GASIOROWSKI & HOLOBINKO
ATTORNEYS AT LAW
54 BROAD STREET
RED BANK, NEW JERSEY 07701
(732) 212-9930
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R. S. GASIOROWSKI
JOHN E. HOLOBINKO

CHRISTIE A. GASIOROWSKI
CATHY S. GASIOROWSKI

March 4, 2024

Via: Certified Mail/R.R.R. 9589 0710 5270 1055 2862 79
-and- First Class Mail
Commercial Tower Elite, LLC
39 Maple Place
Keyport, New Jersey 07735

Re: Commercial Tower Elite, LLC
Block 76, Lot 8,
39 Maple Place
Keyport, New Jersey

Dear Sirs:

This office represents Todd and Amy Liebman (hereinafter referred to as "Applicants") who are owners of, and reside at, a single-family residential house located at 146 Osborne in the Borough of Keyport, State of New Jersey. This property is adjacent to the above-referenced property that presently houses the business Commercial Tower Elite, LLC which designs, builds, installs, and maintains private and public wireless networks which include, but are not limited to, 4G LTE, Microwave OEM, and small cell projects.

Both properties are located in the Borough's RA Single-Family Residential Zone. When Applicants purchased their home at 146 Osborne in 2007, the building located at 39 Maple Place was owned by JAG Tool Co. Inc. and operated as a machine shop. This machine shop was recognized as a valid preexisting nonconforming use. The machine shop did not use or occupy the outside paved area for storage (other than a small shed) or as a work area. Commercial Tower Elite, LLC applied for a Zoning Permit for site interpretation/change of use representing

that Commercial Tower Elite, LLC would not alter the exterior of the building. The Borough Zoning Officer approved the change of use on March 23, 2021.

Since occupying this property in 2020, Commercial Tower Elite, LLC, has used the open area to store construction items, commercial generators, and construction debris outside in the rear yard of its property, which is adjacent to the backyard of the Applicants' single-family residential home in violation of several Keyport Ordinances. Commercial Tower Elite, LLC employees use an industrial forklift to move heavy objects around the perimeter of its property and onto the adjoining public roadway.

More recently, Commercial Tower Elite, LLC employees have started working outside in the rear yard of this facility which is immediately adjacent to the Liebman's backyard. A door was recently installed in the back of this commercial building which leads to this rear yard area and is used to facilitate the loading and unloading of materials and various types of networks and other deliveries all day. These actions constitute the illegal expansion of this nonconforming industrial use in a residential zone.

On or about December 4, 2023, the Liebmans filed an Application with the Borough of Keyport Unified Planning Board pursuant to N.J.S.A. 40:55d-68 which seeks a determination as to whether the character and scope of the activities presently conducted on the aforementioned property are an illegal expansion of the prior pre-existing nonconforming machine shop use. In the alternative, pursuant to N.J.S.A. 40:55D-70(a) and/or (b), this Application seeks to appeal the Zoning Officer's finding that the use of the Griffin Trailer in the rear yard of the property to store construction materials and/or construction debris does not violate Sections 12-17.1 & 16-3.2 Borough's Zoning Ordinance.

This Application has been scheduled for a public hearing before the Keyport Unified Planning Board on April 25, 2024. As this Application is to assess and determine the legality of your firm's use of this property as effecting the neighboring property. Commercial Tower Elite, LLC can retain counsel to represent it at this hearing and will be able to cross-examine the Applicants' witnesses and present its own expert testimony.

I am attaching a copy of the Applicants' submission filed with the Borough of Keyport Unified Planning Board which includes an Application supplemented by

correspondence dated December 8, 2023 and December 21, 2023. Provide these documents to your attorney so that he may prepare your case for the April 25, 2024 hearing before the Unified Planning Board.

Very truly yours,

R. S. GASIOROWSKI

CSG*ts
Enclosures

cc: Todd Liebman via: toddliebman@hotmail.com
Denise Nellis, Secretary Unified Planning Board:
Dnellis@deyportonline.com

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54 BROAD STREET
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R. S. GASIOROWSKI
JOHN E. HOLOBINKO

CHRISTIE A. GASIOROWSKI
CATHY S. GASIOROWSKI

December 8, 2023

Via: Mclark@keyportonline.com
Michele Clark, Clerk
Borough of Keyport
70 West Front Street
Keyport, New Jersey 07735

Re: Commercial Tower Elite
39 Maple Place, Keyport
Block: 76 Lot: 8

Dear Ms. Clark:

This office represents the Applicants, Todd and Amy Liebman, with regard to the above Zoning Board appeal. Enclosed please find the following documents:

1. Original and 22 copies of the Zoning Board of Adjustment Application;

2. Original and 22 copies of Letter Supplementing the Application with Exhibits;

3. A USB Drive containing the above referenced Application and Supplemental Letter with Exhibits.

I also enclose two checks, one in the amount of $375.00 representing the Appeals Application Fee and professionals escrow; one representing the Interpretation Application Fee and professionals escrow in the amount of $275.00.

Very truly yours,

CATHY S. GASIOROWSKI

RSG*ts
Enclosures

Z:\Litigation1\Liebman, Amy - Commercial Tower Elite - 39 Maple Pl. , Keyport\APPEAl fr ZO\Application\Michele Clark Clerk cover letter re Appeal 12-8-23.doc

APPLICATION TO THE KEYPORT UNIFIED PLANNING BOARD

1. SUBJECT PROPERTY

Location: 39 Maple Place, Keyport, NJ

Tax Map: _____ Block: 76 Lot(s) 8

Dimensions: Frontage 62 Depth 105 Total Area 5,400 sq. ft.

Zone District: RA Zone

Location of the property is approximately _____ feet from the intersection of

_____ and _____.

The property is located within 200 feet of another municipality: X NO _____ YES

If yes, name of municipality _____

The property fronts on a County Road or State Highway: X NO _____ YES

COUNTY ROUTE NUMBER _____ STATE HIGHWAY NUMBER _____

2. APPLICANT INFORMATION

Full Legal Name: Todd Liebman and Amy Liebman

Address: 146 Osborne Street, Keyport, NJ

(Street) (City) (State) (Zip)

Telephone Numbers: Day _____ Evening _____

Email: _____

Applicant is a _____ Corporation _____ Partnership ___ Sole Proprietor X Resident

3. OWNER IF DIFFERENT FROM APPLICANT:

If the owner of the property is someone different from the Applicant, then please complete the following:

Owner's Name: _____

Address: _____

(Street) (City) (State) (Zip)

Telephone Numbers: Day _____ Evening _____

Email: _____

4. **ADDITIONAL PROPERTY INFORMATION**

Restrictions, covenants, easements, homeowners/condo association by-laws, existing or proposed on the property:

___YES (attach copies and/or copy of deed) ___PROPOSED (attach description) ___NONE

NOTE: All Deeds Restrictions, covenants, easements, association by-laws, either existing or proposed, must be submitted for review, and must be written in easily understandable English in order to be approved.

Present use of the premises and proposed use (describe in detail): _____

_____

_____

_____

5. **APPLICANT'S EXPERTS / REPRESENTATIVES**

Applicant Attorney: R.S. Gasiorowski, Esq. of Gasiorowski & Holobinko
(Name and Firm if Applicable)

Address: 54 Broad Street, Red Bank, NJ 07701
(Street) (City) (State) (Zip)

Telephone: 732-212-9930 Fax 732-212-9980

Applicant Engineer: _____
(Name and Firm if Applicable)

Address: _____
(Street) (City) (State) (Zip)

Telephone: _____ Fax _____

Applicant Planning Consultant: _____
(Name and Firm if Applicable)

Address: _____
(Street) (City) (State) (Zip)

Telephone: _____ Fax _____

Applicant Traffic Engineer: _____
(Name and Firm if Applicable)

Address: _____
(Street) (City) (State) (Zip)

Telephone: _____ Fax _____

6. **OTHER EXPERTS**

List any other expert(s) who will submit a report and/or testify on behalf of the Applicant.

Name: Marc Leber Field of Expertise: Engineering and Planning

Address: 11 South Main Street, Marlboro, NJ 07746
(Street) (City) (State) (Zip)

Telephone: 732-577-0180 x 200 Fax _____

7. **RELIEF BEING REQUESTED**

SUBDIVISION APPROVAL

_____ Minor Subdivision

_____ Major Subdivision _____ Major Subdivision – Final

_____ Number of Lots to be Created _____ Number of Proposed Dwelling Units

Note: A "Plan of Subdivision" must be submitted in accordance with the submission requirements set forth in the Submission Checklist and the Borough of Keyport Ordinance.

SITE PLAN APPROVAL

_____ Major Site Plan Approval _____ Minor Site Plan Approval

_____ Preliminary Site Plan Approval (phases – if applicable) _____

_____ Final Site Plan Approval (phases – if applicable) _____

_____ Amendment or Revision to an Approval Site Plan (Area to be disturbed – square feet)

_____ Request for a Waiver from Site Plan Review and Approval. Reason for Request: _____

_____

_____

BOROUGH OF KEYPORT APPLICATION

OTHER 7. **RELIEF BEING REQUESTED:**

X Pursuant to N.J.S.A. 40:55D-68 the Applicant seeks a determination from the Borough of Keyport's Unified Planning Board as to whether the scope and character of the present nonconforming commercial use and structure existing on Block 76, Lot 8 shown on the Tax Map of the Borough of Keyport is commensurate with the commercial use which existed prior to the adoption of the amendment to the zoning ordinance which rendered said use and structure nonconforming.

X Appeal of Zoning Officer's decision (N.J.S.A. 40:55D-70(a):

Zoning Officer David Olsen's August 22, 2023 determination that the use of the Griffin Trailer located on Block 76, Lot 8 in the Borough of Keyport's Tax Map is not prohibited by the Borough of Keyport Code Sections 16-3.2 and 12-17.1.

X Interpretation of Zoning Ordinance(N.J.S.A. 40:55D-70(b):

The Applicant is seeking an interpretation of Section 12-17.1 in order to ascertain whether Zoning Officer David Olsen's August 22, 2023 determination that Section 12-17.1 only applies to "storage trailers" and therefore cannot be applied to or used to prohibit Commercial Tower Elite, LLC's use of the open-top Griffin Trailer on its property to store construction materials and/or construction debris is correct.

7. **SUBMISSION REQUIREMENTS**

The Applicant is required to submit each of the following, unless otherwise noted:

A. Application: An Original and nineteen (19) copies to the Board Secretary (Total 20) must be submitted (with attached site plan, plot plan, survey and/or other pertinent documents).

B. Escrow Agreement (Form #1): Sign and submit with original copy of application

C. Notice of Public Hearing (Form #2): DO NOT MAIL TO PROPERTY OWNERS UNTIL AUTHORIZED TO DO SO BY THE BOARD'S SECRETARY. Submit a draft copy (leaving date of hearing blank) and submit with original application. *(Not required for minor subdivision where no variances are requested)*

C. Affidavit of Publication – Asbury Park Press: Evidencing that the Notice of Public Hearing (Form #3) was published at least ten (10) days prior to the hearing date: (DO NOT PUBLISH NOTICE IN NEWSPAPER UNITL AUTHORIZED TO DO SO BY THE BOARD'S SECRETARY) Submit to the Board's Secretary as soon as received by the newspaper. (Not required for minor subdivision where no variances are requested)

D. Affidavit of Service – with attachments (Form #4). Submit to the Board's Secretary along with Original copies of Certified Mail Receipts stamped by the US Post Office as to the date of mailing, and a copy of the Notice of Public Hearing (Form #2) with hearing date.

E. Tax Payment Certification (Form #5). Submit with Original copy of Application.

8. **OTHER APPROVALS, WHICH MAY BE REQUIRED, AND THE DATES THAT PLANS/APPLICATIONS WERE SUBMITTED:**

AGENCY OR PERMIT	YES	NO	DATE PLANS SUBMITTED
Borough of Keyport Health Dept	____	____	_____
Borough of Keyport Planning Board	____	____	_____
Freehold Soil Conservation District	____	____	_____
NJ Dept. of Transportation	____	____	_____
JCP&L	____	____	_____
Other: _____	____	____	_____

*NJ Dept of Environmental Protection

*Check nature of approval(s) needed on next page:

____Sewer Extension Permit; ____Sanitary Sewer Connection Permit; ____Potable Water Construction Permit;

____Stream Encroachment Permit; ____ Wetlands Permit; _____ Tidal Wetlands Permit; ____ Other_____

OTHER

X Informal Review of – Pursuant to N.J.S.A. 40:55D-68, the Applicant seeks the issuance of a certificate certifying that the use*

X Appeal Decision of the Zoning Officer (N.J.S.A. 40:55D-70.a.) Describe nature of appeal: Zoning Officer David OLSEN"S August 22, 2023 determinatior that the use of the Griffin Trailer located on Block 76, Lot 8 in KEYPORT Tax Map is not prohibited by the Borough of KEYPORT Code Sections 16-3.2 and 12.17.1.

____ Interpretation of Map or Ordinance, or Decisions upon Special Questions (N.J.S.A. 40:55D 70.b.) Explain:_____

____ Variance Relief-Hardship (N.J.S.A. 40:55D-70c (1)) Provide Reasons:_____

____ Variance Relief-Substantial Benefit (N.J.S.A. 40:55D-70c (2)) Provide Reasons:_____

____ Variance Relief-Use (N.J.S.A. 40:55D-70cd) Provide Reasons:_____

	EXISTING	PROPOSED	REQUIRED
Minimum lot area:*			
Building coverage limit:*			
Front yard setback:*			
Side yard setback:*			
Rear yard setback:*			
Roadway setback:			
Impervious coverage limit:			
Parking spaces:*			
Building height:*			

*DENOTES ITEMS REQUIRED ON THE SITE PLAN.

*and structure existing on BLOCK &¢, Lot 8 in KEeyport Tax Map existed before the adoption of the Ordinance which rendered the use and structure nonconformi

List of Maps, Reports and other materials accompanying this application (attach additional pages as required for complete listing): _____

_____

_____

_____

_____

9. **OTHER INFORMATION ATTACHED IN SUPPORT OF YOUR APPLICATION.**
(List specific information attached and its importance/significance to your application): _____

_____

_____

_____

10. CERTIFICATIONS

APPLICANT

I certify that the foregoing statements and the materials submitted are true. I further certify that I am the individual applicant or that I am an Officer of the Corporate applicant that I am authorized to sign the application for the Corporation, or that I am a general partner of the partnership applicant. (If the Applicant is a corporation, this application must be signed by an authorized corporate officer as indicated in a resolution of the corporation which must be attached hereto. If the applicant is a partnership, this must be signed by a general partner).

Sworn to and subscribed before me this

_____ day of _____, 20___

_____
NOTARY PUBLIC

X _____
SIGNATURE OF APPLICANT

Todd Liebman & Amy Liebman
Applicant's Name (Print)

OWNER (IF DIFFERENT FROM APPLICANT)

I certify that I am the Owner of the property which is the subject of this application, that I have authorized the applicant to make this application and that I agree to be bound by the application, the representations made by the applicant, and the decision of the Board in this matter.

Sworn to and subscribed before me this

_____ Day of _____, 20___

_____
NOTARY PUBLIC

X _____
SIGNATURE OF OWNER

Todd Liebman & Amy Liebman
Owner's Name (Print)

GASIOROWSKI & HOLOBINKO
ATTORNEYS AT LAW
54 BROAD STREET
RED BANK, NEW JERSEY 07701
(732) 212-9930
FACSIMILE (732) 212-9980

R. S. GASIOROWSKI
JOHN E. HOLOBINKO

CHRISTIE A. GASIOROWSKI
CATHY S. GASIOROWSKI

December 8, 2023

Keyport Planning Board
PO Box 60
Keyport, New Jersey 07735

Re: Commercial Tower Elite, LLC
39 Maple Place, Keyport NJ

Dear Sirs:

This office has been retained to represent Todd & Amy Liebman ("the Liebmans"), the owners and residents of a single-family home identified as Block 76, Lot 9 on the Borough of Keyport's Tax Map, and more commonly known as 146 Osborn Street, Borough of Keyport, State of New Jersey.

Kindly accept this letter to supplement and explain the Application now being filed with the Borough of Keyport's Unified Planning Board pursuant to N.J.S.A. 40:55D-68, which seeks a determination as to whether the type and scope of activities now conducted on adjacent property identified as Block 76, Lot 8 on the Borough of Keyport's Tax Map and more commonly known as 39 Maple Place, Borough of Keyport, State of New Jersey ("Subject Property") by Commercial Tower Elite, LLC, are an accurate reflection of the use which existed prior to the adoption of the ordinance which rendered the use non-conforming.

The Liebmans' single-family residence located at 146 Osborn Street is in the Borough of Keyport's RA Residential District ("RA Zone"). When the Liebmans purchased their property in 2007, the adjacent Subject Property , also located in the RA Zone, was occupied by a machine shop, a nonconforming commercial use. The

prior owners of this property, Jorge Fernandez and Manuel Gonzales, operated the J.A.G. Tool Co., Inc. machine shop on this property. All of the machine shop work took place within the confines of the building located on the Property. The open area of the Subject Property, adjacent to the Liebmans' backyard, contained a paved area that was occasionally used for parking and several trees which effectively blocked out a portion of the Subject Property's building/backyard from the Liebmans' perspective. The Zoning Officer, Dave Olsen ("Olsen") has advised that the machine shop also had a small shed on this portion of the Property for storage of a lawnmower and sorted tools.

Commercial Tower Elite, LLC, purchased the Subject Property in September 2021. Commercial Tower Elite, LLC, cut down the trees on the back section of Subject Property, some of which were adjacent to the Liebman property, and extended the paved area. Commercial Tower Elite, LLC, began storing large amounts of construction materials and equipment outside on the paved area adjacent to the Liebman property. For a time, Commercial Tower Elite, LLC, also located an illegal dumpster adjacent to the Liebman property and frequently burned refuse in a metal drum in the yard in violation of Section 4-1.3. Commercial Tower Elite, LLC, started using the partially paved parking area adjacent to the Liebmans' property as an outdoor work area with several employees working outside on a daily basis. These employees cut pipes, break apart wooden and other types of packaging outside. The work performed outdoors is loud and disruptive. It continues for several hours throughout the workday and often involves the use of a forklift to move to the Griffin Trailer filled with construction debris, building materials and/or other heavy objects around the Subject Property or out onto the public street where the Griffen Trailer is hitched to a truck that brings the materials to a dump or a worksite.

Many of the surrounding residential property owners in the RA Zone wrote letters and/or called complaining to the Borough's zoning officials regarding the disruptive practices of this expanded, intense, nonconforming commercial use. After the Liebmans retained counsel to call and/or write letters to the Zoning Officer, David Olsen ("Olsen") the Borough Administrator, Kim Humphrey, the Construction Official, George Falco ("Falco") and the Fire Official Anthony Vecchio ("Vecchio"), Commercial Tower Elite, LLC's violations of Sections 16-3.2 and 4-1-3 were investigated and a warning and a violation were issued. (EXHIBIT A) (EXHIBIT B) (EXHIBIT C)(EXHIBIT D) While the condition and use of the Subject Property have improved, Commercial Tower Elite, LLC,

continues to violate several Sections of the Borough of Keyport Code. More specifically, in violation of Sections 16-3.2, 16-5.3c(6) and Section 12-17.1, Commercial Tower Elite, LLC, uses a Griffin Trailer located on its property, which is immediately adjacent to the Liebmans' single-family residential property, as an open top dumpster containing, but not limited to, discarded construction materials, including cut up cord, wooden pallets, fencing, disassembled wooden spools and assorted, molded plastic packaging for the entire month of August 2023. (EXHIBIT E) Prior to August, Commercial Tower Elite, LLC, used the same Griffin Trailer to store various items such as several 12-foot satellites dishes and other items used in construction in connection with its business. (EXHIBIT F) Commercial Tower Elite, LLC, continues to engage in activities that are an intensification of the preexisting, nonconforming use previously established by the machine shop. Commercial Tower Elite, LLC, employees regularly work outside on the paved area on the Subject Property, adjacent to the Liebmans' backyard, including cutting pipes, breaking apart wooden spools, burning refuse and using of a forklift to move heavy items on the Subject Property and on the adjacent public street. Making matters worse, Commercial Tower Elite, LLC, cut down the trees which, to a certain degree, visually separated the nonconforming use/property from the Liebman's adjacent conforming residential property.

This office sent letters to the Borough of Keyport's Zoning Officer Olsen, and its Construction Official Falco, on August 16, 2023 and July 20, 2023 regarding the aforementioned violations which: 1) specifically prohibit various materials including construction debris, metal, and wood from being stored, dumped, or otherwise placed upon any property, residential or commercial, within the Borough of Keyport; 2) require a commercial entity to get a permit and adequately screen and provide lids to all receptacles and/or dumpsters, used in connection with the storage and disposal of solid waste, refuse and recyclable materials; and 3) make it unlawful to place a permanent and/or movable storage or transportation trailer of any kind, upon any site within the Borough. (EXHIBIT E, EXHIBIT F, EXHIBIT G). Falco never responded to these letters; however, on August 22, 2023, Olsen prepared letters, dated July 28, 2023 and August 22, 2023, which indicate that he does not believe that Commercial Tower Elite, LLC's, "utility trailer" is a "storage trailer" and/or a "dumpster" and thus, no violation exists. (EXHIBIT H, EXHIBIT I) Olsen also concluded that the vehicles and trailers parked on the paved area adjacent to the Liebmans' property are permitted uses. (EXHIBIT I)

The facts are that Commercial Tower Elite, LLC, makes no attempt to screen from public view its Griffin Trailer which it uses as a receptacle for storage and as a container holding large amounts of construction debris and recycling. Once Commercial Tower Elite, LLC, purchased the Subject Property, cut down the trees and started storing large amounts of construction material and debris among other things, Todd Liebman was forced to frame and place large decorative panels on top of his own fence to attempt to conceal the sight of debris, recycling and/or other construction items stored on Commercial Tower Elite, LLC's property. The decorative screens are unable to effectively block out the view of the Griffin Trailer overflowing with construction debris, recycling or storing satellite dishes for several weeks at a time. Since Olsen's inspections of the Commercial Tower Elite LLC's property were limited to his *driving past* the property, the vehicles parked in front of the Griffin Trailer obfuscated his view of the Griffin Trailer and its contents. Nevertheless, Olsen determined that the conditions he and the property owner agreed upon, i.e. all materials be stored inside the building and only vehicles and trailers be parked on the Subject Property's paved area, adjacent to the Liebman property were kept. Furthermore, Olsen opined that Section 12-17.1 does not apply to the within situation because it is a "utility trailer" not a "storage trailer." (EXHIBIT I) Olsen was under the impression that the utility trailer was going to be leaving and on the road to the job site within hours or a day. (EXHIBIT H)

(a) Pursuant to N.J.S.A. 40:55D-68, the Applicant seeks a determination from the Unified Planning Board regarding whether the character of the original protected, preexisting, nonconforming commercial use located on the Subject Property entitles Commercial Tower Elite, LLC's to expand its commercial operations to include using the outdoor rear/side yard areas of the Subject Property as work space for employees where a forklift is routinely used to move heavy objects and commercial packing, piping, construction debris and/or construction items open-top Griffin Trailer located on the Subject Property without the necessity of getting a variance for the expansion of a nonconforming use.

The Liebmans are property owners and clearly have standing to make this Application pursuant to N.J.S.A. 40:55D-68. Nothing in the record indicates that the preexisting nonconforming commercial use established on the Subject Property by Jorge Fernandez and Manuel Gonzales' machine shop, J.A.G. Tool Co. Inc., involved the use of any of the outside yard areas, including the paved parking area

adjacent to the Liebman single-family residence, for the storage of construction debris, construction items or as a work area used by employees of a commercial processes, including but not limited to, the building of structures, the breaking apart and/or storage of construction debris, building structures or other items and/or the shipping materials. Furthermore, the prior preexisting nonconforming use did not include the use of a forklift on the property to move heavy items around the outside yard of the Subject Property on a daily basis.

It should be noted that the burden of proof as to the claim that a nonconforming, use is legal and conforming is upon the property owner asserting such use. Berkley Square v. Trenton Zoning Board, 410 N.J. Super. 255, 269 (App.Div.) cert. denied 202 N.J. 347 (2010). That such a use may have occurred by oversight from zoning authorities for an extended period does not create an estoppel or right to continue the unapproved use, without the owner obtaining a variance or site plan approval. Bonaventure Int. v. Spring Lake, 350 N.J. Super. 420, 432-433 (App. Div. 2002). To demonstrate such a nonconforming commercial use is legal under zoning law and protected, the property owner claiming the right to such use must demonstrate that the use was lawful under the Zoning Regulations in place at the time the use supposedly commenced or that a proper variance and site plan has been obtained. Ianeri v. East Brunswick Zoning Board, 193 N.J. Super. 15 (Law Div. 1993); Ferraro v. Zoning Board, 321 N.J. Super. 288 (App.Div. 1999). N.J.S.A. 40:55D-68 allows a preexisting nonconforming use to continue absent abandonment or total destruction; however, **such use is ordinarily restricted to its character and scope at the time of the ordinance making it a nonconforming use was enacted**. Conselice v. Seaside Park, 358 N.J. Super. 327 (App.Div. 2003); McDowell Inc. v. Board of Adjustment, 334 N.J. Super. 201, 214 (App.Div. 2000) certif. denied, 167 N.J. 88 (2001). Generally, nonconforming uses may not be enlarged as of right except where the enlargement is so negligible or inconsequential that it does not warrant judicial or administrative notice or interference. Grundlehner v. Dangler, 29 N.J. 256, 263 (App.Div.1956); Kramer v. Montclair, 33 N.J. Super. 16 (App.Div. 1954)

In the present case, the fact that the prior pre-existing, nonconforming commercial use which existed on the Subject Property was a machine shop, J.A.G. Tool Co. Inc., does not entitle Commercial Tower Elite, LLC, to expand the nonconforming commercial use on the Subject Property by: 1) expanding the area of the commercial use to encompass the outside perimeter of the Subject Property

for commercial endeavors; 2) let its employees expand the use by working in the yard outside the structure on the Subject Property using, among other things, a forklift on the Subject Property; and 3) storing construction or other items and/or construction debris in an open top Griffin Trailer for weeks and/or months at a time. Moreover, Commercial Tower Elite has intensified the nonconforming commercial use of the Subject Property by: 1) having its employees work outside of the structure located at 39 Maple Place in Keyport building, cutting pipes and/or taking apart antennas and other equipment; 2) allowing the storage of construction debris and/or construction materials and other objects in an open Griffin Trailer located immediately adjacent to the Liebman property for weeks at a time; 3) utilizing a forklift on the Subject Property and adjoining public roads for myriad tasks; and 4) removing the trees on the Subject Property which effectively separated the Subject Property from the adjacent conforming residential property located at 146 Osborn Street, Borough of Keyport, State of New Jersey.

The aforesaid uses are not protected pre-existing nonconforming uses. These uses represent an intensification and/or expansion of the prior nonconforming commercial use. Accordingly, Commercial Tower Elite, LLC must acquire a use variance pursuant to N.J.S.A. 40:55D-70d(2) if it wishes to continue its present day commercial use.

(b) As an alternative application to the Board. pursuant to N.J.S.A. 40:55D-70(a) and/or (b), the Applicant seeks to appeal the Borough of Keyport's Zoning Officer's finding that Commercial Tower Elite, LLC, were not using the Griffin Trailer on the Subject Property to either store construction materials or, in the alternative, act as an open receptacle for the storage of construction materials, or alternatively, construction debris and recyclables does not violate Sections 16-3.2, 16-5.3c(6) or 12-17.1.

Zoning Officer Olsen's determination that there were no violations was incorrect. Historically, Commercial Tower Elite, LLC, has an open top Griffin Trailer in its own yard accumulating all types of construction debris or acting as a storage receptable for construction materials over the course of several weeks or months at a time. Olsen's conclusion that the Griffin Trailer was not used as a "dumpster" and is not specifically prohibited by Sections 12-17.1 and 16-3.2 is arbitrary, capricious and unreasonable and must be overturned. Section 12-17.1 of

the Borough of Keyport's Borough Code makes it unlawful "…to place a permanent and/or movable storage or transportation trailer of any kind in an empty state, or to be used for the storage of any construction materials, other materials or goods, equipment, tools, etc., of any kind or nature whatsoever." Section 16-3.2 specifically prohibits anyone from having construction debris, among other things, stored, dumped or otherwise placed upon any residential or commercial within the Borough of Keyport.

Please advise as to the next available hearing date before the Borough of Keyport Unified Planning Board at which these maters can be heard. A copy of this application is being submitted to Commercial Tower Elite, LLC's attorney.

Respectfully submitted,

CATHY S. GASIOROWSKI

CSG*ts
Enclosures

EXHIBITS

EXHIBIT A – MARCH 6, 2023 Letter to OLSEN

EXHIBIT B – APRIL 27, 2023 Letter to HUMPHREY

EXHIBIT C – JUNE 13, 2023 Letter to OLSEN

EXHIBIT D MARCH 28, 2023 VIOLATION

EXHIBIT E – July 20, 2023 Letter to OLSEN

EXHIBIT F - AUGUST 18, 2023 Letter to OLSEN

EXHIBIT G – July 20, 2023 Letter to FALCO

EXHIBIT H – JULY 28, 2023 Letter from OLSEN

EXHIBIT I – AUGUST 22, 2023 Letter from OLSEN

-

+

EXHIBIT A

GASIOROWSKI & HOLOBINKO
ATTORNEYS AT LAW
54 BROAD STREET
RED BANK, NEW JERSEY 07701
(732) 212-9930
FACSIMILE (732) 212-9980

R. S. GASIOROWSKI
JOHN E. HOLOBINKO

CHRISTIE A. GASIOROWSKI
CATHY S. GASIOROWSKI

March 6, 2023

Via: dolsen@keyportonline.com
David Olsen
Borough of Keyport
70 West Front Street
P.O. Box 60
Keyport, New Jersey 07735

Re: Commercial Tower Elite - Keyport

Dear Mr. Olsen:

In December 2022 I was contacted by Todd and Amy Liebman, the owners of the single-family home located at 146 Osborne Street in the Borough of Keyport. The Liebmans were aggrieved by their neighbor's use of a commercial dumpster located in close proximity to their property.

When we spoke, you advised me that the preexisting nonconforming commercial use that preceded Commercial Tower Elie also had a dumpster on the property located at 39 Maple Place in the Borough of Keyport. We discussed that compelling Commercial Tower Elite to create a dumpster bed consisting of plants and fencing would not constitute an exacerbation of a preexisting nonconforming use but rather make the use more platable and less offensive to the adjacent residential use. At your recommendation, I made several telephone calls to David Quinn regarding this matter; however, he and I never spoke. The dumpster was eventually moved, but Commercial Elite Tower has commenced activities in that outdoor area that are not permitted and are not legal.

Beginning in January 2023, Commercial Tower Elite started to use the lot which previously contained the dumpster, to store what appears to be piles of equipment it uses during the course of business such as six foot wood spools of wire/cable and metal pallets and/or refuse emanating from its commercial use. Employees of the Commercial Tower Elite work outside on this lot all day long either putting items together or breaking down what these items were transported in. Furthermore, employees burning the wooden spools and other debris in an oil drum out in the open yard has become a common occurrence.

The expansion of assembly work and/or material storage in and onto this outdoor lot/area is an illegal expansion of a nonconforming use. In addition, the activities in this area are in blatant disregard of several Keyport's Ordinances including but not limited to:

> Section 25-1-8.5 All uses shall be conducted within a completely enclosed building, except for service stations, branch banks, dry cleaning, florist and off-street parking and loading facilities;
>
> Section 25-15.4 Uses in a nonresidential district, when abutting a residential district, shall be screened from the residentially zoned lot(s) in accordance with the provisions of Subsection 25-1-14.6;
>
> Section 16-3.2 no person, firm, partnership or corporation shall store or cause to be stored or allow to be stored, or permit to be dumped, spilled or otherwise placed upon any property, residential or commercial within the Borough of Keyport, construction debris, dirt, soil, mud, gravel, sand, stone, cement trees, stumps, brush, grass, wood, metal, iron, ashes, coal or any other type of materials except as may be provided herein; and
>
> Section 4-1.3 Persons placing litter in public receptacles shall do so in such a manner as to prevent it from being carried or deposited by the elements upon any streets, sidewalk or other public place. No person shall burn in the open any rubbish or garbage or refuse, including leaves, wood, and building debris . . . .

Please send a code enforcement and zoning officer to examine the current appearance and uses on the property located at 39 Maple Place and issue a cease and desist order and/or appropriate summons and advise. If the current condition and use of 39 Maple Place does not cease or improve, my clients will be forced to file a Complaint in Lieu of Prerogative Writs as residing next an expanding preexisting nonconforming commercial use which engages in various nonpermitted activities is intolerable.

Commercial Tower Elite must apply for and receive a use variance before if it wishes to continue such behavior.

Please contact me upon receipt of this letter to advise how your officer intends to proceed.

Very Truly Yours,

CATHY S. GASIOROWSKI

RSG*ts

EXHIBIT B

GASIOROWSKI & HOLOBINKO
ATTORNEYS AT LAW
54 BROAD STREET
RED BANK, NEW JERSEY 07701
(732) 212-9930
FACSIMILE (732) 212-9980

R. S. GASIOROWSKI
JOHN E. HOLOBINKO

CHRISTIE A. GASIOROWSKI
CATHY S. GASIOROWSKI

April 27, 2023

Via: dnellis@keyportonline.com
Kim Humprey, Borough Administrator
Borough of Keyport
70 West Front Street
Keyport, New Jersey 07735

Re: Commercial Tower Elite
39 Maple Place, Keyport

Dear Ms. Humprey:

I wrote to you on March 23, 2023 regarding the use and condition of the property located at 39 Maple Place in Keyport ("Subject Property") which is adjacent to Todd & Amy Liebman's single family residential property located at 146 Osbourne Street in Keyport. The nonconforming commercial enterprise at 39 Maple Place, CTE Properties, LLC, permits its employees work outside of its commercial building in its yard in violation of Section 25-1-8.5. The Subject Property is located in a single family residential zone. Working outdoors, and storing large components used in connection with its commercial enterprise and construction debris in its yard is not permitted.

CTE Properties, LLC's, conduct is that much more egregious because shortly after purchasing the Subject Property, it cut down the line of trees on its property which had historically separated the Subject Property from my clients' property effectively shielding the previous owner's pre-existing nonconforming machine shop and yard from Plaintiffs' view.

On March 24, 2023, CTE Properties, LLC, was issued a violation by the Zoning Officer in connection with Ordinance 16-3.2. This Violation, which I have attached hereto for your ready reference, requires that CTE Properties, LLC, remove all construction debris form its property by April 10, 2023. CTE Properties, LLC's, property located at 39 Maple Place in Keyport still looks like a construction site. Since receiving the March 28, 2023 Violation, CTE

Properties, LLC, has not moved anything from its yard. Also attached are five (5) photographs of the Subject Property taken on April 12, 2023, from the Liebman's' property by Todd Liebman. The condition of CTE Properties, LLC's, property is appalling. It affects the Liebman's' ability to enjoy the use of their property as the summer approaches and everyone wants to be outside.

As a result of the myriad calls made to the Borough of Keyport's Building and Zoning Department and an inspection of the Subject Property conducted by the Fire Marshal, CTE Properties, LLC's employees have stopped burning debris outside in its yard in a drum; however, they have not otherwise altered their behavior to comply with Keyport's Ordinances which specifically prohibit a commercial business from carrying on work outside of its building and storing various construction materials and refuse in a yard adjacent to a conforming residential property such as the Liebman's.

I have not received a call back from anyone at the Borough of Keyport regarding these issues. I am prepared to file a Complaint in lieu of Prerogative Writs seeking to enjoin CTE Properties, LLC, from continuing to violate Keyport's Ordinances and my clients' rights; however, I want to give the Borough of Keyport the opportunity to enforce its Ordinances and protect the rights of its citizens first.

Upon receipt of this letter, please contact me and advise how and when this matter can be addressed. If I do not hear anything within a week, I shall file a Complaint against CTE Properties, LLC, and the Borough of Keyport to resolve this matter in a timely fashion.

Very truly yours,

CATHY S. GASIOROWSKI

CSG*ts
Enclosure

cc: Todd & Amy Liebman

Borough of Keyport
70 WEST FRONT ST
P.O. BOX 60
KEYPORT, NJ 07735
(732) 739-5134

Violation Number: ZV-23-009
Issue Date: 3/28/2023
Notice Date: 3/28/2023

Zoning Violation

NOTICE OF VIOLATION

Owner: CTE PROPERTIES, LLC
Address: 1 GLENDALE PLACE
ABERDEEN NJ 07747

Block: 76
Lot: 8
Qualifier:

Site of Violation:

RE: 39 MAPLE PL
Borough of Keyport NJ

7016 1370 0002 0531 3267

A zoning violation has been issued for the above property.

Issuing Officer: David Olsen
Violation Type: NOTICE OF VIOLATION
Statute: 16-3.2
Code: No person or persons, firm, partnership or corporation shall store or cause to be stored or allow to be stored, or permit to be dumped, spilled or otherwise placed upon any property, residential or commercial, within the Borough of Keyport, construction debris, dirt, soil, mud, gravel, sand, stone, cement, trees, stumps, brush, grass, wood, metal, iron, ashes, coal or any other type of materials except as may be provided herein.

Infraction Summary:
YOU MUST REMOVE ALL CONSTRUCTION DEBRIS FROM THE PROPERTY. IF YOU REQUIRE A DUMPSTER, YOU MUST MAKE APPLICATION FOR A DUMPSTER PERMIT.

Compliance Date: 4/10/2023 Inspection Date:
Compliance:

Abatement Date:
Summons Date: Summons Numbers:
Fine:

If you have any questions, please contact this office at: (732) 739-5134.

ZONING OFFICER - (732) 739-5134

3/28/2023
Date

Gmail

Gasiorowski & Holobinko <gasiorowskilaw@gmail.com>

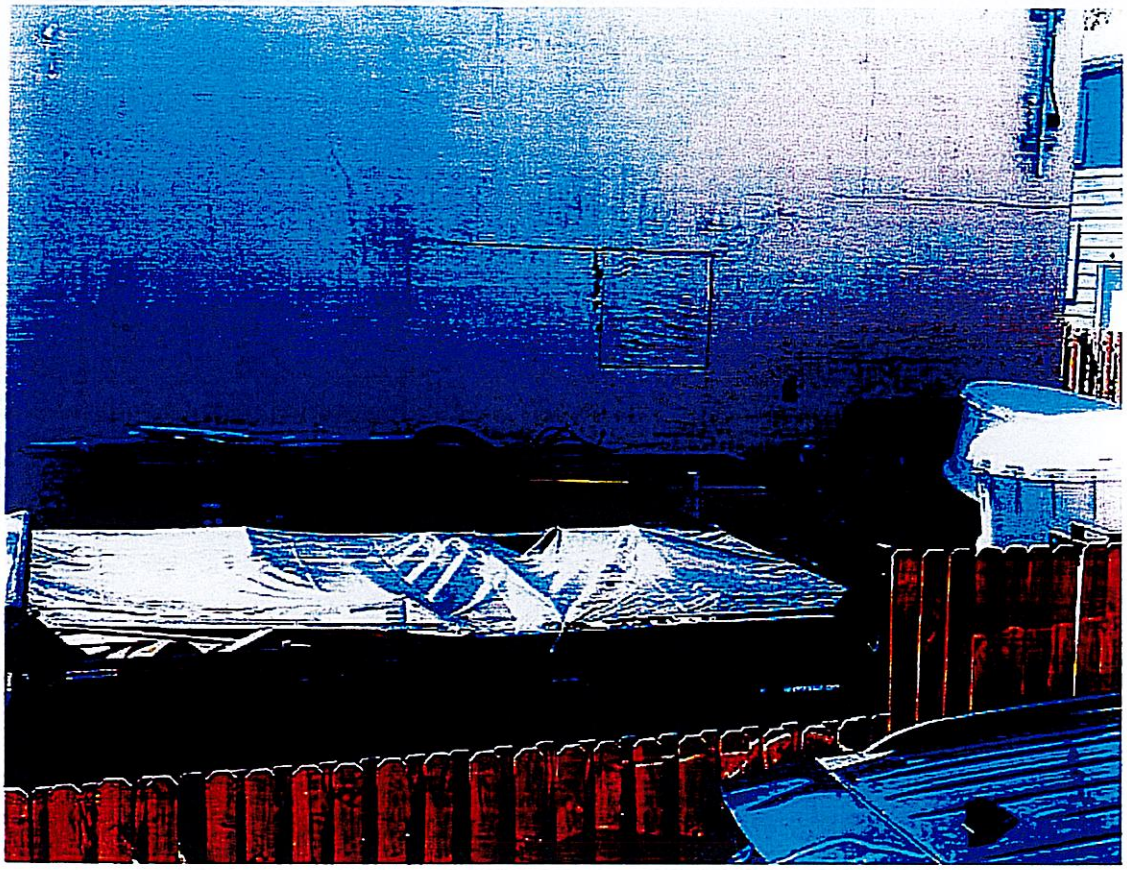
For reference. Pictures of the lot on 4/12 after we spoke

1 message

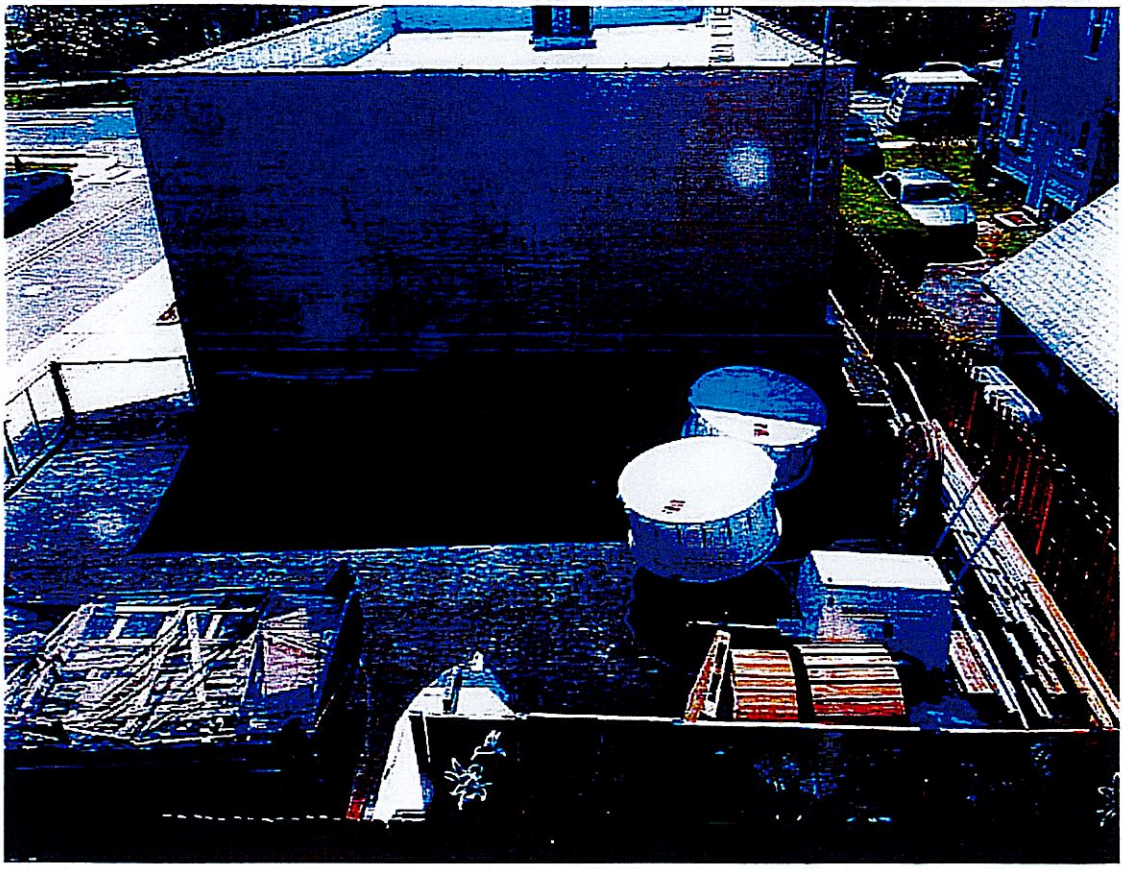
Todd <toddliebman@hotmail.com>
To: "gasiorowskilaw@gmail.com" <gasiorowskilaw@gmail.com>

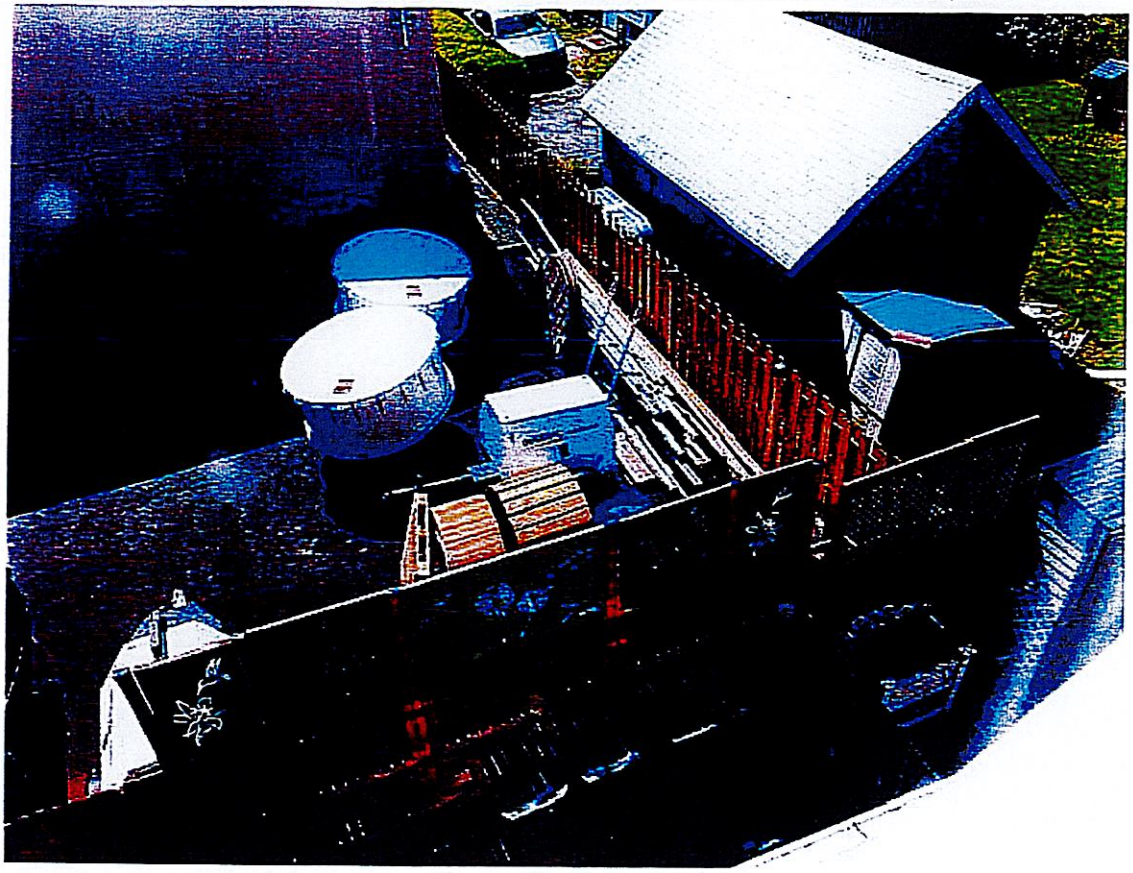
Wed, Apr 12, 2023 at 11:50 AM






GRIFFIN





Sent from my iPhone

EXHIBIT C

EXHIBIT C

GASIOROWSKI & HOLOBINKO
ATTORNEYS AT LAW
54 BROAD STREET
RED BANK, NEW JERSEY 07701
(732) 212-9930
FACSIMILE (732) 212-9980

R. S. GASIOROWSKI
JOHN E. HOLOBINKO

CHRISTIE A. GASIOROWSKI
CATHY S. GASIOROWSKI

June 13, 2023

Via Email & Mail : dolsen@keyportonline.com
David Olsen, Zoning Officer
Borough of Keyport
70 West Front Street
P.O. Box 60
Keyport, New Jersey 07735

Re: Commercial Tower Elite
39 Maple Place
Keyport, New Jersey

Dear Mr. Olsen:

My client reports that Commercial Tower Elite LLC continues to permit its employees to perform work activities in its parking area which is adjacent to the Liebman residence located at 146 Osborn Street in Keyport. The attached photographs depict piles of construction debris located on the property as well as an employee cutting down pipes outside of the building located at 39 Maple Place, Keyport, New Jersey in violation of Sections 25-1-8.5 & 16-3.1.

You advised that pursuant to your April 12, 2023 conversation with an owner of Commercial Tower Elite LLC, the business and its owners were warned that any subsequent violation would result in the imposition of fines. Accordingly, please be advised that Commercial Tower Elite LLC continues to allow its employees to work outside of its building in the yard and store construction equipment/debris on the outside of the building in violation of Keyport Borough's Ordinance Sections 25-1-8.5 & 16-3.1.

S:\Litigation1\Liebman, Amy - Commercial Tower Elite - 39 Maple Pl. , Keyport\Correspondence\David Olsen-6-13-23.docx

After you go out to the property located at 39 Maple Place and observe the improper activities taking place contact me and advise what steps are being taken to compel Commercial Tower Elite LLC to comply with the Borough of Keyport Ordinances. I wish to receive notice of any fines levied against Commercial Tower Elite LLC in connection with its continued outdoor operations and storage.

If no violations and fines issue, I will be forced to file a complaint to ensure that Commercial Tower Elite's offensive behavior ceases.

Thank you.

Very truly yours,

CATHY S. GASIOROWSKI, ESQ,

RSG/cb
cc: Todd and Amy Liebman

EXHIBIT D

Borough of Keyport
70 WEST FRONT ST
P.O. BOX 60
KEYPORT, NJ 07735
(732) 739-5134

Violation Number: ZV-23-009
Issue Date: 3/28/2023
Notice Date: 3/28/2023

Zoning Violation

NOTICE OF VIOLATION

Owner: CTE PROPERTIES, LLC
Address: 1 GLENDALE PLACE
ABERDEEN NJ 07747

Block: 76
Lot: 8
Qualifier:

Site of Violation:

RE: 39 MAPLE PL
Borough of Keyport NJ

7016 1370 0002 0531 3267

A zoning violation has been issued for the above property.

Issuing Officer: David Olsen
Violation Type: NOTICE OF VIOLATION
Statute: 16-3.2
Code: No person or persons, firm, partnership or corporation shall store or cause to be stored or allow to be stored, or permit to be dumped, spilled or otherwise placed upon any property, residential or commercial, within the Borough of Keyport, construction debris, dirt, soil, mud, gravel, sand, stone, cement, trees, stumps, brush, grass, wood, metal, iron, ashes, coal or any other type of materials except as may be provided herein.

Infraction Summary:
YOU MUST REMOVE ALL CONSTRUCTION DEBRIS FROM THE PROPERTY. IF YOU REQUIRE A DUMPSTER, YOU MUST MAKE APPLICATION FOR A DUMPSTER PERMIT.

Compliance Date: 4/10/2023 Inspection Date:
Compliance:

Abatement Date:
Summons Date: Summons Numbers:
Fine:

If you have any questions, please contact this office at: (732) 739-5134.

ZONING OFFICER - (732) 739-5134

3/28/2023
Date

EXHIBIT E

GASIOROWSKI & HOLOBINKO
ATTORNEYS AT LAW
54 BROAD STREET
RED BANK, NEW JERSEY 07701
(732) 212-9930
FACSIMILE (732) 212-9980

R. S. GASIOROWSKI
JOHN E. HOLOBINKO

CHRISTIE A. GASIOROWSKI
CATHY S. GASIOROWSKI

July 20, 2023

Via: dolsen@keyportonline.com
& First Class Mail
David Olsen, Zoning Officer
Borough of Keyport
70 West Front Street
P.O. Box 60
Keyport, New Jersey 07735

Re: Commercial Tower Elite Properties LLC
39 Maple Place
Keyport, New Jersey

Dear Mr. Olsen:

I am glad we were able to speak last week. Mr. Liebman just sent me the enclosed photographs which both depict an unhitched Griffin trailer located on the parking area for Commercial Tower Elite Properties, LLC, 39 Maple Place, Keyport NJ. In the first photograph, two 12-foot satellite dishes are in a Griffin trailer which is located immediately adjacent to Mrs. and Mrs. Liebman's fence. In the second photograph, the Griffin trailer, still located in the parking area for 39 Maple Place in Keyport, is holding what appears to be portions of wooden fencing and/or pieces of wood. Mr. Liebman advises me that the Griffin trailer, containing the aforementioned items, remained in the parking area for several days.

Commercial Tower Elite Properties LLC's use of the Griffin trailer to store and/or hold these items is a violation of Section 12-17.1 which specifically provides:

> ...it shall be unlawful to place a permanent and/or movable storage or transportation trailer of any kind, or other such storage container, upon any site within the Borough.

Whether to be left and/or parked/stored in an empty state or to be used for the storage of any construction materials, other materials or goods, equipment, tools, etc., of any kind or nature whatsoever, except to the extent the said trailer, or container is being used temporarily in conjunction with an authorized and properly permitted active construction project on said site, or to the extent such storage use is authorized pursuant to the Borough's Zoning Ordinances.

Commercial Tower Elite Properties, LLC's use of the Griffin trailer to hold satellite dishes, fencing and/or pieces of wood violates Section 12-17.1 and it should be issued a summons for same. Furthermore, its continuous use of its property to store construction materials and other items outside of its building, as well as its more recent habit of permitting its employees to work outside, markedly increases the intensity of the pre-existing nonconforming use and requires that Commercial Tower Elite Properties, LLC, be compelled seek a use variance pursuant to N.J.S.A .40:55D-70 d(2) from the Borough of Keyport's Unified Planning Board.

Thank you for your assistance in this matter. Please contact me when you receive this letter.

Very truly yours,

CATHY S. GASIOROWSKI, ESQ,

CSG*ts
Enclosures

cc: Todd and Amy Liebman via: email
Geoge Falco, Keyport Construction Official

Gmail

Gasiorowski & Holobinko <gasiorowskilaw@gmail.com>

Commercial Tower Elite July 7th

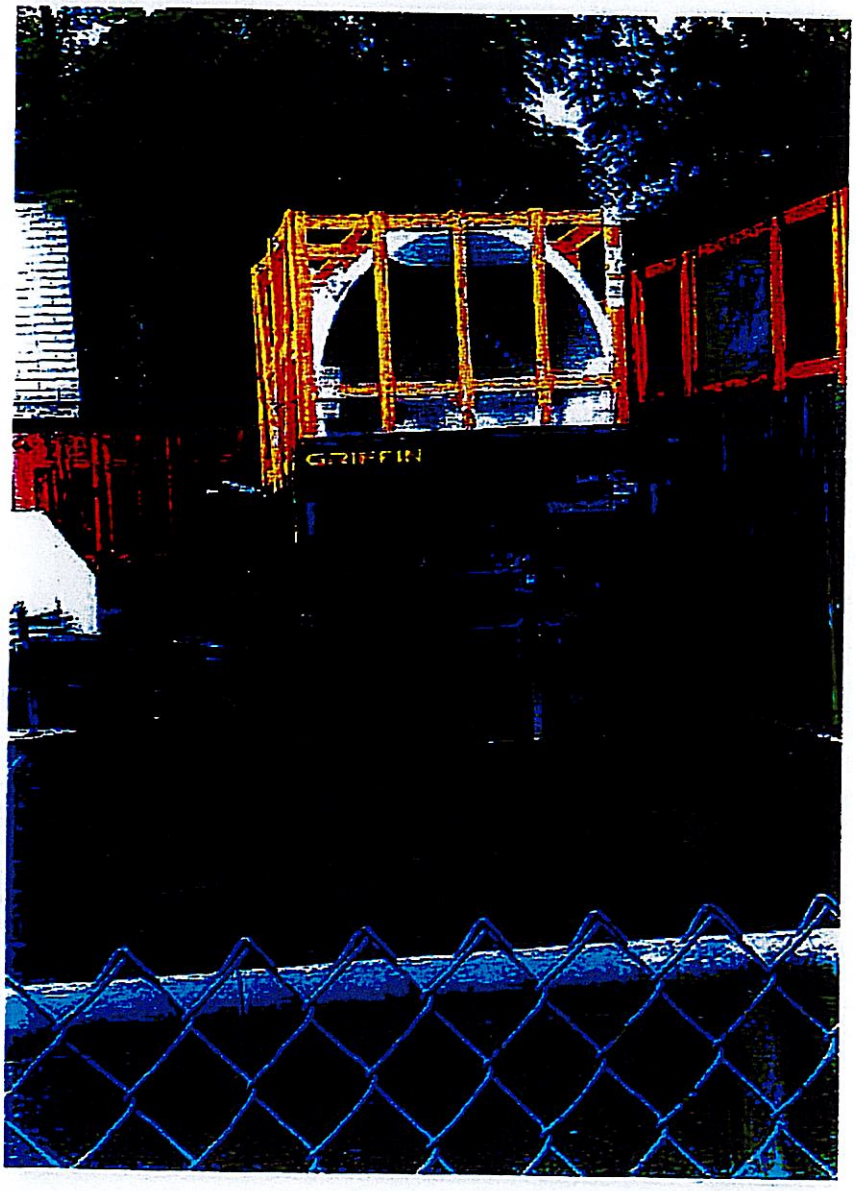
1 message

Todd <toddliebman@hotmail.com>
To: "gasiorowskilaw@gmail.com" <gasiorowskilaw@gmail.com>

Fri, Jul 7, 2023 at 5:08 PM

Good evening,
Below are pictures of Commercial Tower Elite storing satellite dishes on July 7th against my property line which is in violation of zoning code.

Thank you
Todd Liebman




GRIFFIN

EXHIBIT F

GASIOROWSKI & HOLOBINKO
ATTORNEYS AT LAW
54 BROAD STREET
RED BANK, NEW JERSEY 07701
(732) 212-9930
FACSIMILE (732) 212-9980

R. S. GASIOROWSKI
JOHN E. HOLOBINKO

CHRISTIE A. GASIOROWSKI
CATHY S. GASIOROWSKI

August 16, 2023

Via: dolsen@keyportonline.com
David Olsen
146 Osborn Street
Keyport, New Jersey 07735

Re: Commercial Tower Elite - Keyport

Dear Mr. Olsen:

I am in receipt of photographs from Mr. Todd Liebman which depict the Griffin Trailer located on 39 Maple Place, Keyport being used as an open trash receptacle for construction debris and/or as a storage trailer. I am attaching the most recent examples of these types of uses.

Mr. Liebman explained that for several weeks at a time, Commercial Tower Elite Properties, LLC, uses the Griffin Trailer on its property intermittently as a storage trailer for equipment and/or as an open receptacle for various types of debris.

Both acts violate Sections of the Borough Code and are not permitted to occur in a residential zone. Section 16-3.2 prohibits various materials from being stored, dumped, spilled or otherwise placed upon any property, residential or commercial within the Borough of Keyport. The prohibited materials include construction debris, dirt, soil, mud, gravel, sand, stone, cement trees, stumps, brush, grass, wood, metal, iron, ashes, coal or any other type of materials except as may be provided herein. See Section 16-3.2. Section 12-17.1 prohibits the placement of a permanent and/or movable storage or transportation trailer of any kind upon any site within the Borough.

Lastly, pursuant to Section 16-5.3c (6) any commercial entity which maintains an area for the storage of dumpsters or receptacles used in connection with the storage and disposal of solid waste, refuse and recyclable materials shall provide adequate screening from the public view. Each such

area shall be screened by a solid fence and the containers must have a close-fitting lid.

The aforesaid uses are not protected preexisting nonconforming uses. If Commercial Tower Elite, LLC, desires to continue these uses on its property, they are an intensification and/or expansion of a prior preexisting nonconforming use. Commercial Tower Elit, LLC must acquire a use variance pursuant to N.J.S.A. 40:55D-70d(2).

Please advise what you intend to do regarding the aforesaid violation(s).

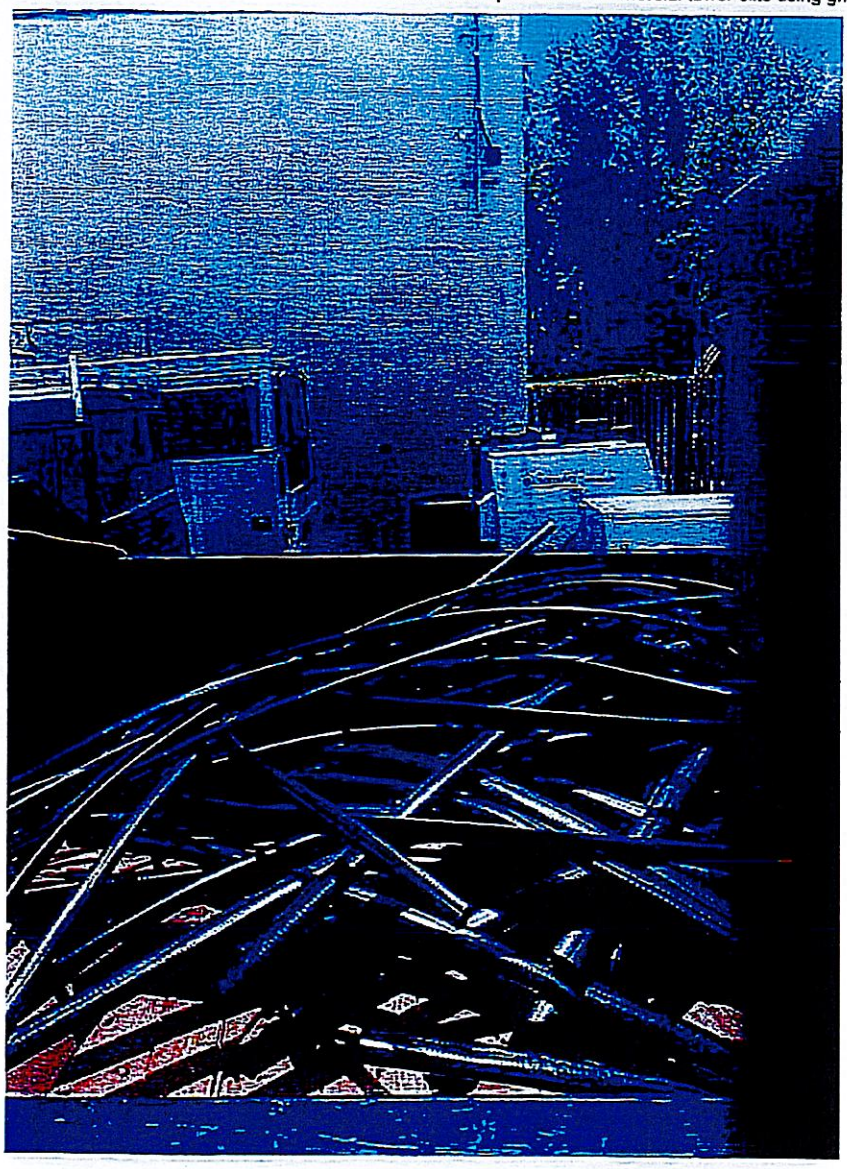
Very truly yours,

CATHY S. GASIOROWSKI

CSG*ts
Enclosures

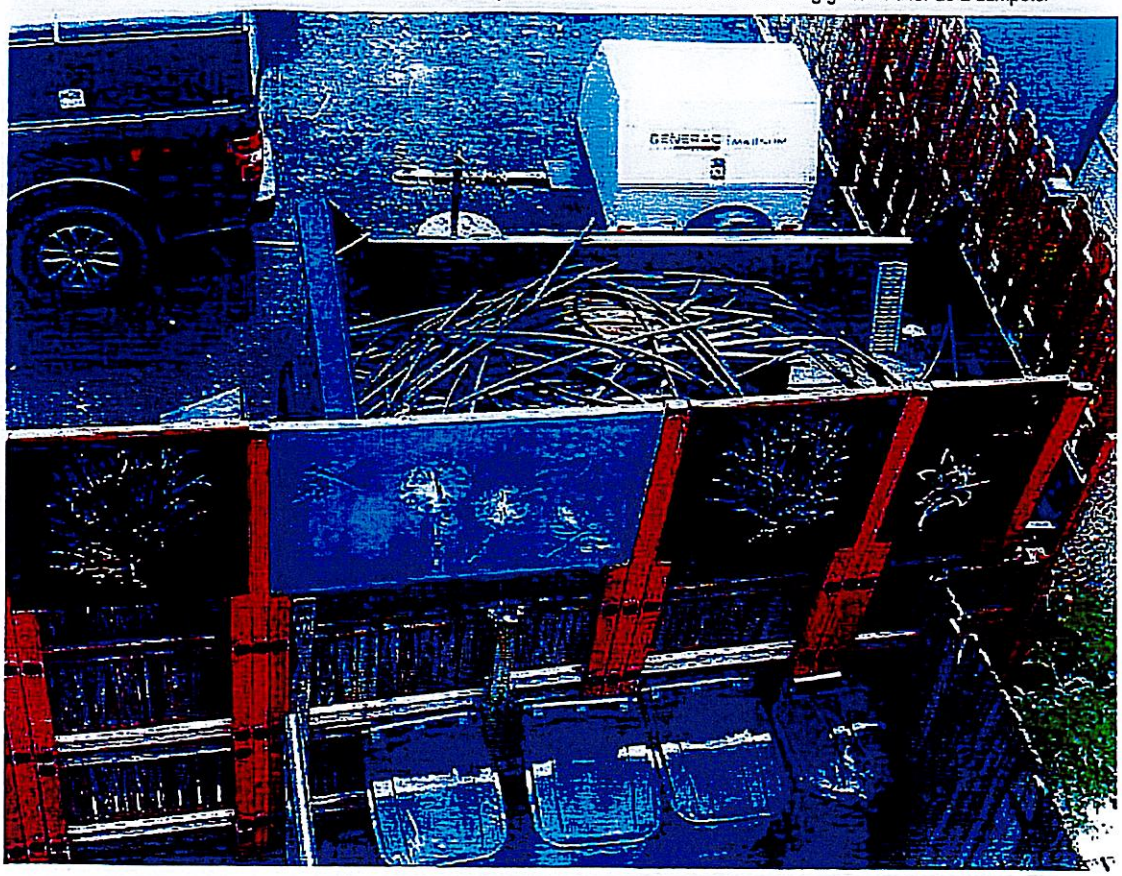
cc: Todd Liebman via: toddliebman@hotmail.com
George Falco via: gfalco@keyportonline.com


GENERAC
MAGNUM





Sent from my iPhone



Sent from my iPhone

EXHIBIT G

GASIOROWSKI & HOLOBINKO
ATTORNEYS AT LAW
54 BROAD STREET
RED BANK, NEW JERSEY 07701
(732) 212-9930
FACSIMILE (732) 212-9980

R. S. GASIOROWSKI
JOHN E. HOLOBINKO

CHRISTIE A. GASIOROWSKI
CATHY S. GASIOROWSKI

July 20, 2023

Via: gfalco@keyportonline.com
& First Class Mail
George Falco, Construction Official
Borough of Keyport
70 West Front Street
P.O. Box 60
Keyport, New Jersey 07735

Re: Commercial Tower Elite Properties LLC
39 Maple Place
Keyport, New Jersey

Dear Mr. Falco :

This firm was retained to represent Todd and Amy Liebman who are residents of Keyport and live at 146 Osbourne Street. The Liebmans' single-family property is located in the Borough of Keyport's RA Single-Family Residential Zone ("RA Zone"). Their neighbor, Commercial Tower Elite Properties LLC, located at 39 Maple Place in Keyport, is also located in the RA Zone; however, it is apparently operating as a continuation of a prior preexisting, nonconforming commercial use. Commercial Tower Elite Properties, LLC, previously received a Notice of Violation from the Borough of Keyport's Zoning Officer, David Olsen, because its property contained a significant amount of construction debris in violation of Section 16-3.2.

Mr. Liebman just sent me the enclosed photographs which both depict an unhitched Griffin trailer located on the parking area for Commercial Tower Elite Properties, LLC, 39 Maple Place, Keyport NJ. In the first photograph, two 12-foot satellite dishes in a Griffin trailer located immediately adjacent to Mrs. and Mrs. Liebman's fence. In the second photograph, the Griffin trailer, still located in the parking area for 39 Maple Place in Keyport, is holding what appears to be portions

of wooden fencing and/or pieces of wood. Mr. Liebman advises me that the Griffin trailer, containing the aforementioned items, remained in the parking area for several days.

Commercial Tower Elite Properties LLC's use of the Griffin trailer to store and/or hold these items is a violation of Section 12-17.1 which specifically provides:

> ...it shall be unlawful to place a permanent and/or movable storage or transportation trailer of any kind, or other such storage container, upon any site within the Borough. Whether to be left and/or parked/stored in an empty state or to be used for the storage of any construction materials, other materials or goods, equipment, tools, etc., of any kind or nature whatsoever, except to the extent the said trailer, or container is being used temporarily in conjunction with an authorized and properly permitted active construction project on said site, or to the extent such storage use is authorized pursuant to the Borough's Zoning Ordinances.

Commercial Tower Elite Properties, LLC's use of the Griffin trailer to hold satellite dishes, fencing and/or pieces of wood violates Section 12-17.1 and it should be issued a summons for same. Furthermore, its continuous use of its property to store construction materials and other items outside of its building, as well as its more recent habit of permitting its employees to work outside, markedly increases the intensity of the pre-existing nonconforming use and requires that Commercial Tower Elite Properties, LLC, be compelled seek a use variance pursuant to N.J.S.A .40:55D-70 d(2) from the Borough of Keyport's Unified Planning Board.

Thank you for your assistance in this matter. Please contact me when you receive this letter.

Very truly yours,

CATHY S. GASIOROWSKI

CSG*ts
Enclosures

cc: Todd and Amy Liebman via: email

S:\Litigation1\Liebman, Amy - Commercial Tower Elite - 39 Maple Pl. , Keyport\Correspondence\Keyport\Falco-7-20-23.docx

Gmail

Gasiorowski & Holobinko <gasiorowskilaw@gmail.com>

Commercial Tower Elite July 7th

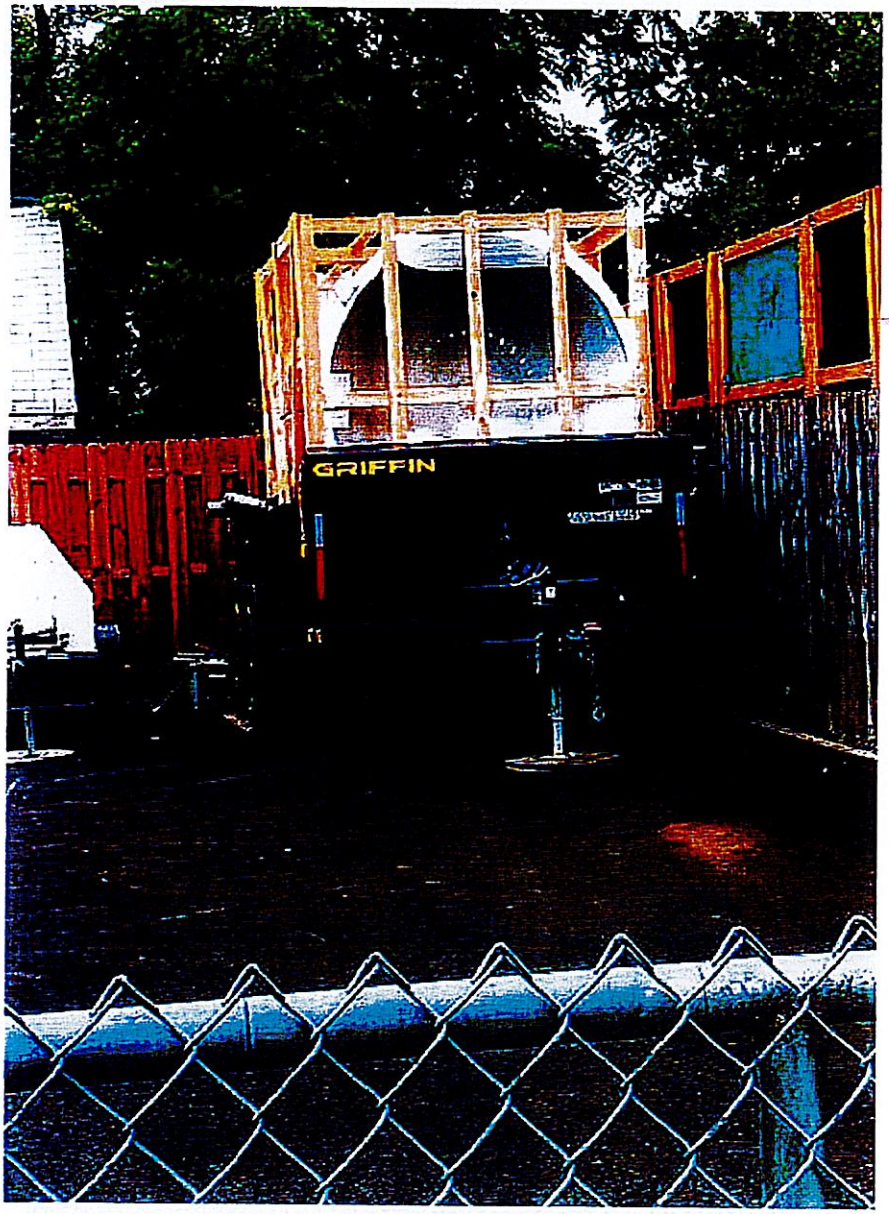
1 message

Todd <toddliebman@hotmail.com>
To: "gasiorowskilaw@gmail.com" <gasiorowskilaw@gmail.com>

Fri, Jul 7, 2023 at 5:08 PM

Good evening,
Below are pictures of Commercial Tower Elite storing satellite dishes on July 7th against my property line which is in violation of zoning code.

Thank you
Todd Liebman




GRIFFIN

EXHIBIT H

The Pearl of the Bayshore℠
Keyport
NEW JERSEY

July 28th 2023

Gasiorowski & Holobinko
c/o Cathy Gasiorowski
54 Broad Street
Red Bank, NJ 07701

Ms. Cathy Gasiorowski,

I have received and read your letter dated July 20th 2023 and reviewed your position regarding the activities at 39 Maple Place as they relate to section 12-17.1 of the Borough ordinance. I do not possess the same interpretations of the Borough Ordinance that you do as they relate to the activities at 39 Maple Place and my positions are as follows:

1. Section 12-17.1 is a sub section 12-17 which establishes the regulations prohibiting the use of storage containers. This section is referring to large shipping containers and trailers similar in nature to those used in over-the-road transportation where a tractor connects to and pulls the storage trailer behind it.

Open top utility trailers are not the same as storage trailers. The trailers containing material in question were not stored on the lot for a prolonged period. It seems to me that the trailer was located behind the building anticipating that it was going to be leaving and on the road to the job site within hours or a day.

I have continued to drive by the property on the following dates and times: June 13th at 1645; June 22nd at 1709; June 38th at 1721; July 3rd 1823; July 12th at 1653; July 18th at 1852; and July 22nd at 1458. On those days, I witnessed the conditions agreed upon by myself and the property owner, which were all materials to be stored inside the building and only vehicles and trailers parked on the paved area behind the building.

If you have any additional questions, need more information, or require further assistance, please feel free to contact me.

Regards,

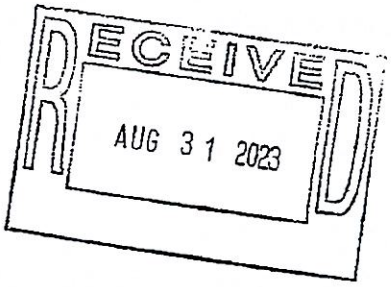
David Olsen
Zoning Officer
Borough of Keyport

EXHIBIT I

The Pearl of the Bayshore℠

Keyport

NEW JERSEY



August 22th 2023

Gasiorowski & Holobinko
c/o Cathy Gasiorowski
54 Broad Street
Red Bank, NJ 07701

Ms. Cathy Gasiorowski,

I have received and read your letter dated August 16th 2023 and reviewed your client's recent complaints regarding the activities at 39 Maple Place.

My position still remains that the utility trailer is not a storage trailer and section 12-17.1 of the Borough ordinance does not apply. The utility trailer is also not a dumpster. The utility trailer can be used to transport materials and equipment to and from job sites as well as removal of bulk trash off site for proper disposal.

I have continued to drive by the property on the following dates and times: July 28th at 1703; August 2nd at 1554; August 4th at 1138; and August 16th at 1647; July 12th at 1653; July 18th at 1852; and July 22nd at 1458. On those days, I witnessed the conditions agreed upon by myself and the property owner, which were all materials to be stored inside the building and only vehicles and trailers parked on the paved area behind the building.

If you have any additional questions, need more information, or require further assistance, please feel free to contact me.

Regards,

David Olsen
Zoning Officer
Borough of Keyport

GASIOROWSKI & HOLOBINKO
ATTORNEYS AT LAW
54 BROAD STREET
RED BANK, NEW JERSEY 07701
(732) 212-9930
FACSIMILE (732) 212-9980

R. S. GASIOROWSKI
JOHN E. HOLOBINKO

CHRISTIE A. GASIOROWSKI
CATHY S. GASIOROWSKI

December 21, 2023

Via: Dnellis@keyportonline.com
Denise Nellis, Planning Board Secretary
70 West Front Street
Keyport, New Jersey 07735

Re: Commercial Tower Elite, LLC
39 Maple Place, Keyport
Block: 76 Lot: 8

Dear Ms. Nellis:

This office, on behalf of the Applicants, Todd and Amy Liebman, submitted an Application to the Borough of Keyport Planning Board, pursuant to N.J.S.A. 40:55D-68, seeking a determination as to whether the character and scope of the activities currently conducted on the aforementioned property are commensurate with the protected prior preexisting nonconforming use. In the alternative, pursuant to N.J.S.A. 40:55D-70(a) and/or (b) the Applicants' papers seek to appeal the Zoning Officer's finding that the use of the Griffin Trailer on the Subject Property to store construction material and/or construction debris does not violate Sections 12-17.1 & 16-3.2 of the Borough of Keyport's Zoning Ordinance.

The Applicants wish to supplement the aforementioned Application to include the most recent letter submitted to the Borough of Keyport's Zoning Officer regarding the Defendant, Commercial Tower Elite, LLC's intensification of nonconforming uses on the site as well as its continuing violations regarding the storage of construction items, and/or construction debris onsite. This letter includes photographs depicting the Defendant,

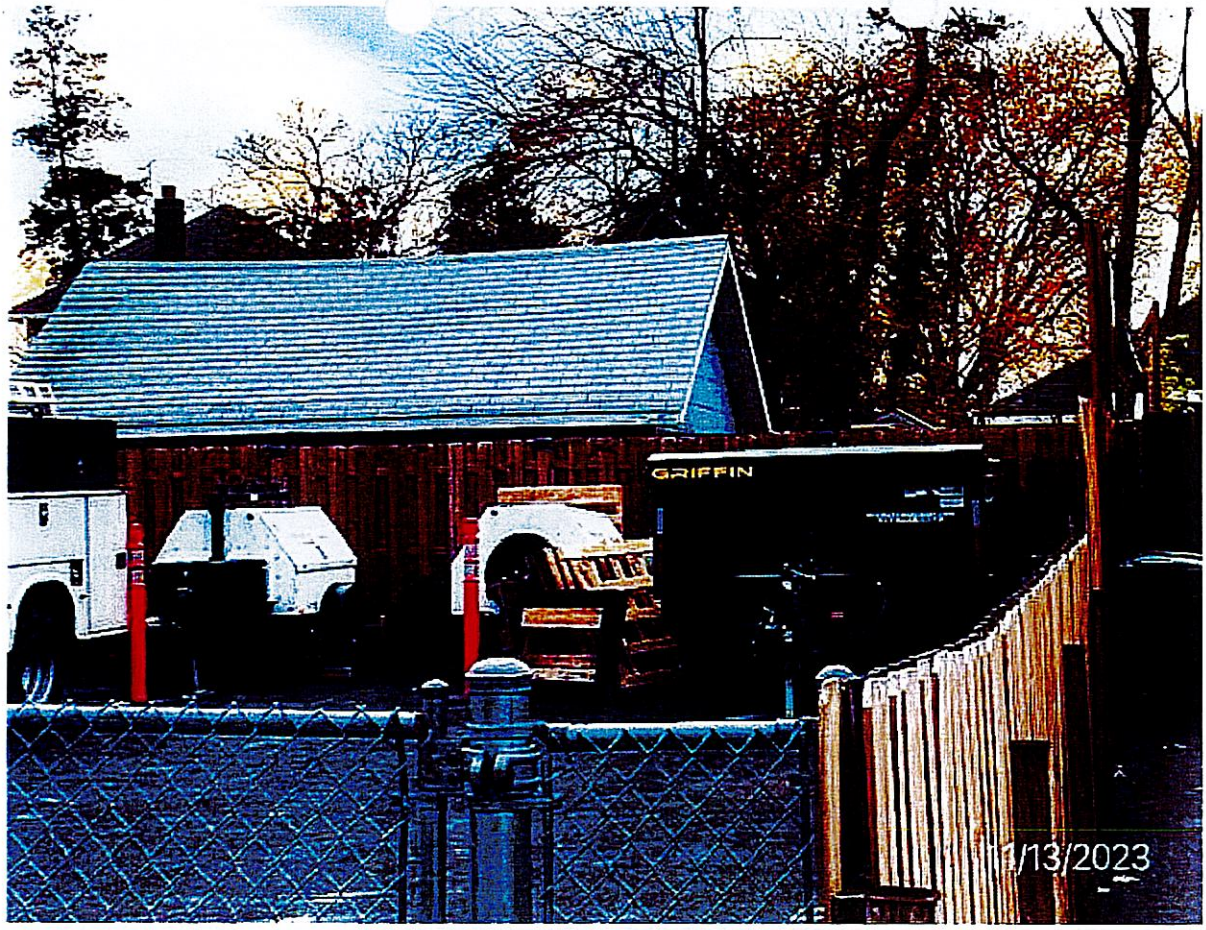
Commercial Tower Elite, LLC's employees working outside and using a tractor onsite and the storage of construction materials and debris onsite on the ground or in containers.

Thank you for your assistance. Wishing you all the best this holiday season.

Very truly yours,

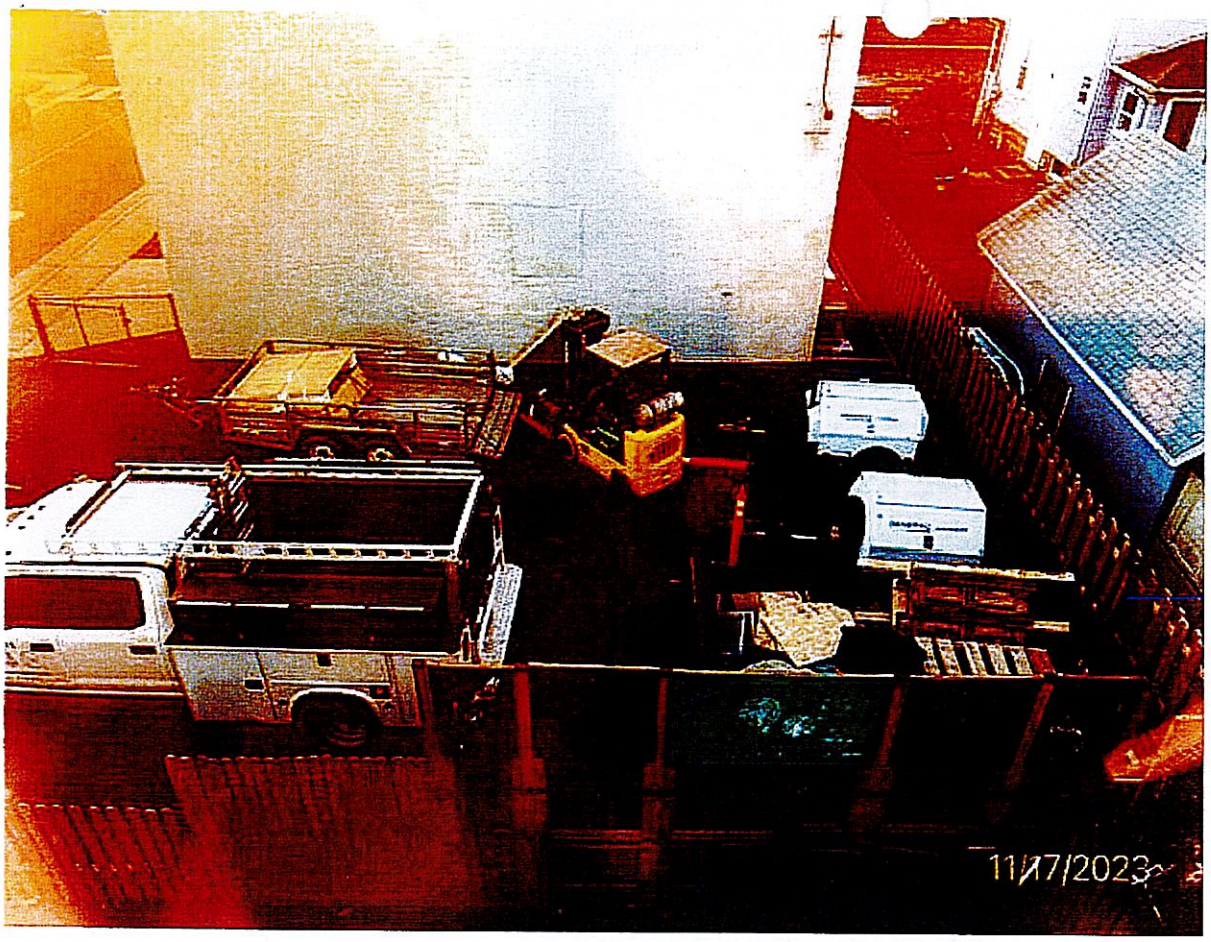
CATHY S. GASIOROWSKI

RSG*ts
Enclosures


GRIFFIN
1/13/2023



Sent from my iPhone


11/17/2023