

My Business License Was Denied Due To Zoning Issues. What Do I Do?

September 26, 2013 | by Jason Rittie

Dear Ask the Attorney:

I own a body shop business and recently signed a lease with a landlord to use a building that was previously occupied by a similar body shop business. The building was vacant for at least five years, but the building is perfectly set-up for my business. I went to the borough to apply for a business license but the zoning officer denied the business permit with the reason that my use is not permitted in the zone and that I had to apply for a use variance through the borough. I don't understand why the business license was denied when I want to use the property for the same use as was previously there, and I have no idea what a use variance is and how to apply for it. Please help.

J.H.

Our guest blogger today is Jason R. Rittie, Esq. Mr. Rittie is Chair of Einhorn Barbarito' Real Estate Department and a partner in the Land Use and Zoning Department. He has extensive experience in complex real estate transactions, particularly in acquisitions, leasing and sale of commercial and residential properties. Mr. Rittie also represents property owners and developers in all aspects of land use and zoning, and has appeared before planning and zoning boards throughout Northern New Jersey for site plans, subdivisions and variances for commercial and residential properties.

Dear J.H.:

You give a lot of information in a short explanation of your issue but many details are left out. Without knowing all the facts, and based solely on the information above, it may be that the issue is that a body shop business is not currently a permitted use in the zone under the borough's existing land use ordinances. The previous body shop use may have been allowed under prior land use ordinances. If so,

land use lawyers commonly refer to these uses as pre-existing, non-conforming uses. Unfortunately, without knowing the specifics of the case here, there could be a number of reasons why you were denied a business license.

It may be that since the property was vacant for a number of years that the zoning officer for the borough has made a determination that the prior body shop use was abandoned and now you must apply for a use variance. Simply put, a “use variance” is a process whereby you must submit an application seeking permission to allow a use that is not otherwise expressly permitted in the particular zone under the borough’s land use ordinance to the borough’s zoning board of adjustment. This type of variance requires a higher standard of legal proof in order for the zoning board of adjustment to grant the use variance; it also requires five affirmative votes from the zoning board members. All land use matters in New Jersey are governed by the “Municipal Land Use Law,” and it is from this statute that a zoning board of adjustment derives its authority to grant variances and from which case law has developed regarding the legal proofs required to be shown by an applicant.

Also, you may be able to appeal the zoning officer’s determination to the zoning board of adjustment, and with the landlord’s assistance, you may be able to demonstrate that the property should be certified as a valid, pre-existing non-conforming use. Appeals from a zoning officer’s determination must be brought within 20 days of the issuance of the denial by filing a Notice of Appeal with the zoning officer. After filing the Notice of Appeal, it will be the zoning board of adjustment that will hear and decide the appeal at a public hearing. Under law, there are certain protections given to uses of property that were lawfully permitted at one point in time under the land use ordinances, but then subsequently became prohibited by changes in the land use ordinances. Generally, and depending on the specific facts and history of the subject property, if you, with the assistance of the landlord, can demonstrate that the prior body shop use was permitted at one point in time, and that such prior use was not abandoned, you may be able to successfully obtain what is commonly known as a certification of pre-existing, non-conforming use. This certification from the zoning board of adjustment would then allow your business license to be approved and issued.

As you may suspect, there are certain legal proofs for this type of certification that need to be proven by the applicant. With the proper legal guidance of a skilled land use and zoning attorney who has all of the facts of why your business license was denied, you very well may be successful.