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January 22, 2019

**HAND DELIVERY**

Mark Zadroga  
Upper Merion Township  
175 West Valley Forge Road  
King of Prussia, PA 19406

**RE: Use Permit Application - 143 S. Gulph Road**

Dear Mark:

As you are aware, this office represents ES IV, LLC ("Tenant") in connection with its proposed rental of approximately 4,500 s.f. of tenant space at the above noted property ("Leasehold"). On behalf of the Tenant, we submitted a Use Application to the Township on or about December 17, 2019, wherein we indicated that the Leasehold was intended for a general retail use, a small portion of which was of an adult nature.

By letter dated January 9, 2020, your office responded that the use was denied because: (i) an "adult use" is not permitted in the General Commercial District; and further, (ii) that "additional information regarding compliance" was not submitted.

We believe that you misapprehended the nature of the use, and accordingly have enclosed a new Use Application, and offer the following additional information in connection therewith.

Tenant proposes to occupy the Leasehold for a general retail use. The items intended for sale include smoke-related items, as well as a small portion of adult-themed products (magazines, books, marital aids, etc.) that are often sold in similar general retail establishments (convenience stores, drug stores, smoke shops, novelty gift stores, gas stations, etc.). These general retail uses are permitted in the General Commercial and Shopping Center Districts in the Township, and indeed, currently exist throughout the Township.

Additionally, §165-266 of the Township Code, which is tangentially referenced in your January 9, 2020 letter, specifically contemplates this type of permissible general retail use and distinguishes it from a more restricted "adult" use by providing as follows:

Adult Bookstore or Adult Video Store

A. A commercial establishment which, as one of its *principal* business purposes, offers for sale or rental for any form of consideration one of more of the following:

- 1) Books, magazines, periodicals or other printed matter or photographs, films, motion picture, videocassettes or video reproductions, slides or other visual representations which depict or describe specific sexual activities or specified anatomical areas.
- 2) Instruments, devices or paraphernalia which are designed for use in connection with specified sexual activities.

(Article XXXVIII, Section 165-266, *emphasis added*).

Pursuant to §165-266, where a commercial establishment dedicates *less than a principal* portion of its floor area to adult materials, the use does not meet the definition of an “adult bookstore or adult video store”, and accordingly, is considered a general retail use.

The Township Code does not define principal, leaving business owners to guess at its meaning and purpose. I understand that in prior discussion with Paul Cambria, Esquire, another attorney for Tenant, this issue was raised and Mr. Cambria requested that the Township provide a specific definition as to how it measures “principal” in this context (i.e. the applicable threshold percentage that defines the difference between a principal and non-principal use), but that no such percentage has to date been provided. The Township’s failure to provide a clear objective standard in this context results in uncertainty and causes delay that it is likely to result in money damages to applicant and other similarly situated business owners.

In the instant matter, as noted on the enclosed floor plan, only 975 s.f. of the 4,500 s.f. (i.e. 21.6%) of the floor area will offer adult materials; which certainly must fall below even the generalized “principal” threshold provided under §165-266.

Accordingly, we have submitted a new Use & Occupancy Permit Application and request, based upon the additional information provided herein, that your office provide a clear objective standard for “principal” as used in §165-266 and issue the requisite use permit to Tenant.

Enclosed in connection therewith are the following:

1. One (1) original and one (1) copy of a Use & Occupancy Permit Application, on the Township’s proscribed form;
2. One (1) original and one (1) copy of a Proposed Plan, dated December 17, 2019, prepared by rkc Architects, depicting the proposed layout; and

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January 22, 2019  
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3. A check, in the amount of One Hundred Twenty-Five Dollars (\$125.00), payable to Upper Merion Township, which I understand to be the applicable filing fee.

Please note the within application is for a use permit only. Once authorized for use, the landlord will submit the requisite drawings for the interior fit-out and an occupancy permit will be requested.

Please do not hesitate to contact me if I can be of any assistance. As always, I thank you for your considerate attention to this matter.

Sincerely,



Anee S. Farrell

ASF:asf

Enclosures

Upper Merion Twp.  
175 W. Valley Forge Rd.  
King of Prussia, PA 19406  
610-205-8507/8508  
Permits Office

# Use & Occupancy Permit Application

Permit #: \_\_\_\_\_

Fee: \_\_\_\_\_

Date completed application received: \_\_\_\_\_

Payment must accompany application. All highlighted sections must be completed.

Application is hereby made to use: 4,500 s.f. for General Retail/Commercial  
square feet Use (Residential, Commercial, Industrial, etc.)

Lease Dates: 10 year initial term  
(for commercial applications)

Occupancy Date: TBD/upon approval at: 143 S. Gulph Road

OR Do you already occupy this space? \_\_\_\_\_ Address: \*\* Include Suite # if known (for commercial applications)

**\*\*MUST CONFIRM ANY NEW SUITE #'S WITH DEPUTY FIRE MARSHAL PRIOR TO OCCUPANCY 610-205-8554**

Describe use in detail: General Retail - see enclosed floor plan

Property Rose M. Riley

Owner: \_\_\_\_\_ name

624 Atterbury Rd., Villanova, PA 19085

address/zip code

Contact Applicant's counsel - see below

phone \_\_\_\_\_ fax \_\_\_\_\_ e-mail \_\_\_\_\_

Tenant: ES IV, LLC c/o Anee S. Farrell, Esquire, Kaplin Stewart

name

910 Harvest Drive, P.O. Box 3037, Blue Bell, PA 19422

Home Office address/zip code

(610) 841-2547

phone \_\_\_\_\_ fax \_\_\_\_\_ e-mail afarrell@kaplaw.com

Contractor: N/A: Application relates to use only

name

address/zip code

phone \_\_\_\_\_ fax \_\_\_\_\_ e-mail \_\_\_\_\_

Rose M. Riley  
signature of owner

signature of owner

1/20/2020

date

Anee S. Farrell  
signature of applicant

By: Anee S. Farrell, Counsel for Applicant

1/22/2020

date

Contact for inspection: Anee S. Farrell

Phone/email: afarrell@kaplaw.com

FOR OFFICE USE ONLY:

Zoning District: \_\_\_\_\_ Approved: \_\_\_\_\_ Dated: \_\_\_\_\_

Applicable Business Taxes: Contact Bus. Tax Office: 610-265-2600

- \_\_\_\_\_ Amusement Tax - 93-611, as amended
- \_\_\_\_\_ Business Privilege Tax - 93-608, as amended
- \_\_\_\_\_ Mercantile Tax - 93-608, as amended
- \_\_\_\_\_ Wholesale
- \_\_\_\_\_ Retail
- \_\_\_\_\_ Wholesale & Retail

### INSPECTION REQUIRED

Prior to opening to Public, applicant must obtain approval from Safety & Codes Enforcement Dept.  
48 Hrs. advance notice required to schedule inspection. 610-205-8554

M. TWD. PERMIT DIV  
JAN 22 2020  
RECEIVED

JAL