

Judy L. Doesschate, Esq.
380 New Scotland Avenue
Albany, New York 12208
judydoesschate@nycap.rr.com
518-459-2889

November 1, 2018

Richard Berkley, Esq., Chairperson
City of Albany Board of Zoning Appeals
200 Henry Johnson Blvd.
Albany, New York 12210

RE: 372 New Scotland Avenue
USDO Use Interpretation 100418.001

Dear Mr. Berkley,

Please consider the following supplemental points, information and documentation in support of my appeal of the decisions referenced in my October 25, 2018 letter:

1. Attached November 1, 2018 Email from Suzanne Sullivan, Executive Director for the NYS Board of Nursing, Regarding RN Performance of Cosmetic Procedures (Attachment K) Which Clearly States:

- a. Tattooing (including micropigmentation) is NOT within the Scope of Practice of RN's or LPNs.**
- b. Persons engaged in tattooing must be permitted pursuant to Public Health Law Article 4A.**
- c. RNs may only perform cosmetic procedures to treat dermatological conditions *pursuant to a valid order from a qualified physician, nurse practitioner or PA who has examined the patient.* The Board of Nursing email lists the specific procedures that RNs may perform pursuant to their license – while expressly excluding micropigmentation.**

None of the services listed in the business description contained in USDO Use Interpretation 100418.001 or on Ms. Cronin's website are included in the Nursing Board's list of cosmetic procedures that may be performed by an RN pursuant to his or her nursing license. Additionally, nothing in the description of the services in the USDO Interpretation or on Ms. Cronin's website even hints that the services are provided pursuant to a valid medical order.

As a result, there is absolutely no basis for anyone to claim that the services proposed to be performed at 372 New Scotland Avenue will be provided under Ms. Cronin's RN license or that they are in anyway nursing, medical or professional services akin to those provided by a doctor, dentist or chiropractor in a private office setting. Consequently, there can be no doubt that the micropigmentation services Ms. Cronin is performing at 1525 Western Avenue and proposes to perform at 372 New Scotland Avenue are performed solely pursuant to her "tattoo artist" license issued in accordance with Albany County Local Law 4 for 1999 and NYS Public Health Law Article 4-A.

As a result, there is no basis for making a distinction between the services being provided by Ms. Cronin and any other person licensed pursuant to the Albany County Local Law 4 for 1999 and the NYS Public Health Law and the only reasonable interpretation is that such services are a "personal or business service" within the USDO. As such, USDO Use Interpretation

100418.001, Mr. Spencer’s final ruling issued on October 17, 2018, and any other determinations or permits issued in reliance on a presumption that the description of the proposed services fall within the scope of practice of an RN and are an “office” are unfounded, and arbitrary and capricious and must be declared null and void.

2. A Conditional Use Permit is Required Before the Proposed Business can Operate as an “Office.”

USDO §375-3(C)(4)(d)(ii) (Use-Specific Standards) expressly states:

“(A) If an Office use involves dangerous or hazardous materials and/or procedures subject to federal or state safety regulations, then a ***Conditional Use permit shall be required.***” (*emphasis supplied*)

There can be no doubt that the proposed business involves dangerous or hazardous materials and/or procedures subject to federal or state safety regulations. The New York State Department of Health (NYSDOH) has felt compelled to issue warnings regarding the risks of tattooing to consumers as well as to tattooists, including about exposure to HIV, Hepatitis B and C and other blood-borne diseases. (*See* Attachment L - NYSDOH webpage on Tattooing regulations and safety concerns.) The concerns about safety are shared by the federal Food and Drug Administration (FDA) and the National Institute for Occupational Safety and Health (NIOSH) as noted in the links provided on the NYS Department of Health webpage. Albany County Department of Health regulations make it clear that the operation of a licensed tattoo shop requires compliance with the federal Occupational Safety and Health Administration (OSHA) regulations for “Occupational Exposure to Blood-borne Pathogens” (29 CFR §1910.1030), as well as compliance with extensive safety and sanitary requirements set forth in its regulations.¹ (*See* Attachment M) They also require adherence to “Universal Precautions” issues by the national Centers for Disease Control (CDC) published in “*Morbidity and Mortality Weekly Report*,” June 23, 1989, Vol. 38 5-6.

Similarly, the NYS Department of State website explicitly warns “**most beauty treatments involve actions that can be dangerous.**” (*See* Attachment F) The operation of a beauty parlor or salon is also subject to extensive health and safety regulations designed to protect both the customer and the beauty specialist. *See* 19 NYCRR §§ 160.12 – 160.27.

As a result, there can be no doubt that if the proposed business is considered to be an “office,” then USDO §375-3(C)(4)(ii) prohibits the operation of the business unless and until the owner-operator has obtained a Conditional Use Permit from the Planning Board.

Additionally, it is evident that these businesses pose special health and safety risks to customers and others that the prior chiropractor’s office did not, and as such, cannot be said to be the same or a less intense use that allows the substitution under the USDO.

¹ I note that section 5 of the Albany County Regulations requires the owner of a Tattoo Shop to submit plans and obtain approval for remodeling or the conversion of an existing structure to a Tattoo Shop prior to the start of any such construction and I was advised by the Albany County Department of Health that no application for 372 New Scotland Avenue had been submitted as of October 24, 2018 although the premises have clearly been undergoing remodeling. Section 7 D. appears to require each work room to have handwashing facilities accessible without touching a door knob, which the plans do not appear to include. (*See* Attachment G-1)

3. Any Objection or Determination Made Based Upon the Use of the Term “Tattoo Parlor” is Misplaced and Irrelevant

Ms. Cronin, Mr. Spencer, and Ms. Cronin’s customers have objected to the use of the term “Tattoo Parlor” in reference to Ms. Cronin’s proposed business. This is a misplaced emphasis on the specific choice of words used in the USDO since the term “tattoo parlor” is clearly intended to be used interchangeably with other terms that describe the services that are required to be licensed pursuant to the Albany County Local Law 4 for 1999 and New York State Public Health Law Article 4-A, i.e., “tattoo parlor,” “tattoo salon,” “tattoo shop” and “tattoo studio.” What is important is not the precise word used or how the business appears, but whether the business is required to be licensed pursuant to Albany County Local Law 4 for 1999 and New York State Public Health Law Article 4-A as USDO §375-3(C)(4)(d)(iii) clearly requires.

Section 461 of New York State Public Health Law Article 4-A provides:

“No person shall be a body piercing specialist or tattooist and no person, firm, corporation, partnership, or other association shall operate a body piercing studio or tattoo studio without first obtaining a permit from the department.”

Education Law section 460 defines “tattoo studio” as “*any premises in which the tattooist conducts such practice,*” and a “tattooist” as “*any person who applies a tattoo to the body of any other person.*” These definitions are indistinguishable from the definitions provided in Albany County Local Law 4 for 1999 for a “tattoo shop” and the common dictionary definitions provided for “tattoo parlor” in the text of my initial October 25, 2018 appeal submission. Ms. Cronin’s premises at 1525 Western Avenue are clearly licensed as a “Tattoo Studio²” in accordance with the requirements of Public Health Law Article 4-A as well as the requirements of Albany County Local Law 4 of 1999 – both of which are listed as “use-specific” requirements for tattoo parlors listed as “personal or business services” in USDO §375-3(C)(4)(d)(iii). (See Attachment G). Hence, Ms. Cronin’s current business is clearly a “personal or business service” under the USDO.

Since Ms. Cronin’s website advertises the same services as those that are included in the USDO interpretation that are intended to be provided at 372 New Scotland Avenue (and this is *not* the practice of nursing), her proposed business is clearly required to be licensed as a “tattoo studio,” “tattoo shop,” “tattoo parlor,” or “tattoo salon” pursuant to Public Health Law Article 4-A and Albany County Local Law 4 of 1999, and consequently, is clearly a “personal or business service” under the USDO.

In addition to the foregoing, I note that the determinations made by Mr. Spencer fail to take into consideration the significant impacts on residents and properties in the area, including, but not limited to: 1. Exposure to sharps, blood and infectious waste; 2. The lack of additional parking for the owner, the esthetician, other employees and customers being served by this

² Since the NYS DOH has not yet issued regulations governing the licensing of tattoo parlors, they accept licensure as a “Tattoo Studio” pursuant to a local sanitary code as sufficient for the purposes of complying with PHL Article 4-A (See Attachment L - NYSDOH webpage) Hence, the Albany County DOH’s use of the term “tattoo studio” in Ms. Cronin’s business permit which is understood to be the same as a “tattoo shop” or “tattoo parlor.”

expanded tattoo studio and beauty salon; 3. Requirements for separate trash pick-up and hazardous waste disposal not otherwise required in an R-2 district; 4. Reductions in the resale value of all properties in the area from the expansion of commercial uses in this R-1 and R-2 zoned family neighborhood that are otherwise only permitted in expressly zoned mixed use-neighborhood center (MU-NC) and higher levels of commercially zoned districts; and 5. Disruption to residents' quiet enjoyment of their neighborhood and properties by drawing individuals, cars, supply vehicles, and waste disposal businesses into this residential neighborhood for purely commercial purposes well beyond what occurred for the prior operation of a chiropractor's office.

For the convenience of the Board, I am attaching the following additional documents that were previously referenced in my October 25, 2018 appeal letter:

1. PDF from New York State Department of State website – Beauty Salon Licensure Requirements clearly stating that all businesses providing one or more of the services licensed under Article 27 of the General Business Law must be licensed as a Beauty Salon a/k/a Appearance Enhancement Business. (Attachment N)
2. September 10, 2018 email from Rick LaJoy, Director of Buildings and Regulatory Compliance, advising me he was not aware of any inquiries or anything else relating to the zoning for 372 New Scotland Avenue and its possible grandfather status or building permits; thereby denying me notice that his office had issued a permit on August 29th and the zoning determination had been made on August 9th. (Attachment O)

I note also, Mr. Glass's email of September 26, 2018 (near end of the string of emails in Attachment D) states "I don't see a record of any permits coming through our office, but not sure there would be if there was not a change of use." These are only two examples of the extensive problems I have had in being able to receive accurate and timely information to be able to exercise my rights under the law, and to be able to advocate effectively for my constituents.

Wherefore, I respectfully reaffirm my request that the Board of Zoning Appeals nullify all decisions made with regard to 372 New Scotland Avenue regarding its nonconformity, permissible uses, certificate of occupancy and related matters and find that the proposed uses are "personal or business services" that cannot be provided at the property because the property lost its nonconforming status, and in any case, the substitution is not permitted because it is a more intense use than the alleged existing nonconformity of an "office" use.

Sincerely,

Judy L. Doeschate

Judy L. Doeschate

cc: L. Alpert w/attachments
B. Glass w/attachments