

DEPARTMENT OF PLANNING AND DEVELOPMENT

STAFF REPORT

TO: Planning Commission – January 13, 2026 (for referral only)
Zoning Board of Appeals – January 15, 2026

FROM: Meagen Zapotoski, AICP, Consulting Planner

APPL: Christopher Warn

Z26-001



Owner: Same

RE: **Public Hearing and Regular Meeting of the Zoning Board of Appeals** pursuant to NYS General City Law Section 81-a(5)(b) and Section 575-55B of the City of Peekskill Zoning Ordinance regarding an **Appeal** of the Code Enforcement Officer's determination, pursuant to Section 575-35, that the uses on the property are not permitted on lots in the Zoning District where the property is located, and an **Interpretation of Section 575-44 regarding Nonconforming buildings and uses**, to determine whether the use of the property for inside and outside storage constitutes a legal, pre-existing nonconforming use. The property is located in the C-4, Neighborhood Commercial District.

Location: **711 North Division Street**

Section-Block-Lot: 23.70-6-15 (Peekskill Tax Map)

Zoning District: C-4, Neighborhood Commercial District

PUBLIC REVIEW SUMMARY

Governing Body	Date	Action/Discussion
Planning Commission	1/13/26 (Anticipated)	Referral
Zoning Board of Appeals	1/15/26 (Anticipated)	Appeal Determination

BACKGROUND & ANALYSIS

The Applicant is seeking an interpretation and appeal of §575-35.A to allow for a contractor's yard to operate in the C-4 General Commercial District, which is not listed as a permitted use in the code section referenced above. The Notice of Violation issued on September 26, 2025 notes that there were thirteen cars parked at the site, and piles of rock and gravel.

The Applicant asserts that the site, which also contains a single-family home, has operated as a contractor's yard since the 1960's, prior to the enactment of the zoning ordinance, and is therefore a legal pre-existing non-conforming use. The Applicant has submitted aerial imagery of the site dating back to 1976, which appear to show outdoor storage at the rear of the site.

Per §575-44.A, Nonconforming Buildings and Uses, nonconforming uses "Shall not be enlarged, extended or placed on a different portion of the lot or parcel of land occupied by such use on the effective date of this chapter or of any applicable amendment thereof, nor shall any external

evidence of such use be increased by any means whatsoever.” We note that the site does not appear to meet these criteria as the area used for this storage appears to become larger as the years progress, most obviously in the 2004 to 2007 period.



Figure 1- 2004



Figure 2- 2007

ENVIRONMENTAL ANALYSIS

The interpretation of a zoning ordinance and the review of Zoning Enforcement Officer decisions are both classified as Type II Actions under SEQR.

WESTCHESTER COUNTY RECOMMENDATION

It appears that this application will require circulation to the Westchester County Planning Board for notification only as no physical modifications to the site are proposed at this time.

STAFF RECOMMENDATION

The Zoning Board of Appeals is being asked to determine (1) whether the contractor's yard use at the rear of the site is a legal pre-existing nonconforming use; (2) if so, whether the non-conforming use was expanded.

DRAWING(S) REVIEWED IN PREPARATION OF STAFF REPORT

1. Cover letter prepared by Zarin & Steinmetz, LLP, signed David J. Cooper and Jaclyn V. Cohen, dated November 25, 2025
2. Notice of Violation and Order to Remedy issued by Jessica Spitzer, Code Enforcement Officer, dated September 26, 2025
3. Application for Appeals and Interpretations to the ZBA, signed Christopher Warn, dated November 22, 2025
4. Historic Aerial Imagery obtained from Westchester County GIS, not dated
5. Letter prepared by Eastern Oil Company, signed Rocco Ricciano Sr. and Philip Picciano, not dated
6. Letter signed James Mahoney, not dated
7. Letter signed Frank Pugliese, not dated
8. Letter prepared by Ferris Carpentry, signed Nick Ferris, not dated

November 25, 2025

Via Hand Delivery & Electronic Mail

Hon. Christopher Hanzlik, Chair
and the Members of the City of Peekskill Zoning Board of Appeals
Peekskill City Hall
840 Main Street
Peekskill, New York 10566

***Re: Application for Appeal of Code Enforcement Officer Determination
and Request for Interpretation of Zoning Ordinance
711 North Division Street, Peekskill, New York***

Dear Chair Hanzlik and Members of the ZBA:

This firm represents Christopher Warn (“Applicant”), the owner of the property located at 711 North Division Street (Tax Map ID 23.70-6-15) (“Property”). The Property is located in the City’s C-4 (“Neighborhood Commercial”) Zoning District and is currently occupied by a longstanding residential and contractor’s yard uses. Importantly, these uses have occupied the Property *for at least the past 60 years* – long before the City’s Zoning Ordinance was adopted in 1977.

On September 26, 2025, the City’s Code Enforcement Officer issued a Notice of Violation to the Applicant upon a determination that the uses on the Property were not permitted on lots in the C-4 district. *See* Notice of Violation, attached as Exhibit A. Further, the CEO instructed the Applicant to remedy the violation by obtaining a special permit. However, we respectfully submit that the contractor’s yard use is a legal, preexisting nonconforming use of the Property.

Accordingly, the Applicant is pursuing its right to appeal the CEO’s determination pursuant to NYS General City Law Section 81-a(5)(b), and requests an interpretation from your Board that the inside and outside storage areas on the Property constitute a legal, pre-existing nonconforming use. As described in more detail below, the Applicant has photographic evidence and eyewitness testimony establishing that the Property has been continually used for commercial storage before the City adopted the C-4 District regulations requiring a special permit for such use. In addition, the extent of the contractor’s yard/storage use has not been impermissibly expanded over the years.

As such, a special permit is not necessary for the Applicant to continue the current mix of uses on the Property. We respectfully request placement on the ZBA's next available agenda to review this application for an interpretation.

In support of this request, enclosed, please find the following materials:

- ZBA Application Form;
- Notice of Violation, dated September 26, 2025 (attached to this letter as Exhibit A);
- Historic Aerial Images of the Property; and
- Support Letters from:
 - Mr. Rocco Picciano, Sr. and Mr. Philip Picciano, Owners, Eastern Oil Co.;
 - Mr. James Mahoney, Service Manager, Eastern Oil Co.;
 - Mr. Frank Pugliese, former tenant; and
 - Mr. Nick Ferris, former tenant.

Property and Use Background

The Property has been improved with, and used as, a single-family residential home and contractor's yard for decades.¹ According to representatives of Eastern Oil Company, who are personally familiar with the Property, in or around the 1960's, an excavation contractor, Fred Biacchi, built and lived in the single-family house, and stored and serviced his trucks and equipment for his contracting business in the rear yard area. *See* Support Letter from Mr. Rocco Picciano, Sr. and Mr. Philip Picciano; *see also* Support Letter from Mr. James Mahoney. From the 1960's until the 1980's, Eastern Oil Co. delivered heating oil and diesel fuel to the Property. As Rocco and Philip Picciano, the owners of Eastern Oil Co., report in their support letter provided herewith, the Property was being used as a contractor's yard the entire time, as they witnessed Mr. Biacchi using the rear yard and garage building to store and repair his equipment. This account is supported by aerial images of the Property from 1976, which show a large dirt lot in the rear yard and equipment and materials stored – outdoors and uncovered – along the rear tree line.

In 1982, following Mr. Biacchi's passing, the Property was conveyed to Salvatore Marcuccilli. Mr. Marcuccilli maintained the contractor's yard use in the rear yard. He leased garage and lot space to tenants, including to the Applicant, for the purpose of storing equipment and vehicles. *See* Support Letter from Mr. Frank Pugliese; *see also* Support Letter from Mr. Nick Ferris.

In 2005, the Property was conveyed to the Applicant, who has continued the contractor's yard use. Specifically, the Applicant leases space in the back of the Property to landscaping and towing businesses. The landscapers store their trucks and equipment there, and the towing company stores tow trucks. Both businesses also maintain and repair their own equipment there.

¹ Single-family residential is a permitted use in the C-4 Zoning District, and thus, not at issue in this application. We mention it for background purposes only.

Importantly, the contractor's yard use has remained largely the same throughout the past 60+ years. Enclosed herewith are letters from local residents and business owners that, together, explain the history of the uses on the Property going back to the 1960's. Trucks, buses, and heavy equipment, including excavators and backhoes, have been stored in the yard and garage, and contractors have continuously used this area of the Property to service their equipment.

Moreover, the historic aerial images taken from Westchester County GIS indicate that the Property was never just used for single-family residential purposes. These images show that the rear yard never – at least since 1976 – had a manicured lawn area or small driveway / parking area that are typical of single-family residential properties. The fundamental nature of the rear yard as a large parking area / contractor's yard space (with an accompanying garage) has remained the same. There has always been outdoor, uncovered storage of trucks and equipment.

Nonconforming Use

The “contractor's yard” use is a legal, pre-existing nonconforming use because as explained above, it occupied the Property before the Zoning Ordinance was adopted in 1977, when a prior owner, Fred Biacchi, began to store and repair equipment used for his excavation contracting business out of the rear yard area in or around the 1960's. As the aerial image of the Property taken in 1976 shows, the rear yard has been a dirt lot with equipment stored along the rear tree line beginning as late as 1976.

Since Mr. Biacchi's passing in the early 1980's, the Property has been conveyed twice, but each new owner has continued operating a contractor's yard by leasing space to local business owners to store and service their trucks and equipment both inside the garage and outdoors throughout the rear lot area. Since zoning regulates the use, not the user, these changes in ownership would not affect the legal, pre-existing nonconforming status of the Property. *See FGL & L Property Corp. v. City of Rye*, 66 N.Y.2d 111, 116 (1985) (quoting *Matter of Dexter v. Town Bd. of Town of Gates*, 36 N.Y.2d 102 (1975)) (“[I]t is a ‘fundamental rule that zoning deals basically with land use and not with the person who owns or occupies it[.]’”) The aerial images, together with the eyewitness accounts, demonstrate this continuation of the use over time.

Under the Zoning Ordinance, this use “may be continued indefinitely, but shall not be enlarged, extended, or placed on a different portion of the lot.” *See City of Peekskill Zoning Ordinance*, § 575-44A(1). The Applicant recognizes that, as the aerial images suggest, the number of vehicles and equipment stored on the Property may have increased slightly over time. However, an increase in the number of vehicles stored, in and of itself, does not constitute an unlawful expansion. New York courts have routinely held that “a mere increase in the volume or intensity of the use, without a concurrent variation or alteration of the specific type of use, is not, per se, an impermissible extension or enlargement of that use.” *Smith v. Bd. of Appeals of Islip*, 609 N.Y.S.2d 912, 914 (2d Dep't 1994); *see also Tartan Oil Corp. v. Bd. of Zoning Appeals of Town of Brookhaven*, 213 A.D.2d 486, 488 (2d Dep't 1995) (modernization of business did not constitute unlawful expansion of nonconforming use); *Red House Farm Inc. v. Zoning Bd. of Appeals of E. Greenbush*, 234 A.D.2d 770, 772 (3d Dep't 1996) (holding that renovations to existing building to increase number of employees at software business that was a nonconforming use were

permissible because “a mere increase in the volume of business activity will not of itself require a use variance).

Here, the fundamental nature of the use has remained the same since before 1977. Ownership has changed hands, different businesses have leased space in the rear yard, and the number of vehicles and equipment has increased slightly over the years. But it has always been a contractor’s yard. Contractors have always used the rear yard of this Property to store and service their vehicles and equipment – both inside the garage and outside throughout the lot area. The aerial images conclusively demonstrate this fact. And, there is nothing inherently different about this use now than when it commenced over 60 years ago. Thus, the Notice of Violation should be invalidated. *See, e.g., People v. Perkins*, 292 N.Y. 329, 329 (1940) (holding that increase in volume of business was not evidence of impermissible expansion of nonconforming use where business was essentially the same); *Ruhm v. C.P. Craska, Inc.*, 59 A.D.2d 1016, 1017 (4th Dep’t 1977) (holding that “[a]n increase in volume [of business] does not alter the legality of a validly established nonconforming use”).

Accordingly, because the contractor’s yard use has occupied the Property since before the adoption of the Zoning Ordinance in 1977 and hasn’t been impermissibly extended or enlarged, the Applicant should be allowed to continue the use as of right on the Property.

Conclusion

For the foregoing reasons, we respectfully request that your Board issue an interpretation that the contractor’s yard is a legal, preexisting nonconforming use and that a special permit is not required to continue the use, and accordingly, overturn the CEO’s September 26th determination.

We thank the Board for its time and attention to this matter, and look forward to discussing this application with your Board at the next available meeting.

Respectfully Submitted,

ZARIN & STEINMETZ LLP

By: 

David J. Cooper
Jaclyn V. Cohen

Encls.

cc: Shaun Petruzelli, Assistant Building Inspector
Jessica Spitzer, Code Enforcement Officer
Eric Gordon, Esq. & Christian Gates, Esq., ZBA Attorneys
Ingrid O’Sullivan, Esq., City Prosecutor
Mr. Christopher Warn

Exhibit A

Notice of Violation, dated September 26, 2025



City of Peekskill

840 Main Street
Peekskill, NY 10566
(914) 734-4140

NOTICE OF VIOLATION - ORDER TO REMEDY

Notice Date: 09/26/2025
Inspection Date: 08/27/2025
Sec/Blk/Lot: 23.70-6-15
Complaint #: 2025-0616
Owner: [REDACTED]
Mailing Addr: [REDACTED]

Site Address: 711 Division St N

VIOLATIONS

Ordinance Code

§ 575-35 - C4 - Neighborhood Commercial District. - C4 - Neighborhood Commercial District.

Code Book

CITY CODE OF PEEKSKILL

Violation Date

09/26/2025

A. Permitted uses. No building or premises shall be used, and no building or part of a building shall be erected which is arranged, intended or designed to be used, in whole or in part, for any purpose except the following: (1) Retail stores with a maximum of 8,000 square feet of selling area. (2) Banks, including drive-in windows. (3) Restaurants; restaurants, carry-out. [Amended 9-10-2012 by L.L. No. 12-2012] (4) Beauty parlors, barbershops, tailors and nail shops. (5) Business, professional or governmental offices. (6) Appliance repair and job printing. (7) Residential development in accordance with the provisions of the R-3 Residence District. (8) Dance studios, martial arts studios. (9) Dry-cleaning stores, except that no dry cleaning may be performed on the property. (10) Museums. (11) Libraries. (12) Business schools.

Description

On 8/27/2025 at 1:36 pm, I, Jessica Spitzer, Code Enforcement Officer observed a business being run in the rear property of 711 North Division St. with at least 13 cars parked on the property and piles of rocks and gravel as well.

Corrections

Owner shall secure special permits for use of lot.

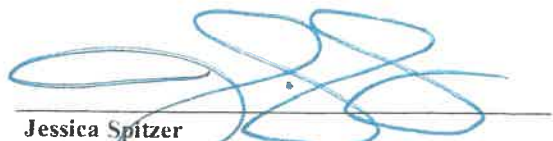
Full compliance with this order to remedy is required by 10/03/2025, which is 7 days after the date of this notice. You may be subject to a fine of not less than \$50.00 and not more than \$1000.00 per violation per day.

You are required to notify this department once the above violations(s) have been corrected. You must appear in the Peekskill City Court on 10/17/2025 at 9:30 AM to answer the charges against you. The Peekskill City Court is located at 2 Nelson Avenue, Peekskill, New York 10566.

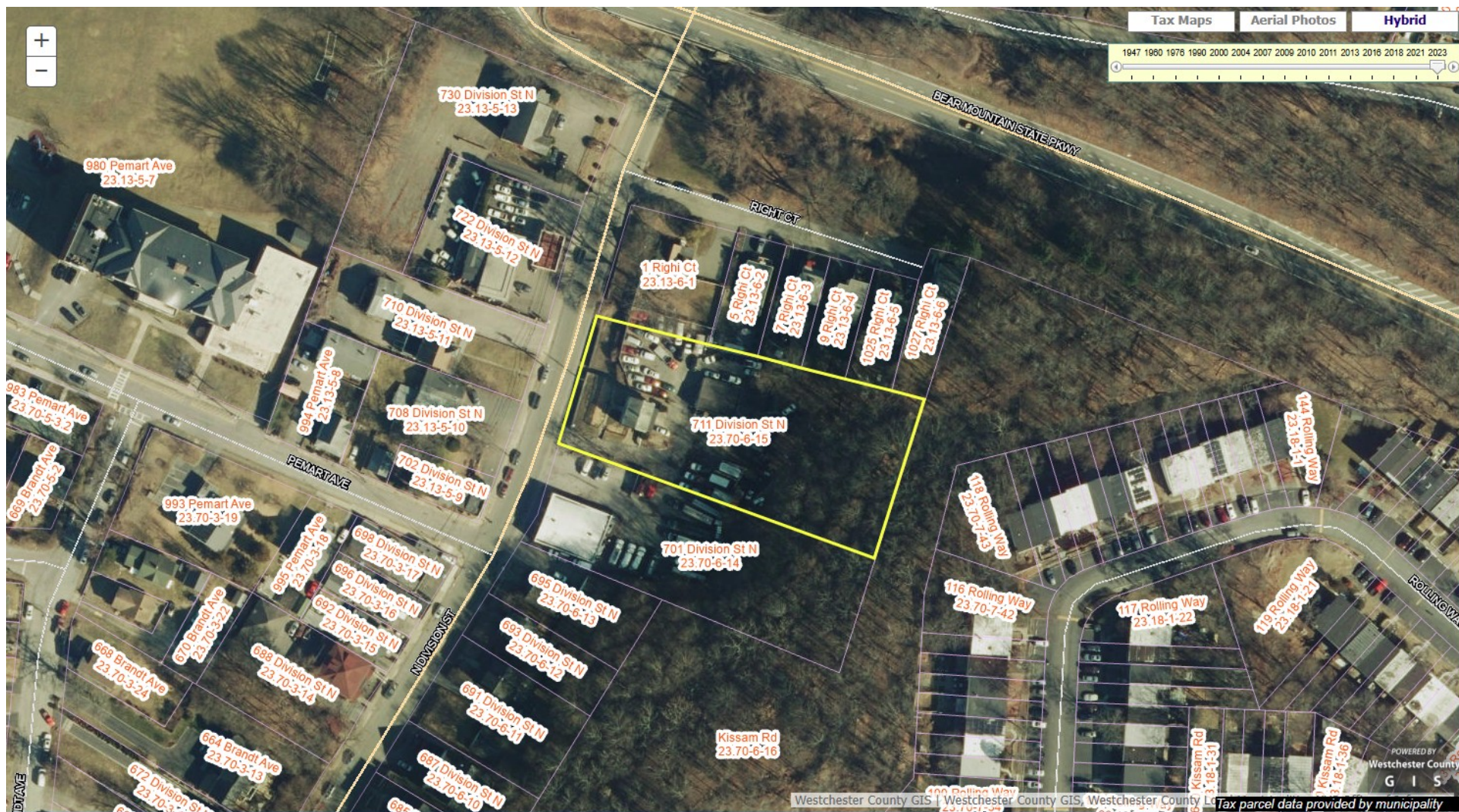
9589 0710 5270 2536 0636 48

Certified Mail Receipt

9589 0710 5270 2536 0636 48


Jessica Spitzer
Code Enforcement Officer
914-734-4143

2023



2013



2000



1990



1976



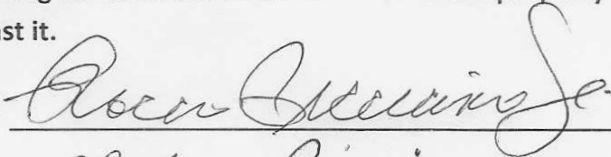
EASTERN OIL COMPANY

936 WASHINGTON STREET
PEEKSKILL, NEW YORK 10566
(914) 737-1583
Fax# 914-737-1576

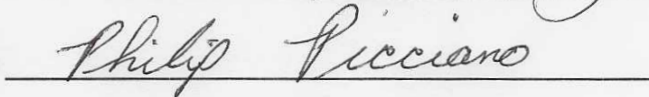
To: The City of Peekskill.

We delivered diesel fuel and heating oil to Mr. Bianci at 711 N. Division St. from the late nineteen sixties until he passed away some time in the nineteen eighties. The entire time Mr. Bianci lived in the house and stored and repaired his equipment in the shop and yard in the rear. After his passing we were the first to be offered the property and should have bought it but decided against it.

Rocco Picciano Sr



Philip Picciano



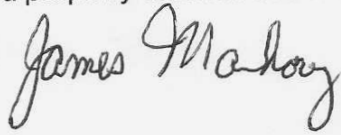
TO: City of Peekskill

FROM: Jim Mahoney

I started providing oil burner service in the shop at 711 N. Division St. for Mr. Bianci from 1980 until his passing. Mr. Bianci was an excavation contractor and built the building when he was a young man. He stored and serviced his equipment there and lived in the house at that location.

I have known Christopher Warn for 30 years and he is a Peekskill native, responsible businessman and devoted family man. It would be a tremendous hardship for him to lose the use of a property that has been in use long before I came along 45 years ago.

Sincerely,



James Mahoney



Frank Pugliese

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

To Whom it May Concern:

I am writing this letter on behalf of Mr. Chris Warn in reference to his property located at 711 North Division St.

I was a lifelong resident of the City of Peekskill, until my relocation to New Jersey in 2023. I knew Peekskill locations, businesses and neighborhoods intimately, whether from playing with friends as a youth, family or family friends, through my contracting business or responding to emergency calls during my tenure in the Fire Department.

I can unequivocally state the aforementioned property was always a storage area/ large vehicle parking lot. Many years ago, there were school/tour buses stored there, as well as other types of vehicles parked in the large parking area. Backhoes, Bobcat excavators and other such heavy equipment were stored /parked in the parking area. The domed building at the Division St. curb used to be an auto repair business, and the owner stored customer's cars in the upper lot while awaiting repairs.

In the late 1990's, my business was growing, and I needed more storage space for my equipment and vehicles. At this time, Chris was renting the west garages and parking lot from Mr. Sal Marcuccilli , the previous property owner; in talking to Chris one day, I explained my situation, and he was gracious enough to speak to Sal on my behalf, and I was able to rent the two east side garages and adjacent parking spaces. We continued to rent together from Sal until I purchased a storage building in 2005 or 2006.

As an aside, Chris's family and mine have known each other for over 50 years. I did many construction jobs with him, and we served together many years in the Peekskill Fire Department until he transferred to another department. I have always found him to be a fair and honorable man, and enjoyed socializing with him and his wife on many occasions. In a word, a gentleman.

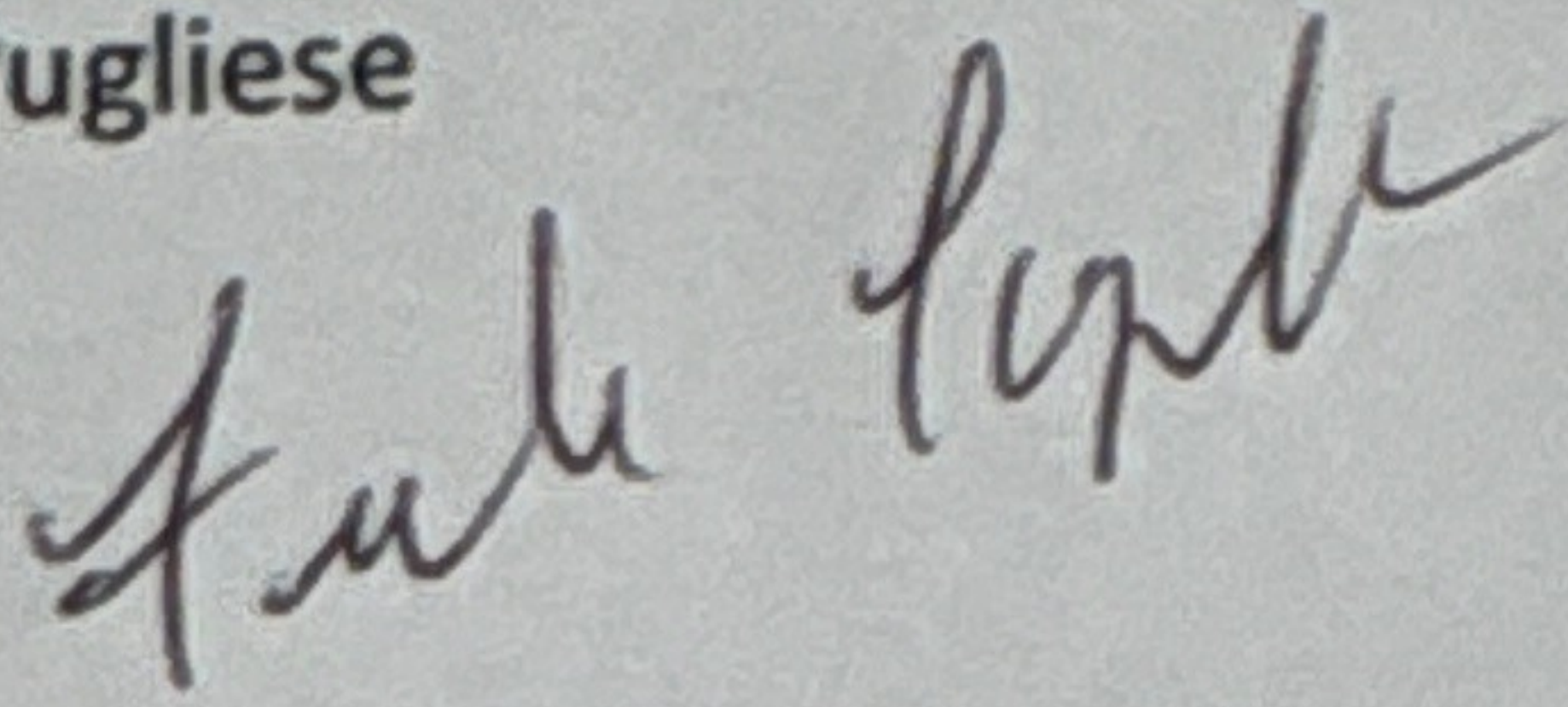
I hope that this letter will serve as an additional source of information regarding the history of this property, and will assist Chris in getting a favorable decision from the City.

Should anyone have any further questions for me regarding this matter, please do not hesitate to contact me using any of the above-captioned contact numbers.

Thank you for your time in this matter.

Sincerely,

Frank Pugliese

A handwritten signature in cursive script, appearing to read "Frank Pugliese", written in dark ink.



To whom this may concern,

I am the owner of Ferris Carpentry LLC, my father James Ferris started our company when he was a career Fire Fighter with the City of Peekskill. Back in the early 90's, my father was looking for a shop for our carpentry business, so he began renting at 711 North Division Street Peekskill, N.Y. We rented a shop garage and yard space with Christopher Warn and continued renting when Chris purchased it the property in early 2000. We rented for many years until I took over the business and moved to my current location.

My father and Chris were lifelong friends, and I have known Chris most of my life and I consider him a good friend. We have worked together, and I can honestly speak of his character, he is honest and respectable businessman as well as a good family man who is always willing to help people in need.

Respectfully,

Nick Ferris

711 Division St N

BUILDING DEPARTMENT'S RECORDS



No STRUCTURES
FOR GRAVEL, ETC.

01/02/2007

711 Division St N

BUILDING DEPARTMENT'S RECORDS



BEGINNING OF
STRUCTURES

12/09/2010

711 Division St N

BUILDING DEPARTMENT'S RECORDS



↑
STRUCTURES
PRESENT

04/21/2016

1st Violation Issued By Brent Van Zandt
Richard Cohen

711 Division St N

BUILDING DEPARTMENT'S RECORDS



↑
MORE CARS
&
SUPPLIES
PRESENT IN STRUCTURE

04/23/2018

711 Division St N

BUILDING DEPARTMENT'S RECORDS



11/25/2018 - 01/17/2019

711 Division St N

BUILDING DEPARTMENT'S RECORDS



04/05/2021

711 Division St N

BUILDING DEPARTMENT'S RECORDS



03/25/2024

711 Division St N

BUILDING DEPARTMENT'S RECORDS



04/04/2025



City of Peekskill

840 Main Street
Peekskill, NY 10566
(914) 734-4140

COMPLAINT NUMBER: 2025-0567

BUILDING DEPARTMENT'S RECORDS



City of Peekskill

**BUILDING DEPARTMENT'S
RECORDS**

840 Main Street
Peekskill, NY 10566
(914)737-3400

NOTICE OF VIOLATION - ORDER TO REMEDY

Notice Date: 5/16/2016
Inspection Date: 5/11/2016
Sec/Blk/Lot: 23.70-6-15
Complaint #: 2016-931

Re-Inspection Date: 6/20/2016

Owner:
Mailing Addr:

Site Address:

VIOLATIONS LISTING

<u>Ordinance Code</u>	<u>Code Book</u>	<u>Violation Date</u>
575-18 Prohibited uses	CITY CODE OF PEEKSKILL	5/16/2016

Description

Prohibited use of property in C-4 zone.
Ordinance Code Description:

Any use not specifically listed in this chapter as a permitted use or as a use permitted by special permit in a particular zone shall be prohibited in that zone.

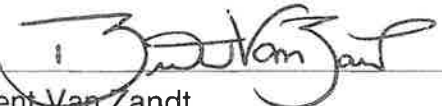
Correction:

Secure proper permits for use of property.

Your immediate attention is required. If you do not comply with the requested action by 5/11/2016 , the City of Peekskill will begin formal prosecution against you. For the purposes of applying penalties, your first violation shall be deemed to have occurred as of 5/11/2016 .

THIS IS THE ONLY LETTER YOU WILL RECEIVE. Your next communication from us will involve formal enforcement action.

You are required to notify this department once the above violations have been corrected, you are to call the inspector mentioned below for a follow-up re-inspection to officially remove the violations from our records. Upon failure to comply with this notice by 6/20/2016 , this matter will be turned over to our Legal Department for Prosecution.


Brent Van Zandt
Director of City Services


Richard Cohen
Code Enforcement Officer
914-734-4213

**BUILDING DEPARTMENT'S
RECORDS**

CITY OF PEEKSKILL, N. Y.

Nº 1471

Certificate Of Occupancy and Compliance

Issued October 22 1982 To Estate of Fred Bianchi
Permit No. _____ Location 711 N. Division St
Tax Map _____ Section 4 Block 14 Lot 7
Use District " C-4 Neighborhood Commercial

This Certifies that the

(Description of Bldg.) Two (2) story one family frame dwelling w/ detached masonry
basement garage and carport

situated on the above mentioned premises has been completed and complies with the provisions of the
~~Building Code and~~ Zoning Ordinance of the City of Peekskill and permission is hereby granted for its
occupancy for the purpose specified below
One Family Dwelling and garage/carport

or that permission for such use has been granted by the Zoning Board of Appeals by order dated
19

Type of Variance _____

Special Conditions _____

Permitting and masonry block garage built before the
adoption of the 1960 City of Peekskill zoning Ordinance.

Fee

\$10.00

1/2 #4400

[Signature]
Building Commissioner