



BOROUGH OF LEONIA
Leonia Planning Board
MINUTES

November 23, 2021	7:30 PM	REMOTE MEETING VIA GOTOMEETING
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The Borough of Leonia Planning Board held a special meeting on November 23, 2021, at 7:30 p.m. via remote video conference in lieu of an in-person meeting due to the Coronavirus pandemic and Governor Murphy’s Executive Orders 107 and 152 that restrict public gatherings.

MEMBERS PRESENT: Ron Wolf, William Russell, Councilman Pat Fusco, Chairman Michael DeGidio, Vice Chair Petti, Timothy Ford, Patrick Botten, Sean Thompson, Ira Gold, Haeseok Ko, Damee Choi

MEMBER(S) ABSENT: Mayor Zeigler

ALSO PRESENT: Planning Board Attorney - Daniel Steinhagen, Zoning Officer - Dan Melfi, Planning Board Engineer – Drew Di Sessa, Planning Board Planner – Ryan Conklin, Planning Board Traffic Engineer – John Corak

Meeting called to order at 7:34 PM

FLAG SALUTE, OPENING MEETING STATEMENT, ROLL CALL

APPROVAL OF MINUTES:

Motion to approve the minutes of the October 27, 2021, meeting was made by: Mr. Botten
Seconded: Vice Chair Petti

Mr. Wolf:	Yes	Chairman DeGidio:	yes	Mr. Botten	yes
Mr. Russell:	yes	Vice Chair Petti:	yes	Mr. Thompson:	yes
Councilman Fusco:	yes	Mr. Ford:	yes	Mr. Gold:	yes

APPROVAL OF RESOLUTION(S):

PB21-16 – Robert & Lisa Robins, 101 Gladwin Avenue, Block: 1207/ Lot: 13
Building Coverage, Rear Yard Setback Variances

Motion to approve Resolution PB21-16 was made by: Mr. Ford
Seconded: Mr. Wolf

On roll call, the vote was recorded as follows:

Mr. Wolf:	yes	Chairman DeGidio:	yes	Mr. Botten	yes
Mr. Russell:	yes	Vice Chair Petti:	yes	Mr. Thompson:	yes
Councilman Fusco:	yes	Mr. Ford:	yes		

NEW/CONTINUING APPLICATIONS:

Chairman DeGidio announced to members of the public that applications PB21-15 for 131 Fort Lee Road and PB21-19 for 181 Sylvan Avenue were being carried. Mr. Steinhagen further announced to members of the public that both matters will be carried to the December 15, 2021, remote meeting of the Planning Board. Mr. Steinhagen advised that there will be no further notice published or mailed to property owners within 200 feet. Mr. Steinhagen also advised that the login information for the meeting will be posted to the Borough website in advance of the December meeting. Mr. Steinhagen advised that the applicants extended the time for the Board to act on the applications.

PB21-10 – Munr Kazmir/Sima Development LLC, 345 Grand Avenue, Block: 803/ Lot: 35
Rear Yard Setback

Benjamin Wine of Prime & Tuvel LLC addressed the Board on behalf of the applicant. Mr. Wine detailed the specifics of the application to include the removal and installation of a retaining wall and to add a canopy over basement egress stairs.

Mr. Robert Zaccone of Robert Zaccone & Associates, located at 212 White Avenue, Old Tappan, NJ, was sworn in to provide expert testimony as an architect and professional planner. Mr. Zaccone indicated that there has been no change in his license status since his appearance at the October Board meeting and that he is a licensed planner. Mr. Zaccone was deemed qualified to testify before the Board.

Marked were the following:

A1 – Proposed Improvements to Rear Yard, Dated June 30, 2021

Mr. Zaccone detailed the survey and existing conditions of the property. Per Mr. Zaccone the applicant will replace the existing retaining wall with a new concrete block retaining wall, measuring approximately 2-feet in height at property line. Mr. Zaccone also stated that the existing canopy will be rebuilt given the current condition. Per Mr. Zaccone, the nature and purpose of the canopy is to protect the stairs and egress areas for the two tenants from inclement weather. Mr. Zaccone also stated that the outdoor stairs must be protected from inclement weather as per code requirements. It is Mr. Zaccone's opinion that the stairs that exist are the original stairs for each tenant. Per Mr. Zaccone, the stairs serve as a second means of egress for each tenant. Mr. Wine noted for the record that the building was constructed in 1930, based on tax records.

Mr. Zaccone further detailed the variance being sought. Per Mr. Zaccone, the justification for the variance is for code compliance, safety, improvement of conditions and safety concerns for the neighboring property. Ms. Choi inquired about safety measures that will be in place during the construction period. Per Mr. Zaccone, safety measure will be implemented to include temporary fencing and erosion control. Mr. Zaccone stated that the building code referenced earlier is IBC (International Building Code) 1011.7.2. Chairman DeGidio inquired about the canopy coverage for the entirety of the rear area as opposed to just the rear stairs. Per Mr. Zaccone, it is good practice to avoid snow/rain from accumulating from the side of the areaways. Further discussion was held regarding building code requirements versus good practice. Mr. Melfi inquired about drainage. Mr. Zaccone stated that the walkway proposed will pitch away slightly. Upon further questioning, Mr. Zaccone advised that the two tenants that currently occupy the building are Direct Meds and Quality Home Care. Mr. Zaccone also stated that the building is not sprinklered and that there is roughly 100 feet from the backend of each tenant space to the front door. Mr. Di Sessa advised that when the applicant applies for the building permit, they must also include a soil moving permit along with engineering plans showing the plan for retaining wall, grades, elevations, and drainage management. Mr. Zaccone confirmed that there are existing drains at the bottom of the staircases.

Mr. Steinhagen inquired about hardship proofs. Per Mr. Zaccone, the only area for both tenants to have a second means of egress is the current location.

The meeting was opened to the public for questioning of Mr. Zaccone.
No members of the public provided questions.
Hearing no questions from the public, the public questioning portion was closed.

The meeting was opened to the public for comments.
No members of the public provided comments.
Hearing no comments from the public, the public comment portion was closed.

A motion to approve application PB21-10, with the condition that a soil moving permit and full engineering plan be submitted, along with fall protection was made by: Mr. Wolf
Seconded: Mr. Botten

Discussion was held regarding obtaining comments from the Building Official regarding the IBC regulations and compliance of the proposed plan. It was determined that approval can proceed with the motion as presented.

On roll call, the vote was recorded as follows:

Mr. Wolf:	yes	Chairman DeGidio:	yes	Mr. Botten:	yes
Mr. Russell:	yes	Vice Chair Petti:	yes	Mr. Thompson:	yes
Councilman Fusco:	yes	Mr. Ford:	yes	Mr. Gold:	yes

Application PB21-10 is approved.

PB21-18 – Citiview Associates Ltd., 176 Fort Lee Road, Block: 1205/ Lot: 3
Preliminary & Final Site Plan Approval, Variances for Density, Units per Building, Minimum Living Space, Basement Apartment, Storage Space, Garages, Parking Spaces, Wall/Fence Height, Open Space, Parking Setback, Parking Aisles and Parking Spaces Variances

Mr. Steinhagen advised that since this application and as well as application PB21-17 involves a D-Variance, Councilman Fusco should not participate. Prior to departing, Councilman Fusco provided the Council Liaison Report. Councilman Fusco advised that there was discussion regarding the noise ordinance at the last Mayor & Council meeting and the ordinance may be up for discussion in the December Board meeting. Councilman Fusco subsequently recused himself from the remainder of the Board meeting.

The applicant’s attorney, Kevin Conway, located at 61 South Paramus Road, Paramus NJ, addressed the Board on behalf of the applicant. Mr. Conway stated that the property consists of a four-story, 21-unit apartment building that was built roughly in 1920. Mr. Conway also detailed the proposal which includes a 1-bedroom superintendent apartment to allow for the superintendent to be onsite for health and safety purposes. Mr. Conway also stated that the proposal includes improvements to the existing parking area. Mr. Conway further stated that the proposed size of the superintendent unit would be 486 square feet.

Mr. Mark Martins of Mark Martins Engineering LLC, located at 55 Walnut Street, Norwood, NJ, was sworn in to provide testimony as a professional engineer. Mr. Martins testified that his license is in good standing and that he has testified before the Board previously. Mr. Martins was deemed qualified to testify before the Board.

Marked was the following:
A-1 – Site Plan for 176 Fort Lee Road, Dated 8/2/2021 & Revised 9/29/2021, Consisting of 4 Pages

Mr. Martins reviewed the site plan, dimensions of the property, zones of the lot and the parking area adjacent to the building. Mr. Peter Pulice was sworn in to authenticate the photos taken of the subject property.

Marked was the following:

A-2 – P1, Photos of Subject Property, Dated 9/29/21

Mr. Martins reviewed the photos contained in Exhibit A-2 depicting current conditions of the property. Mr. Martins reviewed the proposal to add one additional residential unit to the lower level of the building and improve the gravel and macadam parking by adding paving, stripping, curbing, drainage and provide better aesthetics. The improvements to the parking area will result in 17 parking spaces and one ADA space. Mr. Martins also reviewed the parking variances that the applicant is seeking. Per Mr. Martins, benefits to the plan include drainage management and the addition of green spaces. Mr. Martins reviewed the landscaping and lighting plan as well as the zoning table.

Mr. Martins also reviewed the grading of the building and explained that the additional unit along with the area at the rear of the property is considered lower level at grade. Per Mr. Martins, since more than 50% of the level is exposed, it is not a basement so the new proposed unit is not a basement unit and should not require a variance.

Discussion was held regarding current parking conditions versus the proposed parking plan. Per Mr. Martins, 16 to 18 cars are projected to park in the lot as it currently exists. Upon questioning, Mr. Martins confirmed that stormwater runoff was incorporated into the design of the proposed parking area. Mr. Martins also stated that all of the lighting fixtures will be downlit, will also have shields and will not generate glare onto other properties. Mr. Martins also stated that the lighting can be adjusted in the field to adjust for glare issues. Mr. Martins stated that the parking improvements would take a few weeks to a month to complete. Mr. Steinhagen inquired about phasing the improvements to minimize the number of residents who have to park in the street.

Mr. Conklin suggested that landscaping also be added to the front of the building as part of the project. Mr. Martins agreed that low shrubbery and ground cover can be added.

The meeting was opened to the public for questioning of Mr. Martins.

No members of the public provided questions.

Hearing no questions from the public, the public questioning portion was closed.

Mr. Peter Pulice of Pulice Williams Architects, located at 344 Broad Avenue, Leonia NJ, was sworn in as a licensed Architect. Mr. Pulice was deemed qualified to provide expert testimony.

Mr. Pulice provided further details for the additional apartment unit. Mr. Pulice reiterated that the proposed apartment is 486 square feet. Mr. Pulice stated that the proposed apartment meets the building code criteria for an apartment.

Marked was the following:

A-3 – A1, Lower-Level Apartment Plan – 10/4/2021

Mr. Pulice reviewed the current layout and the proposed apartment plan along with other rooms and areas adjacent to the proposed apartment plan. Mr. Pulice stated that it is his opinion that the level is more than 50% above grade and should be considered a typical story and as a result, there is no need for a D-1 variance. Mr. Pulice stated that an onsite super is a benefit to the building because the superintendent can facilitate repairs quickly. Mr. Pulice responded to the Fire Marshall's review letter regarding the proposed plan. Per Mr. Pulice, the Fire Marshall commented that there is a need for a fire lane. Mr. Pulice stated that a new fire lane can be added in the proposed parking area. Mr. Pulice also testified that the parking allotment could be controlled and can be subject to a lease as part of the lease renewal process.

Mr. Botten inquired as to whether the super's apartment could be satisfied out of existing inventory once a unit became available. Mr. Pulice advised that the decision to use existing apartment inventory for the

superintendent's use is a decision that is made by the applicant, however, in Mr. Pulice's opinion the location of the proposed unit and size of the unit makes it more desirable to use for the applicant since it's typical that the superintendent's unit is usually a free apartment. Upon questioning, Mr. Pulice confirmed that the bedroom and the dwelling unit is in compliance with building code requirements for air, light, egress, and bedroom size. Mr. Pulice stated that the square footage for the unit may not meet the Borough requirement for living area, but it does meet the IBC requirements for habitable space.

Marked was the following:

A-4 – P2, Photo Exhibit Dated 10/25/2021 (witness referenced incorrect date during meeting)

Mr. Pulice reviewed Exhibit A-4 and stated that the existing meter and boiler room can be used for building supplies and storage. Chairman DeGidio and Mr. Melfi commented on the storage of combustible items such as cleaning products in the Boiler room. Mr. Melfi also inquired about the windows in the unit. Per Mr. Pulice, there is a window in the living room, bedroom and one in the bathroom that exits out to the areaway.

The meeting was opened to the public for questioning of Mr. Pulice.

No members of the public provided questions.

Hearing no questions from the public, the public questioning portion was closed.

Mr. Steinhagen announced to members of the public that the 176 Fort Lee Road matter for Citiview Associates Ltd., was being carried to the December 15, 2021, remote meeting of the Planning Board. Mr. Steinhagen advised that there will be no further notice published or mailed to property owners within 200 feet. Mr. Steinhagen also advised that the login information for the meeting will be posted to the Borough website in advance of the December meeting. The applicant extended the time for the Board to act on the application.

The meeting went into a brief recess at 9:36 pm and the meeting was called back into session at 9:40 pm.

PB21-17 – Pacific Outdoor Advertising/Consolidated Rail Corp, LLC, Fort Lee Road, Block: 217/ Lot: 1
Variances related to Installation for Double-Sided Digital Billboard Sign within the Railroad Right of Way

Vice Chair Petti recused himself from this application.

Ms. Danielle Federico, of Kaufman, Semeraro & Leibman, LLP, addressed the Board on behalf of the applicant, Pacific Outdoor Advertising LLC. Ms. Federico briefly described the location of the proposed site for the billboard along with the variances that were being sought. Per Ms. Federico, the billboard will be programmed with automatic dimming capability to adjust for brightness. Ms. Federico also advised that the proposed billboard will be used for commercial messages as well as for any public service announcements and is protected by the First Amendment. Ms. Federico further stated that the applicant received its permit from the NJ Department of Transportation (NJDOT) and will comply with all requirements of the NJDOT with respect to location, height, size, illumination, and operation and it will be consistent with industry standards for billboards. Ms. Federico reiterated that the digital billboard is a form of communication and is subject to the protections afforded to speech in the First Amendment of the Constitution as well as Article I of the NJ Constitution. Ms. Federico further stated that the courts have held that ordinances prohibiting billboards within any zoning district is unconstitutional. Per Ms. Federico, limiting the location of billboards to the LI-2 zone is prohibiting billboards and according to Ms. Federico the billboards ordinance violates the US Constitution as well as the NJ Constitution and unnecessarily restricts freedom of speech and expression by prohibiting all billboards.

Mr. Joe Jacobs of Pacific Outdoor Advertising located at 23 Wendy Drive, Linwood, NJ, was sworn in to testify before the Board as a fact witness. Mr. Jacobs testified that he has been in the billboard business for approximately 30 years. Mr. Jacobs stated that he has recently developed digital billboards in other towns or cities in Bergen County, to include Englewood, Rochelle Park and received approvals for development in Paramus. Per Mr. Jacobs, digital billboards can provide real-time benefits for emergencies. Mr. Jacobs also stated that the billboards can promote messages from the town as well. Mr. Jacobs reviewed the operations

and maintenance for digital billboards. According to Mr. Jacobs, management of the billboard communications, ads, or public service announcements is conducted offsite. Mr. Jacobs also stated that onsite physical maintenance is conducted under the guidance of Consolidated Rail Corporation (CSX). Mr. Jacobs also reviewed the process for the auto-dimmers for the billboards based on current industry standards.

Ms. Choi inquired as to the other benefits for digital billboards. Mr. Jacobs reiterated the real-time benefit for emergencies. Mr. Jacobs stated that community posting for events, or public service announcements can be a benefit, and other benefits include federal law enforcement announcements and ads relating to COVID testing or vaccination sites. Mr. Jacobs stated that the location selected for the billboard is the best location for the Borough. Upon questioning, Mr. Jacobs also provided the dimensions of digital billboard signs in other NJ towns that his company installed.

Mr. Gold inquired about the direction that the billboard will be facing, and its benefit to the Borough if the billboard is facing away from Leonia. Mr. Gold also inquired about the benefit of receiving messages from the billboard versus current methods that the Borough employs to disseminate information. Per Mr. Jacobs, residents who travel via the Turnpike will be able to obtain their information via the billboard, particularly given the number of vehicles that take the Turnpike weekly. Ms. Choi inquired about the proximity of the billboard in relation to the residential areas for the other towns that Mr. Jacobs have developed digital billboards. Mr. Jacobs detailed similar instances in other towns where variances were required. Per Mr. Jacobs in Rochelle Park, Englewood and in one situation in Paramus, he has gone to court and won each case because the court ruled that digital billboards cannot be banned. Upon questioning Mr. Jacobs confirmed that the courts held that the digital billboards were protected by the First Amendment. Ms. Choi further inquired as to whether a compromise is ever reached in the cases where there was court action regarding a digital billboard. Mr. Jacobs advised that he has assisted with community projects as a way to work with the community.

Discussion was held regarding the applicant's authority or legal right to install billboards in NJ. Per Mr. Jacobs, permission must be first granted by NJDOT, and NJ courts have held that the prohibition of billboards is unconstitutional. Mr. Steinhagen advised that a memo will be distributed to the Board regarding the constitutionality of the billboard ordinance based on case law. Ms. Federico stated for the record that digital billboards are protected by the First Amendment and are afforded protections.

Chairman DeGidio inquired as to how the size of the billboard is determined. Per Mr. Jacob, size is based on industry standards, which takes into account the size of the road. Upon further questioning, Mr. Jacobs testified that access to the railroad right-of-way can be achieved via Brookside Avenue in order to conduct onsite maintenance to the billboard. Mr. Steinhagen inquired about the selection of commercial advertisements that will be posted to the billboard. Mr. Jacobs advised that there are no inappropriate or illegal ad content posted to the billboards and the company wishing to advertise would have to pay for the ad times. Upon further questioning, Mr. Jacobs reviewed the court matters that have taken place in Paramus regarding billboards. Mr. Steinhagen also inquired about location selection for billboards. Mr. Jacobs testified that he did not contact the Borough regarding use of its property in the LI-2 zone. Mr. Jacobs stated that based on his review, he did not believe there were any other areas in Leonia that would meet the requirements for NJDOT for billboard purposes. Further discussion was held regarding the requirements for digital billboards. Mr. Jacobs testified that a thorough analysis was not undertaken to determine whether or not there were any other areas in Leonia that would comply with NJDOT requirements. Ms. Federico agreed to provide a memo regarding previous litigations cited by the applicant along with an explanation detailing why it is the applicant's position that the Borough's ordinance regarding billboards violates the Constitution.

Upon questioning from Ms. Federico, Mr. Jacobs confirmed that the NJDOT determines the location of billboards and regulates the distance between other billboards. Mr. Jacobs further stated that he has the only billboard permit in Leonia. Further discussion was held regarding the other restrictions that the billboard ordinance regulates. Ms. Federico advised that she would provide a detailed memo regarding the Borough's restrictions. Mr. Conklin inquired about an option to vacate the NJDOT permit and seek an alternate location for the billboard. Mr. Jacobs and Ms. Federico stated that the lots in the LI-2 zone do not comply with the NJDOT requirements.

Ms. Federico advised that she can provide a copy of the NJDOT permit. Mr. Wolf inquired about power supply for the Billboards, to which Mr. Jacobs stated that PSEG is the power company and rent would be paid to the Railroad for this billboard. Mr. Wolf also inquired about the time schedule for changing billboard ads or postings. Per Mr. Jacobs, the billboard would change every eight seconds and the eight second frequency is regulated by the NJDOT. Mr. Jacobs further stated that each ad would be a static presentation that changes every eight seconds and there would be no flashing or movement for the ad. Upon questioning, Mr. Jacobs stated that the NJDOT allows billboard placement on the opposite side of the highway with no distance restrictions, however, for the same side of the highway (for limited access highways), no billboards are allowed within 1000-feet of another billboard, and no digital billboards are allowed within 3000-feet of another digital billboard.

The meeting was opened to the public for questioning of Mr. Jacobs.

The following residents came forward with questions:

- Adyan Kalkan of 13C Lakeview Avenue
- Dawn Hertzell of 17D Lakeview Avenue
- Isaac Park of 429 Ridgeland Terrace
- Jennifer Mitchell of 21B Lakeview Avenue
- Alec Melman of 172 Highwood Avenue
- Daniel Lee of 227 Van Orden Avenue
- Diane Aziza Ooka of 15C Lakeview Avenue

Questions raised included the following topics, distance between the billboard and residences, environmental impact report, distance that the billboard can be viewed on the highway, number of billboards the applicant has installed within approximately 20-feet of residential zones, tax exemption for CSX, property valuation in relation to billboards, Department of Environmental Protection certification requirements, if any, safety structure beneath the billboard, quality of life impact statement, site selection, applicant visits to the sites for billboard proposal.

Hearing no further questions from the public, the public questioning portion was closed.

Mr. Steinhagen inquired whether or not approval was required from NJDOT for any billboard in the State even if it's not on a State highway. Mr. Jacobs confirmed that approval is still required for billboards even when it is not on a highway.

Mr. Steinhagen announced to members of the public that the billboard matter for Pacific Outdoor Advertising, was being carried to the December 15, 2021, remote meeting of the Planning Board. Mr. Steinhagen advised that there will be no further notice published or mailed to property owners within 200 feet. Mr. Steinhagen also advised that the login information for the meeting will be posted to the Borough website in advance of the December meeting. The applicant agreed to the extension of time for the Board to act on the application.

DISCUSSION ON BOARD MATTERS – NEW/OLD BUSINESS:

Chairman DeGidio stated that RFPs have been requested for Board professionals for 2022. Mr. Botten, Mr. Thompson, and Mr. Russell volunteered to form a review subcommittee to provide recommendations to the Board.

Chairman also announced to the Board that the Board Secretary will be stepping down from her position effective January 31, 2022.

COUNCIL LIASION REPORT:

Councilman Fusco provided a brief report earlier in the meeting.

BOARD ATTORNEY REPORT:

Mr. Steinhagen advised that he may have a conflict with the Harakandi application for 181 Sylvan Avenue. Mr. Steinhagen stated that he will refer another attorney to cover the application.

ZONING OFFICER REPORT:

Mr. Melfi had nothing additional to report.

PLANNER REPORT:

Mr. Conklin stated that H2M is moving forward with the Redevelopment Study. Mr. Conklin also stated that the Master Plan should be ready soon but did not have a specific timeline.

PUBLIC COMMENT PERIOD – CORRESPONDENCE:

No Public Comments Raised.

Vice Chair Petti announced to the Board that he will be resigning from the Planning Board effective November 29, 2021, because he is moving out of Leonia. Vice Chair Petti wished his fellow Board members luck. The Chairman, on behalf of the Board and the Borough of Leonia thanked Vice Chair Petti for his many years of service and dedication

With no further business presented, a motion to adjourn the meeting was made by: Vice Chair Petti

Seconded: Mr. Botten

All in Favor – Motion Passed

The meeting was adjourned at 11:17 PM

Respectfully Submitted,

Angela Copeland
Planning Board Secretary