

**Thomas P. Gordon**  
County Executive



**James Smith**  
Acting General Manager

## OFFICE OF LAND USE

### NOTICE OF DECISION

REFERENCE: Application 2013-0421      DECISION FILED: July 23, 2013

1707 Concord Pike, Parcel No. 0610000086

APPLICANT: **Henry Black, Mary Lou Black, and Blackball Properties, LLC**  
1709 Concord Pike,  
Wilmington, DE 19803

PUBLIC HEARING DATE: July 8, 2013      DATE OF DECISION: July 8, 2013

Henry Black, Mary Lou Black, and Blackball Properties, LLC (the "Appellants") appeal from the grant of a Change of Use Certificate ("Certificate") by the Department of Land Use (the "Department") to Gary Staffieri and Adria Charles (the "Staffieris") on May 20, 2013. Specifically, the Appellants allege that the Department erroneously issued the Certificate to the Staffieris despite the failure of the property to meet the parking space requirement for the intended business, as set forth in the New Castle County Unified Development Code ("UDC"). The Appellants further allege that it is legally impermissible, per the County Code, for the Certificate to allow the Staffieris to provide carwashes as part of the services they offer as an auto detailing business.

#### **PROCEDURAL POSTURE<sup>1</sup>**

On September 13, 2011, the Staffieris submitted an application for a building permit in order to change the use of the existing building located at 1707 Concord Pike (the "Property") to one suitable for an auto detailing business. The Department issued a Change of Use certificate on July 27, 2012.

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<sup>1</sup> This is not Appellant's first appearance before the Board. Because of the prior history involving the Appellants and the Property at issue, the Board finds it helpful to briefly summarize the prior proceedings in this decision.

The Appellants, represented by Richard Abbott, Esquire, filed an appeal on August 15, 2012 and a hearing was held on September 5, 2012. The Department raised an issue as to whether or not the Board of License, Inspection and Review (the "Board") had jurisdiction to hear the Appellants' appeal. Ultimately, the Board determined that it did have jurisdiction to hear the Appellants' claims and that the Department's decision to issue the July 2012 Certificate was arbitrary and capricious and also an error of law. Accordingly, on May 29, 2013, the Board issued a written decision reversing the Department's decision, thereby revoking the July 2012 Certificate.

On May 15, 2013, the Staffieris filed another application for a Change of Use Certificate, which was subsequently approved by the Department on May 20, 2013. On May 23, 2013, the Applicants filed the instant appeal, which raises for the second time a lack of statutorily required parking spaces but also raises the issue of prohibition of carwash services being offered on the Property.

#### **THE RECORD BEFORE THE BOARD**

On July 8, 2013, the Board held a properly noticed public hearing on the substance of the Appellants' appeal. Present for the hearing were: Richard Abbott, Esquire, on behalf of the Appellants, and Marlaine White, Esquire, on behalf of the Department. Appellants, by and through Mr. Abbott, argued that the Property still does not have the requisite number of parking spaces under the UDC. Appellants presented, and also described, a compilation of materials including certain sections of the County Code relevant to their argument as well as documents containing information specific to the Property. Appellants also supplemented the record with a copy of the October 24, 2012 decision of the Court of Chancery ("Court decision") regarding the Staffieri's right to use parking areas and a common driveway located on the parcels adjacent to the Property. Attached to the Court decision was a copy of the 1946 Deed, the language of which the Court of Chancery utilized in reaching its decision.

According to Appellants, it was settled in the prior proceedings that the Property requires 4 parking spaces in order for a light automobile service business operation. Appellants argued that to the extent the Department relied upon the Court decision for the purposes of determining parking availability, such reliance was misplaced for several reasons. One such reason noted by Appellants is that the Court decision may potentially be reversed upon some future appeal.

Appellants next argued that the Court of Chancery erred in its decision when it referred to the area behind the building as a “back parking area.” Instead, Appellants urge the Board to consider the 1946 Deed to determine the appropriate parking areas for the Staffieris to utilize. Appellants also argue that the Staffieris may not use the front parking area permitted by the Court in its decision. This is so because there is already an inadequate number of parking spaces required under the UDC for the combined various uses on the adjacent properties, so sharing that parking area is prohibited. Lastly, Appellants argued that that the Appellants are not permitted to perform carwashes because section 12.08.001.B1 of the UDC prohibits the discharge of industrial waste into the storm sewer system or onto driveways.

In its presentation, the Department, by and through its attorney, Ms. White, first noted the legal standard to be applied by the Board. The Department argued that it was required by law to respect the October 2012 decision of the Court of Chancery, which represents a declaratory judgment regarding the Staffieris’ easement rights to park in the areas located on the adjacent properties. According to the Department, it is not the role of this Board to act in contravention of the Court decision. Furthermore, it is not necessary - or permissible - to interpret the provisions of the 1946 Deed to determine the scope (i.e. location(s)) of the Staffieris’ parking rights, as the Court of Chancery has already interpreted the 1946 Deed and determined that the Staffieris have an easement right to use the front parking area, back parking area and common driveway.

The Department next argued that at the time the Certificate was issued, there were no outstanding drainage violations on the Property. This status remained true at the time of hearing. The Department noted that, based upon numerous complaints of stormwater runoff violations, the County has investigated the Property but has been unable to find any violations. In addition, the Delaware Department of Transportation (“DelDOT”) has conducted testing on nearby stormwater drains and did not find any illicit discharge. The Department called James Smith, Acting General Manager of the Department, to provide testimony. Mr. Smith testified regarding DelDOT’s specific findings after performing tests during a field investigation. The Board then heard several comments from the public.

On cross-examination, Mr. Smith testified that he never observed carwash discharge onto the paved area of the Property, though he has seen 2 videos on which is displayed some fluid discharge onto the road by employees of the business located on the Property. Mr. Smith then

denied that the Drainage chapter of the County Code (“Drainage code”) is in conflict with the UDC, so long as there is no industrial waste being discharged.

On rebuttal, Appellants urge the Board to use their common sense in reaching their determination of whether the Staffieris should be permitted to park cars in the area behind the building on the adjacent parcel, notwithstanding the Court decision in the affirmative.

## **LEGAL STANDARDS**

The Board hears appeals regarding the issuance, transfer, renewal, refusal, suspension, revocation or cancellation of a County license or with respect to the effect of any County inspection. The Board is authorized by 9 *Del. C.* §1315 and Section 02.05.103 of the New Castle County Code, and is vested with the authority to consider administrative appeals pursuant to Section 06.09.003 of the New Castle County Code. Pursuant to Section 06.11.003, the Board may affirm, modify, reverse, vacate, or revoke the action appealed, provided that such action by the County shall be affirmed if the action was not arbitrary or capricious or was not taken contrary to law. Appeals shall be heard based solely upon the materials (e.g., plans, documents, reports, studies, drawings, and testimony) available to the official or body rendering the initial decision. Appeals shall not be used to consider new or additional information. Information submitted but not discussed in rendering a decision shall be considered part of the original record and may be considered on appeal. Testimony may be given based upon the material submitted to the decision-maker.

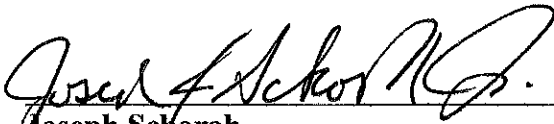
## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

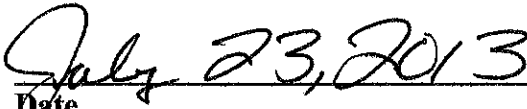
The Board is not persuaded by the Appellants’ argument. With respect to the first basis for appeal, the lack of requisite parking spaces, the Board finds that the October 2012 decision by the Court of Chancery provides the Property with access to the appropriate number of parking spaces required under the UDC. The Board will not substitute its own interpretation of the 1946 Deed for that of the Court of Chancery in determining the scope of the Staffieris’ easement. Moreover, the Board specifically declines to contravene any portion of the Court’s October 2012 Order. With respect to the second basis for appeal, the illicit discharge of industrial waste, the Board finds that there was not enough evidence to show that the Staffieris were discharging an illicit waste onto the Property.

The Board unanimously finds that the Department's decision to grant the Staffieris a Change of Use Certificate was not arbitrary or capricious, nor did it represent an error as a matter of law. Accordingly, Appellants appeal is **denied**.

VOTE: 3-0 (Schorah, K. Williams and T. Williams).

**BOARD OF LICENSE, INSPECTION AND REVIEW**

  
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Joseph Schorah  
Chairperson

  
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Date