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DIRECT EMAIL: DIREPETTO@HARWOODLLOYD.COM
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FILE NO.:

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FRANK V. D. LLOYD (1956-2007)
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PETER CKOLINO (1957-2009)
MICHAEL B. OROPOLLO (1970-2011)
EVELYN R. STORCH (1981-2018)

* CERTIFIED NEW JERSEY CIVIL
TRIAL ATTORNEY
* ALSO ADMITTED IN NY
* ALSO ADMITTED IN PA
* ALSO ADMITTED IN DC

May 4, 2021

Via E-Mail

constoff@rochelleparknj.gov

James DiMaria

Construction Official

Township of Rochelle Park

151 W. Passaic Street

Rochelle Park, New Jersey 07667

Re: 114 Rochelle Avenue
Block 13, Lots 1 and 5

Dear Mr. DiMaria:

The following is our legal opinion based upon the facts as related to us. By Deed dated March 13, 2014, Anna C. Kazimir became the owner of property known on the tax reference map of the Township of Rochelle Park as Block 13, Lots 1 and 5. Lot 1 was formerly known as Lots Numbers 1, 2, 3 and 4 on Block A, is conforming and fronts Rochelle Avenue. Lot 5 was formerly known as Lots Numbers 5 and 6 on Block A, is nonconforming and fronts Parkway. Lot 1 contains a dwelling and Lot 5 is vacant and has never been developed. The issue presented is whether Lots 1 and 5 have merged and whether a subdivision is required to sell Lot 5, the non-conforming lot. Based upon the facts related to us, it is our opinion that Lots 1 and 5 have not merged and that a subdivision is not required to sell Lot 5.

The general rule established in Loechner v. Campoli, 49 N.J. 504 (1967), which became known as the "merger doctrine," provides that when two or more contiguous lots of substandard size are held in common ownership, the lots are combined or merged, in order to meet zoning requirements. Despite separate designations on an old tax map, adjacent undersized lots in common title should be considered part of a larger tract or parcel for zoning purposes. See generally, Cox & Koenig, New Jersey Zoning and Land Use Administration, Section 24-15.2 (GANN, 2017).

"[T]he purpose of the merger doctrine is to bring non-conforming lots into conformity and thus advance the zoning scheme." Jock v. Zoning Bd. of Adjustment, 184 N.J. 562, 567 (2005). Dalton v. Ocean Tp., 245 N.J. Super. 453, 461, (App.Div.), certif. denied, 126 N.J. 324 (1991). The merger doctrine requires subdivision approval for the development of individual substandard parcels if contiguous parcels have been, at any relevant time, in the same ownership and, at the time of such ownership, the parcel was not substandard." Id. at 578.

Since Loechner, court decisions and legislation have limited the merger doctrine, generally to contiguous, undersized lots fronting the same street. There are a number of exceptions to the merger doctrine including the following:

1. Conforming Lots- The merger doctrine does not apply to adjoining lots, owned by the same person, "all of which are found and certified by the administrative officer to conform to the requirements of the municipal development regulations and are shown and designated as separate lots, tracts or parcels on the tax map or atlas of the municipality." N.J.S.A. 40:55D-7.
2. Contiguous lots created pursuant to a subdivision approved under the Planning Act of 1953 or later statute do not merge.
3. Back-to-Back Lots- Merger does not apply where a party who owns a nonconforming lot acquires a contiguous lot that fronts on a different street (back-to-back lots) *and merger would not create a conforming lot*. Jock, supra, citing Chirichello v. Zoning Bd. of Adjustment of Monmouth Beach, 78 N.J. 544, n. 2, (1979) (citing 2 Rathkopf, The Law of Zoning and Planning, § 32.06(2) (4th ed. 1978) (stating "the general rule that adjoining parcels in one ownership merge so as to constitute only one lot [is not applicable where back to back or "L" shaped lots are involved], since it would require a strained finding that these two lots were intended to form one exceptionally long, narrow plot and would be in total disregard of the fact that each fronts on a different street"));
4. Lots Which Would Create an L-shape, Isolating a Corner Lot

The case of Somol v. Bd. of Adjustment of Borough of Morris Plains, 277 N.J. Super. 220, 228, (Law Div. 1994), is instructive. In Somol, a Law Division case, the Court stated that the Chirichello exception to the merger doctrine does not apply if merger would create a conforming lot. Given that the purpose of the merger doctrine is to bring non-conforming lots into conformity and thus advance the zoning scheme, those exceptions for cases where the property is already conforming or where it cannot be rendered conforming make sense...." See Chirichello, supra.

In Somol, the court noted that "it would not be unreasonable to conclude that the Chirichello exception applies (discussed above) and that there is no merger **if all we considered was the positioning of the lots.**" (emphasis added) The Court found that "f Lot 8 merged with Lot 9 (which faced a different street) there would have been one conforming lot facing Granniss Avenue and the purpose of the merger doctrine would have been fulfilled, making

a conforming lot out of adjacent undersized lots. It follows that it cannot be concluded that the Chirichello exception to merger is applicable if it is found that a merger would create a conforming lot as in this case." The Court found that "there is no alternative but to examine the unique facts herein to resolve the merger issue." The facts showed that owners never treated the lots as one lot fronting on Granniss Avenue or as one lot fronting on Cleveland Avenue. The existing home on Lot 9 faces Granniss Avenue and is the same house that existed when the Delaneys owned the lots in 1944. The record indicates that this structure has been standing over one hundred years and was once the original caretaker's house for the Granniss estate. The record also indicates that the properties were separately acquired, and that plaintiff's property was never used by the Delaneys for any purpose, but always remained a vacant wooded lot. The borough treated these lots as two separate lots. ...Lot 8 has always been treated by both the owners and the borough as a separate building lot. Based on these facts, this court finds that the lots did not merge despite common ownership at one time, and lot 8 is an isolated lot and should be dealt with accordingly. Therefore, the rationale of the merger doctrine of Loechner is applicable, but there is no merger because of the unique facts of our case." Somol, 277 N.J. Super. at 229-33.

Also relevant to the merger analysis is the holding of the court in Bridge v. Neptune Bd. of Adj., 233 N.J. Super. 587 (App. Div. 1989). In Bridge, the Court held that if a purchaser bought contiguous nonconforming lots delineated as separate tracts, and then were to build a single-family structure that it overlapped both lots, the lots would merge into a single tract and would require subdivision before either could be sold "as long as the structure remains on any part of both lots."

Based upon the foregoing, it is evident that the determination of whether an exception to the merger doctrine applies is fact sensitive. In the present matter, Lots 1 and 5 are owned by the same person, and if merged, would result in a conforming lot, thereby advancing the zoning scheme, which would tend to favor application of the merger doctrine. However, while Lots 1 and 5 are adjoining lots owned by the same person, the rear of Lot 1 backs to the side of Lot 5 and Lots 1 and 5 front different streets. In addition, it is our understanding that Lots 1 and 5 are taxed separately and that Lot 1 is a conforming lot containing a dwelling, while Lot 5 is and has been vacant and is nonconforming. We do not have specific information as to the size of the lots (although it appears that it is just slightly nonconforming), the history of the owner's conduct with regard to Lot 5, or any information regarding any other structures or appurtenances on Lot 1. Based solely upon the information provided to us, it appears that the Chirichello exception to the merger doctrine applies in this matter, and that Lots 1 and 5 have not merged. Accordingly, a subdivision is not required for the sale of Lot 5.

Please contact me if you wish to further discuss this matter.

Very truly yours,



David M. Repetto, Esq.

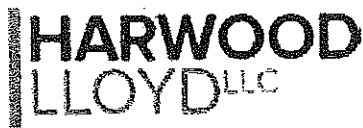
DMR/YF

James DiMaria

From: Repetto, David <DRepetto@harwoodlloyd.com>
Sent: Monday, May 03, 2021 4:08 PM
To: Corrison, Lina; 'constoff@rochelleparknj.gov'
Subject: RE: Reply to E-Mail of 4/22

Thanks Lina. See you tomorrow.
Dave

David M. Repetto, Esq.
Co-Managing Partner



130 Main Street | Hackensack, New Jersey | 07601
Direct 201.359.3576 | Fax 201.487.4758
DRepetto@harwoodlloyd.com
www.harwoodlloyd.com

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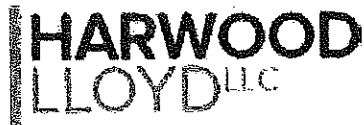
From: Corrison, Lina <LCorrison@harwoodlloyd.com>
Sent: Monday, May 3, 2021 3:56 PM
To: 'constoff@rochelleparknj.gov' <constoff@rochelleparknj.gov>
Cc: Repetto, David <DRepetto@harwoodlloyd.com>
Subject: Reply to E-Mail of 4/22

Good afternoon Mr. DiMaria,

We have reviewed the matter and do not see an issue. We will provide you with a written opinion tomorrow.

Thank you.
Lina

Lina P. Corrison, Esq.
Counsel



130 Main Street | Hackensack, New Jersey | 07601
Direct 201.359.3507 | Fax 201.487.4758
LCorrison@harwoodlloyd.com
www.harwoodlloyd.com

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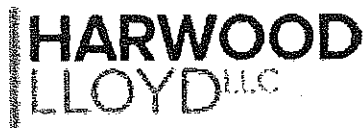
From: Repetto, David <DRepetto@harwoodlloyd.com>
Sent: Thursday, April 29, 2021 7:43 AM
To: James DiMaria <constoff@rochelleparknj.gov>
Cc: Corrison, Lina <LCorrison@harwoodlloyd.com>; Repetto, David <DRepetto@harwoodlloyd.com>
Subject: RE: Reply to E-Mail of 4/22

James,

It was nice to meet you on Tuesday afternoon. Lina Corrison and I will call you tomorrow.

Dave

David M. Repetto, Esq.
Co-Managing Partner



130 Main Street | Hackensack, New Jersey | 07601
Direct 201.359.3576 | Fax 201.487.4758
DRepetto@harwoodlloyd.com
www.harwoodlloyd.com

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From: James DiMaria <constoff@rochelleparknj.gov>
Sent: Wednesday, April 28, 2021 4:38 PM
To: Repetto, David <DRepetto@harwoodlloyd.com>
Subject: RE: Reply to E-Mail of 4/22

Dave can you please call me on my cell 973-766-2478

From: Repetto, David <DRepetto@harwoodlloyd.com>
Sent: Monday, April 26, 2021 11:24 AM
To: James DiMaria <constoff@rochelleparknj.gov>
Cc: Corrison, Lina <LCorrison@harwoodlloyd.com>; Lindenau, Stefani <SLindenau@harwoodlloyd.com>; Repetto, David <DRepetto@harwoodlloyd.com>
Subject: RE: Reply to E-Mail of 4/22

130 Main Street | Hackensack, New Jersey | 07601

Direct 201.359.3507 | Fax 201.487.4758

LCorrison@harwoodlloyd.com

www.harwoodlloyd.com

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Sent: Thursday, April 29, 2021 7:43 AM

To: James DiMaria <constoff@rochelleparknj.gov>

Cc: Corrison, Lina <LCorrison@harwoodlloyd.com>; Repetto, David <DRepetto@harwoodlloyd.com>

Subject: RE: Reply to E-Mail of 4/22

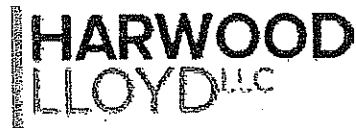
James,

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Dave

David M. Repetto, Esq.

Co-Managing Partner



130 Main Street | Hackensack, New Jersey | 07601

Direct 201.359.3576 | Fax 201.487.4758

DRepetto@harwoodlloyd.com

www.harwoodlloyd.com

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From: James DiMaria <constoff@rochelleparknj.gov>

Sent: Wednesday, April 28, 2021 4:38 PM

To: Repetto, David <DRepetto@harwoodlloyd.com>

Subject: RE: Reply to E-Mail of 4/22

Dave can you please call me on my cell [REDACTED]

From: Repetto, David <DRepetto@harwoodlloyd.com>

Sent: Monday, April 26, 2021 11:24 AM

To: James DiMaria <constoff@rochelleparknj.gov>

Cc: Corrison, Lina <LCorrison@harwoodlloyd.com>; Lindenau, Stefani <SLindenau@harwoodlloyd.com>; Repetto, David <DRepetto@harwoodlloyd.com>

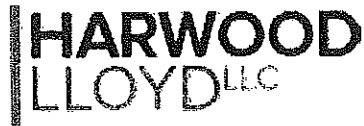
Subject: RE: Reply to E-Mail of 4/22

The names of owners and dates of ownership of the property/lots in question; dates of any prior subdivisions or transfers and details as to subdivision/transfer (lot description/owners names). Pls LMK if you have any further questions?

Dave

David M. Repetto, Esq.

Co-Managing Partner



130 Main Street | Hackensack, New Jersey | 07601

Direct 201.359.3576 | Fax 201.487.4758

DRepetto@harwoodlloyd.com

www.harwoodlloyd.com

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From: James DiMaria <constoff@rochelleparknj.gov>

Sent: Monday, April 26, 2021 10:43 AM

To: Repetto, David <DRepetto@harwoodlloyd.com>

Subject: Re: Reply to E-Mail of 4/22

What type of documentation is needed?

On Apr 25, 2021, at 1:45 PM, Repetto, David <DRepetto@harwoodlloyd.com> wrote:

James,

In reply to your recent e-mail, the issues are whether the adjacent lots owned by the same person/entity and if so, whether they merge into one lot and if a subdivision is needed to sell one of them.

If the **undersized** lots are owned by the same person, then the lots are merged and a subdivision is required to sell. If the adjoining lots are not owned by the same person, then it appears that Lot 6 would be "isolated" (not part of a larger tract in common ownership) and that a subdivision would not be required for the sale. **However, this is a complicated issue I cannot not give you a definitive answer to until we have more information regarding the ownership details. Can you provide those to me?**

The "merger doctrine" was established in Loechner v. Campoli, 49 N.J. 504 (1967), where the Court held that, despite separate designations on an old tax map, adjacent undersized lots in common title should be considered part of a larger tract or parcel for zoning purposes. See Lock v. Zoning Board of

Adjustment, 184 N.J. 562, 569 (N.J. 2005) "The merger doctrine enunciated in Loechner applies only to adjacent undersized lots held in **common legal title**." Jock, 184 N.J. 56 at 597.

Where a party comes into ownership of a single lot that does not meet the area and dimension requirements of the current zoning law, and that party does not own adjoining land, the lot is considered to be isolated and non-conforming. Davis Enterprises v. Karpf, 105 N.J. 476, 481, (1987); William M. Cox, New Jersey Zoning and Land Use Administration, § 12-1.1 (GANN 2005). In order to develop such a lot, the party must apply to the zoning board for a variance. Jock, *supra*, at 578. In Jock, Plaintiffs argued that that grant of a variance was unlawful because the lot in question, was, in fact, not "isolated," but was part of a larger tract in "common ownership," thus **requiring subdivision approval** prior to consideration of a variance application. The court found that contention squarely raised the issue the doctrine of merger. The term "merger" is used in zoning law to describe the combination of two or more contiguous lots of substandard size, that are held in common ownership, in order to meet the requirements of a particular zoning regulation. Robert M. Anderson, 2 *American Law of Zoning* § 9.67 (4th ed. 2005). In effect, it **requires subdivision approval for the development of individual substandard parcels if contiguous parcels have been, at any relevant time, in the same ownership and, at the time of such ownership, the parcel was not substandard.**

Merger is said to be "theoretical" in the sense that it does not preclude the treatment of the lots as separate for other purposes. The official map is not affected; neither are taxes. The issue of merger will never arise unless the property is specifically brought to the attention of the relevant land use board. *Ibid*. Thus, in reality, the so-called merger doctrine is simply the characterization of adjacent undersized lots in common ownership as part of a larger tract or parcel with an eye toward effectuating present day zoning laws. Fred McDowell, Inc. v. Bd. of Adjustment of the Township of Wall, 334 N.J.Super. 201, 224, (App.Div. 2000).

Until Loechner, the sale of lots designated as separate lots on filed maps did not constitute a "subdivision" of land as long as existing lot lines were used. After Loechner, court decisions and legislation have limited the merger doctrine, generally to contiguous, undersized lots fronting the same street. There is a statutory **exception** to the merger doctrine found in the definition of "subdivision" in N.J.S.A. 40:55D-7- "Subdivision" means the division of a lot, tract or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development. The following shall **not** be considered **subdivisions** within the meaning of this act, if no new streets are created: (5) the conveyance of one or more adjoining lots, tracts or parcels of land, **owned by the same person or persons** and all of which are found and certified by the administrative officer to conform to the **requirements of the municipal development regulations** and are shown and designated as separate lots, tracts or parcels on the tax map or atlas of the municipality.

Please get back to me when you have a moment to speak. Thanks.

Dave

David M. Repetto, Esq.
Co-Managing Partner

<Signaturelogo_5df4c8cc-8d38-4356-b05a-842af03fc2d0.png>

130 Main Street | Hackensack, New Jersey | 07601
Direct 201.359.3576 | Fax 201.487.4758

Adjustment, 184 N.J. 562, 569 (N.J. 2005) "The merger doctrine enunciated in Loechner applies only to adjacent undersized lots held in **common legal title**." Jock, 184 N.J. 56 at 597.

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Merger is said to be "theoretical" in the sense that it does not preclude the treatment of the lots as separate for other purposes. The official map is not affected; neither are taxes. The issue of merger will never arise unless the property is specifically brought to the attention of the relevant land use board. *Ibid*. Thus, in reality, the so-called merger doctrine is simply the characterization of adjacent undersized lots in common ownership as part of a larger tract or parcel with an eye toward effectuating present day zoning laws. Fred McDowell, Inc. v. Bd. of Adjustment of the Township of Wall, 334 N.J.Super. 201, 224, (App.Div. 2000).

Until Loechner, the sale of lots designated as separate lots on filed maps did not constitute a "subdivision" of land as long as existing lot lines were used. After Loechner, court decisions and legislation have limited the merger doctrine, generally to contiguous, undersized lots fronting the same street. There is a statutory **exception** to the merger doctrine found in the definition of "subdivision" in N.J.S.A. 40:55D-7- "Subdivision" means the division of a lot, tract or parcel of land into two or more lots, tracts, parcels or other divisions of land for sale or development. The following shall **not** be considered **subdivisions** within the meaning of this act, if no new streets are created: (5) the conveyance of one or more adjoining lots, tracts or parcels of land, **owned by the same person or persons and all of which are found and certified by the administrative officer to conform to the requirements of the municipal development regulations** and are shown and designated as separate lots, tracts or parcels on the tax map or atlas of the municipality.

Please get back to me when you have a moment to speak. Thanks.

Dave

David M. Repetto, Esq.

Co-Managing Partner

<Signaturelogo_5df4c8cc-8d38-4356-b05a-842af03fc2d0.png>

130 Main Street | Hackensack, New Jersey | 07601
Direct 201.359.3576 | Fax 201.487.4758

DRepetto@harwoodlloyd.com
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James DiMaria

From: Joseph Rotolo <Rotolo.law@verizon.net>
Sent: Friday, April 09, 2021 9:32 AM
To: 'James DiMaria'
Cc: admin@rochelleparknj.gov
Subject: RE: Clarification Letter

James,

Generally speaking contiguous lots under common ownership merge and cannot be sold separately without a subdivision. See Loechner v. Campoli, 49 N.J. 520 (1967).

However, the Municipal Land Use Law, at N.J.S.A 40:55D-7 provides a statutory exception to the Loechner rule above by providing that the following is not considered a "subdivision":

The conveyance of one or more adjoining lots, tracts or parcels of land, owned by the same person or persons and all of which are found and certified by the administrative officer to conform to the requirements of the municipal development regulations and are shown and designated as separate lots, tracts, or parcels on the tax map of the municipality.

Since the two lots are separately taxed you would also have to provide the required certification in order to avoid the necessity of a subdivision to sell that lot. If you can't provide that certification then a formal subdivision would be required.

I note that one of the lots is slightly undersized by what would be considered a de minimus amount (less than 1%). The question then becomes whether it is such a small variation that the lot is, for all practical purposes, conforming.

In view of my relationship with the property owner I suggest that you consult with the new Planning Board attorney for a more formal opinion.

I hope this helps.

Joe

JOSEPH J. ROTOLO, ESQ.

Attorney At Law
50 Summit Avenue
Hackensack, New Jersey 07601

Tel: 201-343-0088
Fax: 201-343-0006

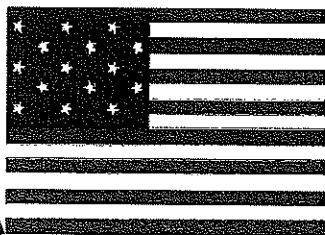
FRAUD ALERT - DO NOT WIRE TRANSFER UNLESS YOU SPEAK TO ME PERSONALLY BY PHONE OR IN PERSON

****ALWAYS PERSONALLY VERIFY ANY REQUEST FOR PAYMENT OR WIRE TRANSFER BY PHONE BEFORE SENDING ANYTHING - BEWARE OF FRAUD.**

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GOD BLESS AMERICA

From: James DiMaria [mailto:constoff@rochelleparknj.gov]
Sent: Wednesday, April 7, 2021 4:57 PM
To: 'Joseph Rotolo'
Cc: admin@rochelleparknj.gov
Subject: FW: Clarification Letter

Joe,

Mr. Kazmir is requesting a Certificate designating his property as two distinct lots that have not been merged under doctrine. I consulted with the tax assessor and he confirms that the lots 5 & 6 are a stand-alone piece of property. I have also attached the deed. Please let me know how to proceed.

Respectfully Submitted,

James DiMaria

Construction/Zoning Official
Township of Rochelle Park
201-556-0520 ext 102

From: Annemarie Wells <Building@rochelleparknj.gov>
Sent: Tuesday, April 06, 2021 12:09 PM
To: James DiMaria <constoff@rochelleparknj.gov>
Subject: FW: Clarification Letter

From: Michael Kazimir [REDACTED]@gmail.com>
Sent: Tuesday, April 06, 2021 12:03 PM
To: building@rochelleparknj.gov
Subject: Clarification Letter

Hi Annemarie,

I am looking for a letter that clarifies a property issue and eliminates complications in the future.

I think it would have to be sent to James DiMaria as the zoning official for clarification.

As part of the process in selling our house a number of questions have come up.

We have 2 properties:

Block 13, Lots 1,2,3,4- Which has our house and garage. The parcels are aligned to Rochelle Avenue, lot is 11070 sq ft.
and

Block 13, Lots 5,6- Which is vacant, except for a shed and an abandoned well. The parcels are aligned to Parkway, lot is 4950 sq ft.

The second lot is undersized by 50 square feet a 1% shortfall of the minimum lot size. We have 2 separate tax bills.
Access to the second lot is directly from the street.

What is the official position of the town as to the status of these parcels? Are they separate or are they linked? If they are linked, please provide the rationale for that position.

Thanks, Mike

James DiMaria

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