

ALARIO & FISCHER, P.C.

ATTORNEYS AT LAW

5 ADLER DRIVE
SUITE 4
EAST SYRACUSE, NEW YORK 13057-1262

TELEPHONE (315) 472-6676

Facsimile (315) 472-4216*

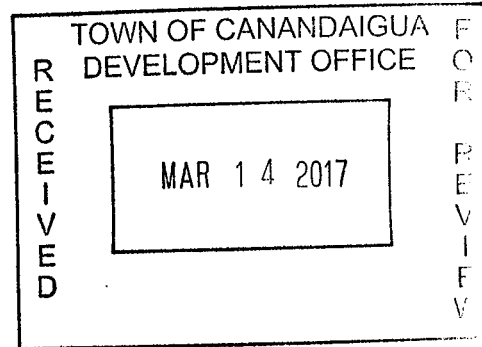
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March 13, 2017

VIA FEDERAL EXPRESS (7786 3975 0246)

Terence Robinson, Chairman
Zoning Board of Appeals
Town of Canandaigua
5440 Routes 5 & 20 West
Canandaigua, New York 14424

Re: **Advanced Living Properties, Inc.**
Our file: 1394-001



Dear Mr. Robinson:

I write on behalf of Advanced Living Properties to respond to the January 26, 2017 letter to the Zoning Board of Appeals from Zoning Officer Christopher Jensen. As you know, we were not supplied with a copy of that letter prior to the February 21, 2017 hearing and, accordingly, were not prepared to address the issues raised therein at that time. Please consider this response in your evaluation of Advanced Living's request for an interpretation of the zoning code filed with the Board on or about January 12, 2017.

In the letter, the Codes Office states that Fallbrook Mobile Home Park is a "legal and permitted principal use within the MH Zoning District." It then claims that because the codes officer's determination only related to an allegedly non-conforming "structure," that was "intentionally removed," the determination that that lot within the park had been "abandoned" was sustainable. This argument actually cuts against the Town's position and reinforces the Fallbrook Mobile Home Park's right to conduct its business and replace mobile homes on existing mobile home sites within the park.

There is no dispute that the Fallbrook Mobile Home Park pre-existed the Manufactured Home Parks regulations embodied in Chapter 134 of the Town of Canandaigua Town Code. So, while the park is a "legal and permitted principal use within the MH Zoning District," it is non-conforming with respect to the multiple regulations imposed upon new parks contained in Chapter 134. We have argued this position repeatedly in correspondence to and discussions with the Town Codes Office and various Town Attorneys over the years as set forth in the materials submitted to this Board with our application for an interpretation. See, for example, Letter to Derek Brocklebank from Laurel Eveleigh dated September 14, 2007; Letter to Derek Brocklebank from Laurel Eveleigh dated September 27, 2007; Letter to Derek Brocklebank from Laurel Eveleigh dated May 28, 2008; Letter to Carol Maue from Laurel Eveleigh dated July 11, 2008; Letter to Carol Maue from Laurel Eveleigh dated October 21, 2008.

This position is entirely consistent with the case law that we have cited in our request for interpretation as well. As stated in the Town of Elbridge case, with respect to a *non-conforming* use, the Town cannot impose non-conforming use principles on a site-by-site basis to the individual home sites within the park. If the Town cannot legally impose non-conforming use

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principles to the component parts of a legal non-conforming use, it defies logic that the Town could impose non-conforming use principles on the component parts of a "**legal and permitted principal use** within the MH Zoning District." Advanced Living's argument is **stronger** because the park is a legal and permitted principal use within the zoning district rather than weaker. Unlike a non-conforming use, where the eventual elimination of the use is desired under the zoning code, there is no such desire to eliminate a "legal and permitted principal use" in a zoning district. The use is presumed to be suitable and appropriate for the district in which it is located and amortizing it away through abandonment of the entirety or component parts does not even enter the analysis.

The principle underlying all of this is that the **use** is a mobile home park and the component pieces inherent in that use are the mobile home sites within the park. The mobile home pads are not "accessory structures" or "non-conforming structures" superfluous to the operation of the property for a mobile home park. These structures **are** the use. Without the mobile home pads, there is no mobile home park, "a legal and permitted principal use" within the zoning district. The mobile home pads are the company inventory – much like hotel rooms are the inventory for a hotel or shelves that hold inventory for a grocery store. Just as the Town could not declare individual hotel rooms that have not been let for a year "abandoned" or grocery store shelves not used for a year "abandoned," so too is the Town precluded from claiming individual mobile home lots within the park "abandoned" if not used for a year.

Given Advanced Living's history with the Town, we are forced to question the Town's motive with this most recent declaration by the Codes Office. Advanced Living Properties has worked with the Town in good faith for nearly a decade to comply with the Town's later-enacted regulations to the extent that it could to ensure that the park is an asset to the Town. Advanced Living has cooperated with the Town, repeatedly, by applying for and receiving annual "licenses" that (by virtue of pre-dating the regulations) it was not required to obtain, providing a baseline understanding of the sites within the park and working with the Town to establish agreed-upon setbacks (see Certificate of Non-Conformity dated December 30, 2011, Exhibit D to Advanced Living's Interpretation Request).

After all of that, the history of which is well documented in Advanced Living's request for interpretation, this latest argument, never before raised or hinted at, raises serious concerns. Why, in 2012, if it was only going to be arguing for its very existence yet again but a few years later, would Advanced Living have agreed to provide a raft of information it was not obligated to provide and agree to setbacks and restrictions it was under no obligation to agree to, if it did not believe that these issues would be put to rest once and for all? The answer is clear. Advanced Living believed (and was led to believe) that, by virtue of its cooperation, it would be allowed to continue its business without further conflict with or interference from the Town. The latest denial on the basis of "abandonment" by the Codes Office was clearly not contemplated by anyone involved in the prior dealings between the Town and Advanced Living.

Finally, the exchange of individual homes on mobile home sites contributes to the improvement of the park overall. Replacement homes that are installed in the park are newer

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and of a higher quality than those they replace (which, in fact, contributes to the delay in finding suitable replacement homes for installation within the park). A newer, well-kept mobile home on each of the sites is ultimately more attractive than a random assortment of homes throughout the park interspersed with empty, unused pads in no apparent order. The company has made many cosmetic improvements to the park to improve the overall park aesthetics and the non-use of preexisting pads within the park does nothing to elevate the attractiveness of the park overall.

For all of these reasons and those expressed in Advanced Living's Application for Interpretation of the Zoning Code, we respectfully request that the Board annul the Codes Office's determination and direct that the Zoning Code's "abandonment" provisions do not apply to the component parts of Advanced Living's Fallbrook Mobile Home Park.

Sincerely yours,

ALARIO & FISCHER, P.C.



Laurel J. Eveleigh

LJE/arg

pc: Christopher Jensen, Zoning Officer (Via email – cjensen@townofcanandaigua.org)
Advanced Living Properties, Inc. (Via Email)

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