

**A RESOLUTION OF THE ZONING BOARD OF THE CITY OF LAMBERTVILLE  
MEMORIALIZING APPEAL OF ZONING OFFICER'S PRIOR DETERMINATION**

**Resolution # 5-2023  
278 North Union Street  
Block 1004 Lot 25**

**WHEREAS**, Maxwell Assets, Inc. (the "Applicant") is the owner of real property located at 278 N. Union Street, Lambertville, New Jersey, identified on the Tax Map for the City of Lambertville as Block 1004, Lot 25 (the "Subject Property"); and

**WHEREAS**, the Subject Property is located within the C-3 Zone; and

**WHEREAS**, pursuant to N.J.S.A. 40:55D-70a, the Applicant has filed an appeal of a determination by the Zoning Officer for the City of Lambertville; and

**WHEREAS**, on May 25, 2023, the Zoning Board of the City of Lambertville held a public hearing and took testimony of the Applicant; and

**WHEREAS**, at said meeting all those who desired to be heard were heard, and the testimony was recorded by the Board; and

**WHEREAS**, the following exhibits were entered into evidence.

**A-1** – Application

**A-2** – Zoning Permit 2023-15

**A-3** – Pictures of Subject Property

**A-4** – List of Approvals without Conditions

**NOW, THEREFORE**, the Zoning Board makes the following findings of fact based on evidence presented at its public hearing at which a record was made:

1. Pursuant to N.J.S.A. 40:55D-70a, the Applicant appeals a determination of the Zoning Officer regarding the issuance of a Zoning Permit permitting the use of the Subject Property to operate an office/design/showroom to display and sell rugs. In the application, it was indicated that the garage door located in the front of the space would be open for mercantile use. While the Zoning Permit for the use was granted, the Zoning Officer included a condition in the Permit which stated: "Front roll up door shall remain closed see Z-408.1D." Applicant appeals the condition.
2. Applicant requested relief from the Zoning Officer, who responded that: "The Zoning Permit will not be modified to allow the garage/bay door to be open for mercantile use . . ." as the Zoning Officer indicated that while the wholesaling and retailing of goods is permitted, it is required that "such activities and inventories are conducted entirely within

an enclosed structure or are conducted in open yard areas which are adequately screened from view from adjacent lots or roads." The appeal to the Board followed.

3. Margaret Carmeli, Esq. appeared on behalf of the Applicant at the public hearing, introduced and summarized the Application, and presented the following witnesses:  
(1) James Kyle, Applicant's Planner, who was qualified and accepted by the Board as an expert and duly sworn; and (2) Daniel Popkin, on behalf of the Applicant.
4. Ms. Carmeli stated that multiple prior Zoning Officers have permitted the garage/bay door to remain open during operating hours and presented examples of other businesses in the building, the C-3 Zone and in the area that operated with their garage/bay doors open.
5. The Board Planner testified in support of the Zoning Officer's determination, discussing the intent of the ordinance and its history, and the fact that the "enclosed structure" requirement was unique to the zone. She also noted that the City Code does not define the word "enclosed," and discussed the definition of the word "enclosed" as set forth in Merriam-Webster's Dictionary and how it supported the Zoning Officer's determination.
6. Mr. Kyle testified as to the language in the ordinance as well as the historical use of the Subject Property, as well as other properties in the area. He testified as to the changing use of the C-3 Zone and how the businesses located there differ now versus when the ordinance was first adopted in the 1970s.
7. Ken Rogers, the Zoning Officer, testified that the language of Section Z-408.1.D of the City Code applies specifically to the C-3 Zone and is clear that the type of use sought by the Applicant must be conducted entirely within an "enclosed structure" and that keeping a garage/bay door open would result in the structure not being enclosed.
8. There were no other members of the public expressing an interest in this application.

**NOW, THEREFORE**, the Zoning Board makes the following conclusions of law based upon the foregoing findings of fact:

1. Pursuant to N.J.S.A. 40:55D-70a, the Applicant has filed an appeal of a determination of the Zoning Officer, asserting that a Zoning Permit for the stated use was inappropriately conditioned on keeping the garage/bay door closed during operation. Under the Municipal Land Use Law, pursuant to N.J.S.A. 40:55D-70a, a zoning board of adjustment has the exclusive jurisdiction to:

[h]ear and decide appeals where it is alleged by the appellant that there is an error in any order, requirement, decision or refusal made by an administrative officer based on or made in the enforcement of the zoning ordinance.

2. Given the changing nature of the C-3 Zone as well as the prior use of garage/bay doors within said Subject Property and the area by other similar businesses, an "enclosed structure" as used in Section Z-408.1.D of the City Code shall be defined to permit garage/bay doors to remain open during the daily operation of businesses within said zone.

**NOW, THEREFORE, BE IT RESOLVED** that at its meeting of May 25, 2023, upon motion duly made, the Board by a vote of five (5) in favor, none (0) opposed, and one (1) abstention, voted to **OVERRIDE** the determination made by the Zoning Officer in the subject Application, as follows:

1. In accordance with the Municipal Land Use Law under N.J.S.A. 40:55D-70(a), the appeal of the determination of the Zoning Officer as set forth in the instant application is hereby granted.
2. The Board reverses the decision of the Zoning Officer, finding that the changing nature of the C-3 Zone as well as the prior use of garage/bay doors within said area by other similar businesses warrants a revised interpretation of the relevant ordinance, which the Board interprets in this instance as requiring all mercantile activity to remain within the building envelope, but the Board also determines that the Zoning Officer at all times acted in good faith.
3. Within ten (10) days after the adoption of this Resolution, the Zoning Permit will be reissued by the Zoning Officer without the condition.
4. The Applicant must pay the costs of all professional review and other fees required to act on the Application, pursuant to the applicable sections of the City's land development ordinances, zone codes and any other applicable municipal codes, and the MLUL.
5. The Applicant shall comply with all Federal, State, and City laws and requirements, including without limitation all applicable provisions of the Code of the City of Lambertville.

By: \_\_\_\_\_

Board Chairman, Pasquale Pittore

Witness: \_\_\_\_\_

Board Secretary, Crystal Lawton

### **CERTIFICATION**

**I HEREBY CERTIFY** that this Resolution of Memorialization being adopted by action of the Board on this 29<sup>th</sup> day of June, 2023, represents a true and correct copy of Resolution adopted by the Zoning Board of the City of Lambertville consistent with its Decisions at its meeting held on the 25<sup>th</sup> day of May, 2023.

By: 

Crystal Lawton, Board Secretary

**City of Lambertville  
18 York Street  
Lambertville NJ 08530  
Planning & Zoning Board of Adjustment  
Notice of Decision**

Please print the following legal notice in your next edition:

**ZONING BOARD OF ADJUSTMENT  
CITY OF LAMBERTVILLE  
NOTICE OF DECISION**

The Zoning Board of Adjustment of the City of Lambertville, NJ, On June 29, 2023, approved resolution 5-2023, for the application of an appeal from the Zoning Officer's decision, at 278 North Union Street, Block 1004 Lot 25. The documents are available to view in the office, via an OPRA request, during normal business.

Crystal Lawton  
Administrative Officer  
Zoning Board of Adjustment