

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

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TOWN OF NEWBURGH, NEW YORK,

Index No.:

Plaintiff

-against-

VERIFIED COMPLAINT

NEWBURGH EOM LLC, NEWBURGH EOM LLC
d/b/a CROSSROADS HOTEL, and
CROSSROADS HOTEL,

Defendants

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Plaintiff, TOWN OF NEWBURGH, NEW YORK, by its attorneys, MacVean, Lewis, Sherwin & McDermott, P.C., as and for its Verified Complaint against Defendants, NEWBURGH EOM LLC, NEWBURGH EOM LLC d/b/a CROSSROADS HOTEL, and CROSSROADS HOTEL, alleges as follows:

NATURE OF ACTION

1. This action is brought by Plaintiff, Town of Newburgh, New York (hereinafter referred to as the "Town") to immediately halt the deliberate, hazardous and unlawful conversion of a hotel known as the Crossroads Hotel (herein referred to as "Crossroads" or "Hotel") located at 5 Lakeside Road in Newburgh, New York, in violation of the Building Construction Code §71-8 of the Town of Newburgh Code, and §185-52D and § 185-50 of the Town Zoning Code.

2. On Friday, May 5, 2023, the Mayor of New York City, the Honorable Eric Adams, announced a new "program" to provide housing for single adult males now in

the care of New York City (hereinafter referred to as the “City”) in nearby rural and residential counties for up to four (4) months.¹

3. The Mayor’s “program” and decisions made as part of the “program” were done unilaterally without consultation with the local municipalities. The Mayor’s program did not consider or address the local zoning, building, or fire codes governing the proposed or “selected” housing sites.

4. The Crossroads Hotel was identified by the Mayor’s office as one of the “selected” housing sites. In response and in order to accommodate the Mayor’s “program,” the Hotel has ceased operating in conformance with the Town Codes and the Certificate of Occupancy issued for these premises and has begun and/or completed converting the Hotel to a long-term residential facility.

5. Defendants must therefore be restrained and enjoined from altering the Hotel for this intended long-term residency use until required approvals and permits are obtained for this change.

6. The Town accordingly seeks from this Court an Order and Judgment: (a) declaring that the altered use and operation of the Crossroads Hotel is in violation of the Town of Newburgh Building Construction Code §71-8; (b) declaring that that the altered use and operation of the Crossroads Hotel is in violation of § 185-50 of the Town Municipal Code; (c) temporarily restraining and enjoining the Defendants from continued use of the Hotel in violation of the Town Codes and, further, from receipt of overflow housing from New York City in such fashion and until returned to its intended use; (d) ordering Defendants to pay for reasonable attorneys’ fees, costs, and

¹ *Mayor Adams Announces Program to Provide Shelter Option for Asylum Seekers Already in Care in Nearby New York Counties* <https://www.nyc.gov/office-of-the-mayor/new/322-23/mayor-adams-program-provide-shelter-option-asylum-seekers-already-care-in> (last accessed May 10, 2023).

disbursements of the Plaintiff in bringing this action; and (e) granting the Town such further relief as this Court deems just and proper.

JURISDICTION AND VENUE

7. This action is brought pursuant to New York State Town Law § 135 (the “Town Law”), which permits the Town Board of the Town of Newburgh to “maintain an action or proceeding in the name of the Town in a court of competent jurisdiction, to compel compliance with, or to restrain by injunction, the violation of any [Town] ordinance, rule, or regulation, notwithstanding that the ordinance, rule, or regulation may provide a penalty or other punishment for such violation.” Town Law §135(1); *see also* Town Law §268.

8. Moreover, The Town of Newburgh Zoning Code §185-52D provides that where “any building, structure, or land is used in violation of this chapter or any regulations made under authority conferred hereby, the Town Board, or, with its approval, the Building and Code Enforcement Officer, or other proper official, in addition to other remedies, may institute any appropriate action or proceeding to prevent such unlawful . . . use; to restrain, correct or abate such violation; or to prevent any illegal act, conduct, business or use in or about such premises.”

9. Venue is proper in this county pursuant to CPLR 505(a), which provides for venue as follows:

“In the county in which one of the parties resided when it was commenced; the county in which a substantial part of the events or omissions giving rise to the claim occurred; or, if none of the parties then resided in the state, in any county designated by the plaintiff.”

10. Since Defendants own and operate the Hotel within the boundaries of Orange County and in the Town of Newburgh, County of Orange, New York, and the

Town of Newburgh is wholly located within the County of Orange, venue in this county is proper.

11. In summary, the Hotel altered its use to accept and house approximately (60) single men in the care custody and control of the City of New York for four (4) months, which constitutes an unpermitted use under the Hotel's Certificate of Occupancy and is a violation of the Town Codes.

PARTIES

12. At all relevant times herein, Plaintiff is and was a duly constituted municipal corporation in the State of New York, having jurisdiction over all health, safety and welfare matters within the geographical confines of the Town of Newburgh, New York.

13. At all relevant times herein, Defendant NEWBURGH EOM LLC was and is a New York Limited Liability Company and is the owner of the Crossroads Hotel, which is located at 5 Lakeside Road, Newburgh, New York 12550, in the Town of Newburgh and County of Orange and was authorized to do business in the State of New York.

14. At all relevant times herein, upon information and belief, Defendant NEWBURGH EOM LLC d/b/a CROSSROADS HOTEL was doing business as Crossroads Hotel, which is located at 5 Lakeside Road, Newburgh, New York 12550, in the Town of Newburgh and County of Orange and was authorized to do business in the State of New York.

15. At all relevant times herein, upon information and belief, Defendant CROSSROADS HOTEL was the owned and operated the Crossroads Hotel, which is

located at 5 Lakeside Road, Newburgh, New York 12550, in the Town of Newburgh and County of Orange and was authorized to do business in the State of New York.

FACTS COMMON TO ALL CAUSES OF ACTION

16. At all relevant times, the subject property is designated as Section 86, Block 1, Lot 39.21 on the Tax Map of the Town of Newburgh.

17. The Town Code defines a “hotel” as “One or more buildings offering transient lodging accommodations for a fee or hire basis to the general public, and which provides rooms or areas for group assembly and a central kitchen only and a central dining room within the building or in an accessory building. A hotel shall not constitute an individual’s or family’s primary residence and shall not be construed to be a multiple dwelling.” Town of Newburgh Municipal Zoning Code §185-3. Additionally, the 2020 New York State Building Code defines “transient” as “occupancy of a dwelling unit or sleeping unit for not more than 30 days.”

18. At all relevant times herein, the subject property has a Certificate of Occupancy authorizing the use of the Hotel situated on the premises as a hotel. This Certificate of Occupancy was issued in, and has been in place, since 1990.

May 5, 2023 – May 6, 2023 Communication from the City of New York’s Mayor’s Office and Ensuing Local State of Emergency.

19. On Friday, May 5, 2023, Gilbert J. Piaquadio, the duly elected Supervisor of the Town of Newburgh, was contacted by New York City Mayor Eric Adams. Mayor Adams advised of a plan to relocate sixty (60) single male asylum seekers to the Town of Newburgh for a period of four (4) months at the Crossroads Hotel.

20. Mayor Adams indicated that the City of New York would be responsible for all the expenses associated with the housing of the asylum seekers for four (4) months.

21. Supervisor Piaquadio raised concerns regarding the absence of background checks on the sixty (60) single men, the safety of the Town of Newburgh residents, the fact that a shelter is not permitted at the Crossroads Hotel pursuant to the Town Code, that the Crossroads Hotel is adjacent to a residential zone with very few services within walking distance, and the fact that the sixty (60) single men would be ineligible to receive Social Services benefits at the conclusion of the Mayor's four (4) month program.

22. Subsequent contact was made by a member of the Mayor's Office, Christopher Ellis, Director of the State Legislative Affairs of the City of New York. A subsequent Zoom video conference was held between the Town of Newburgh and Mayor Adams' Office, but the Mayor was absent from the conference.

23. On Tuesday, May 9, 2023, Orange County Executive Stephen Neuhaus issued a State of Emergency for Orange County. The State of Emergency ordered that all hotels, motels and/or any facilities allowing short-term rentals may not accept any asylum seekers for long term housing within Orange County.

24. On May 8, 2023, the Town of Newburgh Town Board convened an emergency meeting to address the aforesaid developments and the propriety of using a hotel as a shelter for long-term housing accommodations. At the meeting, the Town Board passed a Resolution to approve Special Counsel to seek injunctive relief to prevent the violation of Town Codes.

25. On May 10, 2023, the Town of Newburgh Code Compliance Supervisor and Town Building Inspector and Town Fire Inspector conducted an inspection of the Crossroads Hotel and noted that preparations were being made to the Hotel, including the alteration of beds, insertion of additional bedding, and the alteration of room accommodations.

26. On May 11, 2023, the City of New York delivered two (2) busloads of single men to the Hotel for occupancy for four (4) months.

AS AND FOR A FIRST CAUSE OF ACTION

**(Declaratory Judgment – Property Used in Violation of
Town of Newburgh Building Construction Code §71-8)**

27. Plaintiff repeats and realleges the allegations set forth in paragraphs “1” through “26” hereof as if fully set forth herein.

28. At all relevant times herein, the Defendants’ use of the property is and continues to violate the Town of Newburgh Building Construction Code §71-8.

29. This section provides, in pertinent part, that “A Certificate of Occupancy or Certificate of Compliance shall be required for any work which is the subject of a Building Permit and for all structures, buildings, or portions thereof, which are converted from one use or occupancy classification or subclassification to another. Permission to use or occupy a building or structure, or portion thereof, for which a Building Permit was previously issued shall be granted only by issuance of a Certificate of Occupancy or Certificate of Compliance.” §71-8 (emphasis added).

30. Pursuant to Town of Newburgh Municipal Code §185-3, a “Hotel” is defined as “One or more buildings offering transient lodging accommodations on a fee or hire basis to the general public, and which provides rooms or areas for group

assembly and a central kitchen only and a central dining room within the building or in an accessory building. A hotel shall not constitute an individual's or family's primary residence and shall not be construed to be a multiple dwelling.”

31. Likewise, a “Prohibited Use” is defined as “a use of a building, structure, lot or land, or part thereof, which is not specifically listed as a permitted use, use subject to site plan review, accessory use or special permit use. In addition (as stated in § 185-7F), any use not specifically permitted as one of the above shall be deemed to be prohibited.” Town of Newburgh Municipal Code §185-3.

32. Under Town of Newburgh Municipal Code §185-7 – Effect of Establishment of Zoning Districts, “any use not specifically permitted shall be deemed to be prohibited.”

33. As set forth above and in the accompanying Affidavits, the Defendants are changing the use of the Hotel on the subject property to accommodate the City’s program pursuant to an agreement made by and between the owners of the subject property and the City.

34. As set forth above and in the accompanying Affidavits, the Defendants are making this change in use in violation of the Town Codes and notwithstanding the Certificate of Occupancy that limits use of the subject premises as a hotel rather than long-term residential housing for non-transients.

35. As set forth above and in the accompanying Affidavits, neither the Town of Newburgh nor any of its agencies have issued any permit or Certificate of Occupancy permitting the change in use.

36. Accordingly, the Defendants are required to apply for and obtain a Certificate of Occupancy as contemplated by the relevant provisions of the Town Code.

37. Therefore, by reason of the foregoing, the Town seeks an Order from this Court enjoining the Defendants from making continued unlawful changes and alterations to the Hotel to facilitate the change in use and deeming this unlawful new use and occupancy to be an express violation of the Town Code.

AS AND FOR A SECOND CAUSE OF ACTION

(Declaratory Judgment – Property Used in Violation of Town of Newburgh Municipal Code §185-50)

38. Plaintiff repeats and realleges the allegations set forth in paragraphs “1” through “37” hereof as if fully set forth herein.

39. At all relevant times herein, the Defendants’ use of the property is and continues to violate the Town of Newburgh Municipal Code §185-50.

40. This section states, in pertinent part, “A certificate of occupancy shall be deemed to authorize, and is required for, both initial and continued occupancy and use of a building or the land to which it applies. The following shall be unlawful until a certificate of occupancy shall have been applied for and issued by the Building and Code Enforcement Officer:

- (1) Occupancy and use of a building hereafter erected, structurally altered or moved or any change in the use of an existing building.
- (2) Occupancy, use or any change in the use of any land.
- (3) Any change in use of a nonconforming use.”

41. It is clear that the Defendants’ modification and alterations to accommodate the City’s “program” is an unlawful and unpermitted use in violation of the Town of Newburgh’s Town Codes.

42. Therefore, by reason of the foregoing, the Town seeks an Order from this Court enjoining the Defendants from making continued unlawful changes and alterations to the Hotel to facilitate the change in use and deeming this unlawful new use and occupancy to be an express violation of the Town Code.

AS AND FOR A THIRD CAUSE OF ACTION

(Temporary, preliminary and Permanent Injunction)

43. Plaintiff repeats and realleges the allegations set forth in paragraphs “1” through “42” hereof as if fully set forth herein.

44. As set forth in detail, the subject property was issued and is subject to a Certificate of Occupancy limiting the use of the Crossroads Hotel as a hotel.

45. Based upon observations made by Town Inspectors, and the change in use, Defendants must be enjoined from receipt of any individuals or overflow from the City’s “program” and plan to relocate a significant number of single-adult males to the Crossroads Hotel for long-term housing.

46. In short, Defendants must be enjoined from participating in any such “program” or plan that will result in violations of the laws, codes, and regulations of the Town of Newburgh.

47. Here, injunctive relief should be issued because (1) the Town has a likelihood of success on the merits of the action, (2) the equities are balanced in the Town’s favor in the enforcement of the Town Code; and (3) while unnecessary to obtain injunctive relief, irreparable harm will occur to local residents and to the migrants the City intends to house in violation of local zoning standards.

Likelihood of Success on the Merits

48. The Town is likely to succeed on the merits because it is without dispute that the conversion of the Hotel into a non-permitted use is prohibited by the Town Code without the necessary and requisite approvals.

49. These already occurring changes to the Hotel have been personally observed by Town Inspectors.

50. It is further evident that the Defendants' continued preparations for and receipt of two (2) bus loads of single men from the City of New York will only further commit the Defendants to a course of action that constitutes a change in use to the Crossroads Hotel.

51. Accordingly, the Town will succeed on the merits in enforcing its own Codes.

Balancing of the Equities

52. The balancing of the equities favors the Town as there are no lawful adverse impacts that will result if the Defendants are enjoined from violating the Hotel's Certificate of Occupancy and to adopt an unpermitted use within the Town of Newburgh.

53. However, if the Defendants are not enjoined, continued alterations and modifications to the subject property and acceptance of the approximately sixty (60) single male asylum seekers from the City of New York will result in potential disaster to those who suddenly occupy the Hotel without requisite approvals or permissions for a change in use from a hotel to a facility that otherwise acts as an agency or long-term community residence.

54. Moreover, if the Defendants are not enjoined, the Defendants will have exhibited a complete disregard for local zoning, resulting in irreparable harm.

55. The only reasonable method to stop the current conversion and potential complete conversion of the Hotel is to enjoin such activity to preserve the health, safety and well-being of those in the community and those being shipped into the community without further protection.

56. In this case, unless the Defendants are restrained, immediate and irreparable harm will result.

Irreparable Harm

57. Although the Town need not demonstrate irreparable harm to enforce its own zoning laws (Town of Carmel v. Melchner, 105 A.D.3d 82 (2d Dep't 2013), harm could very well come to those who occupy a hotel that has changed its use to provide long term housing to non-transient occupants for an indeterminate period of time.

58. Harm may befall the regular transient occupants of the Hotel by the establishment's occupancy of non-transient guests.

59. Irreparable harm will occur to the Town as its codes are being violated.

60. To otherwise allow contractual agreements to circumvent the local Zoning Codes and local States of Emergency would be a complete disregard for local law.

61. The Town is seeking a temporary, preliminary, and permanent restraint and injunction against the Crossroads Hotel because the evidence conclusively demonstrates that the Hotel has negotiated, or contracted, with an out-of-County municipality to essentially modify the Hotel into what is otherwise an infirmary for migrant overflow from the City.

62. The Town has no other adequate remedy at law, and the Defendants have no right to change the use of its property without all applicable permits, approvals, or review by Town Officials tasked with preserving the life, safety and welfare of its residents.

63. No other application has been made for the relief requested herein.

64. Accordingly, this Court should issue an order temporarily, preliminarily, and permanently restraining and enjoining the Crossroads Hotel from its continuing and developing transition from what was once a Hotel into something other than what is permitted pursuant to the Town Code.

WHEREFORE, Plaintiff respectfully requests the entry of an Order and Judgment against Defendants, jointly and severally, as follows:

(1) On Plaintiff's First Cause of Action, declaring that the Crossroads Hotel is in violation of the Town of Newburgh Town Codes;

(2) On the Plaintiff's Second Cause of Action, declaring that the Crossroads Hotel is in violation of the Town of Newburgh Town Codes;

(3) On Plaintiff's Third Cause of Action, temporarily restraining and enjoining the Defendants from further alterations to the subject property and, further, temporarily restraining and enjoining the Defendants from receiving or participating in any agreement with the City of New York that otherwise renders the Defendants' property in non-compliance with the Town Codes and, further, permanently restraining and enjoining the Defendants from further activities associated with such receivership of housing overflow from the City of New York at the Hotel, and further temporarily restraining and enjoining the defendants from accepting and housing non-transient male occupants from the City of New

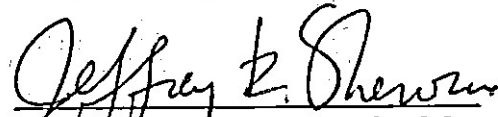
York and Further directing the Defendants to return them to the care, custody, and control of the City of New York;

(4) Directing the Defendants to pay for the reasonable attorneys' fees, costs and disbursements of the Plaintiff in bringing this action; and

(5) Granting Plaintiff such other and further relief as this Court deems just and proper.

Dated: Middletown, New York
May 12, 2023

MacVEAN, LEWIS, SHERWIN & McDERMOTT, P.C.

By: 
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