



COMMON PLEAS COURT
CUYAHOGA COUNTY, OHIO

FILED

DESIGNATION FORM TO BE USED TO INDICATE THE CLASSIFICATION OF THE CAUSE

BIG OAK, LLC

2009 NOV 12 A 11:35 AM

Plaintiff

vs.

Judge

Judge: NANCY MARGARET RUSSO

LAKEWOOD BOARD OF ZONING ADJUSTMENTS

CV 09 709584

Defendant

WALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY

Has this case been previously filed & dismissed? Yes No

Case #: _____ Judge: _____

Is this case related to any cases now pending or previously filed Yes No

Case #: _____ Judge: _____

CIVIL CLASSIFICATIONS: Place an (X) in ONE Classification Only.

Professional Torts:

- 1311 Medical Malpractice
- 1315 Dental Malpractice
- 1316 Optometric Malpractice
- 1317 Chiropractic Malpractice
- 1312 Legal Malpractice
- 1313 Other Malpractice

Foreclosures:

Utilize Separate Foreclosure Designation Form

Commercial Docket:

- 1386 (Temp. Sup. R. 1.03)

Product Liability:

- 1330 Product Liability

Administrative Appeals:

- 1540 Employment Services
- 1551 Other

Other Torts:

- 1310 Motor Vehicle Accident
- 1314 Consumer Action
- 1350 Misc Tort

Other Civil:

- 1500 Replevin/Attachment
- 1382 Business Contract
- 1384 Real Estate Contract
- 1390 Cognovit Contract
- 1391 Other Contract
- 1490 Foreign Judgement
- 1491 Stalking Civil Protection Order
- 1501 Misc Other
- 1502 Petition to contest Adam Walsh Act

Workers Compensation:

- 1550 Workers Compensation
- 1531 Workers Comp. Asbestos

Amount of Controversy:

- None Stated
- Less than \$25,000
- Prayer Amount _____

Parties have previously attempted one of the following prior to filing:

- Arbitration
- Early Neutral Evaluation
- Mediation
- None

I certify that to the best of my knowledge the within case is not related to any now pending or previously filed, except as noted above.

AGAN + GARAGHER LLP

SEAN AGAN

619 W. SUPERIOR AVE

Attorney of Record (Print or type)

1300

S.AGAN@AGLLP.COM

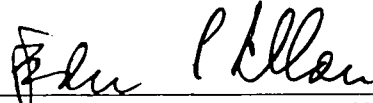
CLEVELAND, OH 44113

Email Address

(216) 377-0598

Phone

Respectfully submitted,



SEAN P. ALLAN (0043522)

Allan & Gallagher, L.L.P.

The Rockefeller Building

614 W. Superior Avenue, Suite 1300

Cleveland, Ohio 44113

Telephone: (216) 377-0598

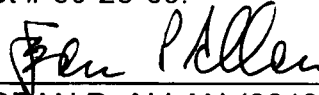
Facsimile: (216) 664-6999

Attorneys for Appellant

PRAECIPE FOR PREPARATION OF THE RECORD

To the Secretary of the Lakewood Board of Zoning Appeals:

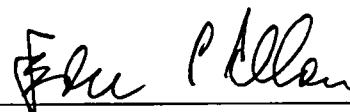
Please prepare and file with the Court of Common Pleas for Cuyahoga County, Ohio, a verbatim transcript of any testimony and all other evidentiary material entered into the record during the October 15, 2008 proceedings of the Lakewood Board of Zoning Appeals, in connection with Docket # 09-25-09.



SEAN P. ALLAN (0043522)
Attorney for Appellant

CERTIFICATE OF SERVICE

A copy of this Notice of Administrative Appeal from The Lakewood Board of Zoning Appeals and Praecept was served upon Appellees by certified mail and regular mail on November 12, 2009.

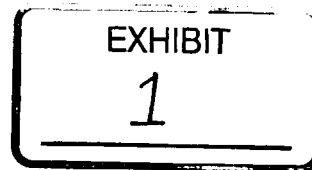


Sean P. Allan (0043522)
Attorney for Appellant



12650 Detroit Avenue • 44107 • (216) 529-6630 • FAX (216) 529-5936
www.onelakewood.com

Carlos Molina
Big Oak, LLC
3922 Kings Mill Run
Rocky River, Ohio 44116



Re: **Docket 09-25-09**
1327 Bonnieview Avenue
Deferred from September

Dear Mr. Molina:

On September 2, 2009, the Board of Zoning Appeals received your appeal of a Correction Notice issued by the City of Lakewood Division of Housing and Building dated August 3, 2009. The matter was placed on the next available docket of the Board and scheduled for hearing on September 17, 2009. Pursuant to your request, the Board of Zoning Appeals deferred the matter until the next monthly meeting.

On October 15, 2009, the matter proceeded to hearing before the Board. At that hearing, you were represented by counsel, and arguments were made on your behalf. The Board also heard evidence and testimony from both the Assistant Building Commissioner and the Building Inspector in support of the Correction Notice.

Based upon the evidence entered into the record on October 15, 2009, the Board of Zoning Appeals voted to **DENY** the appeal, and uphold the Division of Housing and Building's findings as set forth in the Correction Notice of August 3, 2009 as follows:

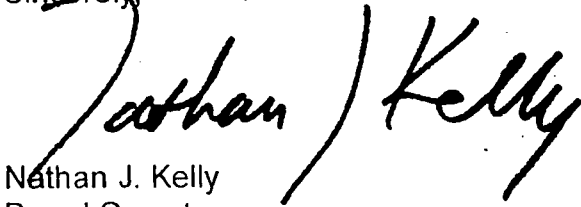
"BUSINESS USES ARE PROHIBITED IN AN R-2 ZONING DISTRICT. (1123) THE USE MUST BE DISCONTINUED OR THE PROPERTY MUST BE REZONED TO ACCOMMODATE THIS USE."

and

"NO CHANGE OF OCCUPANCY IS PERMITTED TO TAKE PLACE UNTIL A CERTIFICATE OF OCCUPANCY HAS BEEN ISSUED. (SECTION 1173.01) A CERTIFICATE OF USE AND OCCUPANCY CANNOT BE ISSUED UNTIL CONFORMANCE WITH ALL ELEMENTS OF THE OHIO BUILDING CODE PERTAINING TO THE CHANGE OF OCCUPANCY CAN BE DEMONSTRATED."

Accordingly, the Board upholds the determination of the Division of Housing and Building that a business is being operated at the above-referenced property in an R-2 zoning district, in violation of the Zoning Code, and that the above-referenced property underwent a change in occupancy without the issuance of a certificate of occupancy.

Sincerely,

A handwritten signature in black ink that reads "Nathan J. Kelly". The signature is written in a cursive style with a large, sweeping initial "N".

Nathan J. Kelly
Board Secretary
Director of Planning and Development

cc: Kevin Spellacy, Esq.
Nora Hurley, Law Director
Robert Apanasewicz, Assistant Building Commissioner

/attachments



CORRECTION NOTICE

FILE COPY

12650 Detroit Avenue • 44107

CARLOS MOLINA
C/O BIG OAK LLC
3922 KINGS MILL RUN
ROCKY RIVER, OHIO 44116

DATE: 8-3-09
ZONING DISTRICT: R-2
TYPE OF STRUCTURE: 4 STORY MASONRY - 3B
AUTHORIZED OCCUPANCY: 72
PRESENT OCCUPANCY:
PARKING SPACES AVAILABLE: GARAGE XOPEN

RE: 1327 BONNIEVIEW AVENUE #110 & #112

TYPE OF INSPECTION:	Annual	Certificate of Occupancy	<input checked="" type="checkbox"/> Complaint	DCD Program
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Dear M/M MOLINA:

A recent inspection of the above noted property disclosed the following corrections are necessary for safe, sanitary, and proper maintenance standards as required by the Codified Ordinances of the City of Lakewood (Orl. 85-78).

The personnel of the Division of Housing and Building want to cooperate with you in keeping this city a fine place to reside. Efforts in maintaining this property are appreciated. The enforcement of Lakewood's Codes is critical to the future of our city, and our department is prepared to work with you to make the following corrections.

EXTERIOR CORRECTIONS

- | | |
|---|--|
| <input type="checkbox"/> 1. Remove unlicensed/immobilized vehicle (1111.09) | <input type="checkbox"/> 18. Maintain/provide doors/windows/screens (1104.10710) |
| <input type="checkbox"/> 2. Cease parking on lawn (1111.009) | <input type="checkbox"/> 19. Repair soffits/fascia (1104.10021) |
| <input type="checkbox"/> 3. Remove unapproved furniture from porch/patio/deck (1104.11) | <input type="checkbox"/> 20. Maintain Siding (1104.10031) |
| <input type="checkbox"/> 4. Remove debris/slightly material from yard area(s) (1104.11) | <input type="checkbox"/> 21. Repair/replace roof (1104.1003) |
| <input type="checkbox"/> 5. Remove debris/slightly material from porches (1104.11) | <input type="checkbox"/> 22. Maintain foundation/exterior walls (1104.1003) |
| <input type="checkbox"/> 6. Store firewood 8 inches above grade (1172.010) | <input type="checkbox"/> 23. Maintain chimney (1104.1003) |
| <input type="checkbox"/> 7. Provide house numbers a minimum of 4" high (1112.040) | <input type="checkbox"/> 24. Repair/replace driveway/service walk (1104.11) |
| <input type="checkbox"/> 8. Provide sufficient garbage/recycling containers with lids (1104.1027) | <input type="checkbox"/> 25. Maintain fence (1104.11) |
| <input type="checkbox"/> 9. Remove dead tree/branches (1104.11) | <input type="checkbox"/> 26. Maintain living fence 3 ft. maximum height (1113.01) |
| <input type="checkbox"/> 10. Maintain lawn/landscaping (1104.11) | <input type="checkbox"/> 27. Raze and rebuild/repair garage (1104.1003) |
| <input type="checkbox"/> 11. Provide/repair/replace steps (1104.1003) | <input type="checkbox"/> 28. Maintain garage/siding/trim/windows/doors (1104.1003) |
| <input type="checkbox"/> 12. Provide materials that match and conform (1104.1003) | <input type="checkbox"/> 29. Paint exterior surfaces where weathered/peeling (1104.1003) |
| <input type="checkbox"/> 13. Provide/maintain gutters/downspouts (1104.1003) | <input type="checkbox"/> 30. Paint/stain steps/porch (1104.1003) |
| <input type="checkbox"/> 14. Seal downspouts to storm sewer (1104.1003) | <input type="checkbox"/> 31. Paint/stain base/new surfaces (1104.1003) |
| <input type="checkbox"/> 15. Maintain/repair lattice (1104.1003) | <input type="checkbox"/> 32. Provide/maintain handrail on stairs (1104.1003) |
| <input type="checkbox"/> 16. Repair/replace porch decking/trim (1104.1003) | <input type="checkbox"/> 33. Remove cooking appliance/device from porches (1104.1003) |
| <input type="checkbox"/> 17. Provide/maintain porch ceiling/pillars/rails (1104.1003) | <input type="checkbox"/> 34. Remove temporary holiday lighting (1104.11) |

CITY OF LAKEWOOD CORRECTION NOTICE P.2 DATE: 8-3-09 Re: 1327 BONNIEVIEW AVE.

35. BUSINESS USES ARE PROHIBITED IN AN R-2 ZONING DISTRICT. (1123) THE USE MUST BE DISCONTINUED OR THE PROPERTY MUST BE REZONED TO ACCOMMODATE THIS USE.

36. NO CHANGE OF OCCUPANCY IS PERMITTED TO TAKE PLACE UNTIL A CERTIFICATE OF OCCUPANCY HAS BEEN ISSUED. SECTION 1173) A CERTIFICATE OF USE AND OCCUPANCY CANNOT BE ISSUED UNTIL CONFORMANCE WITH ALL ELEMENTS OF THE OHIO BUILDING CODE PERTAINING TO THE CHANGE OF OCCUPANCY CAN BE DEMONSTRATED.

37.

38.

39.

40.

This violation notice may be appealed to the Lakewood Board of Zoning Appeals within thirty (30) days of the date of this notice. Forms for that purpose are available in the Lakewood Building Department. If you have any questions on complying with the aforementioned correction(s) noted by (X) ALL by 9-3-09 ; correction(s) by ; and correction(s) by , or if I may be of any assistance, do not hesitate to contact me.

Property owners may qualify for financial assistance for major building corrections. Please contact the Division of Community Development at (216) 529-4663 for information about financial assistance.

This was a VISUAL INSPECTION. The city assumes no liability or responsibility for failure to report violations that may exist and makes no guarantee whatsoever that future violation(s) cannot or will not occur.

Prior to the start of work, permits are required for electrical, plumbing, heating, air conditioning, building, fencing, paving, and/or demolition work.

Thank you for your anticipated cooperation.

Kevin Kelly

Phone: 216.529.6078

E-mail: Kevin.Kelley@lakewoodohio.net

CC: VANGUARD PROPERTIES
ATTN: DAN SHEPPARD
P.O. BOX 367
LAKEWOOD, OHIO 44107

Abbreviations used: BDR-bedroom, KIT-kitchen, BTRM-bathroom, LVJRM-living room, DNT-dining room, CLR-cellar, AT-attic, D/U-dwelling unit

1171-04 6