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September 19, 2018

VIA E-MAIL & REGULAR MAIL

Ms. Mara Wuebker
Borough of Merchantville
1 W. Maple Avenue
Merchantville, New Jersey 08109

RE: NON- CONFORMING USES

Dear Mara:

I am writing to provide you with a legal opinion with respect to inquiries received by your office seeking your determination as to the legality of the continuation of nonconforming uses within Borough properties.

Please be advised that any and all inquiries made in an effort to establish the legality of nonconforming uses proposed to be conducted at properties within the Borough of Merchantville are governed by the State of New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

Accordingly, the Zoning Office is only authorized to issue a finding relative to the legality of the alleged continuation of a non-conforming use for a limited time period. Specifically, an application for a Certification of Nonconforming Use must be made to your office within one year from the adoption of the Ordinance which rendered the use non-conforming.

In the event an application is not made within the requisite time period, jurisdiction for any such determination(s) lies solely with the Joint Land Use Board of the Borough of Merchantville (the "Board"). In that event, relief may be sought via the filing of an appropriate application with the Board. Such applications shall be governed by the policies and procedures of the Board; the terms, covenants and conditions of Zoning Ordinance, including but not limited to the provision of the required public notices, and the requirements of the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

Whether jurisdiction lies with the Board or the Zoning Office, the burden of proof is on the applicant to establish to the body exercising jurisdiction that the use or structure lawfully existed before the adoption of the ordinance which rendered the use nonconforming and that the use or structure was not subsequently abandoned.

The State statute relevant to this matter states as follows:

Any nonconforming use or structure existing at the time of the passage of an ordinance may be continued upon the lot or in the structure so occupied and any such structure may be restored or repaired in the event of partial destruction thereof.

The prospective purchaser, prospective mortgagee, or any other person interested in any land upon which a nonconforming use or structure exists may apply in writing for the issuance of a certificate certifying that the use or structure existed before the adoption of the ordinance which rendered the use or structure nonconforming. The applicant shall have the burden of proof. Application pursuant hereto may be made to the administrative officer within one year of the adoption of the ordinance which rendered the use or structure nonconforming or at any time to the board of adjustment. The administrative officer shall be entitled to demand and receive for such certificate issued by him a reasonable fee not in excess of those provided in R.S. 54:5-14 and R.S. 54:5-15. The fees collected by the official shall be paid by him to the municipality. Denial by the administrative officer shall be appealable to the board of adjustment. N.J.S.A. 40:55D-72 to C. 40:55D-75 shall apply to applications or appeals to the board of adjustment.

N.J.S.A. § 40:55D-68 **emphasis added.**

Please also note, to the extent a prior determination was made by the zoning office relative to the continuation of a nonconforming use and such determination was made in response to a request received outside of the one-year statutory limitations period, such determination shall be hereinafter void and of no force and effect.

Please be guided accordingly and feel free to contact my office if I can be of any further assistance.

Very truly yours,
MADDEN & MADDEN, P.A.

A handwritten signature in blue ink, appearing to read 'Matthew P. Madden', written over a white background.

MATTHEW P. MADDEN, ESQUIRE