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October 13, 2022

Via E-mail (rmclean@teanecknj.gov)

Rosiland V. McLean, Planning Board Secretary
Township of Teaneck Planning Board
818 Teaneck Road
Teaneck, NJ 08812

**Re: Planning Board Applications (jointly and severally the “Applications”
of Holy Name Medical Center, Inc. (the “Applicant”)
Township of Teaneck Planning Board (the “Board”)
Currently Scheduled Hearing Date: October 13, 2022 (the “Public Hearing”)**

Dear Ms. McLean:

As you are likely aware, my office represents various property owners in connection with pending litigation challenging the Ordinance and Master Plan adoption underlying the Applications (and if successful will render any approvals in connection with the Applications as moot). My office was only notified three days ago of said Applications, and accordingly have not had an opportunity to comprehensively review all plans, reports and materials submitted in support of the Applications (I also was out of the office yesterday for an out-of-state funeral). Nor have I had the opportunity to communicate with most of the property owners I represent in the underlying litigation as to whether they wish that my office represent them in connection with the Applications (I am writing this letter to you as authorized by Alan Rubinstein, one of my clients in the underlying litigation). While certain materials in connection with the Applications have been posted on the Township website, they were not available 10 days prior to the proposed hearing date (the Applicant’s attorney, Ms. Berger, did forward to me certain application materials yesterday and two days ago upon my request). Without reviewing the complete application file, I cannot fully assess the extent of variance or exception relief required, or the extent to which expert witness testimony will be required. To compound matters, I have a prior commitment this evening and cannot be in attendance. We respectfully request that the Public Hearing on the Applications be adjourned.

As stated in Cox, New Jersey Zoning and Land Use Administration at Section 18-3.2 (2022 Edition), “[i]t should be remembered that a proceeding before a [planning board] is not essentially an adversary proceeding, and the board is charged with obtaining all facts required by it, and then, in the exercise of its discretion, making a decision which best accords with the rights of the applicant and the interests of the public. See Smith v. Fair Haven Zoning Board, 335 N.J. Super. 111, 121 (App. Div. 2000); Village Supermarket v. Mayfair, 269 N.J. Super. 224, 238 (Law Div. 1993).” Id. As you are aware, there is an extensive history regarding the subject matter of the above-referenced Applications, including pending litigation. Should the Board proceed with the Applications without the undersigned first having a fair opportunity to review in a detailed manner the application materials concerning such a significant project, we respectfully contend that the clients we represent in the underlying litigation will be unfairly prejudiced and arguably constrained from comprehensively providing to the Board (with our assistance) legal argument, cross examination and evidence relevant to the matters before the Board. At all times, the public should have the right to a fair land use process under the New Jersey Municipal Land Use Law (“MLUL”) and State and Federal due process and equal protection laws and regulations. The within adjournment request is certainly reasonable and meritorious, and its denial would constitute arbitrary and capricious action by the Board.

Should the Board not act favorably on the above request, we respectfully contend that the Public Hearing on the Applications cannot proceed as currently scheduled for the following reasons:

THE NOTICES FOR THE PUBLIC HEARINGS ON THE APPLICATIONS FAIL TO COMPLY WITH THE REQUIREMENTS OF THE MUNICIPAL LAND USE LAW (“MLUL”); THEREFORE, THE BOARD LACKS JURISDICTION TO CONDUCT THE PUBLIC HEARINGS AT THE OCTOBER 13, 2022 BOARD MEETING.

One of the fundamental requirements of the MLUL is that the public must be fairly apprised of the application and any related hearings to consider it. See N.J.S.A. 40:55D-11. This public notice requirement: ensure[s] that members of the general public who may be affected by the nature and character of the proposed development are fairly apprised thereof so that they may make an informed determination as to whether they should participate in the hearing, or at the least, look more closely at the plans and other documents on file. Perlmart of Lacey, Inc. v. Lacey Township Planning Board, 295 N.J. Super. 234, 237 (App. Div. 1996).

The required public notice must be provided at least 10 days prior to the scheduled hearing date and must contain: (a) the date, time and place of the hearing; (b) the nature of the matters considered; (c) an accurate identification of the property proposed for development by street address; and (d) the location and times at which any maps and documents for which approval is sought are available. N.J.S.A. 40:55D-11; Perlmart, supra at 236-37. The Court in Perlmart observed, “[w]e have recognized the importance of the public notice requirement of the Municipal Land Use Law (MLUL) and the fact that such notice is jurisdictional.” Id. at 237. To properly put the general public on notice of the nature and character of a proposed development, it is imperative

that the notice of hearing contain an “accurate description of what the property will be used for under the application.” Id. at 238. Where the notice fails to give a reasonably accurate description, adjacent landowners may be misled. Id. at 239 (citing Appeal of Booz, 111 Pa. Commw. 330, 335 (1987)). Notice is fundamental to the Board's jurisdiction, and an applicant's failure to comply with the appropriate notice provision deprives the reviewing board of jurisdiction and is fatal to that board's approval of an application. See Oliva v. City of Garfield, 1 N.J. 184, 190 (1948); Township of Stafford v. Stafford Township Zoning Board of Adjustment, 299 N.J. Super. 188, 196 (App. Div. 1997), aff'd 154 N.J. 62, 79 (1998); Perlmart of Lacey, Inc. v. Lacey Township Planning Board, 295 N.J. Super. 234, 241 (App. Div. 1996); Broir Development Corp. v. Planning Board of the Township of Clinton, 255 N.J. Super. 262, 269-70 (App. Div. 1992) (noting “notice requirements evidence ‘legislative solicitude for the public interest.’”).

The public notices for the Applications (jointly and severally, the “Notices”) are inadequate and deficient as a matter of law, and fall short of compliance with the MLUL’s public notice requirements, including for the following reasons:

1. The Notices do not reference that the proposed uses (temporary gravel parking lot for parking and construction staging/storage, and childcare center with play area) are intended to be accessory uses to the principal, hospital use of the subject property.
2. The Notices do not even reference that the subject property is located in the Hospital Zone.
3. The Notices fail to identify/include two of the properties which are the subject of the Applications (or at least the childcare application): properties depicted on the Township tax maps as Block 3002, Lots 7 and 8.
4. The Notices are confusing and unclear as to what constitutes the “Property” as referenced throughout same.
5. “All documents relating to” the Applications were not available for inspection in the office of the Secretary/Administrator of the Board at least 10 days prior to the Public Hearings. One of our clients in connection with the underlying litigation (Mr. Rubinstein) apparently requested to review said documents in connection with the Applications on or about October 3, but the Board Secretary improperly required that he first submit an OPRA request to the Township Clerk’s office. The documents that eventually were provided to Mr. Rubinstein by the Township Clerk (not the Board Secretary) on October 6 in response to his required OPRA request was incomplete and did not constitute all documents relating to the Applications, and the documents provided were not made available for inspection at the time requested by Mr. Rubinstein (and less than 10 days prior to the Public Hearings). The documents certainly were not available on the date of publication of the Notices as stated therein.

6. Not “all documents relating to” the Applications were available for inspection on the Township website at least 10 days prior to the virtual Public Hearing – documents that are to be referred to at the Public Hearing shall be made available in advance to the public in an electronic format – see N.J.A.C. 5:39-1.4. Further, the documents that were posted on the Township website gave the public a false impression that same constituted “all documents relating to” the Applications.
7. The Notices fail to reference the particular sections of the relevant Ordinance requiring relief by the Applicant; or even the sections of the Municipal Land Use Law under which the Applicant is requesting relief.
8. The Notice as to the temporary gravel parking lot for parking and construction staging/storage fails to identify whether the particular relief sought requires variance relief or exception relief under the MLUL.
9. The Notice as to the temporary gravel parking lot for parking and construction staging/storage references various “Property Requested Waivers” without identifying the requirements applicable to existing conditions or proposed conditions, so to ascertain the extent of relief required.
10. The 10 day notice period prior to the Public Hearings fell on Erev Yom Kippur, Yom Kippur, and two days of Sukkot – four Jewish holidays observed by many homeowners within 200 feet of the subject property. This placed an undue and unconstitutional burden on followers of the Jewish faith to adequately review documents in connection with the Applications and prepare for the Public Hearing. See Ptaszynski v. Uwaneme, 371 N.J. Super. 333, 347 (App. Div. 2004), finding that any State governmental agency, such as a municipal planning board, is a place of public accommodation under the umbrella of the New Jersey Law Against Discrimination.
11. We understand that there is a pending Municipal Court matter involving the subject, temporary gravel parking lot that was recently transferred out of the Township of Teaneck municipal court due to a conflict of interest issue between the Applicant and the Township. If accurate, the Township Planning Board would similarly be precluded from presiding over the Applications.

Accordingly, as in Perlmart, the Notices are substantially deficient, divesting the Board of jurisdiction to begin to consider the Applications at tonight’s Planning Board meeting. These deficiencies require that the hearing on both Applications be adjourned to a later date (subject to any disposition in consideration of the aforementioned Municipal Court matter and related conflict allegations) so that Applicant may provide proper notice, as mandated under the MLUL. Any time limitations required by law within which the Board must consider the Applications are to be tolled until the aforementioned jurisdictional defects are corrected.

Rosiland V. McLean, Planning Board Secretary

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We reserve our right to supplement and amend the information presented in this correspondence at any time, including at all public hearings scheduled for the Applications. Kindly forward an electronic copy of this correspondence to Mr. Bodner (Board Chairman) and to all Board members and professionals in advance of tonight's public hearing, as it should be considered as part of the record of the Applications. We have sent a copy of this submission to the Applicant's and the Board's counsel *via* email, and by copy of same respectfully request of the Applicant's counsel that all future documents, letters, emails, reports and submissions of the Applicant be transmitted to us by the Applicant at the time submitted to the Board and its professionals (we will pay for the reasonable costs of duplication of all such submissions to the extent applicable).

We thank the Board for its consideration, and look forward to hearing from the Board as soon as possible as to the issues raised above.

Very truly yours,



Robert F. Simon

RFS:kas

cc: Wendy M. Berger, Esq. – *via e-mail*

Kevin P. Kelly, Esq. – *via e-mail*