

PLANNING REPORT

In Support of

Legal Challenge to the Jersey City Planning Board's Article 31 Review of Landscaping and Other Changes to Exchange Place in Jersey City, NJ

Submitted On Behalf of:

Polish American Strategic Initiative, Inc.

**Polish American Strategic Initiative
Educational Organization, Inc.**

and Jeanne Daly

The original of this report was signed and sealed on February 20, 2023
in accordance with Chapter 41 of Title 13 of the New Jersey State Board
of Professional Planners

A handwritten signature in blue ink that reads "Carlos M. Rodriguez". The signature is written in a cursive style.

Carlos Rodrigues FAICP / PP

New Jersey Professional Planner #5107

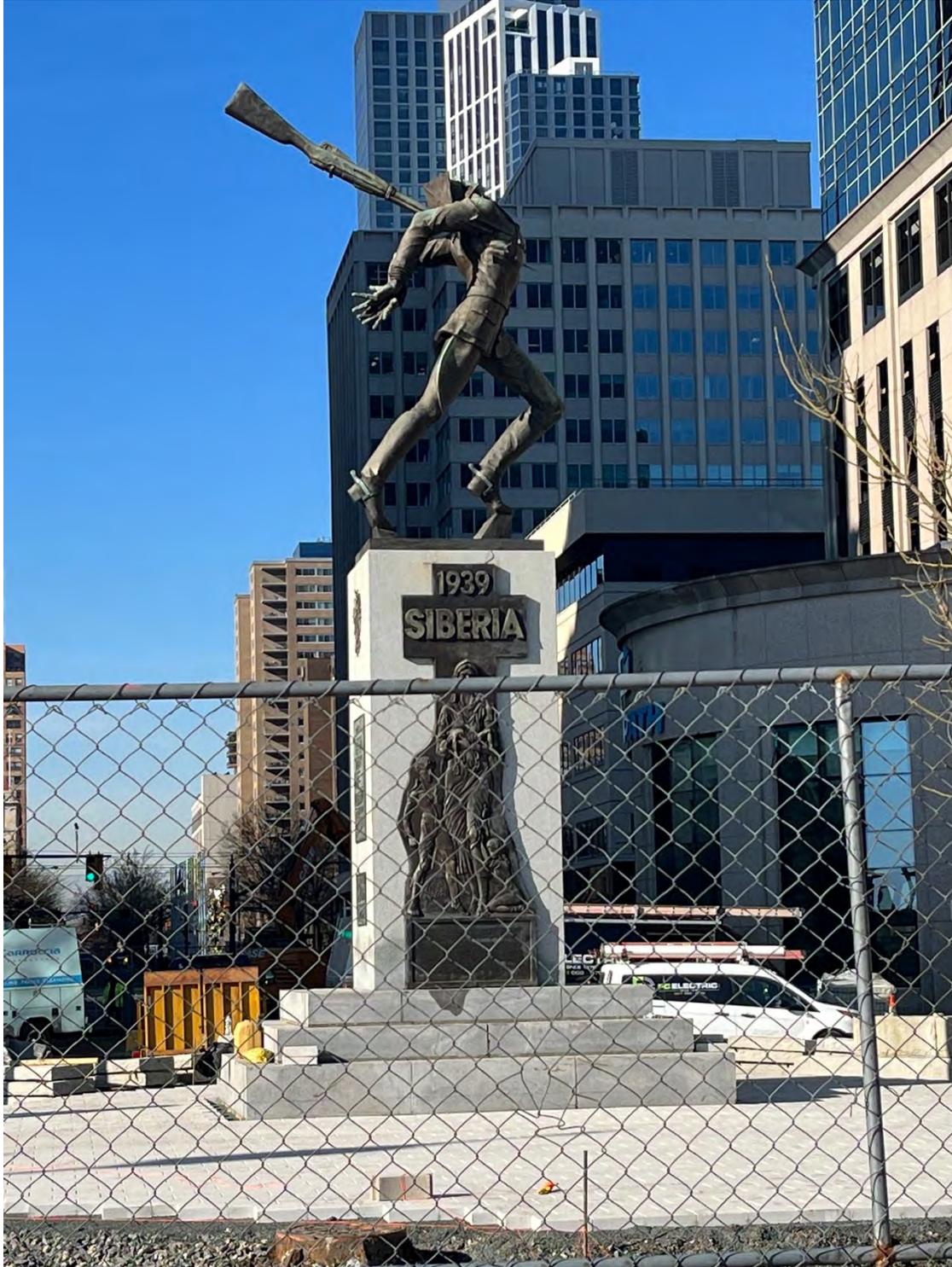


Figure 1 – View of Katyn Memorial from the East. Photo taken by the author on 12/30/2022.

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1. Introduction and Background

For this report, I conducted an in-person visit to the site of Exchange Place on 12/30/2022 and extensively photographed the site and its immediate surroundings. I also reviewed the following documents:

1. Exchange Place Alliance website
2. Exchange Place Alliance – Presentation to the Board of Directors, 11 PPT slides, dated 2/7/2022
3. Melillo Bauer Garman – Landscape Architecture Plans, dated 4/14/2022, 18 sheets
4. Melillo Bauer / Dresdner Robin -- Graphics Package, dated 04/08/2022, 15 sheets
5. Melillo Bauer / Dresdner Robin -- Graphics Package, dated 11/02/2022, 10 sheets
6. Dresdner Robin – Preliminary / Final Site Plans, dated 4/14/2022, 8 sheets
7. Transcript, Jersey City Planning Board 4/26/2022 public hearing, 35 pages
8. Don Pepe, Esq letter to Tanya Marione PP/AICP dated 4/29/2022, 4 pages
9. Transcript, Jersey City Planning Board 5/10/2022 public hearing, 9 pages
10. Our Jersey City Master Plan, various elements (vision statement, open space element)
11. New York City Design – Public Design Commission website
12. UNESCO – Recommendation on the Historic Urban Landscape, 2011
13. World Monument Fund website

Other sources consulted are identified in the body of this report in the appropriate places.

Exchange Place, Jersey City

Exchange Place is an important location in Jersey City facing the Hudson River and with direct views of Midtown and Lower Manhattan.

Around Exchange Place there is a busy PATH station (Exchange Place), the New Jersey Transit Exchange Place light rail station, the Paulus Hook ferry terminal, the Harborside Ferry just North of the plaza, New Jersey Transit bus service, two Hyatt Hotels, a branch of the New Jersey Institute of Technology's Engineering School, several large office complexes (Harborside, Exchange Place Center), the J. Owen Grundy pier / park, and a portion of the Hudson River walkway -- a pedestrian promenade that runs along the Hudson River.

Exchange Place is also the home of the Katyn Memorial, a statue that commemorates a war crime that took place in the Katyn forest in Poland, and a few other locations near the border with Belarus, where thousands of officers of the Polish Army, along with civilians, were murdered by Soviet forces during World War II.

In spite of its name, Exchange Place is not a car-free environment, and in fact faces two busy streets to the West – Hudson Street (parallel) and Montgomery Street (perpendicular). Exchange Place is an inter-modal hub enabling commuters and other travelers to transfer between various public transit options, as well as a popular destination for community gatherings celebrating special occasions. Although motor vehicles are technically prohibited, the

Hyatt House hotel located at 1 Exchange Place has a franchise agreement with Jersey City to allow pick up / drop off operations. The only truly car-free portion of Exchange Place is the area around the statue, and the Hudson River walkway.

Exchange Place has also historically hosted other types of exchanges, namely cultural exchanges. For decades, Jersey City's diverse communities have gathered in Exchange Place Plaza to celebrate and share their unique cultures. Thousands of residents and visitors have attended parades, festivals, and concerts. Attendees enjoyed not only the events, but the stunning waterfront views of the Hudson, the Manhattan skyline, and the cooling breezes of the waterfront. Exchange Place Plaza is a unique public space due to its location, size, and public transportation options. There is not one other public space in Jersey City that contains these elements.

Improvement Districts and District Management Corporations

Business Improvements Districts (BIDs) or Special Improvement Districts (SIDs) are established under New Jersey's "Pedestrian Mall and Special Improvement District Act" (N.J.S.A. 40:56-65 et seq.) and are overseen by the New Jersey Department of Community Affairs (NJDCA) – Division of Housing and Community Resources. The NJDCA website, accessed on 1/10/2023, defines an improvement district in the following way:

“An improvement district is a defined area, generally in the central business district of a downtown or a mixed-use corridor in a larger city, that is authorized by state law and created by an ordinance of the local government to collect a special assessment on the commercial properties and/or businesses in that area. That assessment is granted to a municipally-assigned District Management Corporation (DMC). This entity is typically a non-profit organization, separate and distinct from the municipality itself. The DMC, which is typically governed by a board comprised of at least 50%+1 business & property owner stakeholders, sets the agenda, priority, and initiatives of the organization, in addition to hiring and supervising staff, and determining the annual budget and assessment amount.”

A District Management Corporation is “a group of stakeholders from the community, who function as a Board of Directors and who ultimately supervise downline teams or committees that implement projects for the district’s benefit,” according to NJDCA. NJDCA’s website recommends that the DMC Board be “no fewer than 7 and no more than 13 members in size. In the spirit of the State Law, the Board should be made up of at least 50%+1 business and property owners and also include one municipal official, with other stakeholders such as residents and local institutions, as applicable. The DMC would hire an Executive Director to implement its programs working with the teams/committees. The Executive Director would be accountable to the Board of the DMC.”

A District Management Corporation manages an improvement district as a kind of public-private hybrid entity. As the NJDCA’s website writes, “In a sense, the business community becomes self-governing: private resources from the stakeholders are assessed and used as determined by the businesses to fulfill what they see as the greatest needs of the downtown area. The improvement district (whether "business," or "special," or "downtown" or some other name) is a model for management of the municipal commercial corridor. A special improvement district “provides a mechanism for the businesses of a community to organize as a single entity, to raise funds for activities that supplement municipal services, and to manage themselves to become a more effective shopping/dining/commercial destination. The

Improvement District itself is effectively a boundary of affected properties and businesses, and is defined by municipal ordinance.” [The District Management Corporation controls the assessments from an improvement district, according to the NJDCA website.](https://www.nj.gov/dca/divisions/dhcr/idp_faq.html)
https://www.nj.gov/dca/divisions/dhcr/idp_faq.html

The District Management Corporation of an improvement district has certain powers that the municipal government, Chamber of Commerce, or an Economic Development Committee do not have. As NJDCA explains:

“The best way to illustrate this distinction is by example of the shopping mall: every mall is a collection of stores and eateries that were selected by plan based on their appeal to the local marketplace, and placed in their respective locations within the mall by careful design. They operate under common hours of business, they all contribute to an annual marketing program for which they all benefit, and they share in the costs of special events, improvements, provision of security (that supplements local police support), and even the maintenance of common areas. They can do this because the entire mall is owned by a single owner; the commercial buildings in a typical community are all owned by various owners.

The BID allows the businesses of a municipality to operate more like the businesses in a mall, managed by a single group rather than by each individual merchant on his or her own.”

As the NJDCA website further explains, a special improvement district “operates with a funded budget and pursues a strategy to grow business by managing the appearance, the marketing, the events, for the commercial corridor in ways that the municipality, the Chamber of Commerce or the Business Development Committee cannot do.” In addition, under New Jersey law, according to the NJDCA, the District Management Corporation has “a variety of powers and capabilities for improving and enhancing the viability of the district, unless otherwise constrained by the municipality’s enabling ordinance for the BID.”

The question of whether a District Management Corporation is a public or private entity has not been definitively decided by the New Jersey Attorney General’s office, according to the NJDCA website:

“It has been an ongoing question across New Jersey for many years. Public record of the New Jersey Supreme Court’s opinion stated that Improvement Districts (BIDs, SIDs, DIDs) are an attempt to achieve privately what municipal government has struggled unsuccessfully to do alone as noted in the following cases: *Second Roc-Jersey Associates v. Town of Morristown*, 158 N.J. 581 (1999). See also *Gonzalez v. Borough of Freehold* (A-3476-92T2, June 30, 1994).”

As a result of this continuing question, the NJDCA website “recommends” that a District Management Corporation “seek to meet the spirit of public entity polices such as the Open Public Records Act (OPRA) and Open Public Meetings Act (OPMA). In other words, the DMC should expect that others will seek to hold it accountable as a public entity and prepare accordingly.”

Exchange Place Alliance District Management Corporation

Exchange Place is managed by the Exchange Place Alliance District Management Corporation -- one of eight such Special Improvement Districts (SIDs) that currently operate in Jersey City – which is the entity responsible for carrying out a variety of duties with respect to the maintenance and improvement of the

district. Some of the other SIDs in Jersey City include the Central Avenue SID (est. 1992), the Journal Square Restoration Corporation SID (est. 1995), the Historic Downtown SID (est. 1998), the McGinley Square Partnership Management Corporation Partnership SID (est. 2012), and the West Side Avenue SID (est. 2018).

The Exchange Place Alliance (henceforth the Alliance) was created in 2016 by the City of Jersey City. It oversees an expansive, multi-block area from Sixth Street to Morris Canal Park and West to Marin Boulevard – see Figure 2.

The mission of the Alliance, according to its website (www.exchangeplacealliance.com), accessed on January 9, 2023, is as follows:

“In order to promote economic growth while also attracting new retail and businesses to the area, the Exchange Place Alliance will elevate the neighborhood through capital improvements, repairs and maintenance, landscaping, cleaning, and programming. Previously untapped sources of revenue will be utilized for improvements including the restoration of and upgrades to Exchange Place Plaza, Christopher Columbus Drive and other areas in the district.

The Alliance will also work to enhance the sense of arrival for the area. New amenities will include wayfinding signage and informational kiosks to help direct the public, comfort stations, tables and chairs along the Hudson River Waterfront Walkway, Citi Bike stations, and public Wi-Fi.

The Alliance contracts a crew of workers that will be responsible for timely trash and snow removal, street cleaning, and litter removal, as well as landscaping and hardscaping. New bollards and lighting are planned to be installed in coordination with PATH and PSE&G.

As a part of its mission, the Exchange Place Alliance will focus on communication with the membership and public regarding new organizations, events and businesses within our district. Please reach out to us with any new openings for promotions across our outlets at exchangeplacealliance@gmail.com.”

The Alliance has full time staff and is governed by a seven-member Board of Directors. The Alliance’s current Board includes a representative from the City Council and representatives of four very large real estate development companies: American Equity Partners (the owner of 15 Exchange Place, located in the district), Panepinto Properties, G&S Investors (the lead redeveloper of Metro Plaza, also located in the district) and LeFrak. Michael DeMarco, the Alliance president, is the former CEO of Mack-Cali.¹ No affiliation is provided for Andy Siegel, the seventh board member.

The Katyn Memorial

Within the area managed by the Alliance is located a 32-foot high bronze statue on a granite plinth facing the Hudson River and Lower Manhattan. The statue represents a bound-and-gagged soldier being stabbed through the back with a bayonet. The statue was erected at that location – which then faced the two towers of the World Trade Center – in 1989, to call attention to a World War II atrocity.

¹ <https://re-nj.com/demarco-out-after-five-years-at-mack-cali-as-reit-names-interim-ceo/>



Figure 2 – Map of the Exchange Place Special Improvement District, from the Exchange Place Alliance’s website.

The Katyn Memorial, as it is known, celebrates the 14,000 Polish army officers and the 8,000 civilians that were massacred in 1940 by the Soviet secret police in the Katyn forest. The statue has extraordinary symbolic value for the Polish-American community, many of whom emigrated to the United States following World War II to escape the Iron Curtain and Soviet rule. The Memorial was gifted to the City in 1986 (City Ordinance C-299). In 1989, the City adopted a resolution to establish “a plaza for the placement of a monument to honor the brave members of the Polish Officer Corp. who were subject to mass execution at the hands of the Soviet Government in April of 1940” (Resolution C-4271). The resolution stated that the Plaza “shall be known as the Katyn Monument Plaza and which shall be located on the southerly side of Exchange Place opposite the Path Station[.]”

In Prisoners of History: What Monuments to World War II Tell us About our History and Ourselves, published in 2020 by St Martins Publishing Group, Keith Lowe, the author, describes an incident in May of 2018 when Steve Fulop, the mayor of Jersey City, unilaterally attempted to move the Katyn Memorial to a different location, which resulted in considerable controversy not just in Jersey City, but elsewhere in the United States, as well as in Poland. The City eventually conceded and the statue stayed at its original location. Ordinance No. 18-144, adopted in December 2018, reaffirmed the city’s acceptance of the Memorial as a gift and ordained that the Memorial should remain in its location at Exchange Place in perpetuity. Ordinance No. 18-144 stated that “the community has made it abundantly clear that it wishes for the Katyn Forest Massacre Memorial to remain in its current location at the Eastern terminus of Exchange Place Plaza and it therefore [is] in the City’s best interest that the Katyn Forest Massacre Memorial’s location be formally codified and all contrary Ordinances be rescinded.”

Notably, the plan to move the statue did not include any attempt at restricting public access to it, unlike the Alliance’s current plans, nor did it restrict views of the Hudson River and Manhattan skyline.



KATYN MEMORIAL MOVING TO YORK STREET

MAY 15, 2018 / LJ



City officials released details Monday of the Katyn Memorial’s new home.

The statue will be moved a few feet away from its

Figure 3 – “Katyn Memorial Moving to York Street”, social media post, JerseyCityUpFront.com 5/18/2018

Proposed Plans to Jersey City Planning Board

In 2022, the Alliance proposed a plan to the Jersey City Planning Board consisting of extensive exterior modifications to the public spaces between Exchange Place Center, Hyatt House, the PATH station, the Hyatt Regency hotel and the Harborside complex. These modifications were mostly streetscape-related interventions, such as replacing exterior pavement surfaces, but they also include other features, such as re-grading the area around the Memorial; adding trees and decorative landscaping, seating areas and decorative walls; adding an enhanced pedestrian space; and modifying the vehicular circulation and parking schemes, including a new access road for private use only, for the Hyatt Hotel and 15 Exchange Place, which reduces the amount of pedestrian space available.

Some of these modifications will affect the Katyn Memorial in ways that the Polish community finds inappropriate and disrespectful, namely by placing a bench seating area with a 5 ½ foot tall back around much of the monument, as well as planting bushes of up to about 7 feet in height behind the benches, thereby obscuring the monument, obscuring uninterrupted views of the Hudson River from the West and constraining the area available for public assembly around the monument.

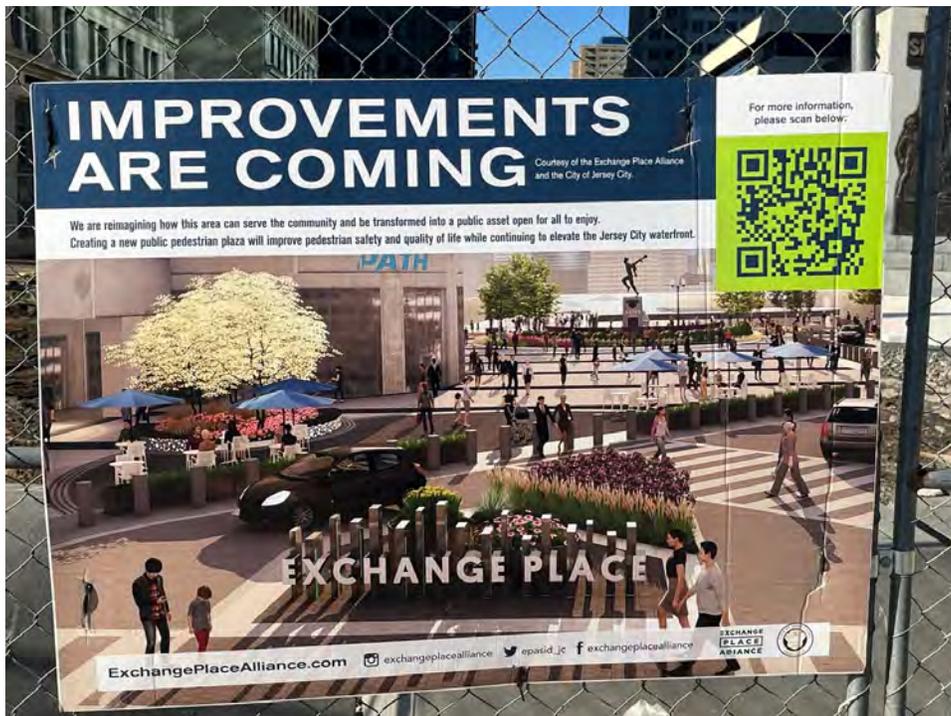


Figure 3 -- “Improvements are coming” -- poster mounted on construction fence. Photo by author 12/30/2022

2. The Planning Board's Section 31 Review of Landscaping and Other Changes to Exchange Place

The landscaping and other changes proposed by the Exchange Place Alliance were referred to the Jersey City Planning Board for a courtesy review under Section 31 of the Municipal Land Use Law (MLUL) N.J.S.A 40:55D et seq which provides as follows:

“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 expenditures 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. This requirement shall apply to action by a housing, parking, highway, special district, or other authority, redevelopment agency, school board or other similar agency, State, county or municipal. In addition, this requirement shall apply to any public entity taking any action to permit the location, erection, use or maintenance of an outdoor advertising sign required to be permitted pursuant to P.L. 1991, c. 413 (C.27:5-5 et seq)”. NJSA 40:55D-31a.

The Jersey City Planning Board held a video conference hearing on 4/26/2022 to determine whether certain streetscape, landscape and circulation changes to Exchange Place proposed by the Exchange Place Alliance were substantially consistent with the Jersey City Master Plan. The Alliance was represented by Donald Pepe, Esq., an attorney with the Scarinci Hollenbeck law firm. A landscape architect and a named partner in the firm of Melillo-Bauer-Carman made a brief presentation to the Board of the proposed changes, using various exhibits.

Mallory Clark, PP / AICP, a senior planner with the Jersey City Planning Division, opined that the proposals were consistent with the goals of the municipal Master Plan, with the Master Plan's Open Space element, and with the City's VisionZero goal of no pedestrian fatalities, although she also suggested a “break” in the proposed planter next to the monument.

After hearing the presentation by the representatives of the Alliance, as well as from the city's planning staff person, and the comments of numerous members of the public, the Planning Board determined unanimously that the proposed changes were not substantially consistent with the city's Master Plan. They essentially agreed with what had been forcefully articulated by the public, namely that some of the proposed changes obscured the view of the statue from the West, that they similarly obscured the view of the Hudson River from the same vantage point, and that they unnecessarily constrained the area available for public gatherings next to the statue.

Chair Langston stated “I don't know why we need to put 5-foot-tall benches on a berm around the statue. I can't support a design that obstructs the view of the statue.” Commissioner Gangadin similarly stated: “Those benches are not needed there. That height of the bench, and to be so close to that statue, I think it's such a total disrespect.

By letter to the Planning Board dated 4/29/2022 (Appendix 2), Mr. Pepe requested that the Board reconsider its Section 31 review. In that letter, Mr. Pepe argued that the Board had mistakenly focused its discussion on “individual design elements” rather than the big picture, and, as such, had mistakenly reached the conclusion that the proposed changes were not consistent with the Master Plan. The letter reads in part:

“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 comment repeatedly falsely stated that the height of the bench surrounding the Katyn Monument was 7’ high when in fact the height is 5’6”². 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.”

The Planning Board granted the request for reconsideration and held a second hearing on the matter on 5/10/2022. A document offering an opinion regarding the basis for finding the Alliance’s proposals for Exchange Place consistent with the Jersey City Master Plan was finally produced on the very day of the May 10 hearing, in a memorandum to the Jersey City Planning Board, dated 5/10/2022, signed by Mallory Clark-Sokolov PP AICP, Senior Planner in the Jersey City Division of Planning, and Tanya Marione, PP / AICP, Division Director of the Jersey City Division of Planning – see Appendix 3.

The contents of this letter were not made available to the public, or to the Planning Board, ahead of time, and were not discussed at the hearing.

The letter finds a basis for determining consistency in the following ways:

“The plan as proposed maintains the current use of the space as public pedestrian plaza and is consistent with the goals and objectives of the Jersey City Master Plan Open Space Element by accomplishing the following:

² The transcript of the hearing clearly shows that the public correctly understood the proposed height of the back of the benches to be 5’ 6”, and that the additional bushes bring the height to about 7 feet – see page 44 of the transcript.

Enhance Every Square Inch:

- 9. Design parks to be welcoming and accessible spaces.
- 11. Collaborate across City agencies.
- 14. Expand the number, mix, and distribution of programs.
- 15. Reflect contemporary tastes and trends in parks and open spaces.

Strengthen Connectivity:

- 21. Install facilities proximate to parks that separate pedestrians and bicyclists from traffic as much as possible.
- 22. Connect parks & open spaces through the city street network with fully accessible biking and walking facilities.
- 24. Implement JC Pedestrian Enhancement Plan and Let's Ride JC Plan with a focus on access to parks and schools.
- 25. Link to and invest in community resources close to existing or future transit stations and stops.

Invest in a Resilient Future

- 30. Create productive landscapes in underutilized or interstitial spaces, and along waterfront shorelines.
- 32. Expand tree coverage equitably throughout the City.”

The letter continues by stating:

“The design as proposed supports the design guidelines of the Jersey City Master Plan Open Space Element as specific to Waterfront Parks:

A. Support Active Lifestyles: The new design maintains contiguous public access to the river while expanding programming with the addition of a new playground at the waterfront.

B. Make Parks Welcoming: The curbless design maintains universally accessible access throughout the plaza space and improves pedestrian and bicycle safety through striped, designated crossings between the plaza and the adjacent HBLR station and PATH entrances.

C. Understand Community Needs: The plaza redesign has given large consideration to the space's historic use as a host site for several benchmark community events and festivals, such as the City's 4th of July celebration. The design maintains a flexible arrangement to enable Office of Cultural Affairs and community organizations / associations to utilize the site for temporary events in a flexible manner.

D. Highlight Unique Features: The design maintains pedestrian and bicycle access and views to the Hudson River Waterfront Walkway, the river itself, and the Owen Grundy Pier.

The plan as proposed is consistent with goals of the JC Walks Pedestrian Enhancement Plan's Policy Recommendations: (relevant to the plaza entrances at Columbus Drive and Hudson St / Montgomery St):

3. Crosswalk Markings and Maintenance

All legs of signalized intersections should be marked

4. ADA depressed curbs

Upgrade all crossings with ADA compliant design

Program Recommendations (relevant to the proposed designated hotel drop off zone):

3. Curbside Management

1. Implement current best-practice design treatments

2. Develop a shared mobility curbside management policy including

g. car sharing spaces

h. ride hailing pick-up/drop-off zones

3. Curbside Management would provide clear guidance for businesses, property owners, and Special Improvement Districts (SIDS) who would like to request appropriate alternative curbside uses”.

“The plan as proposed is consistent with goals of the JC Vision Zero Action Plan: Design Safer

Streets

- Provide a permanent, 24/7 solution to dangerous, excessive and intimidating speeds.
- Better manage limited public space available to accommodate all users as well as parking, deliveries, and emergency services.
- Eliminate uncertainty as to how drivers, pedestrians, and people on bikes should interact, especially at intersections.
- Encourage people to walk, bike, and take transit to reduce the amount of vehicle miles travelled.

Promote a Culture of Safety

- Elevate the importance of safety over increasing the speed and convenience of driving.
- Welcome walking, biking, and transit use as essential everyday transportation modes.

Mr. Pepe provided no new expert testimony, contrary to the representations in his letter. Mr. Alampi (the Planning Board attorney), asked Mr. Pepe (the attorney representing the Alliance): “Mr. Pepe, are we going to hear with respect to the Master Plan and the – what appears to me the obvious concept of pedestrian friendly in lieu of vehicular traffic?” Mr. Pepe, astonishingly, responded “Counsel, I had not planned on presenting any testimony with respect to the compatibility with the Master Plan. I don’t know if any of the city’s planners have any input with respect to that. We have been sharing these designs with them for quite some time. But -- and I believe, you know, one of the Vision Zero is a big impetus for the

city right now, and an important aspect of the Master Plan itself, which is to provide for pedestrian safety” (Transcript of 4/26/2022 hearing, page 20).

The Planning Board held a very brief discussion and reversed itself, voting unanimously to consider the proposed changes to be “substantially consistent with the Master Plan.” No public comment was permitted.

The proposed changes to Exchange Place which were presented to the Planning Board are depicted in a set of engineering drawings, titled Exchange Place Plaza Improvements, signed by Matthew J. Neuls, P.E., of the firm Dresdner Robin, dated 4/14/2022.

A second set of drawings, consisting of 20 sheets, dated 9/3/2019, detail the proposed landscape architecture changes to Exchange Place. Those drawings were prepared by the landscape architecture firm Melillo Bauer Carman and are signed by Thomas S. Carman. The drawings indicate that the 9/3/2019 version was a revision of an earlier version, as they contain a note indicating that they were “revised per client comments.”

The landscape architecture plans on the Alliance website, which are altered from those which were originally submitted to the Board, also indicate the dates of 7/9/2021 as “issued for bid,” and 6/10/2022 as “issued for permit within the “notes” section of the plans. In other words, the Alliance had already solicited bids from qualified construction firms, and selected a contractor, well ahead of the Section 31 review by the Jersey City Planning Board on 4/26/2022. This enabled the Alliance to put together an annual budget of \$9,752,000, including \$5,500,000 for “capital improvements to the plaza.” The Alliance’s budget was approved by Jersey City’s City Council on 7/13/2022.

This timeline may shed light on the Alliance’s reluctance to entertain any changes to its plans, despite the negative reaction received from both the public and the Planning Board. Since the Alliance solicited bids in 2021, by the time the Planning Board heard about the project in April 2022, the plans to remake Exchange Place were too far along. It would delay things if they had to be further amended, and it would perhaps require an amended bid from the contractor, even though the changes being suggested were minimal relative to the scope of the entire project – removing the backs (or at least lowering them) of the benches, removing the masonry wall and the landscaping on the plaza side, and making access to the area around the statue more porous. These are simple things that would not have required a major redesign. However, even having heard the concerns of the public and the Board, the Alliance did not make any changes and instead charged forward with a plan that neither the public nor the Planning Board had supported.

A third set of drawings depicting the proposed changes is titled “graphics package.” It was also prepared by the landscape architecture firm Melillo Bauer Carman and is dated 11/02/2022. It consists of 10 pages of two-dimensional and three-dimensional color renderings and is unsigned. The renderings have no dimensions, and it is unclear whether they are simply a more visually accessible representation of the engineering drawings for a layman’s eye, or whether they show deviations from the drawings.

This “graphic package” was provided to the Board for the Section 31 review which suggests that maybe it is the former, not the latter, scenario. By 11/02/2022, the date marked on the graphics package, construction was already underway on the “improvements” to Exchange Place.



VIEW #8: VIEW THROUGH MAIN PLAZA LOOKING WEST
EXCHANGE PLACE
JERSEY CITY, NJ
DATE: 2022.04.08

Figure 4 -- Page from "graphics package" showing the bench with the oversize back concealing the base of the Katyn Memorial and the proposed trees concealing the statue itself.



3. The Proposed Changes to Exchange Place and Their Impact on the Katyn Monument

The expansion of car-free space at Exchange Place will be a welcome feature that many people will enjoy, including those visiting the Katyn memorial, and patrons of the various public transit facilities located there.

However the engineering plans, the landscape plans and the “graphics package” all clearly show the design problems identified by the public and by the Planning Board at the 4/22/2022 Section 31 hearing.

Private Access Road

The Alliance’s plans call for the privatization of a large portion of the public right-of-way in order to provide an extra private access road to Hyatt House, which also has frontage on both Hudson Street and York Street, and to 15 Exchange Place. This new access road removes a substantial amount, approximately 40% of the pedestrian area of Exchange Place, and essentially creates a new East-West street in the public right-of-way, between York Street and Hudson Street.

Katyn Monument Restrictions

The Katyn Memorial is placed, off-center, within an oval space measuring 61 feet by 47 feet, with the longest axis in an East West direction.

The entire approach to the monument from the West, North and South is obstructed by physical obstacles. To the North and South the plans show two long benches facing the statue with reclining backs that reach 5 ½ feet in height – akin to a throne. The benches are set behind two nine-foot wide landscaped areas. And to the West, the statue is obscured by a 20’ 5” long and 5’ 1” high masonry wall, with landscaping in front. This wall – which serves no functional purpose whatsoever – completely eliminates the view of the base of the statue. Entrance to the oval from the West is limited to two, 6-foot wide entrances, which are very confining for a statue such as this memorial. The combination of the landscaped areas, the backs of the benches and the masonry wall conceals the view of the base of the statue from multiple vantage points and makes it more difficult for the public to access the statue.

In addition to the benches and the masonry wall, the proposal is to plant five trees on the North side of the monument, and ten trees on the South side of the monument, including two clusters of trees on the East side of the monument, between the Hudson River walkway and the monument.

The cumulative result of the benches, the wall, the trees and the landscaped areas will be to considerably narrow the visibility of the monument from these multiple locations.

Even the side of the monument facing the Hudson River walkway – which the design suggests will be the primary means for the public to access the monument -- is not totally unobstructed, as there are another two clusters of trees proposed. Although the monument will also be accessible from the West, under the current proposal that access will be limited to two very narrow points of access on either side of the proposed wall, as discussed above, and not conducive to large crowds.

In addition, the current design leaves only 11 ½ feet – roughly equivalent to the width of a lane of traffic -- between the base of the statue and the benches, thereby unnecessarily constraining public access to the monument itself.

While it is possible that landscaping changes could theoretically be intended to create a pedestrian precinct around the statue with a distinct personality, the proposed design will instead result in a “bubble” -- an area that will be more difficult to access than it currently is, much less visible than it is currently, and spatially constrained on those occasions when large numbers of people converge on the statue.

Planning and Design Defects

The profoundly gratuitous design scheme adopted for the area around the statue reflects a complete misunderstanding of the fundamentals of design for a public space of that nature.

The benches, the wall, the trees, the hedges and the other plantings will not enhance the experience of visitors to the statue. On the contrary, they make it more difficult. These are unnecessary design features that are deployed without a proper understanding of the circumstances or a grasp on their consequences.

The benches do not need to have high backs, or any backs at all, to be functional, nor do they need to have hedges behind them. There is no need to channel the public’s physical and visual access to the statue in such a confining way. It would be very easy to provide opportunities for the public to sit and contemplate, without obscuring the statue. But that is not what has been proposed.

It is not clear why the designers chose to isolate the statue and the area around it from the rest of the plaza. The message that is conveyed by the proposed design is that the statue and the area around it are not really an integral part of the plaza, and therefore need to be cordoned off.

All in all, the proposed treatment of the statue and the area around it would place the statue in a bubble that would markedly contrast with the rest of Exchange Place Plaza, which is open and unconstrained.

This is an inappropriate design decision. The statue and the area around it have always been an integral part of Exchange Place as long as the statue has been in place, as is shown by the ordinances from the 1980s and 2018. The proposed pedestrian and streetscape improvements to Exchange Place should not, under any circumstances, sever the functional and visual connection between the rest of the plaza and the statue and the area around it. It is completely inappropriate to improve the pedestrian experience in the rest of the plaza while at the same time segmenting and isolating the area around the statue and the scenic backdrop of the Hudson River and the Manhattan skyline.

The appropriate design response is to maintain the flow and synergies between all the various elements that constitute Exchange Place, and not segment the plaza with a series of gratuitous design interventions that serve no functional need. All areas of the plaza should interact with each other. There is no legitimate planning or design reason to isolate the statue and the area around it in such a dramatic fashion. The Jersey City Master Plan does not implicate these measures as being necessary or appropriate for this kind of feature.

It has always been a widely-accepted best practice to allow the public to have unimpeded access to statues and other types of sculptures located in public places from every vantage point. I cannot find any justification or any precedent for the Alliance’s approach to artificially and unilaterally limit access to the Katyn Memorial.

NYC Design – Public Design Commission, the New York City agency with jurisdiction over permanent

structures, landscape architecture, and art proposed on or over City-owned property, in the latest version of its “Guidelines for Monuments and Memorials” states clearly: “Monuments / memorials should be oriented to ensure legibility and minimize any contribution to pedestrian congestion.”

The proposed design also provides no basis or justification for the proposed dimensions of the delineated oval area around the statue. While there was some discussion during the Section 31 proceedings that the area within the oval could accommodate up to 200 people, this was not substantiated in any way, and the 200 number was not justified. Why 200, one might ask?

Even if, for the sake of argument, it came to be determined that the area within the oval could comfortably accommodate 200 people, what needs to be pointed out is that the number 200 becomes then a “de facto” upper limit for gatherings around the statue. What happens if more than 200 people show up to view the statue and congregate around it? What authority does the Alliance have to arbitrarily draw the line and limit public gatherings to 200 people?

The 200 upper limit number would obviously not have been practicable during the earliest months of the Covid pandemic, when public health guidelines advised people to stay six feet apart. In a future scenario with Covid or some other highly contagious airborne disease, the area of the oval will only be able to accommodate far fewer than 200 people. Why artificially constrain that number when there is plenty of unprogrammed, pedestrian-only space for the Plaza?

As it turns out, the area within the oval would amount to 2,252 square feet, from which one would have to subtract the area occupied by the plinth on which the statue is mounted. The base of the statue, which is to remain, occupies 15 feet by 15 feet, or 225 square feet. So in the approximately 2,000 square feet that are unobstructed, the oval could most likely accommodate more than 200 people at a time. But still, why delineate the area and artificially constrain public attendance when there is plenty of room in the redesigned plaza portion of Exchange Place?

In effect, the Alliance’s design proposal for the area surrounding the Katyn statue calls to mind the ghettoizing strategy used by various regimes over the years, including the Axis powers during World War II, to isolate and contain people they had grievances against. The Alliance proposal would isolate the Katyn Memorial in its own small pod, with access for only a limited number of members of the public at a time, and physically cut it off from its surroundings – the much larger portion of Exchange Place Plaza. It is no wonder why the Polish-American community rose up to denounce this proposal.

Limitations on the Functionality of the Pedestrian Plaza

Furthermore, the deficits of the plan cut both ways in terms of their effects on the Plaza. In the event of overflow events elsewhere in the Plaza, the area around the statue, if it is not demarcated by restrictive design choices, can be used to augment the pedestrian area occupied by those events. In other words, if the Alliance does not demarcate and segment the pedestrian space with gratuitous walls and hedges that serve no functional purpose whatsoever, the entire plaza space would become more fluid, more flexible, and therefore more capable of accommodating larger crowds.

Accommodating pedestrians is the whole purpose of a pedestrian mall. The proposed appurtenances reduce the flexibility and the ability of the plaza to respond to changing events that attract large crowds. A partial list of events that have taken place at Exchange Place in the past includes the Irish festival, the Indian festival, the Pride Parade, the Holi festival of colors, the Caribbean “carnivale”, the House Party event, the Bolivian parade, the Central American parade, the South American parade and the Puerto

Rican day parade and celebration. These events attract thousands of people. Segmenting the plaza with gratuitous appurtenances introduces an unwanted rigidity and needlessly restricts how pedestrian may occupy the public space.

Ultimately, that represents, in my opinion, a fatal flaw in the design proposed by the Alliance. If the area around the statue is not arbitrarily confined, the number of people capable of comfortably congregating around the statue is not confined. If larger crowds congregate, they can be accommodated. If larger crowds congregate for events elsewhere on the plaza, they can also be accommodated. It is a “win-win” for everyone. It is hard to understand why the Alliance chose this ill-advised design scheme, in the face of active resistance from the community.

 VIEW #10: OVERVIEW FROM PLAYGROUND LOOKING WEST
 EXCHANGE PLACE
 JERSEY CITY, NJ
 DATE: 2022.04.08



Figure 5 -- Page from the “graphics package.” In this version, which was approved by the Planning Board, the Katyn Memorial would only have been approachable from the East, as the bench with the oversize back blocks all access from the West. The revised plans show two entrances from the West between the bench segments but still needlessly restrict public access to the statue and conceal all views of the base of the statue from the West.



Figure 6 -- Holocaust Memorial, Philadelphia. The public has complete, unimpeded access to the statue from every direction. Photo taken by the author, 1/22/2023

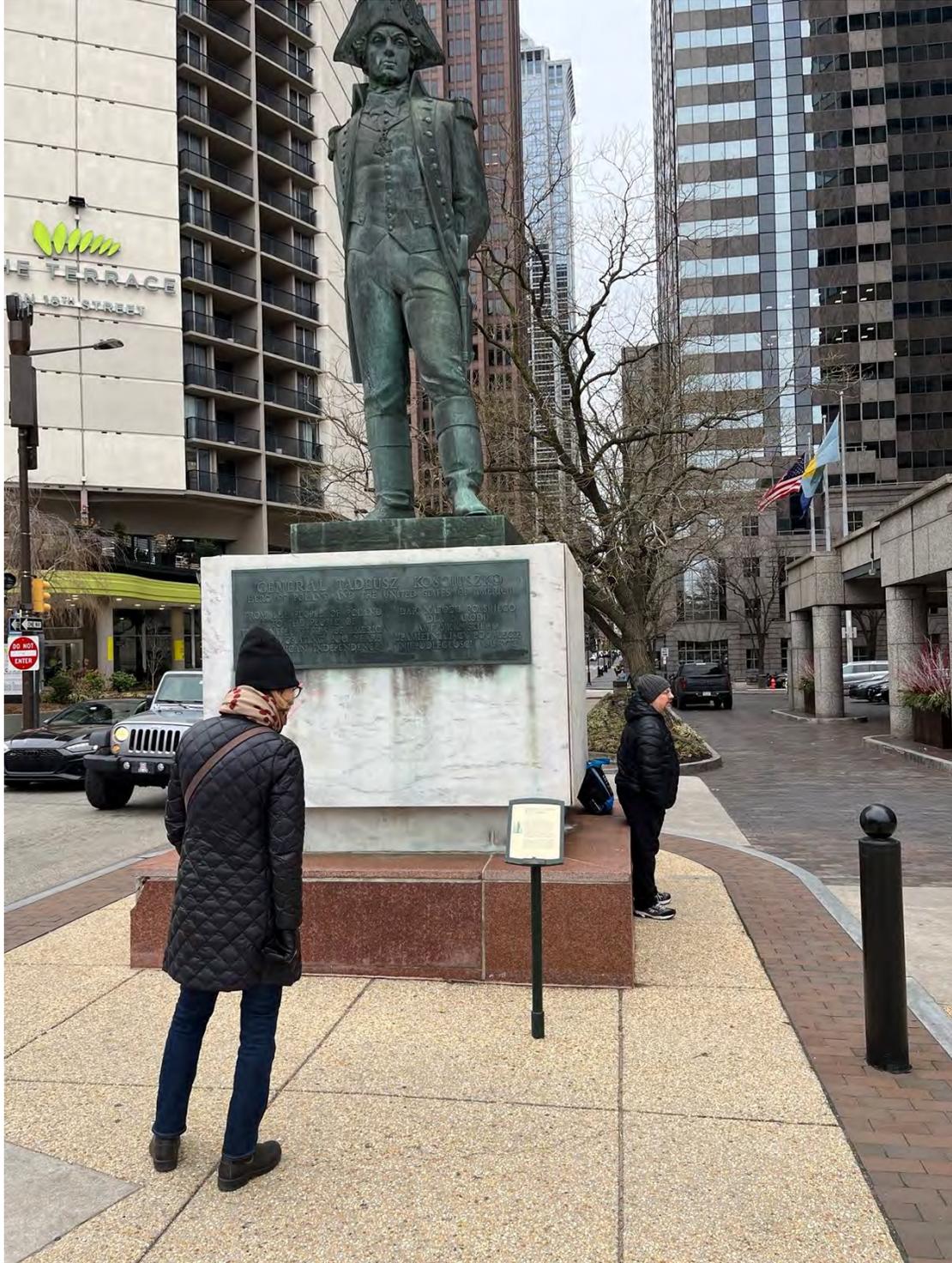


Figure 7 -- Statue of General Tadeusz Kosciuszko – Philadelphia. The public has complete access to the statue from every direction. The base of the statue doubles as a sitting wall. Photo taken by the author on 1/22/2023

4. Was the Section 31 Review Conducted by the Jersey City Planning Board Adequate?

As explained above, the Alliance’s attorney, Mr. Pepe, told the Board that he “had not planned on presenting any testimony with respect to the compatibility of their proposed changes with the Master Plan” (Transcript, April 26, 2022 hearing, p. 20). The Alliance’s approach to the Section 31 hearing was to treat it as an informational hearing, albeit open to the public, to inform the Planning Board of the Alliance’s plans -- not a true Section 31 hearing. As far as the Alliance was concerned, the Alliance’s redesign plans had already been vetted with all the influential players, and the Planning Board’s sole responsibility was to rubber stamp those plans, and not question them.

Mr. Carman, the Alliance’s prime expert witness, is a landscape architect, and does not even appear to be a licensed professional planner in New Jersey, which would make him ineligible to provide testimony on whether the Alliance’s proposed changes to Exchange Place could be deemed consistent with the Jersey City Master Plan.

At the hearing before the Planning Board, the Alliance made no apparent effort to investigate the possible consistency between the Alliance’s plans and the Master Plan, preferring to refer the matter to the city’s planning staff.

The planning memorandum from the City’s planners, dated May 10, states that the project is consistent with the Master Plan because it designates a pedestrian area separate from motor vehicle areas. I do not disagree that the Alliance’s plans for Exchange Place might accomplish some of the goals of the various elements of the city’s Master Plan. In any city, reclaiming an area that is over-run by cars and converting much of it into a pedestrian plaza is a positive step. But that is not the point of a Section 31 review. The point is whether the Alliance’s specific design plan accomplishes those goals.

Many of the goals cited in the planners’ memo of May 10 are generic, i.e. “encourage people to walk, bike, and take transit to reduce the amount of vehicle miles travelled” or “welcome walking, biking, and transit use as essential everyday transportation modes.” It is unclear how the Alliance’s design proposal will “encourage people to walk, bike, and take transit,” although they may not discourage people from doing so.

Again, the question is whether the specific design elements in the Alliance’s plans will reinforce the goals of the Master Plan. The devil is in the details.

For example, the planners’ memo states that the plan furthers the goal to “Highlight Unique Features: The design maintains pedestrian and bicycle access and views to the Hudson River Waterfront Walkway, the river itself, and the Owen Grundy Pier.” But that is not accurate. As we have already established, the plan actually restricts “pedestrian and bicycle access and views to the Hudson River Waterfront Walkway” over existing conditions as a result of poor design decisions taken with respect to the Katyn Memorial.

The planners’ comments also mention goal C -- Understand Community Needs. The planners’ statement is inaccurate that “The plaza redesign has given large consideration to the space’s historic use as a host site for several benchmark community events and festivals, such as the City’s 4th of July celebration. The design maintains a flexible arrangement to enable Office of Cultural Affairs and community organizations / associations to utilize the site for temporary events in a flexible manner.” As we have also already established, the proposed treatment of the Katyn Memorial introduces an element of spatial rigidity –

not flexibility – that does not currently exist. If the Alliance’s design is implemented, Exchange Place will be less flexible than it currently is, and certainly less flexible than it could be. It will be more pleasant to the extent pedestrian-only space is expanded, but less flexible and usable as a public space given the rigidities introduced by the Alliance’s design.

It will also be less used for community events and celebrations, as the Alliance reportedly now no longer allows community-sponsored events in Exchange Place.

Even the goal to “Enhance Every Square Inch: 9. Design parks to be welcoming and accessible spaces” is not accomplished. There is nothing “welcoming and accessible” about the proposed treatment of the Katyn Memorial.

The Open Space element of the City’s Master Plan – a rather extensive document prepared by an outside consultant -- is in fact full of examples of why the Alliance’s proposed design for the Katyn Memorial is extremely ill-advised.

For example, section 6: Expand the impact of parks beyond their edges, states in part: “Any future investments in City open spaces need to consider beyond its property line and into the right-of-way, to ensure the spaces do not create unnecessary barriers to access and encourage more spillover benefits to visitors and neighbors.” (page 115, emphasis added)

In the same section, at sub-item 6.2, the document states “Where possible, reconsider fencing that limits access and enjoyment of green spaces with more welcoming edge materials to unify parks with their neighborhoods.” (page 115). Replace “fencing” with “benches with oversized backs, and tall shrubbery” and this design principle has direct application to the case at hand.

At sub-item 7.1 in the same document (page 116), the city is urged to “create multi-use spaces that allow for flexibility.” In the same sub-item, a New York City Parks Commission initiative known as “parks without borders” is referenced as a model to be applied in Jersey City. Some of the objectives of this initiative are directly relevant to the instant case, such as to “unify park spaces with the neighborhoods they serve,” and “make entrances more welcoming, convenient and easy to find.”

The heading for section 9 of the same document is “design parks to be welcoming and accessible spaces” (page 120). “The City should strive to create equal access for all by reducing barriers to use.” While this statement may be referring more directly to the need to provide universal, barrier-free accessibility, I would argue that blocking or constraining direct access through the placement of unnecessary and counter-productive appurtenances, such as benches and hedges runs directly counter to the intent of this design principle.

Design principle 9.4 (page 120) is “Evaluate if park gateways are logical, visible and clear, as well as the appropriateness of fences or gates.” In this case there are no fences or gates, but other types of physical barriers – the benches, the walls and the hedges – constrain access and clearly violate this principle.

The design objective of section 14 of the same document is to “expand the possible spaces that can host programs and events (page 127).” “Using creative solutions to expand programmable space, we can host more activities, classes, sports, and events that make a significant impact on residents’ lives.” This design principle supports our earlier argument that removing the physical barriers around the Memorial proposed in the Alliance’s plans would provide much greater flexibility in terms of how the space can be

used, not just for memorial-related events, but for any type of event. The proposed Balkanization of the memorial and the area immediately around it is counter-productive no matter how one looks at it.



VIEW #5: MAIN PLAZA & STATUE FROM CAFE PLAZA - LOOKING EAST
 EXCHANGE PLACE
 JERSEY CITY, NJ
MBG
 HUBBARD-BRAUER-GORMAN
 ARCHITECTS
 DATE: 2022.04.08

Figure 8 -- Page from “graphics package.” The base of the statue is completely obscured.

Design principle 15.1 is “engage residents within a 10-minute walk of parks undergoing master plans to identify resident preferences for amenities” (page 128). There is a residential community within a 10-minute walk of Exchange Place which was apparently not consulted. No mailers were sent or posted in public spaces or storefronts, no community-based design meetings were held, and the Historic Paulus Hook Association and the Powerhouse Arts District were not consulted. The Alliance made “virtual presentations” to the public, but comments from the public were limited to three minutes each. The whole design process was driven exclusively by corporate interests.

Design principle 15.2 is “Send mailers to all neighbors within walking distance of the project boundary to ensure residents and business owners are aware of the plan and have opportunity to engage” (page 128). The Alliance may have done this with respect to the business owners – and we don’t know that to be the case – but again the community groups that have historically hosted their events in that space should have been the proxy for the residents, and they were reportedly not consulted.

And finally design principle 16 is to “Offer more events and programming for underrepresented demographics.” The Alliance’s new policy of not allowing community events in Exchange Place violates this principle and raises serious doubts as to the wisdom of turning the programming of public space over to a private entity only representing powerful private interests.

5. Do the Alliance’s Plans Violate New Jersey’s Public Trust Doctrine?

The Municipal Land Use Law authorizes, but does not require, municipal Planning Boards to adopt a “public access plan element”, as an elective element of the municipal Master Plan. This plan element is described as:

“A public access plan element that provides for, encourages, and promotes permanently protected public access to all tidal waters and adjacent shorelines consistent with the public trust doctrine, and which shall include a map and inventory of public access points, public facilities that support access, parking, boat ramps and marinas; an assessment of the need for additional public access; a statement of goals and administrative mechanisms to ensure that access will be permanently protected; and a strategy that describes the forms of access to satisfy the need for such access with an implementation schedule and tools for implementation”. (N.J.S.A. 40:55D-28(h)(17))

The Master Plan adopted by the Jersey City Planning Board does not appear to contain an access plan element.

Under N.J.A.C. 7:8-1.5, the “Public Trust Doctrine” means a common law principle that recognizes that the public has particular inalienable rights to certain natural resources. These resources include, but are not limited to, tidal waterways, the underlying submerged lands and the shore waterward of the mean high-water line, whether owned by a public, quasi-public or private entity. (See Public Access in New Jersey: the Public Trust Doctrine and Practical Steps to Enhance Public Access, Robert Freudenberg, NJDEP, Trenton 2006.)

Lands and waters subject to public trust rights are tidal waterways and their shores, including both lands now or formerly below the mean high-water line, and shores above the mean high-water line. Tidal waterways and their shores are subject to the Public Trust Doctrine and are held in trust by the State for the benefit of all the people, allowing the public to fully enjoy these lands and waters for a variety of public uses.

Public trust rights include public access -- the ability of the public to pass physically and visually to, from and along the ocean shore and other waterfronts subject to public trust rights and to use these lands and waters for activities such as navigation, fishing and recreational activities including, but not limited to, swimming, sunbathing, surfing, sport diving, bird watching, walking, and boating. Public trust rights also include the right to perpendicular and linear access.

In the absence of a grant from the State, submerged lands under tidal waterways and the shore of tidal waterways waterward of the mean high-water line are owned by the State. Regardless of the ownership of these resources, under the Public Trust Doctrine, the public has rights of access to and use of these resources, as well as a reasonable area of shoreline landward of the mean high-water line. Under the Public Trust Doctrine, the State is the trustee of these publicly owned resources and public rights for the common benefit and use of all people without discrimination. As trustee, the State has a fiduciary obligation to ensure that its ownership, regulation and protection of these properties and rights will safeguard them for the enjoyment of present and future generations. The public rights to use these resources extend both to traditional activities such as navigation and fishing, but also to recreational uses such as swimming, sunbathing, fishing, surfing, sport diving, bird watching, walking and boating.

The NJDEP maintains a NJ Public Access Locations Search Tool, which identifies all locations in New Jersey where there is public access to tidal waterways. One of the locations listed is the Hudson River Waterfront Walkway adjacent to Exchange Place Plaza. It is listed as visual public access for a river shoreline. It is noted as not being handicap accessible. The Public Access ID is JC03515. The listed image is at the following link: https://mapsdep.nj.gov/arcgis/rest/services/Features/Environmental_admin/MapServer/7/17179/attachments/10029.

It is clear from this listing that the Hudson River access qualifies as a tidal waterway subject to the Public Trust Doctrine, since it is maintained on NJDEP's list of public access locations to the state's tidal waterways. However, the point listed is on the Hudson River Waterfront Walkway itself. The view in the photos is the view of a person standing on the Walkway, not from Exchange Place Plaza. The view protected by this point would not be obstructed by anything on the Plaza.

However, the public's ability to get to the Hudson River walkway, from the West, will be impeded by the addition of the various appurtenances (walls, benches) and shrubbery planned by the Alliance for the area around the Katyn Memorial. Presently, the public can walk around the monument, anywhere on the plaza, to reach the walkway. The public also has unimpeded views of the Hudson River from the West. If the Alliance's plans are executed, both access to the walkway and the Hudson River views will be needlessly impeded. The public will have to go around the seating walls to both reach the Hudson River walkway and to have views of the Hudson River. As such, it would appear that the Alliance's plans violate the Public Trust Doctrine.

6. Conclusions

Certain design elements of the Alliance's proposal to redevelop Exchange Place – and specifically those that pertain to the Katyn Memorial and the area around it -- are misguided and misdirected, and inconsistent with sound planning and design principles, as well as with the intent and purpose of the Jersey City Master Plan, in particular its Open Space element.

In its Section 31 review of the Alliance's plans, after hearing from numerous members of the public, the Jersey City Planning Board first accurately identified those objectionable design elements and rejected the Alliance's plans. Subsequently, without hearing from any members of the public, the Planning Board suddenly reversed course and deemed those plans consistent with the Master Plan, without any substantive testimony on the record to justify the course reversal, and without any detailed, in-depth discussion of matters of the consistency of this specific design plan with the Jersey City Master Plan.

The initial presentation to the Planning Board by the Alliance's consultants was delivered by a landscape architect and an engineer, neither of whom appear to be licensed Professional Planners in the State of New Jersey, and as such, ineligible to make the presentation, and ineligible to opine on matters of Master Plan consistency.

Indeed the presentation by the Alliance's professionals deliberately skirted the question of Master Plan consistency, as if that were not the stated purpose of the hearing.

The record of these proceedings contains no detailed review of Master Plan consistency, and a letter / memorandum from two planners in the City's Planning Department introduced the day of the second hearing, and bearing that day's date, was never discussed by the Board, was not discussed by the public, and appears to be an after-the-fact effort to cast some appearance of legitimacy on what was an otherwise disorderly and chaotic process.

The Planning Board's Section 31 review of the Alliance's design proposals was totally inadequate and met neither the spirit nor the letter of the law. Certain aspects of the Alliance's design proposals do in fact violate sound planning and design principles for public spaces, with a particular emphasis on the proposed treatment of the Katyn Memorial and the immediately adjacent area. It appears that the Alliance's plan may also violate the State of New Jersey's Public Trust Doctrine by unnecessarily restricting access to, and views of the Hudson River.

Appendix 1

Carlos Rodrigues PP | FAICP

Principal – Design Solutions for a Crowded Planet, LLC

Carlos Rodrigues is a Princeton, NJ based urban designer, professional planner, writer and educator.

His planning practice represents, or has represented, federal, state, county and local government, the Territory of Macao (now part of China), foundations and other charitable organizations, real estate developers, property owners, religious congregations, neighborhood groups, environmental groups, and civic organizations involved in (re)development and preservation projects of merit.

He is an architect (Dipl. Arch. 1978) and a planner (MCRP Rutgers, 1982) and has taught graduate and undergraduate planning courses and studios at the Bloustein School of Planning and Public Policy at Rutgers, in the Landscape Architecture Department at Rutgers and in the Graduate Planning School at Columbia University.

He has worked in senior management positions in the private, public and non-profit sectors, including 10 years with the New Jersey Office of State Planning / Office of Smart Growth, where he also served as Interim Executive Director.

He served as Director of Land Use and Regulatory Affairs at the New Jersey Builders Association, Vice President and New Jersey Director at Regional Plan Association, Director of Planning (Princeton) for Looney Ricks Kiss Architects and special advisor to PlanSmart New Jersey.

He is a charter member of the Congress for the New Urbanism and a recipient of its 2001 Charter Award; a past President of the New Jersey Chapter of the American Planning Association; a past board member of Preservation New Jersey and of the Society for American City and Regional Planning History; and past Chair of the Princeton Township Zoning Board of Adjustment. He is a current board member of the Witherspoon Jackson Development Corporation and sits on the Council for Princeton Future.

He is the author of Designing New Jersey and Employment and Community, the design companions to the 2001 New Jersey State Development and Redevelopment Plan; A Guide to Form-Based Codes in New Jersey and Form-Based Codes: a User's Manual; and editor of the 2018 edition of the Complete Guide to Planning in New Jersey published by the New Jersey Chapter of the American Planning Association.

He currently serves on the American Institute of Certified Planners Task Force that is re-writing the AICP entrance exam, as well as on the Planning Accreditation Board standards review working group, which recently rewrote the accreditation standards for planning programs in the United States, with a view towards promoting greater diversity, equity and inclusivity.

He has appeared as an expert witness on land use matters before New Jersey Superior Court, presented expert reports to the United States District Court for the District of New Jersey, worked as planning consultant to the US Department of Justice – Civil Rights Division and testified on land use matters before both the New Jersey Legislature and the Pennsylvania Legislature.

More detailed bona-fides can be found at <http://rodriguesurbandesign.com/index.html>

Appendix 2

SCARINCI HOLLENBECK

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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

Appendix 3

DEVELOPMENT APPLICATION REVIEW | STAFF REPORT

DATE :	05.10.2022
TO :	Planning Board Commissioners
FROM :	Mallory Clark-Sokolov, PP, AICP, Senior Planner Tanya Marione, PP, AICP, Division Director
CASE :	P21-142
PROJECT :	Exchange Place Plaza Section 31 Review

I. APPLICATION BACKGROUND + PROPOSAL

- **Existing Conditions:** The site is currently an open, largely un-amenitized public hardscape plaza that hosts the Memory of Katyn memorial statue. The plaza is located east of Hudson Street directly adjacent to the Hudson River Waterfront Walkway, J. Owen Grundy Park, and the Exchange Place PATH station entryways.
- **Proposed Conditions:** The site proposes a cosmetic upgrade to the existing hardscape plaza including a new pavement design, security bollards, at-grade vehicular and pedestrian striping for a designated service drive and hotel drop-off zone, several new planting beds for landscaping and trees, and the addition of several public amenities such as seating areas and tables, a playground, a bench and landscape area adjacent to the Memory of Katyn memorial statue, and an updated Citi Bike station.

II. STAFF COMMENTS

- The plan as proposed maintains the current use of the space as public pedestrian plaza and is consistent with the goals and objectives of the Jersey City Master Plan Open Space Element by accomplishing the following:
 - Enhance Every Square Inch:
 9. Design parks to be welcoming and accessible spaces.
 11. Collaborate across City agencies.
 14. Expand the number, mix, and distribution of programs.
 15. Reflect contemporary tastes and trends in parks and open spaces.
 - Strengthen Connectivity
 21. Install facilities proximate to parks that separate pedestrians and bicyclists from traffic as much as possible.
 22. Connect parks & open spaces through the city street network with fully accessible biking and walking facilities.
 24. Implement JC Pedestrian Enhancement Plan and Let's Ride JC Plan with a focus on access to parks and schools.
 25. Link to and invest in community resources close to existing or future transit stations and stops
 - Invest in A Resilient Future
 30. Create productive landscapes in underutilized or interstitial spaces, and along waterfront shorelines
 32. Expand tree coverage equitably throughout the City

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- The design as proposed supports the design guidelines of the Jersey City Master Plan Open Space Element as specific to Waterfront Parks.
 - Waterfront Parks Design Guidelines:
 - A. Support Active Lifestyles
 - The new design maintains contiguous public access to the river while expanding programming with the addition of a new playground at the waterfront.
 - B. Make Parks Welcoming
 - The curbless design maintains universally accessible access throughout the plaza space and improves pedestrian and bicycle safety through striped, designated crossings between the plaza and the adjacent HBLR station and PATH entrances
 - C. Understand Community Needs
 - The plaza redesign has given large consideration to the space's historic use as a host site for several benchmark community events and festivals, such as the City's 4th of July celebration. The design maintains a flexible arrangement to enable Office of Cultural Affairs and community organizations/associations to utilize the site for temporary events in a flexible manner.
 - D. Highlight Unique Features
 - The design maintains pedestrian and bicycle access and views to the Hudson River Waterfront Walkway, the river itself, and the Owen Grundy Pier.

 - The plan as proposed is consistent with goals of the JC Walks Pedestrian Enhancement Plan
 - Policy Recommendations: (relevant to the plaza entrances at Columbus Drive and Hudson St + Montgomery St)
 - 3. Crosswalk Markings and Maintenance
 - All legs of signalized intersections should be marked
 - 4. ADA depressed curbs
 - Upgrade all crossings with ADA compliant design
 - Program Recommendations: (relevant to the proposed designated hotel drop off zone)
 - 3. Curbside Management
 - 1. Implement current best-practice design treatments
 - 2. Develop a shared mobility curbside management policy including
 - g. car sharing spaces
 - h. ride hailing pick-up/drop-off zones
 - 3. Curbside Management would provide clear guidance for businesses, property owners, and Special Improvement Districts (SIDS) who would like to request appropriate alternative curbside uses

 - The plan as proposed is consistent with goals of the JC Vision Zero Action Plan
 - Design Safer Streets
 - >> Provide a permanent, 24/7 solution to dangerous, excessive and intimidating speeds
 - >> Better manage limited public space available to accommodate all users as well as parking, deliveries, and emergency services
 - >> Eliminate uncertainty as to how drivers, pedestrians, and people on bikes should interact, especially at intersections
 - >> Encourage people to walk, bike, and take transit to reduce the amount of vehicle miles travelled
- +Action items 1.5, 1.7, 1.8, 1.10 advanced

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- Promote a Culture of Safety
 - >> Elevate the importance of safety over increasing the speed and convenience of driving
 - >> Welcome walking, biking, and transit use as essential everyday transportation modes
 - +Actions 2.14, 2.17 advanced