

ZBA Case # Z21-035

REVISED AND UPDATED ADDENDUM PROVIDING PRINCIPAL POINTS TO APPLICATION APPEALING A DETERMINATION OF THE JERSEY CITY ZONING OFFICER UNDER N.J.S.A. 40:55D-72(A) AND JCLDO §345 – 8B.1.a.

Introduction:

On June 26, 2020 303 First Street, LLC and Village Townhouse Estates, Inc. (“Applicants”) filed a General Development Application, associated ancillary documents, a survey, engineering and architectural site plans the (“Application Package”) seeking a preliminary and final major site plan approval to develop a five (5) story, forty-four (44) unit building with a parking garage (“Project”) at 303-311 First Street, Jersey City (Block 12701, Lots 12,8,9, and 10) (the “Property”).

The Property is located in the Village Redevelopment Plan (the “Redevelopment Plan”) area.

On April 8, 2021 the Jersey City Zoning Officer issued a zoning determination advising that the Project requires an amendment to the Village Redevelopment Plan that removes or extends the expiration date set forth therein.

Error and Relief Requested:

The determination of the Zoning Officer is erroneous. The Applicants request the Jersey City Board of Adjustment reverse it because the Municipal Council of the City of Jersey City has already taken the legislative action necessary under the N.J.S.A. 40:55D-1 et seq. (the Municipal Land Use Law (“MLUL”) to incorporate the Redevelopment Plan zoning criteria into the Jersey City Land Development Ordinance (“JCLDO”). Such legislative action has given the Redevelopment Plan zoning criteria independent validity and effectiveness and makes it the permanent zoning for the Village Redevelopment Plan area.

Procedural History:

The Property is located in the Village Redevelopment Plan (the “Redevelopment Plan”) area.

Village Townhouse Estates, Inc. is the designated redeveloper of the Property pursuant to a Contract For Sale Of Land For Private Redevelopment with the Jersey City Redevelopment Agency dated June 7, 1985 (the “Redevelopment Contract”) as amended by an Amendment to Contract For Sale Of Land For Private Redevelopment with the Jersey City Redevelopment Agency dated February 18, 2020 (the “Amendment”)(the Redevelopment Contract and the Amendment are collectively referred to herein as the “Redevelopment Agreement”). The Redevelopment Agreement is attached hereto as **Exhibit A**. The Redevelopment Agreement requires the Applicant to redevelop the Property in accordance with the Redevelopment Plan.

The Redevelopment Agreement requires the Applicant to immediately proceed to prepare site plans and construction plans and obtain governmental approvals including approvals from the Jersey City Planning Board to construct the Project on the Property (See Section IV of the Amendment). Further, the Redevelopment Agreement requires the Applicant to obtain site plan approval and governmental approvals for the Project by February 18, 2021. (See Section II of the Amendment).

On June 26, 2020 the Applicants filed a General Development Application, associated ancillary documents, a survey, engineering and architectural site plans seeking a preliminary and final major site plan approval for five (5) story, forty-four (44) unit building with a parking garage for the Property (the "Application Package").

The Jersey City Planning Division acknowledged receipt of the Application Package assigning it Case No. P20-085.

Ms. Lindsey Sigmund, an Assistant Planner in Planning Division, the Applicant's counsel, Ms. Marjorie McInerney, and her professional team were working diligently to process the Application Package. However, on September 10, 2020 Ms. Sigmund e-mailed Ms. McInerney advising that Redevelopment Plan expired, and further that the Jersey City Law Department and the Jersey City Redevelopment Agency's legal team will not permit the Application Package to move forward to the Jersey City Planning Board.

On September 30, 2020, Applicant's counsel James C. McCann filed a letter with Tanya Marione, the Director of the Jersey City Planning Division, requesting that she direct Ms. Sigmund to continue processing the Application Package because the Village Redevelopment Plan zoning criteria is the permanent zoning for the Village Redevelopment Plan area and that it remains in full force and effect.

In response to the Applicant's September 30, 2020 letter, the Jersey City Planning Division, with the support of the Jersey City Corporation Counsel's office, offered a legislative solution to the perceived expiration of the Redevelopment Plan. Specifically, the proposed legislative solution was for the Planning Division and Jersey City Redevelopment Agency to sponsor Ordinance 20-104 which, if adopted by the Jersey City Municipal Council, would amend the Redevelopment Plan to remove the expiration date language from it.

On November 11, 2020 pursuant to an arrangement made between the Applicants' counsel and the City Corporation Counsel's office on behalf of the Planning Division, it was agreed that the Planning Division would resume reviewing the Application Package without prejudice to each party's respective legal position pending the Jersey City Municipal Council's consideration of Ordinance 20-104. In furtherance of such arrangement, the Applicants' development team and Ms. Lindsey Sigmund, Senior Planner in the Jersey City Planning Division, addressed and resolved all of Planning's comments to the Application Package. The Applicants then submitted a final set of site plans to Ms. Sigmund for review by Jersey City review agents and for consideration by the Planning Board at a public hearing. In an e-mail dated December 1, 2020 Ms. Sigmund advised that the Application Package could not be scheduled for a hearing and that the City Corporation Counsel's office should be consulted for further direction.

Meanwhile, Ordinance 20-104 was listed on the Jersey City Municipal Council agenda for a first reading at the December 2, 2020 Council meeting. It called for the removal of expiration dates from thirty-five redevelopment plans including the Village Redevelopment Plan. Per the ordinance, the "Planning Board at its meeting on November 10, 2020 did vote to recommend that the Municipal Council amend" the thirty-five redevelopment plans listed therein. A copy of Ordinance 20-104 is attached hereto as **Exhibit B**.

Nevertheless, Ordinance 20-104 was withdrawn from the agenda of the December 2 meeting before any first reading vote was taken, because of a discussion at the November 23, 2020 City Council Caucus meeting. At that Caucus meeting, certain Council members stated they were reluctant to extend redevelopment plans because they thought the plans should be replaced. In particular, Councilman Solomon objected that the expiring redevelopment plans did not require, but should require, "community give-backs." It was also noted that a proposal for the rezoning of redevelopment plan areas had been made approximately two years prior, but was never acted on. A copy of the Transcript of the November 23, 2020 City Council Caucus meeting is attached hereto as **Exhibit C**. Ultimately, at the December 2, 2020 Council meeting, it was explained that Ordinance 20-104 was being withdrawn because the Council was "looking into reviewing some of the land use laws around this." See Transcript of December 2, 2020 Council Meeting, attached, at 21. A copy of the Transcript of the December 2, 2020 City Council meeting is attached hereto as **Exhibit D**. Ordinance 20-104 has never been re-introduced and has never been adopted by the Jersey City Municipal Council.

On December 31, 2020 the Applicant's counsel James C. McCann filed a letter with Tanya Marione, the Director of the Jersey City Planning Division, requesting that the Application Package be listed on the Planning Board agenda for a hearing. He again advised that the Redevelopment Plan zoning criteria is the permanent zoning for the Village Redevelopment Plan area and that it remained in full force and effect. The December 31, 2020 letter further advised that in the event the Planning Board did not hear this Application Package within the time period mandated by MLUL, the Applicants would move to enforce the automatic approval provisions of the MLUL.

On March 4, 2021 the Applicant's counsel James C. McCann e-mailed Tanya Marione, the Director of the Jersey City Planning Division and the Jersey City Law Department giving them notice that under the relevant sections of the MLUL the Planning Board was required to hear the Application Package by April 1, 2021.

In a March 5, 2021 e-mail to Applicant's counsel James C. McCann, Tanya Marione advised that the Planning Division would schedule the Application Package for a hearing before the Jersey City Planning Board under the Village Redevelopment Plan zoning criteria and the underlying zoning which, per the Director, would be the Neighborhood Commercial zoning in the JCLDO. Ms. Marione further advised that neither zone would require review by the Jersey City Zoning Board of Adjustment.

In a March 8, 2021 e-mail to Applicant's counsel James C. McCann, Tanya Marione advised that the Planning Board would hear the Application Package on March 23, 2021.

In a March 9, 2021 e-mail to Tanya Marione, the Director of the Jersey City Planning Division and the Jersey City Law Department, the Applicant's counsel James C. McCann sought

direction as to how the Application Package complied with the Neighborhood Commercial zoning of the JCLDO and how such criteria could be applied to the Application Package.

In a March 12, 2021 e-mail to Applicant's counsel James C. McCann, Tanya Marione advised that upon further consideration, the Planning Division determined that the Application Package could not be heard by the Planning Board because it did not comply with the Neighborhood Commercial criteria of the JCLDO; the Planning Division was uncertain as to what law and zoning criteria to apply to the Application Package; and unless the Applicants were willing to revise the Application Package to comply with Neighborhood Commercial criteria the Planning Board would not hear the Application Package.

On March 26, 2021, the Applicant's counsel James C. McCann filed with the Zoning Officer of the City of Jersey City an application for a Zoning Determination seeking confirmation that the Redevelopment Plan zoning criteria is the permanent zoning for the Village Redevelopment Plan area, that it remained in full force and effect, and that the Planning Board had jurisdiction to hear the Application Package. A copy of this letter is attached hereto as **Exhibit E**.

On April 8, 2021, the Jersey City Zoning Officer issued a Zoning Determination that the Project requires an amendment to the Village Redevelopment Plan that removes or extends the expiration date set forth therein. A copy of this determination is attached hereto as **Exhibit F**.

The Applicants have filed with the Planning Division and the City Zoning Office an appeal of the Zoning Officer's determination seeking its reversal and seeking confirmation that the Redevelopment Plan zoning criteria is the permanent zoning for the Village Redevelopment Plan area, that it remains in full force and effect, and that the Planning Board has jurisdiction to hear the Application Package.

All documentation and correspondence referenced herein is on file with the City of Jersey City, Division of Planning under Planning Board Case # P20-085 and Zoning Board of Adjustment Case # Z21-035.

The Project:

The Project proposed by the Applicants is a five (5) story, forty-four (44) unit building with a parking garage all at 303-311 First Street, Jersey City (Block 12701, Lots 12,8,9, and 10). With two (2) minor exceptions, the Project complies in all respects with the use and bulk requirements and limitations of the Redevelopment Plan and the JCLDO. The exceptions are that the Project requires a driveway width variance under Sect. V.E of the Redevelopment Plan where a two-way driveway is required to be 20 feet wide and the proposed driveway is 13 feet wide, and a bulkhead stepback variance under §345-60.G.2 of the JCLDO where a 13.2 foot stepback is required and the stepback proposed is -0- feet. Both variances are C variances under the MLUL cognizable by the Jersey City Planning Board.

The Village Redevelopment Plan:

The City Council of Jersey City (the "City Council") adopted the Village Redevelopment Plan in January 1980.

Section VI C) states:

“The provisions of this Plan specifying the redevelopment of the project area and the requirements and restrictions with respect thereto shall be in effect for a period of forty (40) years from the date of approval of this Plan by the City Council of Jersey City.”

The forty (40) year period referenced in the Redevelopment Plan came to an end in January, 2020.

While it may be that certain provisions of the Redevelopment Plan are no longer effective, such is not the case for the zoning criteria in the Redevelopment Plan because legislative action taken by City Council in 2001 and thereafter under the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) (“MLUL”) explicitly and unambiguously confirmed that the zoning criteria in the Redevelopment Plan is, in fact, the permanent and only zoning criteria applicable to the Property, and that it remains in effect unless and until formally amended.

The 2000 Master Plan Confirmed that the Village Redevelopment Plan superseded any Zoning Ordinance in Effect Prior to 1980:

In May, 2000 in accordance with Section 28 of the MLUL (N.J.S.A. 40:55-28), the Jersey City Planning Board adopted a new Jersey City Master Plan.

The new Master Plan prepared by the Division of Planning and adopted by the Jersey City Planning Board is critical of the 1974 Zoning Code. It recommends that the City re-write its zoning ordinance. It flatly states with no ambiguity that the zoning criteria in numerous existing redevelopment areas of the City supersede the then existing zoning ordinance, and that such redevelopment plans function as the zoning ordinance for the areas of the City to which they apply.

The Land Use Section, of the 2000 Master Plan at Page II-6 states:

“SPECIAL DEVELOPMENT AREAS

Regulatory Framework

The regulatory framework for land use and development in the City of Jersey City is complex and multilayered. The City, as required under the Municipal Land Use Law (MLUL), regulates land use and development through the zoning ordinance. However, the HMDC regulates land use and development in the northwest section of the City within the Hackensack Meadowlands District. In addition, development along the Hudson River, Hackensack River and Upper New York Bay is subject to review by the New Jersey Department of Environmental Protection. ***There are also numerous redevelopment areas with separate development regulations that supersede the zoning ordinance.*** Jersey City’s current zoning ordinance was adopted in 1974, readopted in 1978 and has been amended multiple times over the past 25 years. It is based upon the standard zoning principle of

segregating uses into uniform zones with controls to regulate bulk and density. There are 4 residential zones, 5 commercial zones, 3 industrial zones and 2 overlay zones with varying bulk and density standards. This approach is constrained by the City's unique characteristics and development pattern. Jersey City is comprised of distinct neighborhoods that were once separate municipalities prior to consolidation in 1873. The ordinance promotes uniform development in each zone that is often inconsistent with the physical character of the surrounding neighborhood. The City is also characterized by an established pattern of mixed-uses in many areas. The ordinance attempts to segregate these uses instead of promoting contextual in-fill development. Finally, the City is fully developed and future growth will result primarily from in-fill development and redevelopment. The ordinance lacks the design guidelines necessary to encourage in-fill development that is physically compatible with existing buildings and neighborhoods. The limitations of the current zoning ordinance are exacerbated by the age of the ordinance and the numerous amendments that have been made to it. ***Jersey City's regulatory framework is further complicated by the numerous redevelopment plans that supersede the zoning ordinance. The redevelopment plans function as a surrogate master plan and zoning ordinance for certain areas of the City.*** They share the limitations of the City-wide zoning ordinance, however, their limited geographic scope enables City officials to encourage development that is physically compatible with existing buildings and neighborhoods. There are 58 redevelopment plans ranging from the Dixon Crucible Redevelopment Plan to the Newport Redevelopment Plan. They address the unique conditions in areas of the City that have been determined to be "an area in need of redevelopment" pursuant to the Local Redevelopment and Housing Law (P.L. 1992, c.79, s.1). This contributes to the multiple layers of regulation that characterize the City's development process." (***emphasis added***).

The Village Redevelopment Plan is explicitly recognized and listed on Page II-68 of the Master Plan as one of the 58 redevelopment plans in effect in 2000.

There is nothing in the 2000 Master Plan that recommends or suggests that the zoning criteria in any redevelopment plan, or specifically, the Village Redevelopment Plan co-exist with the 1974 Zoning Code or that the zoning provisions should be limited in duration. Thus, as far back as 2000, the Planning Board via the adoption of the Master Plan confirmed that the Village Redevelopment Plan zoning criteria supersede the zoning criteria in the 1974 Zoning Code.

These provisions in the master plan are significant. All of the provisions of a zoning ordinance "shall either be substantially consistent with the land use plan element and the housing plan element of the master plan or designed to effectuate such plan elements." N.J.S.A. 50:55D-62a¹; see also Manalapan Realty v. Tp. Committee, 140 N.J. 366, 381 (1995) (asserting that the "land-use element of the Master Plan 'is required to be the basis for any zoning ordinance'"). The only time the governing body of a municipality "may adopt a zoning ordinance or amendment or revision thereto which in whole or part is inconsistent with or not designed to effectuate the land use plan element and the housing plan element" is when there is an "affirmative vote of a majority of the full authorized membership of the governing body, with the reasons of the governing body

¹ In fact, a zoning ordinance shall not even be adopted until the planning board has adopted the land use plan element and the housing plan element of a master plan. N.J.S.A. 40:55D-62a.

for so acting set forth in a resolution and recorded in its minutes when adopting such an zoning ordinance.” N.J.S.A. 50:55D-62a. Therefore,

[i]n light of the procedures provided by the Legislature to allow municipalities to validate inconsistent ordinances, when read in conjunction with the Law’s overarching concern with encouraging planning, it is clear that the Legislature intended that the requirement that ordinances be substantially consistent with the master plan be rigidly enforced.

[Riggs v. Long Beach, 109 N.J. 601, 621-22 (1988) (Handler, J., concurring) (cited with approval in E. Mill Assocs. v. Tp. Council of East Brunswick, 241 N.J. Super. 403, 406 (App. Div. 1990)).]

Accordingly, in Route 15 Associates v. Jefferson, 187 N.J. Super. 481, 487-88 (App. Div. 1982), the Appellate Division invalidated the rezoning of a property residential use when the master plan suggested that the property should be in an office-use category. In E. Mill Assocs., supra, 241 N.J. Super. at 404-06, the court similarly invalidated the rezoning of a property from office, professional and apartment use to residential use, which was inconsistent with the master plan. See also Willoughby v. Planning Bd. of Tp. of Deptford, 326 N.J. Super. 158, 162, 163 (App. Div. 1999).

Here, to the extent Jersey City’s zoning ordinance has been interpreted such that the Village Redevelopment Plan is expired and ineffectual, it is substantially inconsistent with Jersey City’s master plan and thus invalid. The master plan clearly asserts that the City’s redevelopment plans supersede the zoning ordinance and function as a surrogate master plan and zoning ordinance. The zoning officer’s disregard for the Village Redevelopment Plan in contravention of the master plan is no different from the rezoning in the above-listed cases and should be invalidated as such.

The 2001 Jersey City Land Development Ordinance and Official Zoning Map Confirm that Zoning Criteria in the Redevelopment Plan is the permanent zoning governing the Property Unless and Until it is Formally Amended:

Following the adoption of the Master Plan, the City Council took legislative action under the MLUL that confirms that the zoning criteria in the Redevelopment Plan supersede any prior zoning criteria, and that it is, in fact, the permanent zoning for the Redevelopment Plan area.

The New Official Zoning Map:

On April 11, 2001, the City Council adopted Ordinance #01-042, which enacted the Jersey City Land Development Ordinance (the “JCLDO”), a new zoning ordinance, for the entire City, and a new Official Zoning Map for the City. The new Official Zoning Map lists on it every zoning district in Jersey City and identifies the geographic boundary of each. It specifically lists the Village Redevelopment Plan and shows its geographic boundary. **See City of Jersey City Zoning Map as of February 5, 2021, adopted on April 11, 2001 – REDEVELOPMENT PLAN AREAS Listed in Order of Original Adoption – 21. – VILLAGE.**

Simply put, when the City Council adopted the new Official Zoning Map, it made every redevelopment plan area its own separate zoning district in accordance with the provisions of the MLUL.

On April 11, 2001, when the City Council adopted Ordinance #01-042, which enacted the Jersey City Land Development Ordinance, the City Council incorporated the new Official Zoning Map into the JCLDO. **Section 345-35 of the JCLDO** states:

“Zoning map.

The boundaries of these zoning districts are established on the map entitled "City of Jersey City Zoning Map" originally adopted by Council on April 11, 2001 by Ord. No. 01-042. This map is amended periodically. The current map is in on file and available for public inspection and/or purchase at the Division of City Planning, 30 Montgomery Street, Suite 1400, Jersey City, New Jersey.”

When the City Council enacted the JCLDO and adopted the new Official Zoning Map in accordance with the MLUL it made the Redevelopment Plan zoning criteria part of the JCLDO.

The Official Zoning Map has been amended by the City Council many times since 2001. It continues to list the Redevelopment Plan without reference to any other district or zoning criteria, and without reference to an expiration date. **See City of Jersey City Zoning Map as of February 5, 2021, adopted on April 11, 2001 – REDEVELOPMENT PLAN AREAS Listed in Order of Original Adoption – 21. – VILLAGE.**

Moreover, in 2001 when the City Council adopted the new Official Zoning Map in accordance with the MLUL, it did so against the backdrop of the 2000 Master Plan.

N.J.S.A. 40: 55D- 32 states:

“The governing body may by ordinance adopt or amend an official map of the municipality, ***which shall reflect the appropriate provisions of any municipal master plan***; provided that the governing body may adopt an official map or an amendment or revision thereto which, in whole or in part, is inconsistent with the appropriate designations in the subplan elements of the master plan, but only by the affirmative vote of a majority of its full authorized membership with the reasons for so acting recorded in the minutes when adopting the official map. Prior to the hearing on the adoption of any official map or any amendment thereto, the governing body shall refer the proposed official map or amendment to the planning board pursuant to subsection 17a. of this act [40:55D-26].” (emphasis added).

When the City Council adopted the new Official Zoning Map with each redevelopment area listed thereon, it was necessarily carrying out the provisions in the 2000 Master Plan that redevelopment plans “supersede” the 1974 Zoning Code and “function as the zoning ordinance for certain areas of the City”.

The 2001 JCLDO:

Upon its enactment, the JCLDO superseded and replaced the entirety of the 1974 Zoning Code. No vestige of the 1974 Zoning Code remains in effect. No zoning districts from the 1974 Zoning Code were left to exist. Even if that were not the case, **JCLDO Section 345-38A** states: "In an area officially declared and delineated as a redevelopment area by duly adopted ordinances, the standards and designations contained in the Redevelopment Plans for such legally adopted plans shall take precedence over any standards contained within this Chapter." Further, nothing in the JCLDO signals that the duration of the zoning criteria in any redevelopment plan is limited to that which is stated in any redevelopment plan.

In essence, the Redevelopment Plan supplied the zoning criteria and the geographic area. The 2000 Master Plan declared that Redevelopment Plan zoning criteria should function as the zoning ordinance for that area of the City. Following the recommendations in the Master Plan, the City Council then adopted a new Official Zoning Map directly incorporating the zoning criteria and the geographic boundaries of the Redevelopment Plan into the JCLDO.

The legislative action taken by the City Council under the MLUL was independent of, and completely distinct, from the City Council's adoption of the Village Redevelopment Plan in 1980 under the then applicable redevelopment law.

As such, in 2001 the Municipal Council already took the legislative action that the Planning Division and Zoning Officer are now erroneously requiring in 2021. Essentially, the Municipal Council took the Village Redevelopment Plan zoning criteria which it initially adopted with a 40-year duration under the then applicable redevelopment law and legislatively incorporated it through the MLUL into the 2001 JCLDO and its accompanying Official Zoning Map. The Council took such action based upon the Planning Board's recommendations in the 2000 Master Plan. This Council action had the practical and legal effect of removing the expiration date from the Village Redevelopment Plan zoning criteria and making it the permanent zoning for the Village Redevelopment Plan area.

Thus, beginning in 2001, the zoning criteria in the Redevelopment Plan became the permanent zoning for the Redevelopment Plan area independent of, and regardless of the purported expiration, in whole, or in part, of the Redevelopment Plan.

Because the zoning officer has interpreted the ordinance otherwise, it should be noted that when interpreting an ordinance, the goal is "to discover and effectuate the local legislative intent," and "that intent must be found in the language used." Essex County Retail Liquor Stores Ass'n. v. Municipal Bd. of Alcoholic Beverage Control, 77 N.J. Super. 70, 77 (App. Div. 1962). An ordinance "is to receive a reasonable construction and application, to serve the apparent legislative purpose." Ibid. The court "will not depart from the plain meaning of language which is free of ambiguity, for an ordinance must be construed according to the ordinary meaning of its words and phrases." Ibid.

The Appellate Division applied these principles in Essex County Retail Liquor Stores Ass'n, supra, 77 N.J. Super. at 76-77. There, the ordinance in question stated that a particular type of liquor license "shall be granted or transfer made to other premises within a distance of one thousand feet from ny other premises then covered by [such a license], provided, however, that the local license issuing authority may, in its discretion grant a transfer of an existing license to the same licensee to other premises within six hundred feet of the premises from which the

transfer is made, notwithstanding that the premises to which the license is so transferred is within one thousand feet of an existing [licensed] premises.” Id. at 74. The appellant argued that the local licensing board abused its power by granting respondent’s application to transfer his license from place to place because respondent did not intend to (and ultimately did not) continue operating his business at the new location. Id. at 75-76. The court disagreed, reasoning that the ordinance was clear and unambiguous, and that it did not include any requirement that the transferring party must intend to continue operating his business at the new location. Id. at 76.

As in Essex County Retail Liquor Stores Ass’n, the ordinance is clear in the case of Jersey City’s Village Redevelopment Plan. The JCLDO indicates that it superseded and replaced the 1974 Zoning Code. Its zoning map further indicates that the Village Redevelopment Plan is the only zoning applicable to the Village Redevelopment Plan Area, which is shown on the zoning map. Nothing in the JCLDO indicates that the duration of the zoning criteria in any redevelopment plan is limited to that which is stated in the redevelopment plan. Therefore, no limited duration should be read into the zoning ordinance, and the zoning criteria of the Village Redevelopment Plan are applicable.

Additionally, the Supreme Court of New Jersey has stated that the “zoning ordinance and map may not be read to produce a result . . . lacking in good sense and contrary to the just interests of the [municipality] and its inhabitants.” Dumont Lowden, Inc. v. Hansen, 38 N.J. 49, 55 (1962). The inhabitants of the municipality have the “right to rely . . . on the measure of stability afforded by the duly advertised and formally enacted zoning ordinance.” Id. at 56.

In Dumont Lowden, Inc., supra, a seventeen-acre tract owned by a railroad company and used for railroad purposes was labeled on the zoning map as railroad property but was clearly designated on the zoning map as being in the residential zone for one- and two-family houses. 38 N.J. at 51. After a buyer purchased the tract from the railroad, he sought to build garden apartments on the tract and obtained a zoning board interpretation of the zoning map to the effect that the tract was unzoned following cessation of railroad use. Ibid. The neighbors then challenged that interpretation. Id. at 53.

Ultimately, the Supreme Court held that the zoning map in question “may not reasonably be read as having left the 17-acre [railroad] tract entirely unzoned,” noting that the “map purposed to zone the entire borough and it contained nothing which evidenced anything to the contrary.” Id. at 54. The “underlying zone locations” were “controlled by the map legend.” Id. at 55. Moreover, “[i]f any of the neighboring residents had studied the map at the time of the passage of the zoning ordinance, they presumably would have concluded that the tract, though then properly used for railroad purposes, was in the District A residence zone and would be controlled by the limitation of that zone in the event the railroad ceased.” Ibid. They “certainly would not have concluded that upon cessation of the railroad use the tract would be entirely unzoned.” Ibid. The court so held even though the buyer presented affidavits of borough officials in office at the time the map was adopted indicating that the Mayor and Council of the borough did not intend to place the railroad tract into a zoning classification. Id. at 56. As the court explained, “even assuming the borough officials had a different understanding at the time of the passage of the 1942 ordinance, that understanding was unexpressed and may not now be permitted to overcome the clear meaning and legal effect of the zoning ordinance.” Ibid.

Here, as in Dumont Lowden, Inc., the zoning map is clear as to the zoning of the property in question. The map indisputably shows the Village Redevelopment Plan as the only zoning for the Village Redevelopment Plan area and is purposed to zone the entire City. Additionally, the zoning ordinance unequivocally states that the zoning scheme predating the Village Redevelopment Plan is superseded. Therefore, interpreting the zoning map and ordinance such that Village Redevelopment Plan is expired would mean the Village Redevelopment Plan area is entirely unzoned. Such a result would be “lacking in good sense and contrary to the just interests of the [municipality] and its inhabitants,” who have the “right to rely . . . on the measure of stability afforded by the duly advertised and formally enacted zoning ordinance.” See id. at 55-56. In any case, if the area in question were unzoned, the proposed project would be permitted there.

Prohibition on Development Moratoria

Even if the Village Redevelopment Plan were expired (which is not the case) and the area in question were thus unzoned, the City is required to process the Application Package. N.J.S.A. 40:55D-90a explicitly states that the “prohibition of development in order to prepare a master plan and development regulations is prohibited.” See also Eastampton Center, LLC v. Planning Bd. of Tp. of Eastampton, 354 N.J. Super. 171, 197 (App. Div. 2002) (“[T]he municipality cannot declare a moratorium on development applications while zoning changes are pending.”). N.J.S.A. 40:55D-90b adds that “[n]o moratoria on applications for development or interim zoning ordinances shall be permitted except in cases where the municipality demonstrates on the basis of a written opinion by a qualified health professional that a clear imminent danger to the health of the inhabitants of the municipality exists.”

In Repair Master v. Boro. of Paulsboro, 352 N.J. Super. 1, 13 (App. Div. 2002), the Appellate Division explained the rigidity of the statute by quoting *New Jersey Zoning & Land Use Administration* by William M. Cox & Stuart R. Koenig: “[T]he provisions [of the statute] are so unequivocal that municipalities have ceased to enact the type of moratoria proscribed by” N.J.S.A. 40:55D-90a. As is further explained in the Cox treatise:

The prohibition [on development moratoria] was included for the purpose of prohibiting what had been a common practice in many municipalities designed to slow development. Municipalities would adopt “moratoriums” on development for the stated purpose of permitting the municipality time to revise its master plan and zoning ordinance. Many such moratoria ran for considerable periods of time while the municipalities proceeded to reexamine their master plans and zoning ordinances in a very dilatory manner. **It was to specifically outlaw this kind of stonewalling of development that subsection a was adopted.**

[*New Jersey Zoning & Land Use Administration* (2019), § 10-8.5 (emphasis added)]

In the present case, Jersey City is engaging in exactly the kind of stonewalling that is prohibited by N.J.S.A. 40:55D-90:

The City recognized that the expiration issue could be mooted entirely if the City would simply pass an ordinance eliminating the expiration language from the Village Redevelopment Plan. This legislative solution was set in motion in Ordinance 20-104, which called for the removal of expiration dates from thirty-five redevelopment plans including the Village Redevelopment

Plan. Per the ordinance, the "Planning Board at its meeting on November 10, 2020 did vote to recommend that the Municipal Council amend" the thirty-five redevelopment plans listed in the therein. **See Exhibit B.**

Ordinance 20-104 was scheduled for first reading at the December 2, 2020 meeting of the City Council. However, Ordinance 20-104 was withdrawn from the agenda of that meeting before any first reading vote was taken, because of a discussion at the November 23, 2020 City Council Caucus meeting. At that Caucus meeting, certain Council members stated that redevelopment plans should not be extended because, according to those Council members, the plans did not require "community give-backs" and should therefore be replaced. **See Exhibit C** - Transcript of the November 23, 2020 Council Caucus Meeting at 9 and 10. The discussion also revealed that a proposal for a rezoning of redevelopment plan areas had been languishing for approximately two years. Ultimately, at the December 2, 2020 Council meeting, it was explained that Ordinance 20-104 was being withdrawn because the Council was "looking into reviewing some of the land use laws around this." **See Exhibit D** - Transcript of December 2, 2020 Council Meeting at 21.

The Zoning Officer then issued a formal Zoning Determination that the Project requires an amendment to the Village Redevelopment Plan that removes or extends the expiration language therein, and the Planning Board declined to hear Applicants because it was uncertain what zoning criteria should be applied.

In short, the City has instituted a de facto moratorium on development, which is expressly prohibited by N.J.S.A. 40:55D-90 unless the City establishes that a clear imminent danger to health is at stake. In the case of the Village Redevelopment Plan area, there is obviously no clear imminent danger to health, and the City does not allege any. Instead, the City is delaying development in the Village Redevelopment Plan for the types of reasons that prompted N.J.S.A. 40:55D-90 in the first place. Specifically, the City claims it cannot move forward before reconsidering its zoning scheme and "community give-back" requirements, in clear contradiction of N.J.S.A. 40:55D-90.

The City's dilatory tactics are impermissible no matter the motive, and must be corrected.²

The Local Redevelopment and Housing Law:

While the City Council's action to incorporate the Redevelopment Plan zoning criteria into the JCLDO was taken under the MLUL, it was also completely consistent with the Local Redevelopment and Housing Law (N.J.S.A. 40A:12A-1 et seq.) (the "LRHL").

The New Jersey Legislature adopted the LRHL in 1992. The LRHL replaced and superseded the Blighted Areas Act (N.J.S.A. 40:55-21.2 et. seq.) and the Redevelopment Agencies Law (N.J.S.A. 40:55C-1 et. seq.). While the repealed statutes and the LRHL are similar in many respects, the LRHL contains a provision that was not in the repealed statutes. Section 7(c) (N.J.S.A. 40A:12A-7(c)) of the LRHL states:

² To the extent any argument is raised that N.J.S.A. 40:55D-90 is in the MLUL and does not apply to a redevelopment plan, N.J.S.A. 40A:12A-13 should be noted. That provision (in the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.) states that "[a]ll applications for development or redevelopment of a designated redevelopment area or portion of a redevelopment area shall be submitted to the municipal planning board for its review and approval in accordance with the [MLUL]. ibid.

"c. The redevelopment plan shall describe its relationship to pertinent municipal development regulations as defined in the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.). ***The redevelopment plan shall supersede applicable provisions of the development regulations of the municipality or constitute an overlay-zoning district within the redevelopment area. When the redevelopment plan supersedes any provision of the development regulations, the ordinance adopting the redevelopment plan shall contain an explicit amendment to the zoning district map included in the zoning ordinance. The zoning district map as amended shall indicate the redevelopment area to which the redevelopment plan applies.*** Notwithstanding the provisions of the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) or of other law, no notice beyond that required for adoption of ordinances by the municipality shall be required for the hearing on or adoption of the redevelopment plan or subsequent amendments thereof."
(emphasis added).

The City Council's inclusion of the Redevelopment Plan on the new Official Map constitutes the explicit municipal legislative action necessary under the LHRL to confirm that the Redevelopment Plan zoning criteria supersede any other provisions of the City's development regulations.

Conclusion:

The City Council has, through bona fide legislative action, explicitly and unambiguously incorporated the zoning criteria in the Redevelopment Plan into the JCLDO under the MLUL giving the Redevelopment Plan zoning criteria independent validity and effectiveness regardless of the purported expiration, in whole, or in part, of the Redevelopment Plan. The zoning criteria in the Village Redevelopment Plan is the permanent zoning for the Village Redevelopment Plan area, and, in fact, it is the only zoning criteria applicable to the Village Redevelopment Plan area and it remains in effect.

Relief Requested:

A zoning determination by the Jersey City Zoning Board of Adjustment confirming that:

The Village Redevelopment Plan zoning criteria is applicable to the Property;

The Village Redevelopment Plan zoning criteria remains in full force and effect;

The Neighborhood Commercial zoning criteria in the Jersey City Land Development Ordinance is not applicable to the Property; and

The Village Redevelopment Plan (Sect. V. A) requires the proposed Project to obtain a site plan approval from the Jersey City Planning Board with deviations for driveway width requirement (See Sect. V.E of the Redevelopment Plan) and the bulkhead setback requirement (see JCLDO Sect. 345-60. G. 2).

Dated: June 10, 2021