

# 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 of Henry & Mary Lou Black and Blackball Properties, LLC  
Application to License, Inspection, and Review Board ("LIRB")  
Change of Use Permit Issued May 20, 2013 for 1707 Concord Pike*

Dear Dave:

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

In support of the request for a Stay, I refer you to the appeal letter of this same date which establishes the meritorious nature of the appeal. In addition, UDC Section 40.03.521A 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 with 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 has not pursued such relief in the last 2 years (based upon the inability to provide four (4) on-site parking spaces of the minimum 9 foot wide by 18 foot deep dimension required by the UDC).

Pursuant to 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 UDC 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.

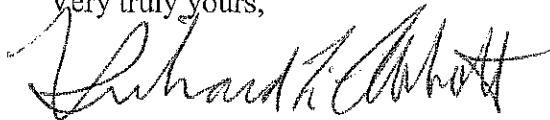
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Under the applicable Code provision, “[t]he Stay will be granted unless the Code Official can demonstrate that the granting of the Stay would jeopardize the health, safety, or welfare of the public.” (emphasis added). Consequently, unless Code Official George O. Haggerty can articulate a reason why a Stay of the Change of Use Permit would jeopardize public health or safety, the Stay request must be granted.

The entry of a Stay will merely maintain the *status quo*, which does not present any health or safety problem. Immediately prior to Permit issuance the business was not legally permitted to operate; a prior Change of Use permit was revoked by a written decision of the LIRB. Indeed, the Stay is appropriate under the circumstances, in order to prevent an unsafe parking situation from occurring until the LIRB considers my clients' appeal challenging the new permit on the merits.

Please confirm that the effectiveness of the Change of Use Permit issued by the Building Code Official on May 20, 2013 shall be stayed pending the LIRB's final decision on my clients' administrative appeal. Thank you.

Very truly yours,



Richard L. Abbott

RLA:cth  
File No. 372.01

cc: Henry & Mary Lou Black – Via U.S. Mail  
Blackball Properties, LLC – Via U.S. Mail