

Case Details | Case Number: ESX-L-004306-25

Case Caption: HOMES FOR ALL NEWARK VS NEWARK CENTRAL PLANN IN

Court: Civil Part

Venue: ESSEX

Case Initiation: 06/05/2025

Case Track: 4

Case Status: Active

Jury Demand: NONE

Case Type: ACTIONS IN LIEU OF PREROGATIVE WRITS Judge: BENJAMIN, AVION, M

Team: 3

Law Firm Case ID:

Transaction Information

Transaction ID: LCV20251682710

Received by eCourts On: 06/05/2025

Total Payment Amount: \$0.00

Documents Received:

COMPLAINT

Case Information Statement

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HOMES FOR ALL NEWARK, TANISHA
GARNER, ABE GRUSWITZ, and JOHN
GOLDSTEIN,

Plaintiffs,

v.

NEWARK CENTRAL PLANNING BOARD,
and IBERIA II REALTY URBAN
RENEWAL, LLC.,

Defendants.

SUPERIOR COURT OF NEW
JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO.: ESX-L-____-25
CIVIL ACTION

**COMPLAINT IN LIEU OF
PREROGATIVE WRITS**

Plaintiffs, HOMES FOR ALL NEWARK and TANISHA GARNER, ABE GRUSWITZ, and JOHN GOLDSTEIN, officers and members of Homes for All Newark, (collectively, the "Plaintiffs") residing or operating in the City of Newark, County of Essex and State of New Jersey, by

way of Complaint in Lieu of Prerogative Writs against the Defendants, allege as follows:

NATURE OF THE ACTION

1. This is an action in lieu of prerogative writs seeking reversal of the decision of the Newark Central Planning Board approving Iberia II Realty Urban Renewal, LLC's application for preliminary and final site plan approval, CPB-24-101, which was memorialized by Resolution adopted by the Newark Central Planning Board on April 21, 2025, and published in The Star-Ledger on April 25, 2025.

2. The application at hand involves the development of four (4) new high-rise mixed-used buildings (with two 30-story towers and two 26-story towers) in Newark's Ironbound neighborhood (the "Application").

3. The Ironbound is characterized by low-scale buildings, and a community that for decades has experienced very high density and significant problems with flooding.

4. Plaintiffs and many members of the community, including Newark's Equitable Growth Advisory Commission, have concerns regarding rising rents, displacement, and the anticipated infrastructure problems arising from the increased height, 98% impervious lot coverage, 0-foot front yard setback and resulting increased density in the Ironbound neighborhood contrary to one of the goals of the 2023 Newark Master Plan; which recommends that

"no additional density . . . beyond what is currently permitted" be effected "until a comprehensive climate adoption plan is prepared to outline the interventions necessary for long-term sustainability and resiliency." (2023 Master Plan, 3.6.5). No such Plan has been implemented or developed.

5. In response to significant procedural violations of the Municipal Land Use Law ("MLUL"), N.J.S.A. 40:55D-1 et seq., and substantive violations of Newark's River Public Access and Redevelopment Plan (the "Riverfront Redevelopment Plan"), Plaintiffs bring this challenge in order to ensure that the developer properly complies with the MLUL and the Redevelopment Plan and that the Newark Central Planning Board permits them to participate in the process in a manner that ensures that their serious concerns about the Application's adverse impact on the density, character of their neighborhood, flooding and equitable growth are heard and considered by the City of Newark and its Planning Board.

PARTIES

6. Plaintiff HOMES FOR ALL NEWARK ("HFAN") is a grassroots, tenant-led 501(c)(3) corporation organized to advance housing justice in the City of Newark. HFAN brings deep local knowledge, an active membership, and a demonstrated commitment to ensuring that all Newark residents – regardless of income – can access safe, affordable, and dignified housing. HFAN is open to all Newark

residents who believe housing is a human right. HFAN brings this Complaint on behalf of its members and in furtherance of its mission to ensure that the City of Newark remains a place where working-class residents, Black and brown communities, and low-income families are not displaced by unlawful eviction practices or predatory development.

7. Plaintiff TANISHA GARNER, at all times relevant to this Complaint, has served as President of HFAN. She is an interested person in the Application and participated in the Planning Board's hearing on March 3, 2025. She resides at 55 Oxford Street, Apt. 6D, Newark, N.J. 07015.

8. Plaintiff ABE GRUSWITZ, at all times relevant to this Complaint, has served as Secretary of HFAN. He is an interested person in the Application and has participated in numerous HFAN meetings to discuss HFAN's strategy to advocate for community interests in connection with the Application. He resides at 49 Hill Street, Apt. 302, Newark, N.J. 07102.

9. Plaintiff JOHN GOLDSTEIN, at all times relevant to this Complaint, has been an active member of HFAN. He is an interested person in the Application and participated in the Planning Board's hearing on March 3, 2025. He resides at 39 Madison Street, Apt. 203, Newark, N.J. 07105.

10. Defendant NEWARK CENTRAL PLANNING BOARD (the "Planning Board") is the duly constituted planning board of the City of

Newark, per the MLUL, N.J.S.A. 40:55D-1 et seq. and City Ordinance §41:11-1 et seq., and is responsible for, inter alia, approving site plan applications for proposed development.

11. Defendant IBERIA II REALTY URBAN RENEWAL, LLC, a limited liability company of the State of New Jersey ("Iberia II"), applied to Defendant Planning Board for a preliminary and final major site plan approval, with no variances and six waivers, to construct four high-rise mixed-use buildings consisting of two 30-story towers and two 26-story towers and containing 1,408 residential units at 450-466 Market Street and 31-39 Jefferson Street, Newark, New Jersey (the "Property").

STATEMENT OF FACTS

Description of the Property

12. The Property is known as Lots 1 and 80 in Block 175, located at 450-466 Market Street and 31-39 Jefferson Street in the Ironbound neighborhood of Newark in the East Ward.

13. Lot 1 is developed with the remains of a 2-story masonry building (with impervious patios and pavers around its foundation), previously owned and used by the Iberia Restaurant. The lot is approximately 1.94 acres, 84,506.4 square feet, and includes approximately 244 feet of frontage along Market Street, 366 feet along Jefferson Street, and 380 feet along Congress Street. There are no buildings on either side of Lot 1 on any of the three streets.

14. Lot 80 is paved completely as a concrete parking area and measures approximately .54 acres, 23,522.4 square feet, with 113 feet of frontage along Jefferson Street and 79 feet along Congress. There are three existing low-level buildings with frontage on Congress near Ferry Street, with one building, closest to but not adjacent to Lot 80, showing a front yard setback of approximately 20 feet. On Jefferson Street that are several low-level commercial and residential buildings south of Lot 80 toward Ferry Street, with the one building adjacent to Lot 80 showing a front yard setback of approximately 12 feet. Together with Lot 1, the lots amount to 2.48 acres, 108,028.8 square feet.

The Riverfront Redevelopment Plan and the 6th Amendment Thereto

15. On August 7, 2013, the Newark City Council adopted the Riverfront Redevelopment Plan. The Plan provided new rules, for the first time since the 1950s, for buildings to be developed along the waterfront. It set forth a host of "Riverfront Development Principles" that included "[b]ring[ing] people together from across Newark and beyond crossing lines of race, background and income," while spurring economic activity and job opportunities and "healing the environment and the River." (Riverfront Redevelopment Plan at p.3)

16. The Plan sets forth rules governing building bulk, including height and front yard setbacks, sets forth the percent of Yard Impervious Area that is permitted for lots 5,000 square

feet or less, contains standards for Parking, Site Planning and Building Design and permits an applicant to apply for variances.

17. There is no provision permitting waivers or exemptions from the Plan's requirements.

18. The Plan is silent as to the Maximum Impervious Lot Coverage for lots greater than 5,000 square feet, which was not regulated by Newark's zoning ordinance at the time. The Plan is also silent as to stormwater management requirements that were also incorporated into Newark's Zoning Ordinance after 2013.

19. The Riverfront Redevelopment Plan sets forth in detail how the Plan is consistent with and advances the goals of the Newark's Master Plan and efforts to create a robust Community and Stakeholder Engagement Process, including 260 park design meetings, 230 development framework meetings and 680 neighborhood meetings. Numerous members of HFAN remember participating in such meetings.

20. The 2023 Newark Master Plan was also the culmination of years of robust public engagement, including numerous meetings and workshops with residents, business owners, and community organizations. This Master Plan, as well as the original Redevelopment Plan, were explicitly designed to protect the Ironbound from overdevelopment, mitigate flooding risks, and prevent displacement, while promoting equitable and sustainable growth along the riverfront.

21. With respect to Block 175, Lot 1, the Riverfront Redevelopment Plan zoned the lot as Riverfront MX-1 (light industrial, residential and retail) with a maximum of 5 stories. At the time, Block 175, Lot 80 did not appear to be included within the boundaries of the Plan area, according to official planning maps.

22. Starting in 2017, the Riverfront Redevelopment Plan has undergone numerous amendments, often, on information and belief, to accommodate the desires of a particular developer who has indicated its intent to purchase the property in question. Public participation or consultation has been minimal if any, outside the formal public hearings held by the Defendant Planning Board and the City Council permitting public comment upon second reading of the redevelopment amendments.

23. In 2017, Block 175, Lot 1 was rezoned as Riverfront MX-2 (medium-density, residential, office and retail) with a maximum height of 12 stories with a 145-feet maximum.

24. It was not until the 6th Amendment, which was adopted by the Newark City Council on September 5, 2024, that Block 175, Lot 80 was explicitly included within the Riverfront Redevelopment Plan.

25. In stark contrast to the community-driven approach that shaped the Master Plan and the original 2013 Riverfront Redevelopment Plan, the 6th Amendment to the Riverfront

Redevelopment Plan was advanced with minimal public input and little transparency. This amendment enables upzoning and large-scale development that directly contradicts the protections and priorities established by the community in the original plans.

26. Even though the 2023 Newark Master Plan had just designated Lot 80 as R-4 (residential) with a maximum height of 5 stories, the amendment raised the height limitation to a maximum of 30 stories. Similarly, the amendment raised the height limit for Lot 1 from 12 stories to a maximum of 30 stories.

27. The 6th amendment also made clear that the Active Street Front Design elements, set forth in Section 8-P of the Original Plan, would govern development along Congress Street, Jefferson Street and Market Street frontages of Block 175, Lot 1 and Lot 80.

Public Participation in the 6th Amendment Process

28. The City of Newark did not engage the Plaintiffs or the greater Ironbound community prior to adopting the 6th Amendment that came right on the heels of the 2023 Master Plan, which had been adopted on September 16, 2023, and involved numerous stakeholder and community meetings.

29. Instead, Defendant Iberia II held two community meetings — one before the amendment was adopted and one after — which appeared designed to “sell” the Application to the community rather than to gauge their desires or hear their concerns.

30. The first meeting was held on November 8, 2023, at the Portuguese sports club with 150-200 people attending. Most of the attendees spoke out against the Application, expressing key concerns about its height and affordability. The developer did not express any intention to modify the Application.

31. A second community meeting was held in October 2024, after the 6th Amendment to the Plan had been adopted by the Newark City Council. Community participants, including members of Plaintiff HFAN, raised similar concerns as they did in the first meeting. Attendees wanted clarification on why the Application had to include such tall buildings. People also expressed the opinion that such huge towers would serve as a wall between the community and the Passaic River in violation of a key principle of the original Riverfront Redevelopment Plan. They also continued to express concern about the affordability of the so-called "Affordable Units" and the adverse impact that the market rate units would have on rents in the Ironbound.

32. Defendant Iberia II claimed to have added a health center to the Application in response to "community feedback." There was also a panel discussion, including a City employee from the planning office, who explained why the developer was permitted to build 30/26 story towers and how the entity had negotiated with the City of Newark to secure such permission.

33. On October 5, 2024, the City's Equitable Growth Advisory Commission issued a report that included: "This report is a follow-up to the Committee report of 9.20.24 regarding the '6th Amendment to Newark's River: Public Access and Redevelopment Plan' (aka Riverfront Redevelopment Plan). We report today that all non-City staff Commissioners are unanimous in their agreement with the Committee report that determined:

that the ordinance, particularly the Iberia upzoning, did violate equitable development in process and substance and will likely have deleterious effects. In addition, Commissioners saw the Iberia matter as a symbolic, even turning point, moment in neighborhood redevelopment issues.... The Commission recommends that the City clarify its strategic thinking on redevelopment and how all, including the Commission, can meaningfully participate in determining the City's approach, including the balancing of risks, benefits, and competing interests.

The Application

34. Defendant Iberia II proposed constructing four (4) high-rise mixed-use buildings, as previously described above. Its Application did not include any request for variances.

35. The development will include a total of 1,408 residential units (with a 20% affordable set aside) and approximately 18,000 square feet of retail space with five storefronts, 85,400 square feet of amenities, including storage space, 60,352 square feet of elevated outdoor space, and 620 parking spaces (including 150 spaces for public usage) spread throughout 5 levels of parking garage, including on the ground floor. Impervious lot coverage

will be 98%, and there will be no front setback on the three sides adjacent to Market, Congress and Jefferson Streets. Fewer shade trees will be provided than required by the Riverfront Redevelopment Plan.

36. This is an enormous mixed-use Application, which will stand between the low-level buildings located on Ferry Street and the Newark Riverfront and will significantly change the landscape of Ironbound.

The Special Hearing

37. In a letter dated February 6, 2025, John Barree, PP, AICP, Newark's Consulting Planner deemed the Iberia II Application complete.

38. On February 18, 2025, a Notice for a "SPECIAL VIRTUAL HEARING" of the Planning Board regarding the Iberia II Application was published in The Star Ledger. The Notice included language informing the public that at the hearing "all interested persons will be given an opportunity to question witnesses" presented by Iberia II and that "The Applicant shall also apply for such variance relief, exceptions, waivers, departures, permits or other approvals or licenses deemed necessary or appropriate by the Applicant or the Board. . ." The notice contained no description of any specific variance or waiver relief sought.

39. In the Central Planning Board Staff Report, dated February 26, 2025, no variances were noted; instead, the staff advised that

four (4) waivers were required since the Application, as proposed, did not meet requirements specifically set forth in the Redevelopment Plan.

40. The four waivers listed in the Staff Report were: "Insufficient Shade Trees" (Riverfront Redevelopment Plan 8-E); "Excessive Entrance Illumination" (Riverfront Redevelopment Plan, 8-G); "Excessive Walkway Illumination" (Riverfront Redevelopment Plan, 8-G); and "Active Ground Floor Requirements" (Riverfront Redevelopment Plan, 8-P).

41. Members of HFAN, including some of the individual Plaintiffs, checked for documents for the Application on the City's Google Drive: https://drive.google.com/drive/u/0/folders/1-TwjgDgjEp8Q36TOfKqVYpYpApAo_vOz. Based on their personal experience, key documents, reports and drawings on which Iberia II relied were not available for public view until February 26, 2025, five (5) days before the hearing.

42. On March 3, 2025, the Central Planning Board held a special meeting at which time the Board heard testimony from Defendant Iberia II's architecture, planning, and engineering experts. Iberia II's traffic expert did not testify and was not available for questioning by members of the Board or interested persons who attended the meeting, which was held virtually.

43. Approximately 36 members of the public were present and were able to present comments prior to the Board voting on the

Application. Although several members of HFAN had prepared questions to ask the Applicant's experts, they were not permitted to cross-examine any of Iberia II's professionals who testified. Indeed, neither the Board's Counsel nor any of its members inquired whether anyone who was present desired to cross-examine the three witnesses. Due to the virtual format of the hearing, interested persons had no way to interrupt the hearing to request cross-examination.

44. The official agenda of the May 3, 2025 Special Hearing indicates that no variances were requested; instead, counsel for Iberia II stated at the outset of the hearing that it was requesting six (6) waivers, including the four waivers noted in the Planning Board Staff Report, and two additional waivers: "Six (6) driveways to/from subject site with three (3) to/from Congress Street and three (3) to/from Jefferson Street"; and "Access Aisle Width of 22 feet for two-way commercial traffic within the Indoor Parking Garage."

The Resolution

45. In a document entitled "NCP 2025 Memorialization Resolution" dated April 21, 2025, regarding CPB 24-101, the Planning Board purportedly approved only four (4) of the six (6) waivers that were requested.

46. These four waivers were identified in the Board's Staff Report, dated February 26, 2025. Waiver 5 requesting the right to

construct "Six (6) driveways to/from subject site with three (3) to/from Congress Street and three (3) to/from Jefferson Street" and waiver 6 requesting the right to construct an "Access Aisle Width of 22 feet for a two-way commercial traffic within the Indoor Parking Garage" were not noted or discussed in the Staff Report. No waiver was specified in the Notice of the Public Hearing, so it is unclear whether waivers 5 and 6 were granted based on the Resolution alone (which does not address these waivers in its Statement of Facts prior to the WHEREAS clauses).

47. Notwithstanding this confusion in the Resolution itself, the summary of the Resolution published in The Star Ledger states that the Board granted all six waivers as follows:

Additionally, the Board granted waivers for insufficient Shade Trees (X2), excessive Entrance Illumination, excessive Walkway Illumination, Active Ground Floor Requirements, Six (6) driveways to/from subject site with three (3) to/from Congress Street and three (3) to/from Jefferson Street, and providing an Access Aisle Width of 22 feet for a two-way commercial traffic within the Indoor Parking Garage.

48. A review of the Resolution indicates that the Board did not memorialize any fact finding or analysis as to each of these waivers; instead, it noted that the "Applicant has presented testimony of its experts regarding . . . the variances requested," (emphasis added), and then proceeded to make legal conclusions that the "grant of the approvals advances the purposes of the MLUL

and the benefits of granting the deviations and approvals substantially outweigh any detriments.”

49. The Resolution additionally confuses the matter with respect to the “Insufficient Shade Trees” waiver seeking permission to divert from the requirements of Riverfront Redevelopment Plan 8-E. This is the case, because one of the conditions of approval states: “The Applicant shall confer with the City’s arborist to provide a total of 14 shade trees along each of Jefferson Street and Congress Street” thus implying that the waiver to provide only 6 trees on each of those streets was not granted, unless “the City Tree Superintendent confirms the trees cannot be provided.”

CLAIMS FOR RELIEF

COUNT I

(Procedural Violations of the MLUL)

50. Plaintiffs hereby incorporate the allegations in Paragraphs 1 through 49.

Failure to Give Notice of Specific Variances

51. N.J.S.A. 40:55D-11 provides that notices of applications for site plan review “shall state the date, time and place of the hearing, [and] the nature of the matters to be considered.” If a variance is sought, the Notice must contain specific information about the application, including, among other requirements, the

specific variances being sought, and the date, time and location of the public hearing.

52. Although, N.J.S.A. 40:55D-51(b) permits a planning board when acting upon applications for preliminary site plan approval to grant an exemption "if literal enforcement of one or more provisions of the ordinance is impracticable or will exact undue hardship because of peculiar conditions pertaining to the land in question" (emphasis added), such exemptions do not apply to Redevelopment Plans, unless the plan specifically has a "deviation clause" that specifically lays out a percentage or other numeric deviation that a planning board is allowed to grant; otherwise, the redevelopment plan in question typically must be amended by ordinance.

53. In this matter, the Riverfront Redevelopment Plan does not authorize the Central Planning Board to grant deviations, exemptions or waivers. Instead, the Plan in 9-B authorizes Variances. It states at page 58:

The Central Planning Board and the Zoning Board of Adjustment are authorized to grant variances from the building and use requirements contained in this plan in accordance with the jurisdictional authority stipulated in the Municipal Land Use law at NJS 40:55D-60 and 40:55D-70.

54. In this matter, Iberia II did not request any variances in its application; its Public Hearing Notice did not specify any variances; and the Board's Staff Report and Resolution both stated

"VARIANCES: None." Instead, Iberia II requested waivers that are not authorized under the Riverfront Redevelopment Plan.

55. In the text of the Resolution, the Board employed the standards applicable to variances, not the hardship test applicable to exemptions/waivers under N.J.S.A. 40:55D-51(b), when it concluded that "the grant of the variances and waivers advances the purposes of the Municipal Land Use Law ("MLUL") and the benefits of granting the deviations and approvals substantially outweigh any detriments" (emphasis added).

56. Because Iberia II was in effect requesting specific variances, and the Board treated its waiver requests as such, the Public Special Hearing Notice caused to be published and mailed by Iberia II was deficient.

Failure to Make Key Documents Available on a Timely Basis

57. N.J.S.A. 40:55D-10(b) states, in relevant part: "Any maps and documents for which approval is sought at a hearing shall be on file and available for inspection at least 10 days before the date of the hearing."

58. In this matter, the Board staff did not place key documents, including but not limited to the survey and architectural drawings concerning the Application on which Iberia II relied, in the relevant Google Drive folder until February 26, 2025.

59. Because such material was not available to the public 10 days before March 3, 2025, the Board did not comply with this requirement of the MLUL.

Failure to Permit Cross-Examination

60. N.J.S.A. 40:55D-10(d) states:

The testimony of all witnesses relating to an application for development shall be taken under oath or affirmation by the presiding officer, and the right of cross-examination shall be permitted to all interested parties through their attorneys, if represented, or directly, if not represented, subject to the discretion of the presiding officer and to reasonable limitations as to time and number of witnesses.

61. Although the Public Special Hearing Notice explicitly stated that interested persons would be given the opportunity to cross-examine witnesses, such an opportunity was denied. Neither Counsel for the Board nor the Chair of the Board asked people present at the hearing whether they wanted to cross-examine Iberia II's expert witnesses. In fact, when one person stated, during the comment period, that they had attended the meeting with the intent to cross-examine Iberia II's planner, Counsel for the Planning Board interrupted her, and emphasized that there would not be any cross-examination by interested persons at this hearing.

62. Several members of HFAN, including Plaintiffs Garner and Goldstein, and other residents of Ironbound had organized among themselves and had divvied up potential questions based on issues of concern in anticipation of the right of cross-examination.

63. Because the Board denied Plaintiffs and other interested persons attending the hearing the right to cross-examine Iberia II's expert witnesses, it violated the MLUL.

WHEREFORE, Plaintiffs HFAN, Garner, Gruswitz and Goldstein demand that Judgment be entered against Defendants Newark Central Planning Board and Iberia II as follows:

- a. Declaring that the failure of the Special Hearing Notice to specify the variances requested and necessary to approve the Application as proposed violated the MLUL;
- b. Declaring that the Board's failure to make available to the public key documents on which Iberia II relied in a timely manner was in violation of MLUL;
- c. Declaring that the Board's denial of the right of interested persons, such as the members of HFAN present at the special hearing, to cross-examine Iberia II's expert witnesses violated the MLUL;
- d. Declaring that together all three violations interfered with Plaintiffs' ability to properly prepare for the hearing and to participate fully in the hearing in such a way as to ensure that their voices would be heard and could impact the decision;
- e. Declaring the Resolution adopted by the Defendant Planning Board on April 21, 2025, as null and void;
- f. Denying the application of Defendant Iberia II;

- g. Awarding court costs and attorneys' fees; and
- h. Granting such other relief as the Court deems appropriate and just.

COUNT II

(Substantive Violations of the Riverfront Redevelopment Plan)

64. Plaintiffs hereby incorporate the allegations in Paragraphs 1 through 63.

65. Pursuant to N.J.S.A. 40:55D-11(g), the Planning Board is required to include "facts and conclusions" based on testimony, documents and other exhibits submitted at the hearing in a resolution memorializing its decision on any application for development.

66. In the Resolution at hand, the Board simply includes the charts regarding Zoning and Design standards provided to them in the Board's Staff Report; the Board accepts its staff's conclusions regarding compliance, non-applicability (N/A), and need to seek a waiver or make a required contribution without any independent analysis of the Plan's requirements and any deviations from those requirements that Iberia II requested.

The Minimum Front Yard Setback (5-B)

67. On the face of the Resolution, the Board accepted and incorporated its staff's conclusion that the Application complied with the Minimum Front Yard Setback set forth in the original Riverfront Redevelopment Plan 5-B.

68. Pursuant to 5-B, the Plan states:

1. The **front yard setback** of a new structure shall match the shorter setback of the two closest principal buildings on each side on the same block as the site, up to a maximum setback of six (6) feet.

* * *

3. When the block has no existing development to serve as the reference for the required setback, the front yard setback shall be six (6) feet.

69. In the present action, the required front yard setback should have been six (6) feet on all three sides of the two lots, not zero (0) feet.

70. The Resolution adopts the standard that 6 feet results "if no prevailing setback" and then concludes the setback is "0 feet (prevailing)." Such language or standard is not found in the Redevelopment Plan.

71. A six-foot setback is required under the Redevelopment Plan.

Impervious Lot Coverage

68. On the face of the Resolution, the Board accepted and incorporated its staff's conclusion that there was no relevant Maximum Impervious Lot Coverage requirement in the Riverfront Redevelopment Plan, so no variance was required.

69. Although the original Riverfront Redevelopment Plan and its several amendments did not designate a Maximum Impervious Lot Coverage percentage for lots greater than 5,000 square feet, as is

the size of either Lots 1 or 80, silence in the Redevelopment Plan does not mean that there is no applicable maximum. The underlying zoning for impervious coverage should apply when a redevelopment plan does not set forth a required development regulation that, if included in the plan, would supersede the zoning ordinance.

70. In 2013, the Newark Zoning Ordinance did not regulate the maximum impervious lot coverage for lots over 5,000 square feet; it did regulate lots of 5,000 or fewer square feet. The Redevelopment Plan simply adopted that same yard impervious requirement found in the Zoning Ordinance.

71. Starting in 2015, the Newark Zoning Ordinance expanded maximum impervious lot coverage requirements to all lot sizes.

72. In accordance with Newark Ordinance §41:5-3-9 (Mixed Use Buildings with Residential and Non-Residential Uses) (2023), buildings constructed in MX-2 zones, which are typically up to 8 stories, are subject to a Maximum 85% Impervious Lot Coverage. Such percentage should pertain to the Application herein, if not the 75% Maximum Impervious Lot Coverage applicable to High-Rise Multi Family Dwellings that are in R-6 zones where permitted Mixed-Use Buildings are proposed and the Application is 9 stories or greater. See Newark Ord. §41:5-3-8 (High-Rise Multi-Family Dwellings) (2023). The building type regulated by Newark Ordinance §41:5-3-8 is similar to the building type proposed in the Application.

73. As a matter of planning principles, public policy and law, regulation of impervious lot coverage is an accepted development requirement in 2025. N.J.S.A. 40A:12A-7 mandates that redevelopment plans specify all proposed land uses and building requirements in the Application area. The failure of the Redevelopment Plan or any amendments thereto to regulate impervious lot coverage does not mean there is no applicable regulation.

74. The Board's decision to approve this Application without a variance for impervious lot coverage is thus erroneous as a matter of law.

Shade Tree/Active Ground Floor Waivers

75. As stated previously, the Riverfront Redevelopment Plan does not authorize the Planning Board to approve waivers or exemptions. It specifically permits the Planning Board or Zoning Board of Adjustment to grant variances.

76. The Board's decision to grant four or six waivers thus does not comply with the Redevelopment Plan. If one concludes that the Board effectively granted four or six variances that too is problematic. A review of the Resolution indicates that the Board did not apply respective c- or d- variance standards to each of the specific waiver requests and conduct any analysis of the testimony presented. The Resolution is thus wholly insufficient under the MLUL.

77. Two waivers are particularly troublesome: The first is with respect to Insufficient Shade Trees, and the second is regarding the Active Storefront Requirements. The Redevelopment Plan provides the following:

4. On-tract trees shall be planted thirty-five (35) feet apart along public streets in the public right of way against the curb between the site's lot line and the curb unless specifically prohibited by the City of Newark Engineering Department.

78. The Resolution identifies a waiver request for Insufficient Shade Trees (Riverfront Redevelopment Pan 8-E) noting that "[w]here a total of 14 shade trees are required along Congress Street, (6) trees ae proposed. Further, where a total of 14 shade trees are required along Jefferson Street, six (6) trees are proposed."

79. Though the Board seemingly "determined that [all] the relief requested by Applicant can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the Zone Plan and the Zoning Ordinance," it also conditioned its approval on the Applicant conferring with the City arborist to provide a total of 14 shade trees along each of Jefferson Street and Congress Street, as required by the Redevelopment Plan; and it is only if the City Tree Superintendent confirms that "the trees cannot be provided" that the waiver will be granted. Such standard - i.e., "cannot be provided" - is vague and thus arbitrary and capricious.

80. The second waiver that deserves special attention is that identified as Active Streetfront Requirements (Riverfront Redevelopment Plan 8-P). The Resolution states: "Where parking garages and storage are prohibited at the ground level along roadways with an active streetfront requirement, these program elements are proposed at the ground level."

81. Nowhere in the Resolution does the Board mention that the parking garage and storage are non-permitted uses, not simply program elements, that require a d-variance. If the Board had done so, it would have realized that it did not have jurisdiction to grant such waiver/variance.

WHEREFORE, Plaintiffs HFAN, Garner, Gruswitz and Goldstein demand that Judgment be entered against Defendant Newark Central Planning Board as follows:

- a. Declaring that the Application does not comply with the Riverfront Redevelopment Plan's Front Yard Setback;
- b. Declaring that the Application does not comply with Newark's Zoning Ordinance Maximum Impervious Lot Coverage standard;
- c. Declaring that the Board's grant of waivers/exemptions was not authorized by the Riverfront Redevelopment Plan and its analysis of such waivers using c- and d-variance standards was totally inadequate, if not non-existent;
- d. Declaring that the Board's decision with respect to the

Insufficient Shade Tree waiver request in particular is confusing, unclear and irrational;

- e. Declaring that the Board did not have jurisdiction to consider, determine or approve a variance to the Active Storefront requirements of the Redevelopment Plan;
- f. Declaring the Resolution adopted by the Defendant Planning Board on April 21, 2025, as null and void;
- g. Denying the application of Defendant Iberia II;
- h. Awarding court costs and attorney's fees; and
- i. Granting such other relief as the Court deems appropriate and just.

COUNT III

(Site Plan Approval is Arbitrary, Unreasonable and Violates the Law)

82. Plaintiffs hereby incorporate the allegations in Paragraphs 1-81 if set forth herein at length.

83. As set forth above, the Planning Board made several procedural errors in violation of the MLUL and approved Iberia II's Application despite the Application's failure to comply with the Redevelopment Plan or Newark Zoning Ordinance, with respect to lot coverage requirements on which the Plan was silent.

84. Furthermore, the Planning Board failed to explicitly treat or discuss Iberia II's request for waivers as variance requests and to then make findings of fact based on the testimony presented with respect to each of those deviation requests.

85. Without explicit variance requests and in the absence of factual findings based on testimony presented with respect to each of such deviation requests, the decision of the Planning Board to approve the site plan as if it were an "as-of-right" plan with waivers was arbitrary, capricious, unreasonable, and in violation of the law.

WHEREFORE, Plaintiffs HFAN, Garner, Gruswitz and Goldstein demand that Judgment be entered against Defendant Newark Central Planning Board as follows:

- a. Declaring the Resolution adopted by the Defendant Planning Board on April 21, 2025, as null and void;
- b. Denying the Application of the Defendant Iberia II.
- c. Awarding court costs and attorneys' fees; and
- d. Granting such other relief as the Court deems appropriate and just.

Respectfully submitted,

NEW JERSEY APPLESEED PUBLIC
INTEREST LAW CENTER, INC.

Dated: June 5, 2025.

By: /s/Renée Steinhagen
Renée Steinhagen, Esq.

and

Dated: June 5, 2025

/s/Cynthia A. Hadjiyannis
Cynthia A. Hadjiyannis, Esq.

DESIGNATION OF TRIAL COUNSEL

Renée Steinhagen, Esq. and Cynthia A. Hadjiyannis, Esq. are hereby designated as trial counsel for Plaintiffs.

/s/Renee Steinhagen
Renée Steinhagen, Esq.

Date: June 5, 2025

CERTIFICATION PURSUANT TO RULE 4:5-1

I, RENÉE STEINHAGEN, hereby certify that:

1. The matter in controversy is not the subject of any other pending Court or arbitration proceeding.

2. I am not aware of any other contemplated Court or arbitration proceeding and;

3. I am not aware at the present time of any other party that should be joined to this litigation.

4. I certify that the statements herein set forth are true. I am aware that if any statements set forth herein are willfully false, I am subject to punishment.

Date: June 5, 2025

/s/Renee Steinhagen
Renée Steinhagen, Esq.

CERTIFICATION PRUSUANT TO RULE 4:69-4

I, RENÉE STEINHAGEN, hereby certify that:

1. A recording of the Special Hearing dated March 3, 2025 was secured from the Newark Central Planning Board; and

2. An official transcript is being prepared.

3. I certify that the statements herein set forth are true.

I am aware that if any statements set forth herein are willfully false, I am subject to punishment.

Date: June 5, 2025

/s/Renee Steinhagen
Renée Steinhagen, Esq.