoning, and that no zoning violations existed, is evidence that use of the barns was a pre-existing legal and valid use that was allowed to continue until DRA Fidelco's purchase of the property. Therefore, the demolition of those pre-existing, non-conforming uses and conversion of the property to a permitted multi-family development with accessory storage in the facility is certainly of the same or more restricted nature than what had been occurring on the site.

In light of this new information, I therefore request that this Board reconsider it's vote and re-vote on the issue at your December 22, 2015, meeting.

Yours very truly,



John C. Cappello

JCC/je
Enclosures

cc: David Donovan, Esq. (via email donovan@dddllplaw.com)

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
132 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550

CODE COMPLIANCE DEPT.
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: 97-1-47.0

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		68
CONVERT 1 FAM. RESIDENCE TO DAY CARE CENTER		

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


CODE COMPLIANCE DEPARTMENT (M.H.)

(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).

TOWN OF NEWBURGH

Crossroads of the Northeast

OLD TOWN HALL
308 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550

CODE COMPLIANCE DEPT.
TELEPHONE 914-584-7801
FAX LINE 914-584-7802

CERTIFICATE OF OCCUPANCY

Building Permit No: 12978

Location: 68 STEWART AVE

Sec-Blk-Lot: 97-1-47.0

CO No: 7291

CO Date: 3/ 6/98

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: 8/ 8/97, 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: 2.5	Number of Families: 0
Dimensions of Building: EXIST	Dimensions of Lot: EXIST	
Use of Building: ALTERATIONS*	Number of Bedrooms: 0	Heating Plant: OIL/HOT AIR
Number of Toilets: 5	Number of Bathrooms: 3.0	
Remarks: RECEIPT A 19298	*FOR "BAGELS AND BLOCKS" DAY CARE AND OFFICES	

This certificate is issued to: NEWBURGH JEWISH COMMUNITY CENTER, INC.
for the aforesaid structure.

Duff J. R. Stuteler Jr.
CODE COMPLIANCE DEPARTMENT

(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).

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

CERTIFICATE OF OCCUPANCY

Location: 68 STEWART AVENUE

Sec-Blk-Lot: 97-1-47.0

Building Permit No: 0-16736

CO No: 10193

CO Date: 07/30/2002

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: 05/08/2002, 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 Structure: 29' X 16'	Dimensions of Lot:	Number of Toilets: 1
Use of Structure: ADDITION **	Number of Bedrooms: 0	
Census Code: 437	Number of Bathrooms: 0.0	Heating Plant: NATURAL G

Remarks: ** REMOVING EXISTING ENCLOSED PORCH CREATING NEW ADDITION FOR SENIOR CITIZEN & PRE-SCHOOL RECREATION ROOM. RECEIPTS#30887 & 30888 HANDICAP ACCESSIBLE.

This certificate is issued to: NEWBURGH JEWISH COMMUNITY CENTER for the aforesaid structure.

Kenneth Corfield

CODE COMPLIANCE DEPARTMENT

(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).

TOWN OF NEWBURGH

Crossroads of the Northeast

OLD TOWN HALL
132 GARDNERTOWN ROAD
NEWBURGH, NEW YORK 12550

CODE COMPLIANCE DEPT.
TELEPHONE 914-564-7801
FAX LINE 914-564-7802

CERTIFICATE OF OCCUPANCY

Building Permit No: 3868

Location: 68 STEWART AVE.

Sec-Blk-Lot: 97-1-A-2 41

CO No: 6599

CO Date: 9/30/96

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: 3/27/78, 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: VINYL/STEEL	Number of Stories: 0.0	Number of Families: 0
Dimensions of Building:	Dimensions of Lot:	
Use of Building: IN-GRND POOL	Number of Bedrooms: 0	Heating Plant:
Number of Toilets: 0	Number of Bathrooms: 0.0	
Remarks: RECEIPT #376		

CO 6599-96 9/30/96
ELECTRICAL SURVEY DONE AND APPROVED 9/30/96

This certificate is issued to: FIRST REALTY DEV. LTD.
for the aforesaid structure.


CODE COMPLIANCE DEPARTMENT

(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).