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November 26, 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 and Members of the Board of Zoning Appeals:

Attached please find additional documentation/evidence supporting my appeal, specifically with regard to my request that the Board of Zoning Appeals:

1. nullify the August 9, 2018 certificate of nonconformity;
2. find 372 New Scotland Avenue is not a legal nonconforming “office” use; and
3. find that the “use” described in USDO Use Interpretation 100418.001 is not an “office” use, but a “personal or business services” use.

The additional documentation attached is described below. I am also attaching a revised list of Attachments for your convenience.

Additionally, at the Board of Zoning Appeals workshop on November 14, 2018, I learned that the “Change of Use” Certificate issued on August 29, 2018 has been “corrected” to note that the “change of use” authorized is an “office use.” I am asking the Board of Zoning Appeals rescind and nullify both the original certificate and this “corrected” version because: 1. The evidence clearly shows that the first floor at 372 New Scotland Avenue never was a legal nonconforming office use, so any “office use” is not a permitted use; 2. Any potential claim of a legal nonconforming office use at 372 New Scotland Avenue has been discontinued multiple times for more than 180 days since 1966, and more than 365 days since June 27, 2017 – also terminating any claim to an “office use” as a “permitted use;” 3. Since the prior use was an “office use,” there is no basis to issue a “change of use” certificate for an “office use;” and 4. The proposed business is not an “office” use, but a “personal or business service” use that was required to be submitted to the BZA on notice to residents. Thus, both the issuance of the original certificate and the “correction” is improper.

The following is a list of the additional attached documentation in support of my appeal:

P. Zoning Compliance Certificate Application – With Unsigned, Unsworn Statement from Unknown person Re: prior 372 New Scotland Avenue Use and Description of Business

Q. FOIL Request relating to 372 New Scotland Avenue submitted on October 2, 2018 – Including Specific Request for Any Documentation that might have been relied upon in issuing such permits, including a finding a continuing legal non-conforming use (Only “proof” provided on October 19, 2018 in response is the above application.)

R. Affidavit of Carol Carpenter, Part Owner and prior resident of 370 New Scotland Avenue, who babysat at 372 New Scotland, Re: 372 New Scotland Avenue Used as a Single Family Residence With No Doctor’s Office in the main residence; Doctor’s Office was in the Basement 1961 through at least 1971

S. Affidavit of Richard Mabee, Tenant of 372 New Scotland Avenue 1979-1983 Regarding first floor “Office Use” Discontinued and Vacant in 1982 through after October 1983

T. Letter of Mary Alice Maynes, Owner of 3 Ramsey Place, Re: History of 372 New Scotland Avenue and opposition to commercial use

U. Deeds for 372 New Scotland Avenue from October 22, 1971 to present (Deeds are described in list of attachments for your ease of reference)

V. Excerpts from Polk City Directory for 372 New Scotland Avenue, showing “vacant” entry in 1983 where the office entry normally appeared, (Directory not published in 1982 and 1984); Other years showing no tenant names for when the chiropractor lived at 372 New Scotland Avenue (Polk Entries are described in detail in the list of attachments for your ease of reference)

W. Prior Albany Zoning Code Provisions Relevant to 372 New Scotland

X. New York State Education Department Division of Licensing Services Disciplinary Record for Seth Kohl; License Suspended September 12, 2017; October 27, 2017 Conviction Noted in Record; Record of inappropriate conduct going back years.

Y. Albany County Local Law 4 for 1999 – Tattoo and Body Piercing Regulation

Z. Excerpt from Colour Cosmetics Website Nov 15, 2018 showing Nora Quinn as “Certified Micropigmentation Specialist” (but not a nurse)

AA. Chapter 38 of Legal Manual for New York Physicians, Fourth Edition: Corporate Practice of Medicine and Fee-Splitting, by Judy L. Doeschate, Esq. and Andrew Roth, Esq., published by New York State Bar Association and Medical Society of the State of New York (Business Corporations cannot practice medicine or other professions without express authorization pursuant to statute)

BB. New York State Law Provisions RE:

1. Definition of “Professional Services” (General Business Law §1501);
2. Nursing License Does not Confer Authority to Practice Medicine (Education Law §6909)

CC. October 19, 2018 email from Kathleen Cronin, RN Regarding Use of Second Floor

DD. Affidavit of Donald A. Tumonis, Chiropractor, regarding his residing in and operating his Chiropractic practice at 372 New Scotland Avenue in the 1980s, and the first floor office being vacant when he purchased the property in September of 1983.

I look forward to putting this documentation in context for you at the hearing Wednesday evening.

Sincerely,

s/ Judy L. Doesschate

Judy L. Doesschate

Attachments

CC: L. Alpert

B. Glass