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December 20, 2023

Hon. Chairman and Board Members
Town of Newburgh ZBA
Town Hall
1496 NY 300
Newburgh, New York 12550

RE: July 4 Ever

Dear Chairman and Board Members:

This is a further supplement to the application pending as to interpretation of three remaining code compliance matters.

1. Use of mobile home for occupancy.

The applicant suggests multiple bases for you to conclude that the mobile home can be used for a residence as well as an office.

The interpretation request is that you determine that the present use of the structure is a permitted residential use with incidental office use not to exceed a designated square feet area.

A. The property is in a zone that allows a single family residence. That is a permitted use in a R-1 zone. Whatever the past history as to its label and administrative process, at this point in time the use is lawful. The approval of a variance use does not prohibit the allowable zoned use.

B. It is not unreasonable that a permissible accessory use to a storage/vending fireworks business would be an onsite resident who is required as a condition of employment to reside on the premises.

C. The paper trail since 1982 reflects references to residential use of the mobile home. See Gerald Canfield's letter dated October 23, 2002, paragraph 9 "Owners to apply for and comply with all requirements relative to office/residence structures."

D. By email dated March 29, 2023, from Jim Campbell to Vincent Esposito, copied to three other town staff (Ms. Velazquez, Mr. Canfield and Martina, the noncompliance was identified as a "manufactured home" and claim made

it could not be used for commercial purposes, i.e. office. Further, that no mobile home is permitted in any district. A copy is attached as Exhibit “4.”

Reference is respectfully made to Section 616 of Executive Law (EXC) Chapter 18, Article 21-B, Title 2, Manufactured Homes as single – family dwellings in residential districts.

Section 616. Manufactured homes as single-family dwellings in residential districts. A manufactured home that is affixed to a permanent foundation and conforms with the identical development specification and standards, including general aesthetic and architectural standards, applicable to conventional, site-built single-family dwellings in the residential district in which the manufactured home is to be sited, shall be deemed to be a conforming single family dwelling for purposes of the applicable local zoning law or ordinance.

The Building Department expressly says “you installed a manufactured home” and could not be used as an office. Hence a conversion of the use from office to residence which is permitted in this zone eliminates the noncompliance. The state law Section 616 validates the “manufactured home” use as a residence.

As for office use of the structure, it is incidental to the principal residential use. Further, the structure was approved as an office. There is no reason that a smaller office is not allowed in the same building. The structure use approved for office use. There is no reason that office use of a portion violates the Campbell limitation.

If the structure is termed as a mobile home, there is no restriction on office use as incidental.

The characterization of the structure as a “manufactured home” is inconsistent with the application and the history of the prior submissions that all clearly identify the structure as a mobile home office.

Looking at the substance of the matter the structure is a residential unit. See Exhibit "2" which is the floor plan, and clearly has all the attributes of a residence and is a permitted residential use. By limiting the area in a residence that can be an incidental office use is no different than many residences in the Town that have incidental or even accessory office use as a normal use of a residence.

E. Use as a residence instead as an office is the change from one permitted use to another permitted use.

A review of the ZBA file reveals that as part of the submission made by the Applicant was the sanitary sewer permit application. It can be noted that the form provided by the Town sets forth at the bottom the uses and gallonage design standards. Exhibit “1.” A 1000 gallon system is required for a three (3) bedroom house and same is for an office. Therefore, there is no issue as to the sanitary system capacity since the constructed system meets the requirements for a residence of three (3) bedrooms and there are only two (2) in the structure. Exhibit “2.”

There seems to be a question as to the confirmation of the installation of the system. The Applicant has engaged an engineer to perform the necessary certification that will allow our engineer certification. See Exhibit "3," ZBA minutes of September 25, 2003, at page 2. That exhibit includes the approval decision by the ZBA.

MATTERS 5 AND 6

5. Are cargo containers or tractor trailers allowed on the property as an accessory use to the principal use of fireworks storage and vending? Yes.

Neither cargo containers nor tractor trailers are structures. They are portable storage units movable by motor vehicles or other equipment. All products arrive and depart in cargo containers or tractor trailers. The use is reasonable accessory to a storage and vending use..

Is off-street parking of commercial vehicles on the property allowed? Yes.

6. The use variance of 1982 and 2003 contemplated commercial use of the property. Parking off-street is a reasonable and customary accessory use for a commercial business. There is no issue of encroachment or adverse effect on any public right of way.

The interpretation request is that you determine that the presence of cargo containers and tractor trailers is customary for a business engaged in storage and vending. The use variance for a commercial use contemplates a reasonable limited area will be utilized for this purpose.

The matter of tractor trailers and containers was addressed by the Board previously.

- A. On page 2 of the Variance Application dated 2002 at paragraph 4, the requested relief was "keep the double wide mobile home, construction trailer and 5 concrete pads on-site to facilitate their fireworks storage operation."
- B. The minutes of September 26, 2002, at pages 1 and 2 discuss the containers on site as between 5 and 8.
- C. On page 1 of the Minutes of August 28, 2003, last two paragraphs and on page 2 at various places, the trailers were identified in the first three paragraphs.
- D. In the minutes of March, 2004, the retention of other trailers was disclosed at page 1, paragraphs 4-7.

Based on the above history, the placement of trailers and containers was previously disclosed, reviewed, considered and approved. The issue has come up because the number on site is larger than what the historical record states.

In large part, they are the property of the former tenant who is being evicted. That eviction will include the removal of the excessive containers and trailers.

The Applicant is requesting an interpretation that the placement of these be confirmed to a defined area. These units are of variable size. By specifying an area for parking the administrative enforcement will be easier and the owner will have flexibility as to sizes. For that purpose, there is submitted a plan that reflects the areas previously designated as parking or storage places. There is specific surface area depicted on the plan. The interpretation is that trailers and containers as a limited customary incidental business use is limited as shown on the plan.

The Applicant respectfully requests the interpretations that are expressly and impliedly supported by the facts and law.

Very truly yours,

A handwritten signature in black ink, appearing to read "Gerald N. Jacobowitz", written in a cursive style.

Gerald N. Jacobowitz

Enclosure