



HOUSING, ECONOMIC DEVELOPMENT & COMMERCE

Division of Zoning
Nick Taylor, Zoning Officer
One Jackson Square
Jersey City, New Jersey 07305
Telephone (201) 547-4832

Steven M. Fulop, Mayor
City of Jersey City

April 15, 2020

Charles J. Harrington, III
Connell Foley LLP
Harborside Financial Center
2510 Plaza Five
Jersey City, N.J. 07311

Re: 221 Grove Street
Block # 15906 Lot # 1
115.60X155.49 0.52AC
Vacant Land
Zone: Liberty Harbor North Redevelopment Plan

Dear Mr. Harrington,

1. The total net area of **Block 5.1** LHN RDP is 56,343 sq. ft.
2. The total area of Block 5.1 in the **M-Class** District is 34,350 sq. ft.
3. The total area of Block 5.1 in the **S-Class** District is 21,993 sq. ft.
4. The **M-Class** buildings can be three times larger than the **S-Class**
5. The **M-Class** potential: $3 \times 34,350 = 103,050$ sq. ft.
6. The **S-Class** potential: $1 \times 21,993 = 21,993$ sq. ft.
7. The **M-Class** + **S-Class** permitted buildout is 125,043 sq. ft.
8. The maximum permitted units on Block 5.1 LHN RDP is **365**
9. **82.4%** or 301 units are permitted in the **M-Class** District
10. **17.6 %** or 64 units can be built in the **S-Class** District (**66** have been built)
11. **221 Grove St.** Block 15906 Lot 1 occupies **66.32%** of the **M-Class** District
12. Block 15801 Lots 23.03 and 23.04 occupies **33.68** of the **M-Class** District
13. **299** of the 365 permitted residential units on Block 5.1 can still be built
14. **198** residential dwelling units can be built on the subject lot Block 15906 Lot 1
15. **101** residential dwelling units can be built on Block 15801 Lots 23.03 and 23.04

It is my opinion that 198 residential dwelling units would be permitted on the subject lot, 221 Grove St. Block 15906 Lot 1 and that 101 residential dwelling units would be permitted on Block 15801 Lots 23.03 and 23.04.

If I can be of further assistance, please contact this office.

Respectfully Yours,

Nick Taylor
Zoning Officer



HOUSING, ECONOMIC DEVELOPMENT & COMMERCE

Division of Zoning

Nick Taylor, Zoning Officer

One Jackson Square

Jersey City, New Jersey 07305

Telephone (201) 547-4832

Steven M. Fulop, Mayor
City of Jersey City

September 2, 2020

Marjorie M. McNerney
348 Ninth Street, Suite B
Jersey City, N.J. 07302

Re: 221 Grove Street
Block # 15906 Lot # 1
115.60X155.49 0.52 Ac.
Vacant Land
Zone: Liberty Harbor North Redevelopment Plan

Dear Ms. McNerney,

Thank you for your letter of September 1, 2020. You brought to light several conditions and legal requirements which caused me to re-consider my April, 15, 2020 letter to Charles Harrington regarding Block 5.1.

After careful re-consideration, I agree that the Liberty Harbor North Redevelopment Plan establishes the **maximum** number of units per acre/density for 221 Grove Street at **146.64** maximum units. (.52 acres X 282 = 146.64)

The Redevelopment Plan also clearly prohibits the Planning Board from granting a deviation for exceeding the maximum development capacity of either square footage or residential dwelling units.

I further agree that the MLUL expressly prohibits the Planning Board from granting variances for exceeding the maximum number of residential dwelling units, reserving that for the **Board of Adjustment**.

The only legal means of exceeding the maximum number of residential dwelling units would be by an **amendment** to the Redevelopment Plan.

The square foot land area on **Block 5.1** owned or controlled by One Grove Property, LLC is **22,780 SF** and the total land area owned or controlled by Liberty Harbor is **44,052 SF** including the 10,489 SF that Liberty Harbor agreed to contribute for the Regent Street Extension. In my opinion, the land area contributed for the Regent Street Extension should be included in the calculation of permitted density.

For the above reasons and after substantial re-consideration of the law, I rescind my letter of April, 15, 2020 addressed to Charles Harrington and the opinions it contained.

If I can be of further assistance, please contact this office.

Respectfully Yours,

Nick Taylor
Zoning Officer

MARJORIE M. MCINERNEY

Attorney at Law

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Jersey City, New Jersey 07302
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Telephone: (201) 516-8551
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September 1, 2020

Mr. Nick Taylor, Director
Division of Zoning Enforcement
City of Jersey City
City Hall Annex
1 Jackson Square
Jersey City, NJ 07305

RE: Liberty Harbor North, Development Block 5.1
Municipal Block 15906, Lot 1
221 Grove Street, Jersey City, NJ

Dear Mr. Taylor,

I represent Liberty Harbor North Brownstone Condominium Urban Renewal ("Liberty Harbor"), as such I respectfully write this letter in opposition to your April 15, 2020 opinion regarding the above parcel owned by One Grove Property LLC. The facts set out are erroneous, have no basis in fact and the conclusions are in direct violation of the Liberty Harbor North Redevelopment Plan ("the Plan") and the Municipal Land Use Law ("MLUL").

1. A primary regulation under the Plan is the establishment of a maximum number of residential units permitted for a particular site. Density means the permitted number of dwelling units per gross area of land to be developed. N.J.S.A 40:55D-4.

The attached Intensity Summary on Page VII.2 (See attachment #1) of the Plan clearly sets out the maximum permitted number of units, by way of the units per gross and net acre rule. The unit per acre regulation is very clear and cannot be administratively increased by some creative convoluted series of interpretations and flawed logic.

On Development Block 5.1 a maximum 282 units per acre is permitted. The subject lot is 0.52 acres; therefore, One Grove Property LLC, are permitted to develop a maximum of 146.6 residential units. The owners of the subject lot own no other land on the Block, and so they have no rights to additional units.

If the owners wish to pursue a greater unit density they must request an amendment to the Redevelopment Plan. The Plan spell out the allowable reasons for granting a deviation to the Plan Regulations, see Paragraph IX.H and I on attached page V5 (attachment #2). However, it should be noted that the Plan expressly prohibits deviations to exceed the maximum number of either square footage or dwelling units, see Para. IX.I.

Moreover, under the MLUL a Planning Board is not empowered to grant a variance for a density. The granting of a density variance may only be done by the Board of Adjustment, not the Planning Board. *Commercial Realty v. First Atlantic*, 122 N.J. 546, 561 (1991) *Grubbs v. Slothower*, 389 N.J. Super 377, 384 (App. Div. 2007); *Trinity Baptist v. Louis Scott Hold.*, 219 N.J. Super. 490, 496-498 (App. Div. 1987).

2. When allocating density, a comparison of the lot areas in Block 5.1 reveals that 221 Grove Street owns or controls 22,780 square feet of land. Liberty Harbor owns or controls 33,563 square feet of land, substantially more than One Grove Property LLC. In addition, Liberty Harbor is contributing another 10,489 square feet of land to create the extension of Regent Street providing frontage and access for 221 Grove Street project. The land area owned by Liberty Harbor, including the Regent Street Area, is more than double the land on Block 5.1 owned by One Grove. The Regent Street land is and should be part of the gross units regarding acre calculation and permitted density.

3. In addition, this faulty interpretation of the zone is contrary to the agreement regarding the shared driveway and extension of Regent Street. One Grove Property LLC has violated the terms of our agreement when they eliminating the shared driveway (with utilities already constructed) and is attempting to increase the number of residential units above the 148 units agreed upon and permitted by the Plan.

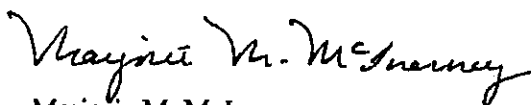
Liberty Harbor had agreed to contribute the land for the extension of Regent Street by way of an agreement with the City and previous owners of the 221 Grove Street. The

Agreement included Liberty Harbor North as the party contributing the land to create Regent Street frontage and access for 221 Grove Street, and the owners of 221 Grove creating a shared driveway to be created for the benefit of both 221 Grove and the contiguous Liberty Harbor site to the north. In 2014, the 221 Grove Street site plan approval was obtained, demonstrated and memorialized the clear intent and Agreement of the parties; it included the Full Architectural and Engineering for shared driveway and the maximum allowable unit count of 148. This agreement was made contemplating the correct interpretation of the zone: that 221 Grove would be 148 residential units, per the Plan and per the filed site plan. Moreover, Liberty Harbor relied on the agreement and site plan approval to construct utilities to conform to the approved plan.

Based on these significant and unilateral changes by One Grove to the terms of the Agreement, and the failure of One Grove to adhere to their duties under the agreement, my client is not inclined to make the land contribution for the extension of Regent Street. Instead the Regent Street extension land will be developed for private purposes.

In light of the expressed prohibition in the Redevelopment Plan to increase the unit density of the Block 5.1 at 221 Grove Street, and the legal statutes and caselaw stating that the Planning Board has no power to grant a density variance, my client disagrees with the interpretation of zone in your letter. Only the Board of Adjustment has the power under the law. In this case the only lawful method to increase density is to amend the Plan, an action by the municipal council. I respectfully ask that you re-evaluate your re-interpretation of the regulations set forth in the Plan and rescind your April 15, 2020 letter.

Very truly yours,


Marjorie M. McNerney

MMM/dm



STEVEN M. FULOP
MAYOR OF JERSEY CITY

CITY OF JERSEY CITY
DEPARTMENT OF HOUSING, ECONOMIC
DEVELOPMENT AND COMMERCE

1 JACKSON SQUARE | JERSEY CITY, NJ 07305
P: 201 547 5070



ANNISIA CIALONE
DIRECTOR

September 18, 2020

Marjorie M. McNerney
348 Ninth Street, Suite B
Jersey City, N.J. 07302

Re: 221 (aka101) Grove Street
Block #15906 Lot #1

Ms. McNerney,

I have reviewed the letter on behalf of Liberty Harbor North Brownstone Condominium Urban Renewal, sent to Nick Taylor, the Zoning Officer, dated September 1, 2020. In summary, your letter you "respectfully ask that you (Zoning Officer) re-evaluate your re-interpretation of the regulations set forth in the Plan and rescind your April 15, 2020 letter."

The April 15, 2020 letter from Nick Taylor to Charles Harrington verifies that "198 residential units would be permitted on the subject lot, 221 Grove St. Block 15906 Lot 1 and that 101 residential dwelling units would be permitted on Block 15801 Lots 23.03 and 23.04." The April 15th Taylor letter was sent in response to a request for interpretation sent by Charles Harrington, on behalf of his client, China Construction, to determine the allowable density for the parcel the client was in contract to purchase. Mr. Harrington originally sought the interpretation through the Planning Division, and then to the Zoning Officer for a formal interpretation. It is stated in the Land Development Ordinance and MLUL that the official interpretation from the Zoning Officer is NOT a requirement to submit a board application (NJSA 40:55D-72.b). Therefore, this action was done voluntarily.

The Zoning Officer is not granted the powers of appeal in the MLUL or even locally in the Jersey City Land Development Ordinance. The remedy for appealing, or in your words "re-evaluating" is through the Zoning Board of Adjustment, or of course, as prerogative writs in Superior Court.

40:55D-70. Powers. The board of adjustment shall have the power to:

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

40:55D-72. Appeals and applications to board of adjustment.

a. Appeals to the board of adjustment may be taken by any interested party affected by any decision of an administrative officer of the municipality based on or made in the

Re: 221 Grove Street

enforcement of the zoning ordinance or official map. Such appeal shall be taken within 20 days by filing a notice of appeal with the officer from whom the appeal is taken specifying the grounds of such appeal. The officer from whom the appeal is taken shall immediately transmit to the board all the papers constituting the record upon which the action appealed from was taken.

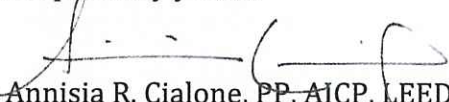
b. A developer may file an application for development with the board of adjustment for action under any of its powers without prior application to an administrative officer.

While it is clear that "any interested party affected by the decision of an administrative officer" can file an appeal, it is also very clear that ONLY the Zoning Board of Adjustment has the authority to do so. Furthermore, it would be a horrible precedent to have one private landowner challenge another private land owner's property rights outside of a public hearing, and without the express knowledge of that landowner.

Therefore, using the powers given to the position I hold as Director of Housing, Economic Development and Commerce to 'act as the Chief Planning and Zoning Officer of the city" under Article X Chapter 3-72 of the Municipal Code, I revoke the opinion given by Mr. Taylor in his September 2, 2020 letter that "rescind(s) (his) letter of April 15, 2020 addressed to Charles Harrington and the opinions it contained." It is my opinion that Mr. Taylor acted outside of his position, and that your office did not follow the proper procedure laid in the MLUL and JCLDO out for aggrieved parties.

If you still wish to appeal the April 15, 2020 decision, you must do so at the Zoning Board of Adjustment. You should also obtain a determination from the Zoning Board that your appeal is timely, as the time difference from April 15, 2020 to September 1, 2020 far exceeds the 20 day limit given in the MLUL for an appeal.

Respectfully yours,



Annisia R. Cialone, PP, AICP, LEED AP

Director

Department of Housing, Economic Development, and Commerce