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March 1, 2024

Jim Quish, Chairman
Planning and Zoning Board
City of Milford
70 West River Street
Milford, CT 06460

RE: 104 Edgewater Place, Milford: Petition for Coastal Site Plan Review (the "Petition") for the proposed construction of a single-family dwelling on Assessor's Map D45, Block 513, Parcel 39 (the "Site"), which is owned by Brenton C. Artz (the "Petitioner").

Dear Chairman Quish and Members of the Board:

As you know, Attorney Joel Green of this office represents Christopher McKenna in opposition to the above captioned Petition which is currently scheduled for a public hearing on March 5, 2024. Mr. McKenna owns and resides on property located adjacent to or within one hundred (100') feet of the Site that is the subject of the Petition.

As you may also be aware, the Site is contiguous to Milford Harbor. It has just come to our attention that notice of the Petition was not submitted to the Milford Harbor Management Commission (the "MHMC") for review at least thirty-five days prior to the public hearing, as is required pursuant to Section 22a-113p of the Connecticut General Statutes concerning municipal harbor management commissions.

Specifically, Section 22a-113p provides, in relevant part:

§ 22a-113p. Action on applications to municipal agencies referred to [a municipal harbor management] commission

The commission may review and make recommendations, consistent with the plan, on any proposal affecting the real property on, in or contiguous to the harbor that is received by any . . . combined planning and zoning commission . . . or other land use authority. Such agencies shall send a copy of any such proposal to the [harbor management] commission upon the request of such [harbor management] commission. The [harbor management] commission shall be notified of any such proposal at least thirty-five

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days prior to the commencement of the hearing thereon or where no hearing is held, at least thirty-five days prior to the taking of any final action on the proposal. **The local agency authorized to act on the proposal shall consider the recommendations of the [harbor management] commission. A two-thirds vote of all the members of the local agency having authority to act on the proposal shall be required to approve a proposal which has not received a favorable recommendation from the [harbor management] commission**, provided that the provisions of this section shall not be deemed to alter the authority of the agency having primary jurisdiction over the proposal to deny, modify or condition the proposal. Failure of the [harbor management] commission to submit a recommendation shall be deemed to be approval of the proposal.

Conn. Gen. Stat. Sec. 22a-113p (emphasis added).

Respectfully, the Board may not act on the Petition until referral has been made to the MHMC, and until either the MHMC has provided a recommendation, whether favorable or unfavorable, or else has taken no action within thirty-five days after having received notice of the Petition.

This is to request that the Board either deny the Petition without prejudice to resubmit, or to request that the Petitioner consent to any extension of time that may be needed to hold the public hearing open, pursuant to Section 8-7d of the General Statutes and Section 7.1.1.3 of the Milford Zoning Regulations.

Further, as Attorney Green indicated in prior correspondence to you, although he had been available to appear before the Board on February 20, 2024, when the public hearing was originally scheduled to open, he is currently travelling outside of the country and shall be unable to attend the Board's March 5, 2024 meeting, either in person or remotely.

Moreover, counsel for the Petitioner has indicated that at the public hearing he intends to present "3 design professionals, in addition to counsel", and neither the identities of those professionals nor the subject matter of their presentations have been disclosed. In any event, Attorney Green will be unable to review any documents submitted or testimony given prior to or during the hearing if held on March 5th, however he would be available to appear before you after he returns on March 12, 2024.

Accordingly, on behalf of Attorney Green, this is to renew his request that the public hearing be further continued to allow time for the MHMC to review the proposal and provide a recommendation in accordance with Section 22a-113p, and to allow Attorney Green a full and fair opportunity to participate on behalf of Mr. McKenna, who shall be aggrieved by any action taken by the Board on the Petition. Respectfully, under the circumstances, such continuance is necessary to comport with principles of fundamental fairness that govern the proceedings of this Board.

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Additionally, although Attorney Green, again, is unable to attend next week, on his behalf I am separately submitting, by email, documents for inclusion in the record that he would intend to discuss if his request for a continuance is granted by the Board.

If you require additional information with respect to the foregoing, please do not hesitate to contact me.

Thank you for your time and consideration.

Very truly yours,

A handwritten signature in blue ink that reads "Linda Pesce Laske". The signature is written in a cursive style with a large initial "L".

Linda Pesce Laske

LPL:laf

cc: Christopher McKenna

Kevin Curseaden, Esquire

Susan LaFond

From: Kevin Curseaden <kjcurseaden@cmctlaw.com>
Sent: Friday, March 1, 2024 6:03 PM
To: David Sulkis
Cc: Susan LaFond; Joseph Griffith; Meg E. Greene; Linda Laske; Joel Green
Subject: RE: 104 Edgewater Place
Attachments: 22a-113p Action on applications to municipal agencies referred to commission.doc; 104 Edgewater Place -Transmittal of CAM Application.pdf

CAUTION: This message originated outside of the organization. Use caution when opening attachments, clicking links or responding to requests for information.

David,

Attorney Green's office has filed a request for a continuance claiming that because the Milford Harbor Management Commission (HMC) did not have the plans "35 days prior to the commencement of the hearing..." pursuant to Connecticut General Statute §22a-113p, that the PZ Board cannot act on this application. That is not correct. Only the HMC can claim lack of notice under this statute, not a neighbor. The HMC already has the application plans and is reviewing them.

Please note,

- CGS § 22a-113p states the HMC, "may review and make recommendations, consistent with the [Harbor Management] plan, on any proposal affecting the real property on, in or contiguous to the harbor that is received by any ... planning and zoning commission ... Such agencies shall send a copy of any such proposal to the commission upon the request of such commission."
- The HMC only reviews the application to determine whether it is consistent with the Harbor Management Plan.
- The public hearing for the PZ CAM application was opened on 2/20/24 and immediately tabled for other reasons.
- The Chair of the HMC requested the application plans from DPLU on 2/21/24. The plans were provided by City Planner David Sulkis to the HMC c/o the Harbor Master via email that same day (see attached copy of email which Attorney Green was also copied).
- The next public hearing on the PZ CAM application is 3/5/24.
- The next HMC meeting is 3/21/24, at which I believe the HMC will be reviewing and making a recommendation or report regarding this application.

Based on the caselaw (which is minimal), the fact the HMC did not have the plans 35 days prior to the public hearing is not a *jurisdictional defect* because it is not a *public notice* provision. Rather, it is a *private or personal notice* provision to the HMC. See Boris v. Garbo Lobster Co., No. 548853, 1999 WL 1212249, at *7–9 (Conn. Super. Ct. Dec. 3, 1999); and Kerlin v. Plan. & Zoning Bd. of Appeals of the Town of Greenwich, No. FSTCV206047732S, 2021 WL 761812, at *10 (Conn. Super. Ct. Jan. 27, 2021), opinion vacated on reconsideration sub nom. Kerlin v. ZBA of Town of Greenwich, No. FSTCV206047732S, 2021 WL 6101236 (Conn. Super. Ct. July 6, 2021), aff'd sub nom. Kerlin v. Plan. & Zoning Comm'n, 222 Conn. App. 141, 304 A.3d 148 (2023). Vacated on other grounds.

Bottom Line: The public hearing may proceed on 3/5/24. The PZ Board may decide to keep the public hearing open for the limited reason to receive the report from the HMC. Or, the PZ Board could even close the hearing and vote that night if it felt ready to do so. The risk to the applicant is that if the HMC does not provide a favorable recommendation, then a 2/3 vote is required for approval.

Thank you.

Kevin

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From: Lucy Ferreira <lferreira@gglaw.net>
Sent: Friday, March 1, 2024 4:26 PM
To: jquish@ibsgreen.com
Cc: DSulkis@Milfordct.gov; SLaFond@Milfordct.gov; JGriffith@Milfordct.gov; MGreene@milfordct.gov; SHHarris@Milfordct.gov; ccmac4@cs.com; Kevin Curseaden <kjcurseaden@cmctlaw.com>; Linda Laske <llaske@gglaw.net>; Joel Green <jgreen@gglaw.net>
Subject: 104 Edgewater Place

Lucy A. Ferreira
Legal Assistant to Joel Z. Green
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From: [David Sulkis](#)
To: [James Donegan](#)
Cc: [Joseph Griffith](#); [Susan LaFond](#); [Kevin Curseaden](#); [Joel Green](#); [Meg E. Greene](#)
Subject: 104 Edgewater Place -Transmittal of CAM Application
Date: Wednesday, February 21, 2024 9:34:27 AM
Attachments: [3 Revised CAM Application 104 Edgewater PL 120623.pdf](#)
[Plans 104 Edgewater Place 02-16-2024.pdf](#)

Hi Jim,

Per the request of Bob Brennan,

I'm forwarding to you a copy of the Coastal Area Site Plan for 104 Edgewater Place.

Please let me know if you have any questions,

Regards,

Dave

David B. Sulkis, A.I.C.P.
City Planner/Executive Secretary
City of Milford
70 West River St
Milford, CT 06460
203-783-3245
dsulkis@milfordct.gov



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

Connecticut General Statutes Annotated

Title 22a. Environmental Protection (Refs & Annos)

Chapter 444A. Harbor Management Commissions (Refs & Annos)

C.G.S.A. § 22a-113p

§ 22a-113p. Action on applications to municipal agencies referred to commission

Effective: July 1, 2021

Currentness

The commission may review and make recommendations, consistent with the plan, on any proposal affecting the real property on, in or contiguous to the harbor that is received by any zoning commission, planning commission or combined planning and zoning commission, zoning board of appeals, historic district commissions, flood prevention, climate resilience and erosion control board, harbor improvement agency, port authority, redevelopment agency, shellfish commission, sewer commission, water pollution control authority or special district with zoning or other land use authority. Such agencies shall send a copy of any such proposal to the commission upon the request of such commission. The commission shall be notified of any such proposal at least thirty-five days prior to the commencement of the hearing thereon or where no hearing is held, at least thirty-five days prior to the taking of any final action on the proposal. The local agency authorized to act on the proposal shall consider the recommendations of the commission. A two-thirds vote of all the members of the local agency having authority to act on the proposal shall be required to approve a proposal which has not received a favorable recommendation from the commission, provided that the provisions of this section shall not be deemed to alter the authority of the agency having primary jurisdiction over the proposal to deny, modify or condition the proposal. Failure of the commission to submit a recommendation shall be deemed to be approval of the proposal.

Credits

(1984, P.A. 84-247, § 6; 2021, P.A. 21-115, § 15, eff. July 1, 2021.)

C. G. S. A. § 22a-113p, CT ST § 22a-113p

The statutes and Constitution are current with all enactments of the 2023 Regular Session and the 2023 September Special Session.

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