

ABBOTT LAW FIRM LLC

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May 23, 2013

VIA FEDERAL EXPRESS

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

*Re: Appeal to License, Inspection, And Review Board ("LIRB")
Change of Use Permit Issued 5/20/13 – 1707 Concord Pike*

Dear Dave:

Please accept the enclosed Application as the appeal of Henry Black, Mary Lou Black, and Blackball Properties, LLC to the LIRB regarding the above-referenced decision by the Department of Land Use ("Department").

Also enclosed please find: 1) a check payable to New Castle County in the amount of \$500, which is the fee for this appeal; 2) the Change of Use Permit being appealed; and 3) a tax printout for the property.

The Blacks are the owners of 1709 Concord Pike, which directly abuts the property at issue, 1707 Concord Pike ("1707"). Blackball Properties, LLC is the owner of 1703 Concord Pike, which is one property removed (29 feet) from 1707.

1. The first basis for appeal is the failure of 1707 to meet the requirements of the New Castle County Unified Development Code ("UDC") for operation of an auto detailing business, a light automobile service use, a prerequisite to Permit issuance under County Code § 6.03.019B. Specifically, 1707 lacks the requisite four (4) off-street parking spaces required in order for a Change of Use to be granted for the auto detailing business operation.

To the extent that the Department relied upon alleged rights to park on the adjacent properties identified as 1701 through 1705 Concord Pike (the "Triplex Properties"), the decision is in error based upon the fact that: 1) the Court decision granting those rights is not final; it will be appealed in the near future and may ultimately be reversed (eviscerating any easement rights); 2) the only place on the Triplex Properties where parking is legally permitted pursuant to the Court decision is in front of the buildings where 7 parking stalls are currently striped; and 3) 1707 may not rely upon the

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“shared parking” on the Triplex Properties under UDC § 40.22.611K. since the 7 spaces are not adequate for the 3 first floor commercial uses and 3 second story apartment units on the Triplex Properties (which need 12 or more parking spaces under the UDC).

Additionally, off-site parking on a contiguous parcel may only be approved to satisfy the minimum off-street parking requirements of the UDC where the criteria contained in UDC § 40.03.523 have been satisfied. Since no permanent, guaranteed right to park anywhere on the adjacent Triplex Properties exists as a legal or practical matter, the prerequisites of that UDC section cannot be satisfied. In addition, no land development plan was submitted and approved as required by UDC § 40.03.523I.

Pursuant to New Castle County Code § 6.11.003A., my clients constitute “any person who in good faith claims that the true intent of this Chapter or the rules legally adopted thereunder have been incorrectly interpreted” so as to be entitled to appeal to the LIRB. Reversal is warranted where there is an error of law or where the decision is arbitrary and capricious

2. The second basis for appeal is the Change of Use Permit’s contravention of UDC and the County Drainage Code provisions. The Change of Use Permit allows light automobile service use of 1707. UDC § 40.33.240I. defines light automobile service to include “automotive service and repair within buildings, fuel sales, car wash. (NAICS447, 4413, 8111 except 811121 paint and body shop).” Indeed, the 2012 NAICS definition for category 811192 (carwashes) includes automotive detailing services, automobile washing and polishing, car detailers, carwashes, automobile detailing services, and the like. *See* enclosed. Accordingly, the grant of Change of Use Permit authorizes the utilization of 1707 for the washing of vehicles.

The carwash component of the auto detailing service operation permitted on 1707 by the Change of Use Permit is not legally permissible. Both indoor and outdoor carwashing is prohibited by County Code under the circumstances.

The County has not approved a sanitary sewer connection or any capacity under County Code Chapter 38. Indoor carwash activities would require a drain to be installed in order to collect the water runoff. Such water runoff would then have to be discharged into the sanitary sewer system. In this case, the owner of 1707 expressly received a waiver of sewer capacity on the grounds that he committed to not discharge any carwash runoff into the sanitary sewer system.

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Outdoor carwashing on 1707 is barred since water may not be discharged onto any driveway or parking lot area which drains into the storm sewer system pursuant to Drainage Code § 12.08.001B.1. In addition, vehicle servicing such as the washing of cars may not take place in any parking area pursuant to UDC §40.30.521C. Consequently, the Change of Use Permit was issued in direct contravention of prohibitions contained in both the UDC and the Drainage Code.

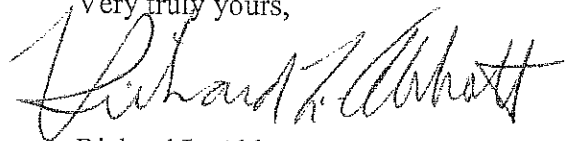
In addition to the provisions of County Code § 6.11.003A., Drainage Code § 12.08.006A. permits an aggrieved person to appeal a decision of the Code Official to the LIRB. The LIRB may reverse the Department's decision based upon an error of law or where the decision was arbitrary or capricious.

* * * * *

My clients contend that the Change of Use Permit was issued in error, and that it should be revoked. The Department decision was legally erroneous and arbitrary or capricious.

Please notify me of the scheduled LIRB hearing date at your earliest convenience.

Very truly yours,



Richard L. Abbott

RLA:cth
Enclosures
File No. 372.01

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

**NEW CASTLE COUNTY
BOARD OF LICENSE, INSPECTION & REVIEW**

APPLICATION FOR HEARING

I.

Henry & Mary Lou Black and
Blackball Properties, LLC
Application Name

Gary Staffieri & Adria Charles Staffieri
Legal Owner Name

1703 Concord Pike & 17099 Concord Pike
Applicant Address

100 Sackville Mills Lane
Legal Owner Address

Wilmington, DE 19803

Wallingford, PA, 19086

Subject

Property: 1707 Concord Pike, Wilmington, DE 19803 / CN
Location/Address Zoning Classification

0610000086 / Brandywine

*Tax Parcel Number
(Found on Property Tax Bill or call
County Assessment at 395-5400)

**Hundred
(Appoquinimink, Blackbird, Brandywine, Christiana, Mill Creek,
New Castle, Pencader, Red Lion, St. Georges, White Clay Creek)

II.

PLACE CHECK MARKS ON THE APPROPRIATE LINES AND FILL IN REQUIRED INFORMATION:

Has a previous application for this property been filed with the Board? XX No; XX Yes- App. No.: 2012-0555
Previous Hearing Date April 16, 2013

Has a previous application for this property been appealed to the Superior Court? XX No; XX Yes. If yes, give status. _____

- Attached is a copy of document(s) relevant to the subject of the appeal.
 Attached is the appropriate filing fee (\$500.00) made payable to NEW CASTLE COUNTY.
 This application was filed on May 23, 2013, within the required time (20 days).

III.

CHECK THE APPROPRIATE SECTION BELOW AND FILL IN THE REQUIRED INFORMATION PERTAINING TO THE TYPE OF RELIEF REQUESTED.

- Appeal from administrative decision by Code Official dated May 20, 2013, regarding Change of Use Permit for the following reasons: See transmittal letter to General Manager Culver, the contents of which are hereby incorporated herein.

[] Seek interpretation of the New Castle County Code pertaining to Section _____, because

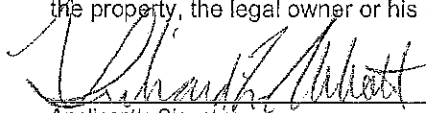
[] Seek extension of time within which to comply with _____
because _____

[] Seek some form of relief other than that set forth above: _____

State reasons for this request:

IV.

THE UNDERSIGNED HEREBY CERTIFIES THAT THE LEGAL OWNER OF THE SUBJECT PROPERTY IS AWARE OF AND AGREES TO THE FILING OF THIS APPLICATION AND THAT THE INFORMATION CONTAINED HEREIN IS CORRECT. (If the applicant is not the legal owner of the property, the legal owner or his authorized representative must sign this form.)


Applicant's Signature
By Attorney

May 23, 2013
Dated

Richard L. Abbott, Esquire, Attorney
Applicant's Name (PLEASE PRINT)

Telephone Number: (302) 489-2529

_____, THE LEGAL OWNER OF THE SUBJECT PROPERTY, HEREBY CERTIFIES THAT THE INFORMATION PROVIDED HEREIN IS CORRECT AND AGREES TO BE BOUND BY ANY DECISION OF THE BOARD OF LICENSE, INSPECTION & REVIEW WITH RESPECT TO THE SUBJECT PROPERTY.

Legal Owner's Signature

Dated:

Legal Owner's Name (PLEASE PRINT)

Telephone Number: _____

If necessary, an additional sheet may be added to this application form.

NEW CASTLE COUNTY

Department of Land Use - Licensing Division
87 Reads Way, New Castle County, DE 19720

CERTIFICATE OF USE

Effective Date: 5/20/2013

Permit Number: 20130567

Applicant/Contractor:

Property Owner:

STAFFIERI GARY & CHARLES ADRIA
100 SACKVILLE MILLS LANE
WALLINGFORD, PA 19086

STAFFIERI GARY & CHARLES ADRIA
100 SACKVILLE MILLS LANE
WALLINGFORD, PA 19086

Parcel Number: 0610000086

Lot: P2A

Property Address: 1707 CONCORD PK

Subdivision: DEERHURST

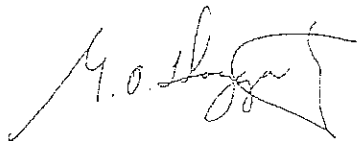
Description:

CHANGE OF USE TO AUTO DETAILING BUSINESS

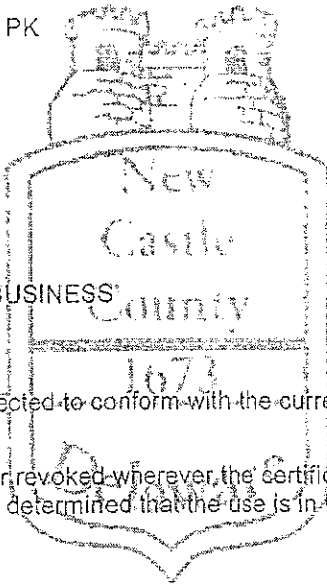
The activity described above has been inspected to conform with the current codes of New Castle County.

This Certificate of Use may be suspended or revoked whenever the certificate is issued in error, or on the basis of incorrect information supplied, or where it is determined that the use is in violation of the provisions of the New Castle County Code.

Code Official Signature



MAY 22 2013
SCANNED



Permit # 20130567

Parcel Number: 0610000086 Parcel Details	Permit Type: EXISTING USE OR BLDG
Location: 1707 CONCORD PK	Work Type:
Contact: STAFFIERI GARY & CHARLES ADRIA	Status: Closed
Contractor:	Last Stage Completed: Issue COO
Contractor ID:	Next Stage: Complete
Contract Type:	

Dates	
Application:	5/15/2013
Issued:	5/17/2013
Certificate of Occupancy:	5/20/2013
Temp Certificate of Occupancy:	Not Available
Final:	5/20/2013

Inspections				
Inspection #	Inspection Type	Scheduled Date	Status	Completion Date
1336756	FINAL INSPECTION	5/20/2013	Passed	5/20/2013

Conditions		
Application Date	Description	Approval Date
5/15/2013	FIRE MARSHAL APPROVAL	5/17/2013
5/17/2013	CONTRACTOR VERIFICATION FORM	5/20/2013
5/17/2013	FIRE MARSHAL FINAL APPROVAL	5/17/2013

Reviews	
Review Type	Status
REVIEW OF BUILDING PLANS	Approved
	Approved

Parcel # 0610000086

Property Address: 1707 CONCORD PK
WILMINGTON, DE 19803-
Subdivision: DEERHURST
Owner: STAFFIERI GARY & CHARLES ADRIA
100 SACKVILLE MILLS LANE
Owner Address:
WALLINGFORD, PA 19086
Municipal Info: Unincorporated

Lot #: P2A	Property Class: COMMERCIAL
Location:	Lot Size: 0.04
Map Grid: 11003680	Lot Depth: 110
Block:	Lot Frontage: 6.50
Census Tract: 116.00	Street Finish:
Street Type:	
Water:	
Microfilm #: 000198	

Related Project Plans				
	A/P No.	Project Name	Work Type	Status
Details	20120555			ACTIVE

Permit History			
	A/P No.	Permit Type	Status
Details	201105831	COMMERCIAL TENANT FITOUT	Closed
Details	20130567	EXISTING USE OR BLDG	Closed
Details	20111143	EXISTING USE OR BLDG	Stop Work

District & Zoning Info	
Districts	
<ul style="list-style-type: none"> ▪ BRANDYWINE SCHOOL DIST-TRES ▪ COUNCIL 2 - ROBERT S WEINER ▪ FIRE/RESCUE - TALLEYVILLE ▪ PLANNING 1 - BRANDYWINE ▪ DE SEN 05- CATHERINE CLOUTIER ▪ NORTH OF C&D CANAL ▪ SEWER DISTRICT NORTHERN-ASMT ▪ TRAFFIC ZONE T063 (YR2000) ▪ DE REP 06-DEBRA J HEFFERNAN 	
Zoning	
<ul style="list-style-type: none"> ▪ CN - UDC - COMMERCIAL NEIGHBORHOOD 	

Sales History					
Owner	Deed	Current Owner?	Multi?	Sale Date	Sale Amount
		N	N	10/1/1980	\$39,500.00

JACOBS EDMOND H & ROSHBERG I	T122 180	N	N	6/1/1983	\$40,000.00
ROSEN FREDERICK M	812 182	N	N	1/4/1989	\$71,900.00
SCHNEIDER GLORIA L	1724 78	N	N	4/29/1994	\$80,000.00
STAFFIERI GARY & CHARLES ADRIA	2858 136	Y	N	6/29/2000	\$155,000.00

Tax/Assessment Info	
Assessment	
Land:	8700
Structure:	31400
Homesite:	0
Total:	40100
County Taxable:	40100
School Taxable:	40100

Tax History as of 5/21/2013 6:21:02 AM								
	County				School			
Tax Year	Principal Due	Penalty Due	Date Paid	Amt Paid	Principal Due	Penalty Due	Date Paid	Amt Paid
2005A	\$0.00	\$0.00	11/3/2006	\$198.58	\$0.00	\$0.00	11/3/2006	\$729.40
2006A	\$0.00	\$0.00	11/3/2006	\$210.00	\$0.00	\$0.00	11/3/2006	\$693.90
2007A	\$0.00	\$0.00	7/30/2008	\$266.83	\$0.00	\$0.00	12/8/2008	\$854.47
2008A	\$0.00	\$0.00	7/30/2008	\$231.71	\$0.00	\$0.00	10/27/2010	\$825.47
2009A	\$0.00	\$0.00	10/27/2010	\$338.83	\$0.00	\$0.00	5/18/2011	\$946.30
2010A	\$0.00	\$0.00	10/27/2010	\$305.34	\$0.00	\$0.00	5/18/2011	\$877.34
2011A	\$0.00	\$0.00	5/29/2012	\$324.54	\$0.00	\$0.00	11/16/2012	\$905.45
2012A	\$0.00	\$0.00	11/16/2012	\$298.16	\$0.00	\$0.00	5/9/2013	\$973.02
	\$0.00	\$0.00	Not Available	\$0.00	\$0.00	\$0.00	Not Available	\$0.00
County Balance Due: \$0.00								
School Balance Due: \$0.00								
These amounts are valid through the last day of the month. For accounts with delinquent balances, statutory penalty will accrue on the first day of next month.								

Sewer History as of 5/21/2013 6:22:02 AM				
Tax Year	Principal Due	Penalty Due	Date Paid	Amount Paid
1999S3	\$0.00	\$0.00	8/23/1999	\$19.47
1999S4	\$0.00	\$0.00	11/19/1999	\$19.47
2000S1	\$0.00	\$0.00	2/14/2000	\$22.72
2000S2	\$0.00	\$0.00	5/17/2000	\$22.72
2000S3	\$0.00	\$0.00	1/28/2002	\$27.77
2000S4	\$0.00	\$0.00	1/28/2002	\$27.08
2001S1	\$0.00	\$0.00	1/28/2002	\$22.53
2001S2	\$0.00	\$0.00	1/28/2002	\$21.96
2001S3	\$0.00	\$0.00	1/28/2002	\$21.39
2001S4	\$0.00	\$0.00	5/31/2002	\$20.94
2002S1	\$0.00	\$0.00	5/31/2002	\$35.03
2002S2	\$0.00	\$0.00	5/31/2002	\$32.45
2002S3	\$0.00	\$0.00	12/2/2002	\$34.43
2002S4	\$0.00	\$0.00	12/2/2002	\$32.45
2003S1	\$0.00	\$0.00	7/8/2003	\$34.71

2003S2	\$0.00	\$0.00	7/8/2003	\$34.39
2003S3	\$0.00	\$0.00	8/11/2003	\$32.45
2003S4	\$0.00	\$0.00	5/6/2004	\$35.66
2004S1	\$0.00	\$0.00	6/10/2004	\$20.86
2004S2	\$0.00	\$0.00	6/10/2004	\$19.94
2004S3	\$0.00	\$0.00	12/10/2004	\$21.01
2004S4	\$0.00	\$0.00	12/10/2004	\$19.47
2005S1	\$0.00	\$0.00	8/3/2005	\$9.90
2005S2	\$0.00	\$0.00	8/3/2005	\$9.63
2005S3	\$0.00	\$0.00	8/3/2005	\$12.50
2005S4	\$0.00	\$0.00	12/13/2005	\$12.50
2006S1	\$0.00	\$0.00	8/4/2006	\$54.86
2006S2	\$0.00	\$0.00	8/4/2006	\$53.36
2006S3	\$0.00	\$0.00	8/4/2006	\$51.13
2006S4	\$0.00	\$0.00	11/26/2007	\$59.64
2007S1	\$0.00	\$0.00	11/26/2007	\$14.30
2007S2	\$0.00	\$0.00	11/26/2007	\$13.91
2007S3	\$0.00	\$0.00	11/26/2007	\$13.52
2007S4	\$0.00	\$0.00	11/26/2007	\$12.50
2008S1	\$0.00	\$0.00	3/3/2009	\$14.69
2008S2	\$0.00	\$0.00	3/3/2009	\$14.93
2008S3	\$0.00	\$0.00	3/3/2009	\$13.91
2008S4	\$0.00	\$0.00	3/3/2009	\$13.52
2009S1	\$0.00	\$0.00	3/3/2009	\$12.50
2009S2	\$0.00	\$0.00	8/7/2009	\$13.39
2009S3	\$0.00	\$0.00	8/7/2009	\$12.50
2009S4	\$0.00	\$0.00	5/29/2012	\$16.72
2010S1	\$0.00	\$0.00	5/29/2012	\$16.64
2010S2	\$0.00	\$0.00	5/29/2012	\$16.25
2010S3	\$0.00	\$0.00	5/29/2012	\$15.86
2010S4	\$0.00	\$0.00	5/29/2012	\$15.47
2011S1	\$0.00	\$0.00	5/29/2012	\$15.08
2011S2	\$0.00	\$0.00	5/29/2012	\$14.69
2011S3	\$0.00	\$0.00	5/29/2012	\$14.30
2011S4	\$0.00	\$0.00	5/29/2012	\$13.91
2012S1	\$0.00	\$0.00	5/29/2012	\$13.52
2012S2	\$0.00	\$0.00	5/29/2012	\$12.50
2012S3	\$0.00	\$0.00	11/19/2012	\$13.52
2012S4	\$0.00	\$0.00	11/19/2012	\$12.50
2013S1	\$0.00	\$0.00	5/9/2013	\$13.39
2013S2	\$0.00	\$0.00	5/9/2013	\$12.50

Balance Due: \$0.00

Overpayment: \$0.13

These amounts are valid through the last day of the month. Statutory penalty will accrue on the first day of next month.

Commercial Structure Characteristics

Building #: 01

Occupancy: GENERAL OFFICE	# of Stories: 1	Year Built: 1962
Struct Class: MASONRY-WALL	Quality: AVERAGE	Condition: AVERAGE
Floor Level: FIRST	Grnd Flr Area: 731	Total Flr Area: 731
Ext Wall Type: COMMON BRICK	Wall Height: 11	Perimeter: 120
AC %: 90	Heat %: 90	Rentable Units: 2

Bsmt: 0	Bsmt Util: NO BSMT	
Year Renov: 0	Renov Rtnng: NONE	Eff. Yr Built: 1963

North American Industry Classification System

You are here: [Census.gov](http://www.census.gov) > [Business & Industry](#) > [NAICS](#) > NAICS Search/Tools

2012 NAICS Definition

T = Canadian, Mexican, and United States industries are comparable.

811192 Car Washes

This U.S. industry comprises establishments primarily engaged in cleaning, washing, and/or waxing automotive vehicles, such as passenger cars, trucks, and vans, and trailers.

Illustrative Examples:

Automotive detail shops
Mobile car and truck washes
Car washes

2002 NAICS	2007 NAICS	2012 NAICS	Corresponding Index Entries
811192	811192	811192	Automotive detailing services (i.e., cleaning, polishing)
811192	811192	811192	Automotive washing and polishing
811192	811192	811192	Car detailers
811192	811192	811192	Car washes
811192	811192	811192	Detailing services (i.e., cleaning and polishing), automotive
811192	811192	811192	Mobile car and truck washes
811192	811192	811192	Self-service carwash
811192	811192	811192	Truck and bus washes

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