



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 11:35ase 1

Plaintiff

vs.

Judge

Judge: NANCY MARGARET RUSSO

CV 09 709584

LAKEWOOD BOARD OF ZONING ADJUSTMENTS

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.

ALAN + GAWAGHER LLP

Firm name (Print or type)

614 W. SUPERIOR AVE

Address

1300

Address CLEVELAND, OH 44113

Phone (216) 377-0598

SEAN ALAN

Attorney of Record (Print or type)

Signature

S.ALAN@AGLLP.com

Email Address

FILED
IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO
2009 NOV 12 A 11:35

BIG OAK, LLC
3922 Kings Mill Run
Rocky River, Ohio 44116

GERALD E. FUERST
CLERK OF COURTS
CUYAHOGA COUNTY

CASE NO.

Complaint

NANCY MARGARET RU
CV 09 709584

JUDGE

Appellant

vs.

**APPEAL FROM A DECISION OF
LAKEWOOD BOARD OF ZONING
APPEALS IN DOCKET# 09-25-09**

**LAKEWOOD BOARD OF ZONING
APPEALS**

c/o nATHAN Kelly, Secretary

12650 Detroit Avenue
Lakewood, Ohio 44107

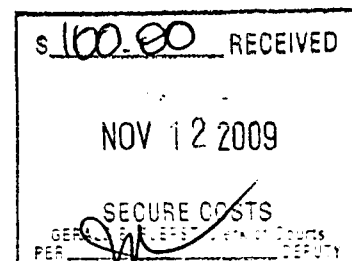
CITY OF LAKEWOOD

12650 Detroit Avenue
Lakewood, Ohio 44107

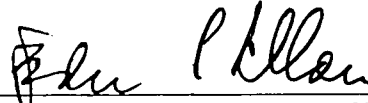
Appellees

NOTICE OF ADMINISTRATIVE APPEAL

Now comes Appellant Big Oak., LLC, through counsel, and pursuant to Ohio Revised Code §2505 and 2506 hereby serves notice of appeal to the Court of Common Pleas for Cuyahoga County, Ohio, on issues of law and fact, from the decision of the Lakewood Board of Zoning Appeals, mailed on or about October 16, 2009, upholding the validity of Correction Notice issued by the City of Lakewood, Division of Housing and Building. A copy of the Decision from which this appeal is taken is attached as **Exhibit 1**



Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sean P. Allan", is written over a horizontal line.

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

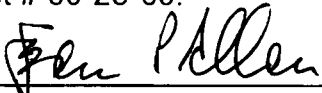
Facsimile: (216) 664-6999

Attorneys for Appellant

PRAECIPE FOR PREPARATION OF THE RECORD

To the Secretary of the Lakewood Board of Zoning Appeals:

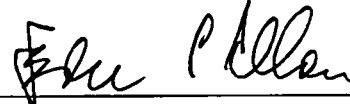
Please prepare and file with the Court of Common Pleas for Cuyahoga County, Ohio, a verbatim transcript of any testimony and all other evidentiary material entered into the record during the October 15, 2008 proceedings of the Lakewood Board of Zoning Appeals, in connection with Docket # 09-25-09.



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 Praeipce was served upon Appellees by certified mail and regular mail on November 12, 2009.

A handwritten signature in black ink, appearing to read "Sean P. Allan", is written over a horizontal line.

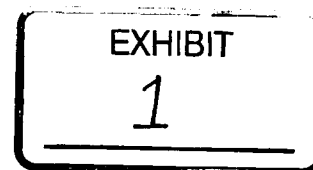
Sean P. Allan (0043522)
Attorney for Appellant



BOARD OF ZONING APPEALS

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:

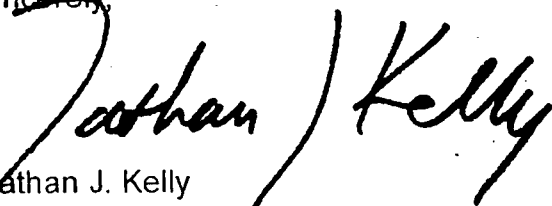
"BUSINESS USES ARE PROHIBITED IN AN R-2 ZONING DISTRICT. (1123) THE USE MUST BE DISCONTINUED OR THE PROPERTY MUST BE REZONED TO ACCOMMODATE THIS USE."

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, reading "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



12650 Detroit Avenue • 44107

CORRECTION NOTICE

FILE COPY

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 X OPEN

RE: 1327 BONNIEVIEW AVENUE #110 & #112

TYPE OF INSPECTION: ☐ Annual • ☐ Certificate of Occupancy • ☒ Complaint • ☐ DCD Program

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 (Ord. 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

- | | |
|---|--|
| ☐ 1. Remove unlicensed/immobilized vehicle (1101.09) | ☐ 18. Maintain/provide doors/windows/screens (1104.0270) |
| ☐ 2. Cease parking on lawn (1101.009) | ☐ 19. Repair soffit/fascia (1104.1001) |
| ☐ 3. Remove unapproved furniture from porch/patio/deck (1104.11) | ☐ 20. Maintain Siding (1104.1001) |
| ☐ 4. Remove debris/slightly material from yard area(s) (1104.11) | ☐ 21. Repair/Replace roof (1104.1001) |
| ☐ 5. Remove debris/slightly material from porches (1104.11) | ☐ 22. Maintain foundation/external walls (1104.1001) |
| ☐ 6. Store firewood 8 inches above grade (1104.1001) | ☐ 23. Maintain chimney (1104.1001) |
| ☐ 7. Provide house numbers a minimum of 4" high (1104.1001) | ☐ 24. Repair/replace driveway/service walk (1104.11) |
| ☐ 8. Provide sufficient garbage/recycling containers with lids (1104.1001) | ☐ 25. Maintain fence (1104.11) |
| ☐ 9. Remove dead tree/branches (1104.11) | ☐ 26. Maintain living fence 3 ft. maximum height (1104.11) |
| ☐ 10. Maintain lawn/landscaping (1104.11) | ☐ 27. Raze and rebuild/repair garage (1104.1001) |
| ☐ 11. Provide/repair/replace steps (1104.1001) | ☐ 28. Maintain garage/siding/trim/windows/doors (1104.1001) |
| ☐ 12. Provide materials that match and conform (1104.1001) | ☐ 29. Paint exterior surfaces where weathered/peeling (1104.1001) |
| ☐ 13. Provide/maintain gutters/downspouts (1104.1001) | ☐ 30. Paint/stain steps/porch (1104.1001) |
| ☐ 14. Seal downspouts to storm sewer (1104.1001) | ☐ 31. Paint/stain base/new surfaces (1104.1001) |
| ☐ 15. Maintain/provide lattice (1104.1001) | ☐ 32. Provide/maintain handrail on stairs (1104.1001) |
| ☐ 16. Repair/replace porch decking/trim (1104.1001) | ☐ 33. Remove cooking appliance/device from porches (1104.1001) |
| ☐ 17. Provide/maintain porch ceiling/pillars/rails (1104.1001) | ☐ 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) 529-6663 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.Kelly@lakewoodohio.us

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

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

1171-84 6