

Plan Submittal Form

Address: 19 Livingston Avenue, Dobbs Ferry, NY

Application #: _____

Project: Townhouse development at 19 Livingston Avenue

Name: Livingston Development Group, LLC

Email: vics@northbrookcontracting.com

Phone: (914) 403-6756

Plans attached are being submitted for (check appropriate box):

- Building permit application 1 PDF copy & 2 paper copies ¼ scale
- Amendment to an application or permit, 2 sealed copies
- Final As Built to close permit, 1 sealed copy
- Final survey to close permit, 1 sealed copy

Plans attached are submitted at the direction of the Building Inspector for review by the following board (check all that apply):

- BOT- 1 PDF copy + 5 paper copies ¼ scale
- PB - 1 PDF copy + 7 paper copies ¼ scale
- ZBA - 1 PDF copy + 4 paper copies ¼ scale
- AHRB – 1 PDF copy + 2 paper copies ¼ scale

Received Stamp:



McGULLOUGH, GOLDBERGER & STAUDT, LLP
ATTORNEYS AT LAW
1311 MAMARONECK AVENUE, SUITE 340
WHITE PLAINS, NEW YORK

FRANK S. McCULLOUGH, JR.
JAMES STAUDT
LINDA B. WHITEHEAD
SETH M. MANDELBAUM

AMANDA L. BROSY
EDMUND C. GRAINGER, III
PATRICIA W. GURAHIAN
MEREDITH A. LEFF
MORGAN H. STANLEY
KEVIN E. STAUDT
STEVEN M. WRABEL

CHARLES A. GOLDBERGER
COUNSEL

10605

(914) 949-6400

FAX (914) 949-2510

WWW.McGULLOUGHGOLDBERGER.COM

FRANK S. McCULLOUGH (1905-1998)
EVANS V. BREWSTER (1920-2005)

March 24, 2021



Chairman Peter Hofmann
and Members of the Zoning Board of Appeals
Village of Dobbs Ferry
112 Main Street
Dobbs Ferry, NY 10522

Re: Interpretation Application, 19 Livingston Avenue

Dear Chairman Hoffman and Members of the Zoning Board of Appeals:

This firm represents Livingston Development Group, LLC (the "Applicant"), and Victor Serricchio, Brian Dyer and Andrew Sokolik, the owners of the approximately .92 acre property known as 19 Livingston Avenue (the "Property"). The Property is located on the west side of Livingston Avenue, just north of the intersection with Route 9. The has been vacant and unused for several years. We are submitting this application to appeal the interpretation provided by the Dobbs Ferry Building Inspector (the "Building Inspector"), detailed in the Denial Letter enclosed herewith, that due to the proposed condominium form of ownership the proposed project would be a "Multi-Family Housing Complex" which is not permitted in the MDR-1 District and would not meet the definition of Townhouse. As is more fully set forth below we disagree with this interpretation.

The Property is located in the Mixed Density Residential "MDR-1" zoning district directly north of the St. Cabrini Nursing Home. To the south and east, along Livingston Avenue, are a mix of single family and multi-family houses as well as the Livingston Ridge Condominium. To the west the rear of the Property slopes down steeply to the Metro-North property. The Applicant is proposing to develop the Property with approximately eight townhouses consistent with the surrounding neighborhood (the "Project"). Townhouses are specifically permitted in the MDR-1 District. The townhouses will be in three buildings of two and three units each, with a common driveway and parking area towards the rear, all as shown on the site plan submitted herewith. This proposed density is far below what is permitted, and the Project is fully compliant with the dimensional requirements of the Zoning Code. The development will serve as transitional

residential development in keeping with the surrounding area, and the intended purpose of the MDR-1 District. See Zoning Ordinance § 300-35.A.(2)(b).

Our clients are proposing that the Project townhouses be sold as individual condominium units. When a condominium is proposed, there is not a subdivision approval, however a map showing the individual units and identifying separate tax lots for each townhouse unit allowing for the separate sale of the units is filed in the County Clerk's Office in the same manner as a subdivision map. Site Plan approval will be required. While a municipality cannot restrict the form of ownership (see below), the Building Inspector has made a determination that due to this proposed form of ownership which does not require subdivision approval, the development would be a "Multi-Family Housing Complex" which is not permitted in the MDR-1 District and would not meet the definition of Townhouse. We disagree with this interpretation and request that the Zoning Board overturn the interpretation of the Building Inspector and determine that the Project as proposed is permitted in the MDR-1 District.

Legal Standard of Review

Any interpretation of the Zoning Ordinance must be reviewed in light of well-settled New York law. New York courts have established that zoning codes are in derogation of common law property rights. As such, they must be strictly construed, and it has been unequivocally determined that any ambiguities in the language of a zoning code must be resolved in favor of the property owner. *See Matter of Allen v. Adami*, 39 N.Y.2d 275 (Ct App 1976)(emphasis added); *see also Robert E. Havell Revocable Trust v. Zoning Board of Appeals of Village of Monroe*, 127 A.D.3d 1095 (2d Dep't 2015), *citing Matter of BBJ Assoc., LLC v. Zoning Bd. of Appeals of Town of Kent*, 65 A.D.3d 154, 159, 881 N.Y.S.2d 496 [citation omitted]; *Matter of Subdivisions, Inc. v. Town of Sullivan*, 92 A.D.3d 1184, 1185, 938 N.Y.S.2d 682. Therefore, wherever the Zoning Ordinance is unclear or ambiguous, it must be interpreted in favor of the Applicant, as property owner.

It is respectfully submitted that, as discussed below, the particular sections of the Zoning Ordinance clearly support the Applicant's position. Yet even if those sections are in any way open to interpretation, those ambiguities must be interpreted in favor of the Applicant.

Analysis of Zoning Ordinance

As set forth above, the Building Inspector has made his interpretation based upon the proposed use of the condominium form of ownership. Zoning ordinances cannot be employed by a municipality to exclude condominiums or discriminate against the condominium form of ownership, for it is use rather than form of ownership that is the proper concern and focus of zoning and planning regulations. North Fork Motel, Inc. v. Grigonis, 93 A.D.2d 883, 461 N.Y.S.2d 414 (2d Dep't 1983). Whether the individual townhouse units are created by a subdivision map or filed condominium floor plan map will not change the use, appearance or design of the Project, but only the actual form of ownership which is not a zoning issue.

Even absent the issue of dependence on the form of ownership, we believe the project as designed is permitted in the MDR-1 based upon the clear language of the Code. Townhouses are a permitted principal use in the MDR-1 District. Zoning Ordinance § 300, Attachment 1. "Townhouse" is defined in the Zoning Ordinance as, "Two or more side-by-side attached dwelling units sharing one or more common walls, with each dwelling unit located on a separate lot." Zoning Ordinance § 300-15.B.(2)(f). It is clear from the plans enclosed herewith that the proposed homes are indeed attached dwelling units sharing common walls. The Building Inspector has based his interpretation on the fact that the units are not on "separate lots."

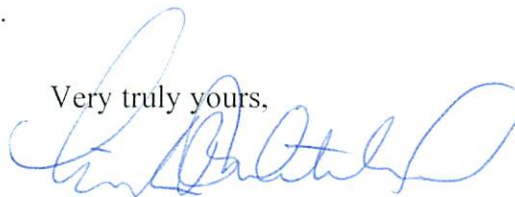
The Zoning Ordinance defines a "lot" as, "A parcel of land separated from other parcels of land for purposes of sale, lease or separate use. Such separation may be described on a subdivision plat, indicated on a recorded map or deed, specified by metes and bounds, or created as a result of a public street or railroad right-of-way." A "parcel", is then defined as, "A circumscribed area of land identified by a unique Tax Map identification number consisting of a section, map and lot number." Zoning Ordinance § 300-14.

The townhouses are proposed to be developed and sold individually as condominiums. As set forth above, condominium units must be shown on a recorded map, meeting the requirement for separation set forth in the definition of "lot." Each townhouse will be sold, owned and taxed separately, and will be given its own Tax Map identification by the Assessor. As a result, each townhouse will be located on its own parcel as defined, and therefore its own lot, as clearly defined by the Zoning Ordinance. Furthermore, even if there is any ambiguity as to how such terms should be interpreted, such ambiguity must be resolved in favor of the Applicant, in accordance with well-established black letter law.

Based upon the above, it is therefore respectfully submitted that the determination of the Building Inspector should be overturned, in accordance with the Zoning Ordinance and unequivocal New York law. We look forward to discussing this matter with the Board at your upcoming meeting.

Thank you for your consideration.

Very truly yours,



Linda B. Whitehead

Enclosures

cc: Livingston Development Group, LLC
Christina Griffin

APPLICATION TO ZONING BOARD OF APPEALS
VILLAGE OF DOBBS FERRY

Note: Eight copies of the application must be filed with the Clerk of the Board, no later than 2:00 p.m., twenty-one (21) days prior to the date of the meeting.



Date Filed: _____

Applicant's Name: Victor Serricchio, Brian Dyer, Andrew Sokolik (owners)
Livingston Development Group, LLC (applicant) Telephone: 914-403-6756

Property Location: 19 Livingston Avenue, Dobbs Ferry, NY

Sheet: 3.120, Block: 104, Lots/Parcel: 3

The undersigned applicant requests a hearing before the Zoning Board of Appeals based on the following:
(check one)

Appeals decision of Building Inspector Special Permit

Every application or appeal must be accompanied by an accurate plot plan to scale showing location of all existing structures, and also drawings showing the exact location, dimensions, and the nature of all proposed structures. These requirements will ordinarily be best met with surveys and architect's drawings. The Board may require that surveys and/or drawings be prepared and signed by duly accredited surveyors, engineers, or architects. Applicant is required to show proof of title to or legal interest in the premises, by deed or contract of sale, or other document. This application or appeal is made pursuant to the authorization contained in the Building Zoning Ordinance:

Article: VII Section: 300-22 Subdivisions: B(2)

The basis of the relief sought by the undersigned pursuant to the provisions of the Building Zoning Ordinance is as follows: (Set forth briefly all pertinent facts and use additional sheets if necessary).

See narrative from McCullough, Goldberger & Staudt, LLP.

Linda B. Whitehead, Attorney
Applicant

STATE OF NEW YORK)
COUNTY OF WESTCHESTER) ss:

On this 24 day of March, 2021 before me personally came Linda B. Whitehead who came duly sworn deposes and says that he/she read the foregoing application and knows the content thereof and that the same is true to his/her own knowledge.

My Hanh Retherford
Notary Public

MY HANH RETHERFORD
NOTARY PUBLIC, State of New York
No. 01RE6023103
Qualified In Westchester County
Commission Expires April 12, 2023



VILLAGE OF DOBBS FERRY

Building Department
112 Main Street
Dobbs Ferry, New York 10522
TEL: (914) 231-8513 • emanley@dobbsferry.com

3/15/2021

Vic Serricchio & Partners
PO Box 331
Yonkers, NY 10710

Re: 19 Livingston Ave

S/B/L 3.120-104-3

Dear Mr. Serricchio,

Pursuant to a review of the submitted proposed plans to construct 8 new townhouses on your vacant lot, the following determinations were made.

The property is located predominantly in the MDR-1 Zone.

The code allows Townhouses in this zone and is specific in its' category definition 300-15B(2)(f) Townhouse. Two or more side-by-side attached dwelling units sharing one or more common walls, with each dwelling unit located on a separate lot.

You have proposed all the units on the existing lot, with no subdivision to create "separate lots". This scenario would be defined as "Multi-Family Housing Complex" in 300-15(2)(c&d), which is not permitted in the MDR-1 zone as per Table A-1 in Appendix A.

Thus requiring a variance to construct on a common lot.

For these reasons your proposal, as submitted, is denied pending zoning board review.

If you have any questions, please contact the Building Department at (914) 231-8513.

Respectfully,

Ed Manley
Land Use Officer

The Office of the Westchester County Clerk: This page is part of the instrument; the County Clerk will rely on the information provided on this page for purposes of indexing this instrument. To the best of submitter's knowledge, the information contained on this Recording and Endorsement Cover Page is consistent with the information contained in the attached document.



520393175DED002Z

Westchester County Recording & Endorsement Page

Submitter Information

Name: Thoroughbred Title Services, LLC Phone: 914-644-6100
 Address 1: 800 Westchester Avenue Fax: 914-644-6159
 Address 2: Suite S434 Email: vesposito@thoroughbredtitleservices.co
 City/State/Zip: Rye Brook NY 10573 Reference for Submitter: 22748

Document Details

Control Number: **520393175** Document Type: **Deed (DED)**
 Package ID: 2012020800074001001 Document Page Count: **3** Total Page Count: **5**

Parties

Additional Parties on Continuation page

1st PARTY 2nd PARTY
 1: 19 LIVINGSTON AVE REALTY CORP - Other 1: SERRICCHIO VICTOR - Individual
 2: 2: DYER BRIAN - Individual

Property

Additional Properties on Continuation page

Street Address: 19 LIVINGSTON AVENUE Tax Designation: 3.120-104-3
 City/Town: GREENBURGH Village: DOBBS FERRY

Cross-References

Additional Cross-Refs on Continuation page

1: 2: 3: 4:

Supporting Documents

1: RP-5217 2: TP-584

Recording Fees

Statutory Recording Fee: \$40.00
 Page Fee: \$20.00
 Cross-Reference Fee: \$0.00
 Mortgage Affidavit Filing Fee: \$0.00
 RP-5217 Filing Fee: \$250.00
 TP-584 Filing Fee: \$5.00
 Total Recording Fees Paid: **\$315.00**

Mortgage Taxes

Document Date:
 Mortgage Amount:
 Basic: \$0.00
 Westchester: \$0.00
 Additional: \$0.00
 MTA: \$0.00
 Special: \$0.00
 Yonkers: \$0.00
 Total Mortgage Tax: **\$0.00**

Transfer Taxes

Consideration: \$1,145,000.00
 Transfer Tax: \$4,580.00
 Mansion Tax: \$0.00
 Transfer Tax Number: 38310

Dwelling Type: Exempt:
 Serial #:

RECORDED IN THE OFFICE OF THE WESTCHESTER COUNTY CLERK



Recorded: 02/24/2012 at 11:54 AM
 Control Number: **520393175**
 Witness my hand and official seal

Timothy C. Idoni
 Westchester County Clerk

Record and Return To

Pick-up at County Clerk's office

Thoroughbred Title Services, LLC
 800 Westchester Avenue
 Suite S434
 Rye Brook, NY 10573
 Attn: Vincent Esposito

The Office of the Westchester County Clerk: This page is part of the instrument; the County Clerk will rely on the information provided on this page for purposes of indexing this instrument. To the best of submitter's knowledge, the information contained on this Recording and Endorsement Cover Page is consistent with the information contained in the attached document.

520393175DED002Z

Westchester County Recording & Endorsement Page

Document Details

Control Number: **520393175**

Document Type: **Deed (DED)**

Package ID: 2012020800074001001

Document Page Count: 3

Total Page Count: 5

1st PARTY Addendum

2nd PARTY Addendum

SOKOLIK ANDREW

Individual

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

3

THIS INDENTURE, made the 8th day of February, in the year 2012

BETWEEN 19 Livingston Avenue Realty Corp., with its principal place of business at 19 Livingston Avenue, Dobbs Ferry, New York 10522

party of the first part, and Victor Serricchio, Brian Dyer and Andrew Sokolik, each with a 1/3 interest party of the second part, *19 Livingston Avenue, Dobbs Ferry, NY 10522*

WITNESSETH, that the party of the first part, in consideration of

ten (\$10.00) dollars

paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Village of Dobbs Ferry, Town of Greenburgh, County of Westchester and State of New York, being bounded and describd as follows:

BEGINNING at a point on the westerly side of Livingston Avenue, distant 76.00 feet northerly from the corner formed by the intersection of the westerly side of Livingston Avenue with the northerly side of Post Road;

RUNNING THENCE along the northerly bounds of the lands now or formerly of the Missionary Sisters of the Scared Heart, the following courses and distances: North 33 degrees 30' 30" West, 59.67 feet; North 56 degrees 10' 20" West, 90.00 feet; North 38 degrees 39' 20" West, 71.20 feet; North 56 degrees 10' 20" West, 70.00 feet; North 33 degrees 49' 40" East, 50.00 feet; North 56 degrees 10' 20" West, 100.28 feet to a point on the southerly boundary of lands now or formerly of the New York Central Railroad;

RUNNING THENCE along the lands now or formerly of the New York Central Railroad, North 44 degrees 16' 48" East, 132.58 feet to the lands now or formerly of R.L. Luckey;

RUNNING THENCE along the lands now or formerly of Luckey, South 56 degrees 10' 20" East, 265.00 feet to a point on the westerly side of Livingston Avenue;

RUNNING THENCE in a southerly direction along Livingston Avenue the following courses and distances: South 33 Degrees 49' 40" West, 30.00 feet; South 02 degrees 26' 40" West, 117.58 feet; South 14 degrees 34' 15" West, 100.00 feet to the point or place of **BEGINNING**.

"Being the same premises described in the deed to the parties of the first part herein by deed dated 8/24/85 and recorded 11/19/85 in the Westchester County Clerk's Office at Liber 8272 Page 140."

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; **TOGETHER** with the appurtenances and all the estate and rights of the party of the first part in and to said premises; **TO HAVE AND TO HOLD** the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.

AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

(Handwritten signatures)

THOROUGHBRED TITLE SERVICES, LLC

Title No. TTS12-22748-W

SCHEDULE A

ALL that certain plot, piece or parcel of land, situate, lying and being in the Village of Dobbs Ferry, Town of Greenburgh, County of Westchester and State of New York, County of Westchester and State of New York being bounded and deccribed as follows:

BEGINNING at a point on the westerly side of Livingston Avenue, distant 76.00 feet northerly from the corner formed by the intersection of the westerly side of Livingston Avenue with the northerly side of Post Road;

RUNNING THENCE along the northerly bounds of the lands now or formerly of the Missionary Sisters of the Scared Heart, the following courses and distances:

North 33 degrees 30 minutes 30 seconds West, 59.67 feet;

North 56 degrees 10 minutes 20 seconds West, 90.00 feet;

North 38 degrees 39 minutes 20 seconds West, 71.20 feet;

North 56 degrees 10 minutes 20 seconds West, 70.00 feet;

North 33 degrees 49 minutes 40 seconds East, 50.00 feet;

North 56 degrees 10 minutes 20 seconds West, 100.28 feet to a point on the southerly boundary of lands now or formerly the New York Central Railroad;

THENCE along the lands now or formerly of the New York Central Railroad, North 44 degrees 16 minutes 48 seconds East, 132.58 feet to the lands now or formerly of R.L. Luckey;

THENCE along the lands now or formerly of Luckey, South 56 degrees 10 minutes 20 seconds East, 265.00 feet to a point on the westerly side of Livingston Avenue;

THENCE in a southerly direction along Livingston Avenue the following courses and distances:

South 33 degrees 49 minutes 40 seconds West, 30.00 feet;

South 02 degrees 26 minutes 40 seconds West, 117.58 feet;

South 14 degrees 34 minutes 15 seconds West, 100.00 feet to the point or place of

Beginning.

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of Westchester, ss:

On the 8th day of February in the year 2012, before me, the undersigned, personally appeared Silvio DiMeglio

, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



RANDI ROSEN
Notary Public, State of New York
No. 01RO6159171
Qualified in Westchester County
Commission Expires Jan. 16, 2015

ACKNOWLEDGEMENT TAKEN IN NEW YORK STATE

State of New York, County of _____, ss:

On the _____ day of _____ in the year _____, before me, the undersigned, personally appeared

, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

ACKNOWLEDGEMENT BY SUBSCRIBING WITNESS TAKEN IN NEW YORK STATE

State of New York, County of _____, ss:

On the _____ day of _____ in the year _____, before me, the undersigned, a Notary Public in and for said State, personally appeared _____, the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he/she/they reside(s) in

(if the place of residence is in a city, include the street and street number if any, thereof); that he/she/they know(s)

to be the individual described in and who executed the foregoing instrument; that said subscribing witness was present and saw said

execute the same; and that said witness at the same time subscribed his/her/their name(s) as a witness thereto

ACKNOWLEDGEMENT TAKEN OUTSIDE NEW YORK STATE

*State of _____, County of _____, ss:

*(Or insert District of Columbia, Territory, Possession or Foreign County)

On the _____ day of _____ in the year _____, before me _____ the undersigned personally appeared

Personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual make such appearance before the undersigned in the

(add the city or political subdivision and the state or country or other place the acknowledgement was taken).

**Bargain and Sale Deed
With Covenants**

Title No. TTS12-22748-W

19 Livingston Avenue Realty Corp
TO

Victor Serricchio, Brian Dyer and Andrew Sokolik

SECTION: SHEET: 3, 120

BLOCK: 104

LOT: 3

COUNTY OR TOWN: 19 Livingston Avenue, Dobbs Ferry, New York 10522

