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Laurel A. Jurkowski, Paralegal

August 10, 2021

Via Email & Regular Mail
Michelle.ann.liptak@gmail.com

Michelle Liptak
196 Sunset Avenue
Kinderhook, New York 12106

Dear Michelle Liptak:

I am the municipal attorney for the Village of Kinderhook. The Village Code Officer, Peter Bujanow and Mayor, Dale Leiser forwarded on to me your email letter of August 4, 2021, regarding the operations of the property and business at 59 Broad Street, known as the "Carolina House Restaurant." We have reviewed your letter and supporting documentation, and wanted to provide a response to you, as you plan to move your business forward.

As you indicated in your letter, the Village of Kinderhook Code at section 130-26 provides that where a nonconforming use of land or buildings has been discontinued for a period of 18 months, such use shall not be reestablished. The code section states that a discontinuance occurs regardless of any reservation of an intent not to abandon the use, or of the owner having an intent to resume active operations.

The leading case on discontinuance of nonconforming uses is Toys R Us v. Silva, 89 N.Y.2d 411 (1996), where the New York Court of Appeals determined "abandonment of a non conforming use requires an intent to relinquish and some overt act or failure to act . . ." However, the Court defers to the local code as to what constitutes discontinuance. As stated above, the Villages code states abandonment occurs "regardless of your intent."

Your letter evidences your actions and intent to remain in business. Your letter documents the impacts the COVID-19 pandemic has had on your operations.

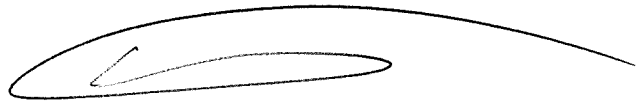
Further research indicates that "courts have found no abandonment where the non conforming use was interrupted by war, condemnation, fire, injunction, or other events or circumstances beyond the user's control." 12A N.Y. Jur. 2d Buildings § 363

As you indicated in your letter, the global pandemic of COVID-19 occurred in March of 2020 and continues to date. The pandemic and resultant impacts have caused the restaurant business to almost collapse. Your letter documented your efforts to continue operations, remaining in business, and your ongoing and continued efforts to operate the property as a restaurant.

The COVID-19 pandemic is clearly an outside impact that was, and remains, outside of your control. In my opinion, your explanation and documentation provide sufficient justification for the noncomfoming status of the Carolina House restaurant to NOT be deemed discontinued or abandoned. As you progress in your operations, it is my suggestion that you provide periodic updates to the Village's Code Officer and Mayor, so your ongoing efforts to resume normal operations can be documented.

If you have any questions or concerns, please feel free to contact me to discuss the matter further.

Sincerely yours,

A handwritten signature in black ink, consisting of a large, sweeping loop that starts on the left, goes up and over, then down and back to the left, ending in a small hook.

Robert J. Fitzsimmons

CC: CEO, Peter Bujanow (via email)
Mayor, Dale Leiser (via email)

Enc.

Michelle Liptak
196 Sunset Avenue
Kinderhook, NY 12106

Mr. Peter Bujanow
Code Enforcement Officer - Village of Kinderhook
6 Chatham Street
Kinderhook, NY 12106

August 4, 2021

Dear Mr. Bujanow,

I am the owner of the property and business at 59 Broad Street in the village of Kinderhook, which I understand the village views as a non-conforming use. Due to a number of COVID-related circumstances, the property has been unable to operate as a restaurant since late March of 2020. Therefore, please consider this letter a formal request to extend the eighteen-month period of discontinued operation set forth in section 130-26 of the Village zoning ordinance as we continue to navigate these uncharted, tumultuous, and unpredictable economic times resulting from the global pandemic.

As you likely are aware, 59 Broad Street has served as a restaurant site for approximately eighty years, most notably as The Dutch Grill and Jansen's. Carolina House has been in existence for almost half of this time, for it was established in 1983. The property has been in the Liptak family for thirty-three of those years, and we operated the restaurant from 1988 to 2013. In spite of my sisters and I opting to no longer run the restaurant back in 2013, we have made it a stipulation that subsequent tenants or owners maintain the integrity of "Carolina House" given its place as one of the oldest independently-owned restaurants in Columbia County and its historical significance to the Kinderhook Village.

In early 2020, we entered into the third year of our lease with our tenant, Leo Castellanos, who, unfortunately, left the country in early March of 2020 when the pandemic really hit New York. After his departure, he neglected to support the business and was unable to return to the US given the COVID-related travel restrictions. Thus, the restaurant was forced to shut down in late March. In spite of attempts to negotiate a lower / deferred payment plan, the tenant declined because of the ever-increasing restaurant capacity restrictions and COVID rules, as well as the resulting lack of staff and revenue. Thus, he abruptly broke our agreement and permanently vacated the premises.

As the long-term owner of this property, I was incredibly distraught over the severe economic and financial impacts of the pandemic. For the remainder of 2020, it was impossible to list, sell, or even open a business - particularly a restaurant. Again, my tenant had abandoned the business, state licensing offices were in limited operation, and financial institutions were basically frozen. For months, no one was able to reopen Carolina House, including myself. Though Bank of Greene County (BOGC) was able to offer me a three month deferment on my mortgage, additional funding was not available, and the restaurant industry was in dire straits due to the numerous NYS Executive Orders that initially ceased and then severely limited indoor dining for well-over a year (EO 202 through EO 202.111; EO 210). In an effort to resume operations, even in a strictly limited capacity, I again reached out to BOGC about the feasibility of refinancing, and I received an email from the bank (see attachment) saying that it would not do a refinance due to the "uncertainty with being able to operate a profitable

restaurant in NYS under reduced seating capacity guidelines." Though BOGC directed me to a different lender who might be able to help, I did not qualify since I was not running the business at the time it closed.

In mid-2020, I and my family had begun to work on / clean up the property in preparation to open or sell. We completed some exterior painting and repaired the vestibule. Though we did have two parties interested in purchasing the property back in the summer of 2020, negotiations fell through due to lending issues and the unpredictability of the pandemic. Eventually we signed a lease with restaurateur, Christopher Knable, on December 4, 2020; however, his SBA loan still has not come through due to the crippling effects of COVID - especially on the restaurant and financial industries. In early 2021, Mr. Knable began to work on the kitchen (which basically has not been updated since 1982). He is in the process of laying a new floor, expects to tile the walls, and install all new kitchen equipment including a new exhaust system. He also intends to redo the electrical system throughout the building, repair/repave the parking lot, and do some cosmetic work to the interior of the building (and getting the appropriate permits, of course). Mr. Knable has enthusiastically agreed to maintain all aspects of the Carolina House brand and deeply values its history and place in the community. However, his plans continue to be waylaid due to not only a lack of funding but also the severe shortage of workers. For months, he has dedicated resources - both time and money - to finding a chef, prep cook, and waitstaff but to no avail. He owns three other eateries - he has advised that two are alarmingly short-staffed and one he had to outright close due to a lack of help. To be transparent, I fear that the unexpected and far-reaching impact of the pandemic may very well break my negotiations with Mr. Knable. In essence he (and, thus, I) require more time to ride out the current and future reverberations of COVID, particularly since our country has now entered a fourth wave.

In sum, I respectfully request that the eighteen-month period in section 130-26 of the Zoning Code be extended due to far-reaching and perpetual pandemic-related economic struggles. I believe that the COVID pandemic caused the initial cessation of operations in March of 2020 and has prevented the re-opening of the restaurant to this very date. I am committed to doing what is needed to maintain the site as a restaurant, preferably as Carolina House; however, unprecedented and paralyzing circumstances have prevented this from happening in 2020-2021. I have embedded the link to the Executive Orders, attached a copy of my email exchange with BOGC, and am sending a list of relevant articles from the NYS Restaurant Association - all of which attest to the insurmountable challenges of operating the restaurant at 59 Broad Street. Certainly, I am happy to address any questions you may have. Given the gravity and time-sensitive nature of the situation, I kindly request that I receive a written reply to this letter within three business days.

Sincerely,

Michelle A. Liptak
michelle.ann.liptak@gmail.com



Michelle Liptak <michelle.ann.liptak@gmail.com>

RE: Carolina House / Shellan Ltd.

1 message

Brian D. Stickle <BrianS@tbogc.com>
To: Michelle Liptak <michelle.ann.liptak@gmail.com>

Thu, Oct 8, 2020 at 2:32 PM

Good Afternoon Michelle:

At this time, given the uncertainty with being able to operate a profitable restaurant in NYS under reduced seating capacity guidelines, I don't think that a refinance with equity out would be something we could accommodate, given the risks associated. The Bank is being very cautious in the hospitality industry at the moment, so drawing additional equity from the property to re-open the restaurant would not be an option at this time.

While we remain in a holding pattern with respect to financing in the hospitality industry, I do know that Pursuit Lending in Albany is administering loans through the NY Forward Loan Program Fund which may be right up your alley for this scenario. They are offering very low interest rates on loans to businesses affected by COVID (up to \$100k), so long as you didn't get a Payroll Protection Loan or Economic Injury Disaster Loan from SBA. Details of the program can be found in the two attachments to this message, and if it sounds like a program that can work for you, I recommend contacting Wesley Slyke directly to get started on the application process:

Wesley R. Slyke**Senior Business Development Officer****50 Beaver Street, Floor 5, Albany, NY 12207****P: 518-209-6498**

Regards,

Brian D. Stickle*AVP, Commercial Lending & Business Development, NMLS ID 780144*

Bank of Greene County

Phone: (518) 943-2600 ext. 2096

Email: BrianS@tbogc.com

From: Michelle Liptak <michelle.ann.liptak@gmail.com>**Sent:** Thursday, October 8, 2020 1:59 PM**To:** Brian D. Stickle <BrianS@tbogc.com>**Subject:** Re: Carolina House / Shellan Ltd.



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- March 4, 2021 | [State Restaurant Association Survey: Majority of Operators Report Delivery and Take-Out Sales Make Up Less Than One-Third of Lost Sales](#)
- February, 15, 2021 | [SCHUMER: CAPITAL REGION'S RESTAURANTS, THE WORKERS THEY EMPLOY & LOCAL ECONOMY THEY SUPPORT NEED IMMEDIATE FED RELIEF TO WEATHER COVID FOR THE LONG HAUL](#)
- January 23, 2021 | [State Restaurant Association Calls on New York to Follow Other States' Lead and Loosen Restrictions](#)
- December 30, 2020 | [NYSRA applauds local governments for implementing price gouging protections, but warns of big tech loophole that hurts local restaurants](#)
- December 10, 2020 | [New York's Restaurants Faring Far Worse Than National Average](#)
- September 3, 2020 | [NYSRA Survey: Nearly Two-Thirds of New York's Restaurants Likely to Close by Year's End Without Government Support](#)
- August 16, 2020 | [State Restaurant Association Survey: 90% of restaurants unlikely to be profitable in the next 6 months without Gov't assistance](#)
- July 7, 2020 | [Overwhelming Majority of New Yorkers in Favor of Permanently Allowing Takeout or Delivery of Alcoholic Beverages from Restaurants](#)
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- March 16, 2020 | [Restaurants Must Switch to Delivery and Take Out](#)
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- January 6, 2020 | [Bisons' Rob Free named Chairman of New York State Restaurant Association](#)