

LAW OFFICES  
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September 26, 2008

Betty Dixon, Director  
Office of Inspections Permits  
Anne Arundel County  
Heritage Office Complex  
2664 Riva Road  
Annapolis, MD 21401

Re: Spectec, LLC/ The Alamo Apartments  
321 Magothy Road, Arnold, MD

Dear Madam:

This office represents a group of individuals who adjoin, or are in proximity to, the referenced property and are directly affected by the decisions of your Department and other County agencies and departments relative to the referenced property.

It appears from the construction activity over the past several months that the property is currently undergoing work to correct serious health and/or safety problems, including those problems set forth in one or more citations from the County. In addition, it appears that other work, most notably repair or replacement of the roof, has been accomplished. My clients note that it does not appear from the County's on-line permit records that any of the of the work that has been undertaken to date was the subject of a building permit. My clients request that you confirm 1) whether a permit was required for the work, and 2) whether a permit was issued.

My clients also wish to point out that the County may no longer issue an occupancy permit for this building for use as six apartments. Rather, the permitted use of the structure, or a new structure on the property, is limited to those uses set forth in the R-2 zoning.

The use of the property as a five unit apartment was at all times since 1993 a non-conforming use by virtue of a non-conforming use decision denominated Administrative Decision NC 3-93 (June 11, 1993). That five unit apartment use was modified by a 1996 special exception decision to allow an 11 percent

RECEIVED  
9/29/08  
RSL

District of Columbia Office  
4530 Wisconsin Avenue, N.W., Suite 200  
Washington, D.C. 20016  
Phone: 202.253.8923

Betty Dixon, Director  
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expansion incorporating a sixth unit (Case No. 1995-0542-S, In Re: Thomas D. Scardina, Jr., decided February 15, 1996).

The non-conforming use was specifically identified to Lots 21, 22 and 24-32, comprising approximately 44,687 square feet of land area. The area of the property did not change with the 1996 special exception decision.

On or about February 7, 2005, Thomas Scardina, Jr., the owner of Lots 21 and 22, sold those two lots, thereby reducing the land area of the non-conforming use by approximately 8,000 square feet. Subsequently a single family house was built on Lots 21 and 22.

On or about June 13, 2006, Thomas Scardina, Jr., the owner of Lots 27-30 (and the physical lots upon which the 6-unit apartment sits) sold those 4 lots - comprising approximately 17,949 square feet - to Spectec, Inc. Accordingly, by June 13, 2006, the original size of the lots comprising the non-conforming use had been reduced to 40% of its original size.

Prior to 1996, the County issued citations for the structure due to serious health and/or safety issues. The present owner of the property appears to be correcting those issues, but no longer owns all, or even a substantial portion, of the real property upon which the non-conforming use was based. Accordingly, the non-conforming is no longer permitted and an occupancy permit for a 6-unit (or smaller number) apartment may not be issued. Only a single family residence, or other permitted use under the R-2 zoning, is allowed.

The issue of the loss of the non-conforming use was discussed in Case Numbers 2007-0045-S and 2007-0100-V before the County Administrative Hearing Officer. I enclose a copy of the Hearing Officer's decision for your reference and direct your attention to Pages 11-12. Although that decision was the subject of an appeal, the sole issue that the Appellant brought before the Board of Appeals related to an extension of time within which to complete the correction of the health and/or safety violations. There was no appeal of the Hearing Officer's decision relating to the loss of the non-conforming use.

Lastly, my clients submit that under Section 18-4-203, Lots 21 and 22 merged by operation of law, or were required to be merged by agreement of the common owner, Thomas Scardina, Jr., in order to maintain the non-conforming 6 unit apartment use. There

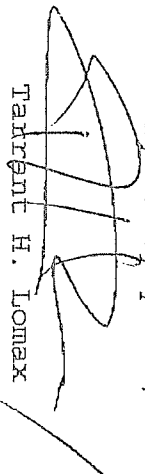
Betty Dixon, Director  
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is no apparent record of any recorded lot merger agreement, and the construction on Lots 21 and 22 in fact may be illegal and required to be removed.

My clients request that you confirm that the use applicable to this property is now limited to those uses within the R-2 zoning, and that an occupancy permit for a multi-family use will not be issued.

I await your advice in these matters.

Very truly yours,



Tarrant H. Lomax

cc: Clients  
Robert J. Fuoco, Esq.

LAW OFFICE  
OF

ROBERT J. FUOCO

105 PADFIELD BOULEVARD

GLEN BURNIE, MARYLAND 21061

(410) 768-6733

FAX (410) 768-5917

October 7, 2008

Tarrant H. Lomax, Esq., P.C.  
940 Bay Ridge Avenue  
Annapolis, MD 21403-3033

RE: Spectec, LLC/The Alamo Apartments  
321 Magothy Road, Arnold, MD  
My File Number: M223-47

Dear Mr. Lomax:

I represent Spectec, LLC. I am in receipt of your letter of September 26, 2008. Your letter is groundless and I am requesting that you withdraw same by a separate letter to the office of Inspections and Permits.

Before your involvement in this case, the Community Association of Manhattan Beach, litigated my client's right to the continued recognition of 321 Magothy Road (hereinafter referred to as "the subject property") as a non-conforming use with six separate apartment units. As I believe you are aware, that recognition was granted in two separate decisions: in 1993 (granting the original non-conforming use recognition) and in 1996 (granting a special exception to expand to six apartment units).

Under the appropriate Anne Arundel County regulations, a non-conforming use may continue in perpetuity as long as it does not remain vacant for a period in excess of one year. Because of the Health Department order to vacate the subject property in order to correct certain Health Department violations, the subject property was vacant for a period in excess of one year. To prevent the harsh application of the statute, and the resulting lapse of the special exception and the non-conforming use recognition, my client filed a variance to extend the time by which the subject property could remain vacant until the Health Department violations were vitiated.

The Administrative Hearing Officer denied that request. That decision was appealed and the Board of Appeals granted that request in its decision dated May 28, 2008, Case Number BA44-07V. No appeal was taken from that decision.

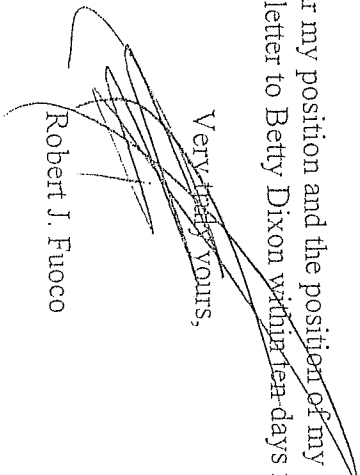
You wrongly refer only to the decision of the Administrative Hearing Officer. That decision becomes void after an appeal and subsequent decision by the Board of Appeals. I am

sure that you are aware under the Anne Arundel County Charter, Section 603, all cases heard by the Board of Appeals are heard de novo. Therefore, there is no partial appeal. Your statement in your letter that "there was no appeal of the Hearing Officer's decision relating to the loss of the non-conforming use" is factually and legally wrong. The decision by the Board of Appeals granting the variance was by definition a recognition that the non-conforming status enjoyed by the subject property was extended and will continue to benefit the subject property. The issue has been decided. No appeal was taken. It is now res judicata. You may not collaterally attack that decision. If your clients attempt to interfere with my client's application to obtain a building permit, I will file a declaratory action and request attorney's fees.

Please identify your "clients" in this action. The Manhattan Beach Community Association already voted not to further obstruct my client's rights to develop this property. If this action is an organized effort by the Community Association, it is ultra vires and may lead to the removal of the officers of the Community Association.

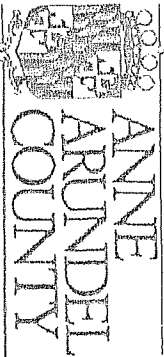
I trust this makes clear my position and the position of my client. Please advise whether you intend to withdraw your letter to Betty Dixon within ten days from the date of this letter.

~~Very truly yours,~~

  
Robert J. Fuoco

RJF:gkr

cc: Spectec, LLC ✓



M A R Y L A N D

County Executive John R. Leopold

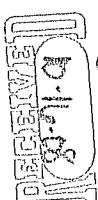
*Department of Inspections and Permits*  
2664 Riva Road, Annapolis, MD 21401

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October 13, 2008



Tarrant H. Lomax, Esq.  
940 Bay Ridge Avenue  
Annapolis, MD 21403

Re: 321 Magothy Road, Arnold, MD

Dear Mr. Lomax:

I have reviewed the information you submitted with your letter to me dated September 26, 2008 in reference to the above address.

The decision of the Administrative Hearing Officer dated June 22, 2007, to deny the special exception to allow the expansion of the existing six units and the variance to extend the 18-month maximum time before termination of nonconforming use was appealed to the Anne Arundel County Board of Appeals as you noted in your letter.

The special exception to expand each of the six units by 11% was denied and not appealed. The number of units was never an issue in the special exception. The property owner decided to renovate the property rather than demolish and rebuild. That decision by the property owner negated the need for the special exception for expansion of the non-conforming use.

The issue before the Board of Appeals was the extension of time to allow completion of the necessary renovations in order to comply with the Health Department issues. The acreage of the property has never been at issue.

This Department has investigated numerous complaints over the last several months. The work that was being done on the roof did not make any structural changes and therefore a permit was not necessary. An inspection of the work was completed to make this determination. The installation of the windows also was inspected and no permit was required for that work. The property currently has six active building permits for interior renovations on the property (B02251890, B02251893 through B02251897.)

The Certificate of Use issue is still open pending inspection once construction has progressed to a point that distinct, separate units can be inspected. To date, all inspections have determined that the property is in compliance with the variance conditions and building codes.

Sincerely,

Elizabeth L. Dixon  
Director

cc: Robert J. Fuoco ✓

LAW OFFICE  
OF  
ROBERT J. FUOCO  
105 PADFIELD BOULEVARD  
GLEN BURNE, MARYLAND 21061  
(410) 768-6733  
FAX (410) 768-5917  
November 5, 2008

Tarrant H. Lomax, Esq., P.C.  
940 Bay Ridge Avenue  
Annapolis, MD 21403-3033

RE: Our File No.: M223-47  
Spectec, LLC

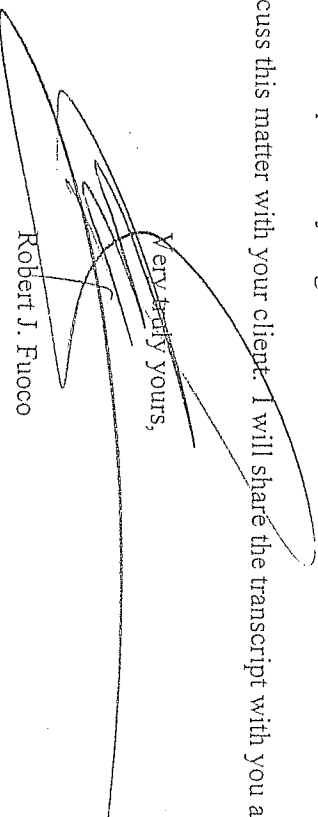
Dear Mr. Lomax:

I am in receipt of your letter dated October 30, 2008. I understand your representation in this case. I further understand that you were not privy to the two Administrative Hearings: one before the Administrative Hearing Officer and one before the Board of Appeals.

The issue you and your client now raise has already been raised in previous administrative proceedings. Therefore, the issue has already been resolved. A transcript of the testimony will bear that issue out. I have ordered same.

I understand that you are only operating on the information your client has given to you. However, your client knows that this issue has already been litigated. I enclose a copy of the Closing Argument filed with the Board of Appeals by Fred Sussman on behalf of the Community Association. This exact same argument was raised by your client and rejected by the Board. As a result, I will seek attorney's fees if I have to defend a frivolous appeal before the Board of Appeals. Please do not view this letter as a "threat". I am simply giving you and your client fair and advance warning that I do not take lightly to having to re-litigate an issue previously litigated.

Therefore, please discuss this matter with your client. I will share the transcript with you after my receipt of same.

  
Very truly yours,  
Robert J. Fuoco

RJF:gkr  
Enclosure

cc: Spectec, LLC ✓  
Betty Dixon - Anne Arundel County