

VILLAGE OF NYACK
BUILDING
SEP 19 2025
DEPARTMENT
RECEIVED

**REGULAR MEETING
ZONING BOARD OF APPEALS**

Nyack Village Hall
Nyack, New York

September 18, 2025

Present: Steven P. Knowlton, Chair
Jack Dunnigan
Roger Cohen

Recused:
Absent: Ellyse Berg
Richard Gressle
Miriam Rubington, Alternate

Also Present: Chief Building Inspector Manny Carmona

The following resolution was offered by Member Knowlton and seconded by Member Gressle and carried based upon a review of the evidence presented at the public hearing held on September 18, 2025

**BOARD OF APPEALS
VILLAGE OF NYACK, COUNTY OF ROCKLAND**

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In the Matter of the application of Claude Mews (1 Prospect Street)) for an appeal of the Chief Building Inspector's determination that the property in question is not a legal, pre-existing non-conforming use.

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The Zoning Board of Appeals held a public meetings on the 18th day of September, and due deliberations having been made; the Chairman polled the members and determined there were no conflicts that would require recusal. The Applicant and counsel also consented to the Board hearing the Application with 3 members, and consented to the unanimous requirement that the 3 member quorum required.

Now, upon said hearing and upon the evidence adduced thereat, it is hereby found and determined that:

FINDINGS OF FACT & CONCLUSIONS OF LAW

FIRST: Applicant petitions the Zoning Board for the relief listed above.

SECOND: The ZBA, in reaching its Findings of Fact and Conclusions of Law has taken the following factual testimony and evidence under consideration:

1. The application and supporting documents.
2. The testimony of Schenley Vital counsel and the Applicant.
3. Testimony of Claude Mews, property owner
4. ZBA members knowledge of the site in question.
5. Site visits by all members of the ZBA.
6. Chief Building Inspector's notes, testimony, and summary.

THIRD: As a result of the property owner seeking to make repairs on his building, he was advised in April of this year that his building had not been issued a Certificate of Occupancy establishing it as a four family dwelling. The Applicant bought the property in 2009 and has resided there since that time. He testified that he bought the property as an existing 4 family dwelling and has paid taxes on the building as an assessed 4 family dwelling.

FOURTH: The Applicant has supplied a number of Certificates of Compliance issued by the Village of Nyack Building Department that certify "that the Multiple Residence located at the premises indicated above complies with all of the requirements of the applicable State Laws and Local Ordinances." The Certificates provided to this Board both pre-date and post-date the purchase of the property by the Applicant. Don Yacopino, former Chief Building Inspector, signed a number of the Certificates of Compliance.

FIFTH: The property is located in the TFR zoning district. 4 family multiple residences are not a permitted use in that zoning district.

SIXTH: The Applicant testified that he has relied upon the Village Certificates, and at no time before April of 2025 has the Village or any other governmental agency informed him that his property did not have a Certificate of Occupancy for a 4 family use.

SEVENTH: The file of the Nyack Building Department contains an undated memorandum authored by former Chief Building Inspector John Allgor noting that the building was a non-conforming, illegal use. Mr. Allgor passed away prior to the purchase by Mr. Mews of the property. This memorandum was presented to the ZBA for the first time at the hearing.

These findings of fact were moved and passed unanimously.

CONCLUSIONS OF LAW:

The only issue before this Board at present is that appeal of the Building Inspector's determination that the present use of the property is a legal pre-existing, non-conforming use.

The evidence presented by the Applicant, especially the pre-purchase Certificates of Compliance issued to the prior owner of the property support the contention of the Applicant that at one time, 4 family multiple residential use of this site was either legally pre-existing non-conforming or was a permitted use in the zone at some time in the past.

In New York, a property owner may not necessarily rely on a village government form stating that the property is used as a four-family dwelling if that use is challenged by the building inspector. The determination of whether a property is lawfully used as a four-family dwelling depends on whether the use complies with applicable zoning ordinances, building codes, and whether it constitutes a lawful nonconforming use. In "Kennedy v. Zoning Bd. of Appeals, 205 A.D.2d 629," the court held that a lawful nonconforming use may continue even if a certificate of occupancy or other permit was not obtained, provided the use was lawful at the time it began and has been continuously maintained. However, a new building inspector cannot retroactively determine that a use violates the same ordinance if a prior determination found the use to be lawful. *Id.* Here, based on the Certificates of Compliance presented, 2 prior Building Inspectors signed the Certificates of Compliance. From this evidence the Board can reasonably infer that the Multiple Residence use was lawful.

Further, in the interest of justice and equity, a property owner should be able to reasonably rely upon a municipal authority's actions (or inaction) related to the use of his property. Here, the fact that the Village of Nyack did not notify the property owner of a Certificate of Occupancy deficiency, despite having multiple opportunities to do so, should not be held against the property owner.

Therefore, upon motion of the Chairman, the Zoning Board of Appeals:

1. REVERSES the decision of the Chief Building Inspector and GRANTS the Appeal of Applicant.
2. Finds that the 4 family, multiple residential use at the site is a legally non-conforming use that may be maintained in accordance with the Village of Nyack Code.
3. The following conditions are appended to this decision, to which the Applicant has agreed: the Applicant will work with the Building Department to remedy the deficiencies noted in the Inspection Report dated April 2, 2025, including all permits and inspections as deemed necessary by the Building Department. The time to remedy will be set by the Chief Building Inspector. After which time, upon reinspection by the Building Department to confirm complete compliance, a Certificate of Occupancy will issue for a 4 family, multi-residential use.

On a roll call, the vote was as follows:

Ayes:	3
Nays:	0
Abstain:	0

/s/Steven P. Knowlton, Esq.
Steven P. Knowlton Chairperson
Zoning Board of Appeals, Nyack.