

include managing, operating, maintaining, and repairing the “common elements” of a residential development comprised of 7 residential units and 1 commercial unit (the “Condominium”).

3. The Master Deed was recorded in the Office of the Hudson County Register of Deeds on June 20, 2005, in Deed Book 7586 at Page 74, et seq.

4. The Bylaws of the Association (the “Bylaws”) were recorded as Exhibit “1-E” to the Master Deed.

5. Pursuant to the Governing Documents, the affairs of the Association are managed by the Association’s Board of Trustees (the “Board”).

6. The Bylaws state that the Board has the powers and privileges necessary for the administration of the affairs, business and property of the Association and the Governing Documents empower the Board with all duties necessary to discharge its powers in a manner that protects the health, safety and general welfare of the Condominium and engage in all such other lawful acts and things as it is legally entitled to do under the law or by the Governing Documents, including filing lawsuits to protect the Association’s interests.

7. Defendant City of Hoboken Planning Board (the “Planning Board”) is a municipal entity of the State of New Jersey situated in Hudson County.

8. Defendant Story Dispensary of Hoboken LLC is a New Jersey limited liability company formed on January 11, 2022, which purports to maintain a principal place of business located at 51 14th Street, 1st Floor, Hoboken, Hudson County, New Jersey.

BACKGROUND FACTS

9. This action in lieu of prerogative writ was necessitated by the Planning Board’s refusal to adequately review, consider, and deliberate upon the application made by Story Dispensary of Hoboken, LLC (the “Applicant” or “Story”) to occupy, and operate as a cannabis

dispensary, the ground floor and basement commercial unit located within the residential mixed-use Condominium governed by the Association.

10. The Condominium consists of a 1st floor and basement commercial unit (the “Commercial Unit”), formerly operated as the well-known Hudson Tavern restaurant, and seven residential units above the 1st floor commercial unit (the “Residential Units”).

11. On March 10, 2022, Story submitted an application for site plan approval from the City of City of Hoboken Planning Board in connection with the proposed operation of an adult-use cannabis retail establishment that would operate from the ground floor and basement of the Commercial Unit, allegedly in accordance with the applicable ordinances of the City of Hoboken (the “Application”).

12. On November 1, 2022, after five (5) hearings, many of which went into the early morning hours, the Planning Board approved the Application despite many failures on the part of the Applicant.

Applicant’s failure to obtain required “d” variances

13. The Application and conditional approval violates the ordinances adopted by the City of Hoboken applicable to Cannabis, namely Section 196-33.1, entitled “Cannabis,” subsection (M), entitled “Site Plan Approval; Minimum Requirements; Performance Standards.”

14. Section 196-33.1(M)(2) specifically and unequivocally states that a cannabis dispensary shall only be located on the ground floor:

Building use. A cannabis retailer or medical cannabis dispensary shall only be located on the ground floor (i.e., street level) of any building in which it has been approved to be located unless the cannabis retailer or medical cannabis dispensary occupies the entire building on the property...

(emphasis added).

15. The Applicant sought, and the conditional approval of the Planning Board permits, access to and use of the basement by the Applicant.

16. Section 196-33.1(M)(4) requires, in part, that “No cannabis products or paraphernalia shall be visible from a public sidewalk, public street or right-of-way, or any other public place.”

17. Section 196-33.1(M)(9)(a) requires that “*A video recording security system shall be employed covering all areas* of the cannabis retailer or medical cannabis dispensary *and the adjacent exterior of the building* with a 24/7 recording system that records for a minimum thirty-day archive.” (emphasis added).

18. The Applicant originally proposed a five-foot high “gradient” screening, which does not meet the requirements of Section 196-33.1(M)(4).

19. The Applicant, realizing its error, instead committed to completely frosting the glass along the storefront to satisfy Section 196-33.1(M)(4) and put security cameras inside the windows facing out towards the exterior of the building.

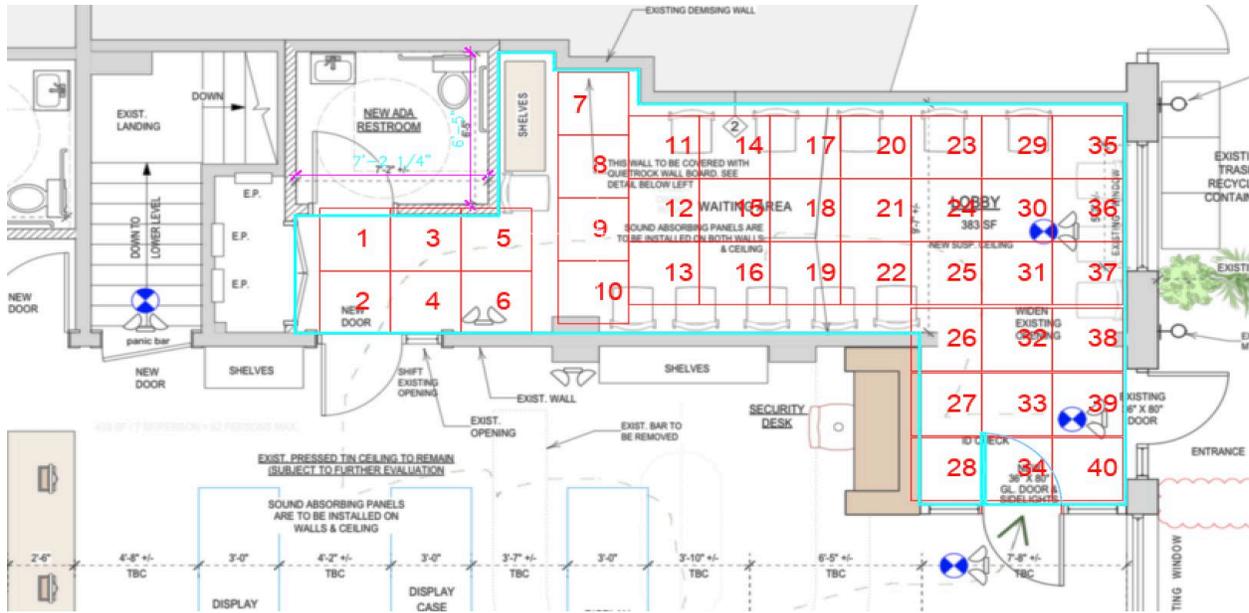
20. As testified to by the Association’s architect and professional planner, Christopher Ling, AIA, PP, in opposition to the Application, completely frosting the windows runs afoul of the recommendations of the City of Hoboken Historic Preservation Commission. Thus, it is not satisfactory to satisfy the requirements of Section 196-33.1(M)(4).

21. As further testified to by Mr. Ling, the location of security cameras in the windows unequivocally cannot capture all areas of the adjacent exterior the building. There will be blind spots in violation of Section 196-33.1(M)(9)(a).

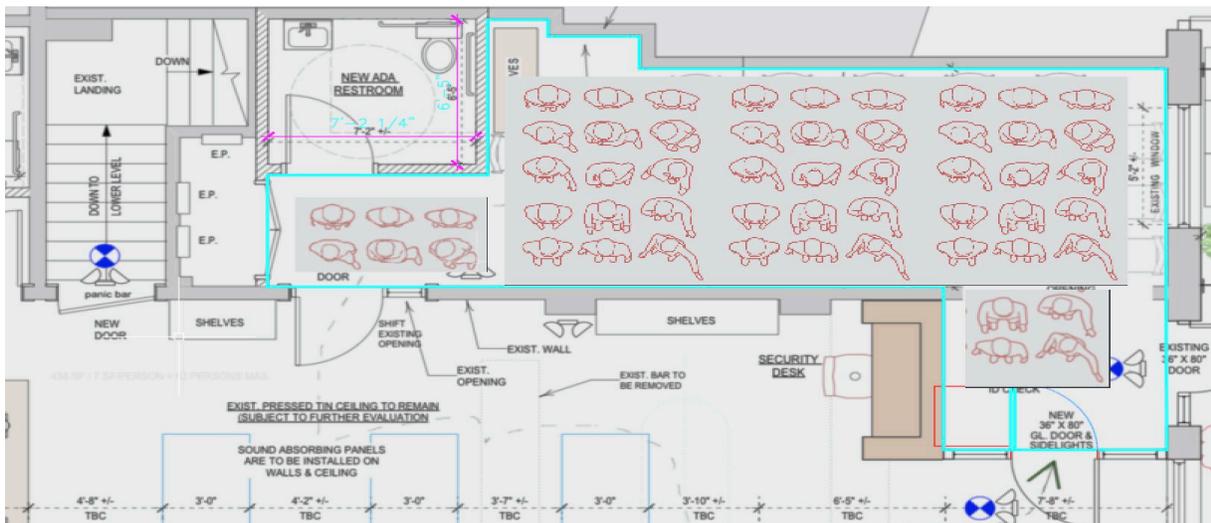
22. Section 196-33.1(M)(10) provides that “Queuing of customers outside a cannabis retailer or medical cannabis dispensary is prohibited. The cannabis retailer or dispensary shall

26. As irrefutably testified to and demonstrated by Mr. Ling, you simply cannot squeeze fifty-five (55) customers into the waiting room, no matter how hard you might try.

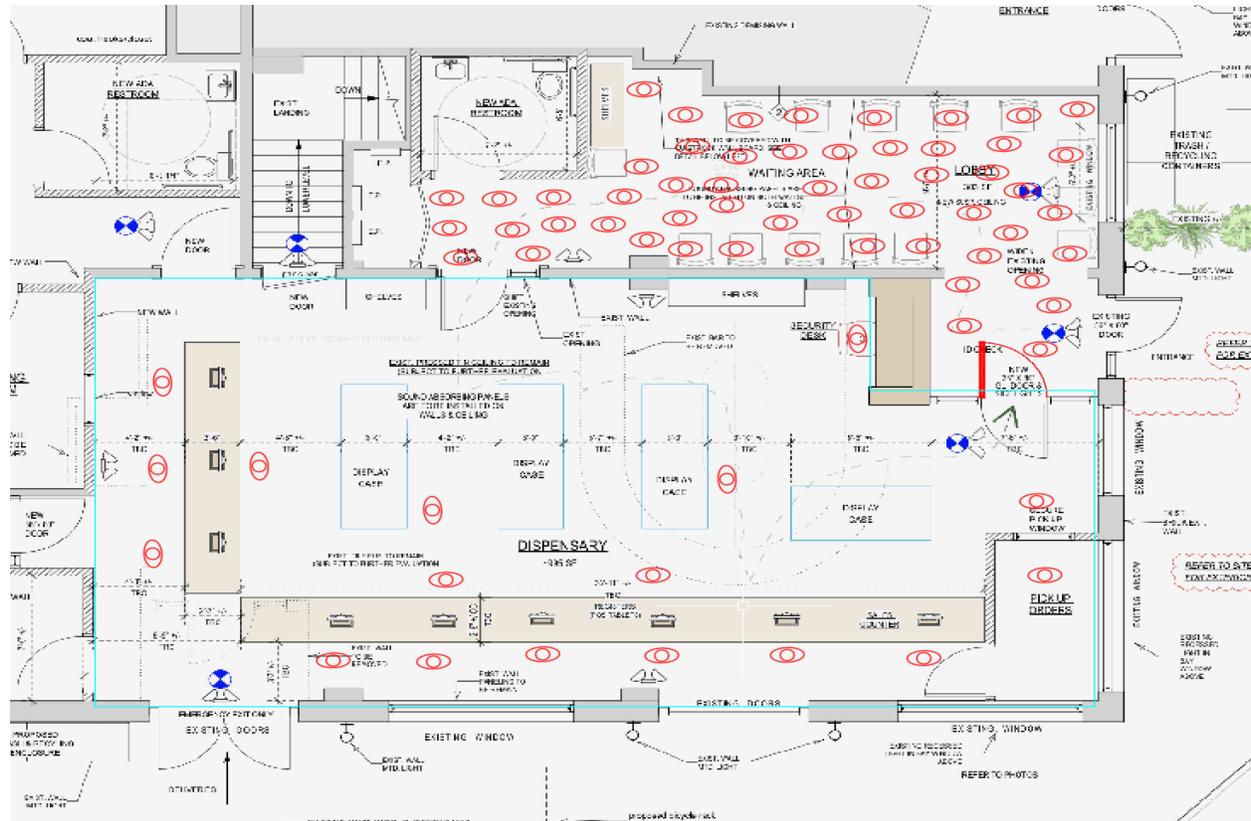
27. For example, if you provided 7 square-feet of space per person, the most you can muster is forty (40) people, and that is if you put nine (9) of those customers by the check-in desk and blocking the ingress and egress:



28. To give the Applicant the benefit of the doubt, Mr. Ling overlaid fifty-five (55) patrons, which requires packing them in like sardines and again blocking the front entry and exit:



29. Even using the lowest estimated trips generated for the afternoon on a weekday of eighty-two customers (82) – which is as high as one-hundred twenty-five (125) on the Saturday peak hours – there will unquestionably be an uncontrollable queuing of customers outside the facility of at least 21 additional queuing customers per hour, and that assumes the Applicant is processing customers in a matter of minutes:



This drawing depicts 55 customers in the waiting room, 9 employees at the cash registers, 2 security guards and 6 customers in the dispensary, or 61 customers inside the facility, leaving at least 21 customers queuing outside on the average pm weekday giving the Applicant all benefit of the doubt that they will squeeze 55 customers into their small lobby and that their actual average pm weekday will only be 82 customers. Weekends, of course, will be even more.

30. The Applicant’s proposed use violates Section 196-33.1(M)(10).

31. Section 196-33.1(M)(11) provides that “One parking space shall be provided for each five persons of occupancy load after the first 20 persons rounded to the closest whole number. The requisite number of spaces should be secured from a private or public parking

facility not more than five block-lengths away. Spaces may be used by staff and/or offered to patrons through validation.”

32. This requires the Applicant to secure at least fourteen (14) parking spaces.

33. The Applicant failed to submit sufficient proof that it had actually secured fourteen (14) parking spaces in violation of Section 196-33.1(M)(11).

34. As a conditional approval requirements, the failure to meet any of the conditions set forth in Section 196-33.1(M) triggers the necessity for a zoning variance pursuant to N.J.S.A. 40:55D-70(d)(3), as it is a clear “deviation from a specification or standard pursuant to [N.J.S.A. 40:55D-67] *pertaining solely to a conditional use.*” (emphasis added).

35. For example, use of the basement of the subject property in connection with the Applicant’s retail cannabis establishment, as proposed by the Applicant and conditionally approved by the Planning Board, is in direct violation of the ordinance and thus would trigger the need for a “d” variance.

36. The same requirement for a “d” variance holds true for the Applicant’s failure to meet Sections 196-33.1(M)(4), 196-33.1(M)(9), 196-33.1(M)(10), and 196-33.1(M)(11).

37. It is elementary to the objectives of the Municipal Land Use Law that a Planning Board cannot grant a “d” variance, only the Zoning Board of Adjustment can do; and, further, that a site plan application cannot be entertained until after the zoning board of adjustment has resolved any necessary variances, such as required “d” variances.

38. Indeed, “[o]ne of the salient features of the MLUL was ... its concept of ancillary jurisdiction in each board...It would be inconsistent with this salutary purpose to allow an applicant first to apply to the planning board for site plan approval of construction of a prohibited use and then to apply to the board of adjustment for a use variance”. Najduch v. Township of

Independence Planning Bd., 411 N.J. Super. 268, 277 (Law Div. 2009) (quoting Kaufmann, supra. 11 N.J. at 558).).

The Planning Board held meetings until the early morning hours

39. Over the course of five (5) meetings, the Application was subject to extensive challenge by the Association and members of the public, including with respect to the failure to meet conditional approval requirements, but also other concerns, such as safety and public security, which the Planning Board could use to further support denial of the Application pursuant to its applicable ordinances.

40. Some of these meeting progressed into the early hours of the morning and, at least twice, past 1:00 a.m., with members of the Planning Board and public all visibly exhausted:



41. After presentations by the Applicant and the Association, including expert testimony and cross-examination and after public comment, on November 1, 2022, at nearly 1:30 a.m., the Planning Board approved Story’s application.

¹ <https://hudsonreporter.com/2022/09/20/story-dispensary-s-cannabis-application-has-become-a-never-ending-story/>

42. The deliberation on the application was perfunctory and revealed that the Planning Board had serious concern that the proposed use may result in “disaster,” queried the possibility of conditional approval subject to it being revoked because of material concerns regarding the viability of this use and were concerned that an adverse determination on this Application might result in litigation.

43. Indeed, there were several other fatal defects in the Applicant’s submission that were ignored by the Planning Board in granting its approval of the subject application.

The Applicant misrepresented the ownership structure of the Commercial Unit

44. Unbeknownst to the Association, the owner of the Commercial Unit entered into a lease agreement with NJRE 5153 14th LLC, titled “Licensed (Class 5) Retail Cannabis Retailer Facility Gross Lease Agreement.” According to the lease agreement, it was executed on April 7, 2022, but made effective January 1, 2022:

AGREEMENT OF LEASE

This Lease Agreement (the “Agreement”) is executed on April 7, 2022 but made effective the 1st day of January, 2022,

BETWEEN

51-53 14TH STREET RETAIL LLC, a New Jersey limited liability company,

whose address is 443 Albany Court, West New York, New Jersey 07093, herein designated as “Lessor”,

AND

NJRE 5153 14TH LLC, a Wyoming limited liability company,

whose address is 26 Scarlet Oak Road, Flemington, New Jersey 08822, herein designated as “Lessee.”

45. The address associated with the lessee, 26 Scarlet Oak Road, Flemington, New Jersey, is owned by Aaron Epstein.

46. Mr. Epstein is to be the Operator and day to day management of the proposed Story dispensary, has a background in operating dispensaries, and has been the representative of Story at each City of Hoboken hearing where Story has appeared seeking approval of the dispensary. In fact, Mr. Epstein has represented that Story only has a letter of intent and that there is no signed lease, despite the existence and knowledge of a signed lease between Retail and NJRE 5153 14th LLC.

47. According to this Agreement, the owner of the Commercial Unit, 51-53 14th Street Retail, LLC (“Retail”) permitted the use of the unit as a Cannabis Retailer as follows:

h. PERMITTED USE:
 Any use permitted by applicable municipal law, including but not limited to as a Cannabis retailer as defined in City of Hoboken Municipal Code Section 36-3 pursuant to (i) a Class 5 license to be issued in accordance with the laws of the State of New Jersey and all applicable licensure requirements, and the regulations incidental thereto, and (ii) receipt of all other permits and approvals of local, county or state agencies or authorities required to be issued in order to operate the use, and uses ancillary or incident thereto, on or before the Fully Permitted Date as hereinafter defined. Lessee shall not operate any business or other use of the Premises prior to obtaining all such requisite permits and approvals of local, county or state agencies or authorities required to be issued in order to operate the use.

48. In addition, the Lease Agreement provides the Lessee to purchase the premises or 100% of the Lessor, which is exercisable over the period of December 1, 2022 – May 31, 2023:

m. PURCHASE OPTION:
 Provided Lessee is not then in default under any Lease terms beyond applicable notice, grace and cure periods, Lessee shall have the option to either (i) purchase the Premises; or (ii) purchase 100% of the equity of Lessor, exercisable between December 1, 2022 and May 31, 2023, pursuant to the terms of Section 20 of the Lease.

49. Critically, the occupation by Story Dispensary of Hoboken LLC, an affiliate of the Lessee, is the subject of a sublease relationship:

16. Assignment and Subletting.

a. The parties acknowledge that upon execution of this Lease, Lessee intends to sublet the Premises to "**Story Dispensary of Hoboken LLC**", an affiliate of Lessee, and that the licenses and permits pertaining to the use of the Premises for the Permitted Use will be held by the subtenant and not by Lessee.

50. The agreement provides for a purchase option by the Lessee on a sliding scale commencing December 2022 and continuing through May 2023, at the purchase prices of \$3,445,000 and \$3,420,000, respectively:

d. Purchase Option Price.

i. If exercised in the month of December 2022 the Purchase Option Price shall be \$3,445,000.

ii. If exercised in the month of January 2023 the Purchase Option Price shall be \$3,440,000.

iii. If exercised in the month of February 2023 the Purchase Option Price shall be \$3,435,000.

iv. If exercised in the month of March 2023 the Purchase Option Price shall be \$3,430,000.

v. If exercised in the month of April 2023 the Purchase Option Price shall be \$3,425,000.

vi. If exercised in the month of May 2023 the Purchase Option Price shall be \$3,420,000.

51. The purchase option price of \$3,445,000 if exercised in December 2022 reflects a 43.5% return on the \$2,400,000 purchase price within one year of acquisition.

52. The Lease Agreement between Retail and NJRE 5153 14th LLC is executed by Touraj J. Vedadi, as Manager of NJRE 5153 14th LLC and attested to by Thomas H. McGlade.

53. Notably, while the Applicant is not a party to this Agreement, it was clearly aware

of its existence and did not bring it to the attention of the Planning Board, as it would call into question who the true owner/operator was and that was not the Applicant.

54. The Agreement is personally guaranteed by Touraj Jason Vedadi, a Texas resident.

55. On January 17, 2022, Retail signed a non-binding letter of intent to lease the commercial unit with an entity known as Alligator 14Th Street, LLC, with Alligator 14th Steet, LLC - - not Story - - as the tenant of the commercial unit.

56. This “nonbinding letter of intent” provides for the same early purchase option reflected in the foregoing Lease Agreement:

Equity or Asset Purchase Option:	<p>Between December 1, 2022 and May 31, 2023, Tenant shall have the option (the “Purchase Option”) to either 1) purchase the Premises from Landlord, or 2) purchase 100% of the equity/membership interests of Landlord from Landlord’s current owners, for the greater of (a) \$3,500,000. Such amount shall be reduced by \$5,000 x the number of months between the Lease Commencement Date and the date of exercise of the Purchase Option. By way of example, if Tenant exercises the Purchase Option on January 1, 2023 and Landlord had delivered the Premises on January 1, 2022, the purchase price will be reduced by \$60,000.00 (i.e. \$5,000 x 12 months).</p> <p>Tenant shall have the right to extend the Purchase Option period for six (6) additional months by providing Landlord with written notice of such intent, together with evidence, satisfactory to Landlord that Tenant has been diligently pursuing all permits referenced herein, no less than sixty (60) days before the end of the initial Purchase Option period.</p>
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57. Furthermore, the performance of the first twelve months of the Lease Agreement is “personally guaranteed by the principals of Tenant”:

Guarantor:	<p>During the first twelve (12) months of the Lease, its terms shall be personally guaranteed by the principals of Tenant. Such guarantee shall expire upon commencement of the thirteenth (13th) month of the Lease term.</p>
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58. The “Nonbinding Letter of Intent” is signed by T. Jason Vedadi as the authorized officer of Alligator 14th Street, LLC:

59. The very same day, Retail, Alligator 14th Street LLC as “sublessor” and Best Buds Hoboken LLC as “tenant” executed a “Landlord and Sublessor Certification,” in which the Retail Defendants represented that, “[t]he undersigned Landlord is the owner of the commercial condominium unit comprising the Premises, while the undersigned Sublessor leases the Premises from the Landlord pending Sublessor’s acquisition of the Premises from the Landlord”:

LANDLORD AND SUBLESSOR CERTIFICATION	
Premises:	51 14 th Street, 1st Floor, Hoboken, New Jersey 07030 (“Premises”)
Landlord:	51-53 14 th Street Retail LLC (“Landlord”)
Sublessor:	Alligator 14th Street LLC (“Sublessor”)
Sublessee/Tenant:	Best Buds Hoboken LLC (“Tenant”)
As of the date hereof, the undersigned hereby certifies the following:	
1. The undersigned Landlord is the owner of the commercial condominium unit comprising the Premises, while the undersigned Sublessor leases the Premises from the Landlord pending Sublessor’s acquisition of the Premises from Landlord.	

60. The “Landlord and Sublessor Certification” was signed by Thomas H. McGlade on behalf of Alligator 14th Street LLC:

61. A few days later, on January 24, 2022, Story officially submitted its Cannabis Business Application to the City of Hoboken Cannabis Review Board (“CRB”).

62. At the CRB hearing, Story, through its 60% owner, Samantha Silva, represented that the Applicant was a woman/minority owned business and those facts were prominently relied on in the CRB’s decisions to endorse the Application to be heard by the Planning Board.

63. None of the true information of the ownership structure was disclosed to the CRB

and was only brought to the attention of the City of Hoboken Planning Board by the Association during the November 1, 2022, hearing.

64. Despite this information, the Planning Board declined to remand for further consideration by the CRB.

65. Section 196-33.1(M)(1) requires the CRB's approval as a condition of approval of the Application; yet, such approval by the CRB, was based upon misleading, inaccurate or otherwise untruthful representations about the Applicant's true ownership structure.

The Applicant did not submit a Traffic Impact Study

66. The Applicant did not submit a Traffic Impact Study and circulation plan in support of the Application. Instead, the Applicant elected to maintain that there is no significant change in use and therefore relies solely on what the Applicant's own expert titled a Limited Traffic Study.

67. The Limited Traffic Study was just that -- limited at best. More importantly, as the Applicant's expert demonstrated, the Limited Traffic Study was entirely inaccurate.

68. ITE traffic studies are only as accurate as the data input into the analysis and the Applicant's expert skewed the analysis by classifying the Hudson Tavern as a "High Turnover (Sit-Down) Restaurant," as opposed to its proper classification as a "Quality Restaurant" or "Fine Dining." All the experts agree on one thing. The ITE analysis is pure mathematics and therefore entirely dependent on inputting correct data to the equation.

69. If you use the appropriate designation of the Hudson Tavern as a Quality Restaurant or Fine Dining establishment under the 11th edition, the conclusions are that (a) there will be an increase of more than 100 trips in peak hours, which the NJDOT Access Management Code defines as significant; and (b) there will be an increase in two-way traffic in excess of 500

daily trips. The NJDOT Access Management Code considers to be a major traffic generator.

70. The above referenced NJDOT Access Management Code standards were specifically relied upon by the Applicant's own traffic engineer in an attempt to argue that a full Traffic Impact Study and circulation plan was not required. Of course, the Applicant's traffic engineer used a skewed analysis by improperly designating the prior use.

71. The results of the industry standard ITE analysis using the proper prior use actually suggest, according to the NJDOT Access Management Code standards relied upon by the Applicant, that the Applicant should have been required to prepare and submit a full Traffic Impact Study and circulation plan *with the Application*.

72. The Applicant had the opportunity to prepare a full Traffic Impact Study and circulation plan, but opted not to; instead, asking for a waiver from this requirement by presenting skewed analysis.

73. For this reason alone, the Application was incomplete pursuant to N.J.S.A 40:55D-10.3.

Members of the Planning Board expressed concern prior to conditional approval

74. For example, the Commissioners were struck by the accuracy of the representations made by the Applicant to the Cannabis Review Board and questioned whether they had the authority to remand the application back to the Cannabis Review Board and itself speculated that "this will end up in a court and all of these issues will get sorted out on that end." (Tr. 211:4-9).

75. At other points in their deliberations, the Planning Board members questioned whether the dispensary would be or could be "shut down" if the implementation was a "disaster." (Tr. 3-4:21-305:1).

76. Commissioner Doyle also noted that the ordinance upon which the Application was based was “not all that really well thought through.” (Tr. 307:2-7).

77. Indeed, at the time of the deliberations, Commissioner Jacobsen synthesized the various defects that the Planning Board was struggling to address:

COMMISSIONER JACOBSON: Yeah. Well, and just first off I want to thanks the applicant, the objector, all the members of the public for the incredibly constructive dialogue, and I thank you. Where I'm struggling with this application is the question of how -- if approved, how is this going to play out and how is this going to affect the neighborhood? *And there's the feeling that if we were to approve it, then there's no further recourse and we all just have to live with the consequences and trust that the applicant and the operator are going to manage the queuing and the traffic flow within the facility in a safe and effective manner, that public safety concerns with queuing and loitering are going to be responded to appropriately by the authorities, and there's a lot of doubt of how that's actually going to work out.* So maybe to some of these questions, rather than trying to impose specific conditions at this point, given all of the unknowns, is there some, and also accounting for what appears to have been a lack of community engagement through the process, could we have an agreement or a condition, something that six months following the opening that the applicant, the operator come back to the Planning Board, not for a re-review of the application, but for a discussion of how is it going? We can have some statistics from the public safety. We can have members of the community. We can have the operator. And at that point maybe there's some, okay, these are some things we have learned, are there some changes that maybe we could, that they would come forward with of, you know, we really would like to use a door on Hudson Street, we've learned wed really like to do that, and try to facilitate a process of improvement so that we don't have to get it right tonight, we leave the window open to getting it right based on how things have actually turned out.

(Tr.315:18-317:7) (emphasis added).

78. Commissioner Doyle similarly asked whether the Planning Board could grant a “conditional approval for six months” and have the applicant “come back in six months” for actual approval. (Tr.319:13-19).

79. Viewed through this lens, the actions of the planning board were arbitrary, capricious and unreasonable and should be set aside.

WHEREFORE, the Association demands judgment against the Planning Board:

- A. declaring that the November 1, 2022, grant of approval of Story’s application be vacated and set aside;
- B. awarding reasonable attorneys’ fees and costs of suit; and
- C. for such other and further relief as the Court deems appropriate.

BECKER & POLIAKOFF LLP
Attorneys for Plaintiff

Date: December 16, 2022

By: 

Martin C. Cabalar

DESIGNATION OF TRIAL COUNSEL

Plaintiffs designate Martin C. Cabalar, Esq. as trial counsel.

BECKER & POLIAKOFF LLP
Attorneys for Plaintiff

Date: December 16, 2022

By: 

Martin C. Cabalar

RULE 4:5-1 CERTIFICATION

The undersigned certifies that pursuant to *Rule 4:5-1* the matter in controversy is related to a pending proceeding captioned 51-53 14th Street Condominium Association, Inc. v. 51-53 14th Street Retail LLC, et al. (Docket No. HUD-C-49-22). The undersigned is not presently aware of any additional parties that should be included in this action.

Date: December 16, 2022 By: 
Martin C. Cabalar

CERTIFICATION PURSUANT TO R. 4:69-2

The undersigned certifies that transcripts of the proceedings before the Planning Board are appended hereto as Exhibits 1, 2, 3, 4, and 5.

Date: December 16, 2022 By: 
Martin C. Cabalar

