

# ABBOTT LAW FIRM LLC

---

RICHARD L. ABBOTT, ESQ.  
302.489.ALAW  
RICH@RICHABBOTTLAWFIRM.COM

September 6, 2012

VIA FACSIMILE AND EMAIL

David M. Culver, General Manager  
New Castle County Department of Land Use  
87 Read's Way  
New Castle, DE 19720

*Re: Appeal of Henry & Mary Lou Black and Blackball Properties, LLC  
Application No. 2012-055, License, Inspection, and Review Board ("LIRB")  
Change of Use Permit – 1707 Concord Pike*

Dear Dave:

I am writing to request a Stay of the effectiveness of the above-referenced Change of Use Certification issued by the Building Code Official, George O. Haggerty, pursuant to New Castle County Code §6.11.003F.

I did not initially pursue a Stay since at deposition Gary Staffieri, the owner of 1707 Concord Pike, stated that he did not intend to rely on the permit by opening his purported Auto Detailing business. In addition, I did not seek the stay since the LIRB promptly provided a hearing date: yesterday, Wednesday, September 5, 2012 at 5:00 p.m.

Unfortunately, the LIRB did not proceed to consider the merits of my clients' appeal challenging the issuance of the permit. And given the past behavior of the owner of 1707 Concord Pike *vis a vis* my clients, I have no confidence that he will continue to stand down in commencing business operations in reliance on the erroneously issued permit. Consequently, I would respectfully request that you enter a Stay pending the outcome of the current appeal proceedings.

In support of my request for a Stay, I provide you with further information establishing the meritorious nature of the appeal. Enclosed please find a summary prepared to submit to the LIRB, which establishes that there is inadequate parking to operate the Light Auto Service use proposed. Indeed, Assistant General Manager James Smith provided the exact same interpretation in 2011 and 2012, withholding issuance of the Change of Use Permit based upon Code Enforcement Violation issues at the property.

It is my understanding based on testimony provided to the LIRB at yesterday's hearing that County Planner Joe Abele theorized that the 1707 property did not need four

David M. Culver, General Manager  
New Castle County Department of Land Use  
September 6, 2012  
Page 2

(4) parking spaces because it was a Non-Conforming Situation that was grandfathered pursuant to Article 8 of the UDC. The problems with that argument are that: 1) Parking is not a Non-Conforming Situation, and 2) the UDC specifically provides that a Change of Use must conform with UDC parking provision.

UDC Division 40.33.300 defines the term "non-conforming situation" as a "[a] building/structure or the use of a lot or building/structure lawfully existing at the time this Chapter or a subsequent amendment to this Chapter became effective which does not conform to the dimensional and/or use requirements of the district in which it is located." Parking is not a "use" issue; that subject addresses the types of commercial operations that may be conducted on the CN (Commercial Neighborhood) zoned parcel. Nor does Parking constitute a "dimensional" matter under the UDC; it is not addressed in the dimensional standards contained in Article 4 of the UDC..

Additionally, UDC Section 40.03.521A specifically provides that a Change of Use triggers the need to conform with the UDC's off-street parking provisions. So while a parcel with inadequate parking is legal non-conforming based upon the historic uses thereof, a change of use to a more intensive use triggers the need to comply current parking requirements.

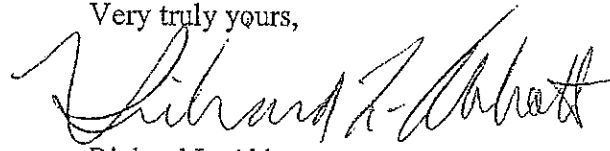
As you know, the property owner has at least two alternatives to pursue in order to seek relief from the four (4) parking space requirement mandated by UDC §40.03.522 and Table 40.03.522: 1) an Administrative approval of fewer parking spaces pursuant to a Parking Demand Needs Analysis under UDC §40.03.524, or 2) a Variance from the Board of Adjustment. So the property owner is not without means to open for business. Indeed, it is amazing that the property owner did not pursue such relief during the ten (10) month period in which the County denied issuance of the Change of Use Permit (based upon the failure of the owner to provide four on-site parking spaces of the minimum 9 foot wide by 18 foot deep dimension required by the UDC).

Under standard principles of statutory construction, the County cannot ignore the specific directive that a Change in Use comply with off-street parking requirements based upon Article 8. All UDC provisions must be read together, in order to create one harmonious whole. The only way to do so is to conclude that UDC Article 8 does not require conformance with UDC parking requirements as long as the historic use of a parcel is continued, but that when a Change of Use to a more intensive business operation occurs then the UDC off-street parking provisions kick in.

David M. Culver, General Manager  
New Castle County Department of Land Use  
September 6, 2012  
Page 3

Please confirm that the effectiveness of the Change of Use Permit issued by the Building Code Official on July 27, 2012 shall be stayed pending final decision on my clients' administrative appeal. Thank you.

Very truly yours,



Richard L. Abbott

RLA:cth  
Enclosure  
File No. 372.01

cc: Henry & Mary Lou Black (w/enclosures) -- Via U.S. Mail  
Blackball Properties, LLC (w/enclosures) -- Via U.S. Mail

REASONS 1707 CONCORD PIKE  
PARKING LIMITATIONS BAR CHANGE OF USE TO LIGHT AUTO SERVICE

1. Code Section 6.03.019 B. requires that a change in use comply with the UDC.
  2. UDC Section 40.03.521 A. requires a new use to conform with UDC off street parking requirements.
  3. Table 40.03.522 requires 4 off street parking spaces for a General, Light Auto Service Use like the auto detailing business use proposed (single garage bay).
  4. Section 40.03.523 forbids encroachment of parking spaces into driveways, and no vehicle may overhang an access driveway.
  5. A Parking Space is defined by Division 40.33.300 as "an area of land designated for the parking of motor vehicles."
  6. Section 40.22.611 B. requires that parking spaces be striped and terminated with curbs, bumper blocks or other approved marking.
  7. Section 40.22.611 F. only permits garages to be considered as a parking space for detached housing.
  8. Section and Table 40.22.612 requires that 90 degree/perpendicular and angled/diagonal parking spaces be 9 feet wide by 18 feet deep.
- \* The subject site only has space for One (1) off street parking space. The service garage does not count as a parking space. And the rear yard is not big enough for a space, or to fit motor vehicles without encroaching/overhanging onto the access driveway of the adjacent driveway. Only head-in parking in front of the building works, as diagonal parking would also cause vehicles to overhang the abutting access driveway.
- \* Conclusion: Four (4) spaces are required, but only one (1) parking space is provided.