



Consulting, Municipal & Environmental Engineers
Planners ■ Surveyors ■ Landscape Architects

200 Valley Road, Suite 400
Mt. Arlington, NJ 07856
Tel: 973.398.3110 ■ Fax: 973.398.3199

October 31, 2011

VIA E-MAIL & UPS

Ms. Kimberly Kerkuska, Principal Environmental Specialist
New Jersey Department of Environmental Protection
Division of Land Use Regulation
Bureau of Urban Growth and Redevelopment
Mail Code 501-02A, P.O. Box 420
Trenton, NJ 08625-0420

Re: Waterfront Development Permit
DLUR File No. 0905-07-0001.2
Monarch at Shipyard
Block 264.2, Lot 1
City of Hoboken, Hudson County, New Jersey
MC Project No. HOP-121

Dear Ms. Kerkuska:

This letter is in response to the above referenced application request for a Waterfront Development Permit – IP in Water. We are providing these comments on behalf of the Mayor and Planning Board of the City of Hoboken. Both the Mayor and the Planning Board object to the issuance of this permit for the reasons described below.

1. The applicant failed to properly notice for the project. The project involves work below the mean high water line which requires a Waterfront Development Permit and the project involves work in uplands within 500 ft. of the mean high water line (Filled water edge) which requires an Upland Waterfront Development Permit. The LURP-2 form submitted by the applicant indicates that they are only applying for a Waterfront Development Permit.
2. The Compliance Statement indicates that the project site was originally approved for use as public access to the waterfront and recreational uses including tennis courts and a tennis pavilion (NJDEP Permit No. 0905-93-001.6/.7/.8) as part of the original Shipyard Project. This original permit approval for the construction of six 13 story, three 11 story and two 2-story buildings as well as 63,200 S.F. of retail space, contained a condition (Condition 4(f)) that “the public access improvements on the tennis pier are to be completed and open to the public within two years following initial occupancy of Development Block F”. The applicant’s proposal to now convert the tennis pier to a residential use violates Condition 4(f) of the original Waterfront Development Permit.



To: Ms. Kimberly Kerkuska, Principal Environmental Specialist
Re: Monarch Shipyard – City of Hoboken
MC Project No. HOP-121

October 31, 2011
Page 2 of 6

The failure of the applicant to comply with the conditions of the original permit is a basis for rendering a determination of non-compliance for the current application. The use of this pier for recreational use was part of a large revenue producing development approved by the Department and the fact that complying with the original permit conditions will now results in costs to the applicant should not be a reason for dismissing this as a viable alternative.

3. The “Existing Platform Plan,” illustrates existing pilings along the entire length of the pier. However, photographs submitted with the application, as well as our review of current aerial photography, illustrate areas of open waters and do not provide evidence that there are pilings along the entire length of the pier. It appears structurally sound pilings are not existing throughout the project area. The absence of structurally sound pilings throughout the entire project area is a non-compliance condition associated with a number of Coastal Zone Management Rules.

We reviewed the documents provided by the applicant’s engineers regarding the structural soundness of the piles underlying the platform. The documents consisted of pictures at low tide showing a few piles in the open water area. In addition the submission included pictures of an extracted pile along with a structural and geotechnical report. The applicant indicated that they believe that the timber piles supporting the relieving platform are arranged in 8-foot bents at 3 feet center to center.

The picture taken at low tide shows the presence of a few piles but it does not confirm wide presence of structurally sound piles under the entire area. Extracting a single pile does not confirm that the entire platform is supported on sound piles. The applicant should have conducted an underwater inspection of the piles to confirm presence of piles across the entire area and to confirm the soundness of the piles.

The applicant Engineers determined that the piles are capable of supporting 25-ton each. However, the applicant intends to replace or reconfigure the existing piles. Based on our review of this information, the applicant failed to demonstrate that a sound piling system exists under the entire platform and open water area of the project.

4. Under the Special Urban Areas Rule (NJAC 7:7E-3.43) housing on pilings is conditionally acceptable only if the site contains existing structurally sound pilings and only where water dependent uses are shown to be infeasible. The applicant has not adequately demonstrated that water dependent uses are infeasible for this site and the applicant is proposing a housing development where structurally sound pilings may not currently exist. Also, a viable alternative use was approved for the project site in 1997 i.e. public access, tennis courts and a tennis pavilion. This would represent a type of public waterfront recreation use which, the applicant admits in their August 3, 2011 response letter to the Department, constitutes a type of water dependent use.



To: Ms. Kimberly Kerkuska, Principal Environmental Specialist
Re: Monarch Shipyard – City of Hoboken
MC Project No. HOP-121

October 31, 2011
Page 3 of 6

Open water areas exist at certain locations on the project site over where the applicant contends exist structurally sound pilings are absent. NJAC 7:7E-3.43(c) states that expansion of total water coverage through the use of pilings can only occur for water dependent uses. The applicant is not proposing a water dependent use for this site and has failed to demonstrate compliance with the Special Urban Areas Rule.

5. In accordance with the Housing Use Rule (NJAC 7:7E-7.2(b) (2)) new housing is only acceptable on structurally sound existing pilings and where it has been demonstrated that water dependent use are infeasible for the project site. The applicant is proposing new housing where structurally sound pilings may not exist and the applicant agrees that public waterfront recreation represents a type of water dependent use. Public waterfront recreation was previously approved for the project site as part of the permit issued in 1997. Therefore, the application does not comply with the Housing Use Rule since feasible water dependent uses do exist for the project site.
6. The location of the proposed project is within an area that is considered Intertidal/subtidal shallows habitat. The reconstruction of the pier will involve the driving of pilings therefore resulting in the disturbance and filling of Intertidal/subtidal shallows habitat. In accordance with N.J.A.C. 7:7E-3.15 (Intertidal and subtidal shallows), the filling of intertidal shallows for housing purposes is not permitted. Maintenance dredging, new dredging, installed or submerged infrastructure, beach nourishment, aquaculture, boat ramps, docks and piers for cargo and commercial fisheries, recreational docks and piers, dredged material disposal, solid waste and sludge dumping, filling (for water dependent uses), mooring, sand and gravel mining, bridges, overhead transmission lines, dams and impoundments, outfalls and intakes, breakwaters, artificial reefs, are examples of activities that are conditionally acceptable in Intertidal and subtidal shallows. Therefore, the application does not comply with the Intertidal and subtidal shallows Rule.
7. The project site is located within the Hudson River Waterfront Area and subject to NJAC 7:7E-3.48 (Hudson River Waterfront Area Rule). One provision of this rule requires the applicant to determine the average building height for any project proposed to be built on piers. Once the average building height is determined, this value is then used to calculate the amount of **usable landscaped public open space** that must be provided in the project design. The applicant indicated in their compliance document that the average building height was 60 ft. without providing a description on how they reached this conclusion. Based upon our review of the Sheets A107 and A108 (Building Sections) of the permit plans the average height is closer to 73 ft.

Using 60 ft. as the average building height, the applicant determined that they were required to provide a total of 11,250 S.F. of **usable landscaped open public space**. Using 73 ft. as the average building height, the applicant would be required to provide 17,775 S.F. of **usable landscaped open public space**, 6,375 S.F. of which would be required at the landward end of the project and 11,400 S.F. would be required at the



To: Ms. Kimberly Kerkuska, Principal Environmental Specialist
Re: Monarch Shipyard – City of Hoboken
MC Project No. HOP-121

October 31, 2011
Page 4 of 6

waterward end of the project. The applicant is only proposing 5,620 S.F. (see Public Access Plan -Sheet A102) at the landward end of the project and 1,024 S.F. of this is actually shown as the driveway for the parking garage.

The applicant indicates that instead of providing the usable landscaped public open space at the waterward end of the project, they are instead meeting this requirement by providing open public space along the northern and western project limits. However, 7,504 S.F. of this area is not usable landscaped open public space but is instead a walkway which does not contain any landscaping. Also, the landscaped area along the eastern portion of the property is not usable space accessible to the public but instead functions more like a garden. For these reasons, the applicant has failed to comply with NJAC 7:7E-3.48.

8. This project is located along the Hudson River and the Hudson River has an associated riparian zone. In accordance with the Flood Hazard Area Control Act Rules a 50 ft. riparian zone would be imposed around the landward portion of the project that would be bulkheaded. NJAC 7:13-10.2(v) states:

“that in cases where an applicant proposes to redevelop a site within 25 ft. of any top of bank or edge of water, all existing impervious surface within 25 feet of top of bank or edge of water shall be removed and the riparian zone in this area shall be adequately stabilized and replanted with indigenous, non-invasive vegetation, except in the following cases:

- 1. The applicant demonstrates that removing the existing impervious surface and/or preventing the replacement of the existing impervious surface within 25 ft. of the top of bank or edge of water would likely threaten public safety, exacerbate flooding or erosion and/or cause an undue hardship upon the applicant. In such a case, the riparian zone within 25 ft. of the top of bank or edge of water shall be restored, stabilized and/or replanted to the extent feasible; and/or*
- 2. The applicant proposes to construct a public walkway within 25 ft. of the top of bank or edge of water, provided the walkway is constructed of permeable material where feasible, and provided the remainder of the area within 25 ft. of top of bank or edge of water is restored, stabilized and replanted with indigenous, non-invasive vegetation”*

Since a 50 foot riparian zone exists (at least along the upland portion of the project), this should be shown on the plans and addressed in the Applicant's reports. The applicant has chosen to construct a 16 ft. public walkway within the 25 ft. riparian zone. However, the applicant's plan fails to comply with this rule since a portion of the western side of the 11 story building located on the landward side of the project overhangs the 25 ft. riparian zone and a portion of the access driveway falls within the 25 ft. riparian zone along the eastern portion of the project site.



To: Ms. Kimberly Kerkuska, Principal Environmental Specialist
Re: Monarch Shipyard – City of Hoboken
MC Project No. HOP-121

October 31, 2011
Page 5 of 6

From reviewing recent aerial photography, it is apparent that the entire site is not covered by impervious surfaces. As acknowledged by the applicant in their compliance statement, portions of the pier have failed exposing open water areas. We estimate that these open waters areas comprise 0.15 acres of the site. The applicant also acknowledges in their compliance statement (Attachment 5, response to “Determining if a Site is Forested or Unforested”) that portions of the site are vegetated with trees, shrubs and herbaceous plants. This type of vegetation cannot grow over impervious surfaces. These facts demonstrate that the site is not 100% impervious as represented by the applicant in their application.

The NJDEP has in past reviews required that it be demonstrated that the surface cover that is used in the analysis must have existed in the past 5 years (see BMP manual, Chapter 5). Therefore, it appears that some vegetation existed in the last five years and should be taken into consideration for Flood Hazard Area Control Act Rules as well as existing impervious coverage and the increase in proposed impervious coverage for TSS removal.

9. The project site is located within the floodway of the Hudson River. In accordance with the Flood Hazard Area Control Act Rules at NJAC 7:13-10.3(c)(1) (Requirements for a regulated activity in a floodway) the construction of a building on a pier in the Hudson River is approvable only if the project complies with the requirements of the Coastal Zone Management Rules at NJAC 7:7E-3.48 (Hudson River Waterfront Area). For the reason described previously, the project does not comply with NJAC 7:7E-3.48 and therefore does not comply with the Flood Hazard Area Control Act Rules.
10. For the reasons listed above, with respect to the amount of impervious cover on the site, the NSPS spreadsheet submitted by the applicant to quantify any proposed low impact design does not accurately reflect site conditions. The applicant should provide accurate information on the extent of impervious cover on the site and revise their NSPS spreadsheet.
11. In accordance with the Coastal Zone Management Rules (CZM) the applicant claims to have demonstrated compliance with the Subchapter 5 (Requirements for Impervious Cover and Vegetative Cover for General Land Areas and Certain Special Areas) by providing a copy of the applicable Tidelands Map which classifies the project site as containing between 81-100% impervious cover. The applicant then assumes that the project site contains 100% impervious cover without any justification except to state that the “platform surface was historically completely concrete”. There is no definitive information submitted by the applicant to indicate that only 81% of the platform was covered by impervious surfaces.



To: Ms. Kimberly Kerkuska, Principal Environmental Specialist
Re: Monarch Shipyard – City of Hoboken
MC Project No. HOP-121

October 31, 2011
Page 6 of 6

From reviewing recent aerial photography, it is apparent that the entire site is not covered by impervious surfaces. As acknowledged by the applicant in their compliance statement, portions of the pier have failed exposing open water areas. We estimate that these open waters areas comprise 0.15 acres of the site. The applicant also acknowledges in their compliance statement (Attachment 5, response to "Determining if a Site is Forested or Unforested") that portions of the site are vegetated with trees, shrubs and herbaceous plants. This type of vegetation cannot grow over impervious surfaces and appears to cover at least 25% of the site. These facts demonstrate that the site is not 100% impervious as represented by the applicant in their application.

Furthermore, in order to demonstrate compliance with the Major Development standard of the Stormwater Rules, the applicant cannot rely on the Tideland Mapping. Instead the applicant must submit accurate information on the extent of impervious cover on the site, which the applicant has failed to do. The Department cannot make a determination on whether or not this project meets the BMPs to satisfy the required level of water quality treatment required under the Stormwater Rules without accurate information on the amount of impervious cover on the site.

If you have any questions or require further information, please don't hesitate to contact me.

Very truly yours,

MASER CONSULTING P.A.

Andrew R. Hipolit, P.E., P.P., C.M.E.
Planning Board Engineer, City of Hoboken

RW/msd

\\Admin1\projects\HOP\HOP-121\Letters\2011\10-31-11 arh Kerkuska.docx