

DONALD M. PEPE | Partner
dpepe@sh-law.com
Direct Phone: 732-568-8370 | Fax: 732.695.8108

April 29, 2022

VIA ELECTRONIC MAIL TO Tanya Marione tanyam@jcnj.org

Tanya R. Marione, PP, AICP
Director of City Planning
Department of Housing, Economic Development, and Commerce
1 Jackson Square
Jersey City, NJ 07305

**Re: April 26, 2022 Planning Board
Application P21-142
Request for Reconsideration**

Dear Ms. Marione:

This firm represents the Exchange Place Alliance District Management Corporation (the “Applicant”) with respect to the above referenced matter. As you know, the City of Jersey City Planning Board (the “Board”), at its April 26, 2022 meeting, undertook a review of plans for improvements to the Exchange Place Pedestrian Plaza in accordance with N.J.S.A. 55D-31, a so-called “Section 31” review. At the conclusion of the hearing, the Board voted to “not” recommend that the project proceed as presented. Please accept this correspondence on behalf of the Applicant as a formal request for reconsideration of that decision.

Pursuant to Lambert v Borough of Beach Haven, a New Jersey Appellate Division case decided in 2020, the New Jersey Superior Court, Appellate Division decided that the Joint Land Use Board of the Borough of Beach Haven was permitted to reconsider a decision to deny a site plan application within 45 days of the original vote and before a resolution has been adopted. Such actions are particularly appropriate in instances where mistake or fraud are apparent in the prior proceedings. See Moton v. Clark, 102 N.J. Super. 84, 97-98 (law Div. 1968), aff’d 108 N.J. Super. 74 (App. Div. 1969).

In its application before the Board, the Exchange Place Alliance sought a “Section 31” review of its plans for improving the pedestrian plaza at the foot of Montgomery Street. N.J.S.A. 40:55D-31 provides:

“Whenever the planning board shall have adopted any portion of the master plan, the governing body or other public agency having jurisdiction over the subject matter, before taking action necessitating the expenditure of any public

funds, incidental to the location, character or extent of such project, shall refer the action involving such specific project to the planning board for review and recommendation in conjunction with such master plan and shall not act thereon, without such recommendation or until 45 days have elapsed after such reference without receiving such recommendation.”

The function of the Board under N.J.S.A. 40:55D-31 is to review the plans “so that the board may assimilate the project into its master plan responsibilities and make recommendations which the applicant may accept or reject.” See Ocean County Utility v. Township of Berkley, 221 N.J. Super. 621, 633 (Law Div. 1987). “It is assumed that such recommendations would be for the purpose of suggesting to the applicant steps which it may take to enable the design of the proposed project to be consistent with, to whatever extent possible, the master plan of the municipality”. Id.

In the matter at hand, the Planning Board undertook an appropriate review and voiced recommendations for how the plan can be improved, but in its final voice resolution, the Board voted unanimously to “not” recommend the plan as proposed. Respectfully, that resolution, while wholly appropriate in instances where the Board is charged with reviewing redevelopment designations, redevelopment plans and redevelopment amendments where the function of the Board is to make recommendations to the municipal Council, the resolution and vote as undertaken was not appropriate in the context of a Section 31 review. As noted, where the Board undertakes a Section 31 review, its role is to suggest to the applicant steps which it may take to enable the designer of the proposed project to be consistent with, to whatever extent possible, the master plan. Here, the colloquy surrounding the vote made it clear that the Board took issue with the design of the proposed improvements, specifically the treatment of the Katyn Monument. the Board made no findings as to consistency with the City of Jersey City Master Plan nor did the Board relate the design concerns noted to the goals and objectives of the Master Plan, an oversight that the Applicant feels strongly must be addressed.

In addition to the noted procedural issues, there appeared to be some confusion introduced by members of the public who spoke during the public comment period, issues that, in the interests of justice, can and should be clarified at a rehearing. For instance, public commentators repeatedly falsely stated that the height of the bench surrounding the Katyn Monument was 7’ high when in fact the height is 5’6”. There were also repeated false assertions that no public meetings were held to discuss the proposed plaza plans, that the project did not comport with the Local Public Contracts Law, and that the treatment of the Katyn Monument was somehow disrespectful, assertions that are patently untrue and which the Applicant would like an opportunity to clarify.

Upon rehearing, the Applicant intends to introduce additional evidence that clearly demonstrates its thoughtful engagement with several neighboring property owners, stakeholders, various City offices and the general public to develop the final plaza designs including: (i) five public meetings dedicated in part to the public plaza design, each publicized in accordance with the Open Public Meeting Act; (ii) a community meeting, with newspaper notice and mail notice to adjoining property owners, on August 19, 2020; (iii) individual meetings with Mack-Cali, the

owners of Plaza 10 and the Hyatt House Hotel, and (iv) multiple design meetings with NJ Transit, the Port Authority, City Planning, City Fire, Public Safety, Cultural Affairs, City Engineering, the Historic Paulus Hook Association, the Powerhouse Neighborhood Association, and the Colgate Commercial Property Owners Association.

Most significantly, upon rehearing, the Applicant will introduce evidence demonstrating that, notwithstanding the comments made by the public at the hearing to the contrary, and as requested by City Council in connection with the controversy surrounding the earlier proposal to relocate the monument, it met repeatedly with the Committee for the Conservation of the Katyn Monument & Historic Objects (“CCKMHO”) and others, on one occasion drawing out the dimensions of the plan in chalk on the plaza, and ultimately received not only the approval of the committee, but its gratitude for the level of cooperation. Attached is a newspaper article authored by Alice Wozniak, Chairman of the Board for the Committee for the Conservation of the Katyn Monument & Historic Objects and Wojciech Stan Mazur, V-President of Business Affairs of the CCKMHO, confirming its involvement in meetings hosted by the Applicant at which the architectural landscaping plans were presented. The committee stated that with respect to the open forum of the meeting, it was “particularly impressed that the designers listened to the combined input of the CCKMHO, the residents of Jersey City and the Polish Community over the last year. We were also delighted to see that a number of individuals spoke up and expressed their approval for the plan.” Of particular importance is the acknowledgement in the article that “the plan shows a peaceful and serene area with low growing plants and bushes around the [m]onument rather than the trees initially proposed that would have obscured its view. In addition, a semi-circular seating area is proposed for behind the [m]onument to provide a place of reflection on the heroes lost in the Katyn Massacre, Siberia and the Twin Towers.”

Continuing, the article notes that “[a]nother concern that most all of Polonia had as expressed by the CCKMHO “was that they would still be able to assemble in front of the Katyn Monument for Commemorative events throughout the year”, acknowledging that this concern was addressed by the designers by providing an oval surrounding the [m]onument that would lead into a larger space in front of the [m]onument closer to the waterfront walkway. We were advised by the planners that this space would easily accommodate up to 200 people and that if additional space were needed that a designated paved stage area near the Hyatt Hotel could also be used. In summary, the CCKMHO recognized the long road traveled, ultimately thanking the Exchange Place Special Improvement District, especially its Executive Director, Ms. Elizabeth Cain, her assistant Mr. Martin Schmid as well as the Board of the EPASID and its Chairman Mr. Michael DeMarco for their efforts and cooperation.

Had the Board been privy to this information at the prior hearing, it would have been clear to the Board that any concerns over the treatment of the Katyn Monument were fully and satisfactorily addressed to the satisfaction of the CCKMHO, notwithstanding the self-serving, false comments made by certain members of the public to the contrary that, left unaddressed as they were at the prior hearing, had an outsized and inappropriate influence on the Board in rendering its findings.

For the foregoing reasons, we ask that the mater be relisted for hearing and introduction of additional evidence at the next regularly scheduled Planning Board meeting.

Sincerely,

/s/ Donald M. Pepe

Donald M. Pepe
FOR THE FIRM
DMP/ab
Encl.

cc: Santo Alampi, Esq.

cc: Exchange Place Alliance District Management Corporation