

Variations to exceed maximum Density and number of bedrooms per acre, lot size (conditional use variance), lot width, front yard setback, side yard setback, building coverage, and building height, and design exceptions

**RESOLUTION
LEONIA PLANNING BOARD
APPLICATION OF MSN SERVICES, LLC**

CALENDAR NO. 2015-19

WHEREAS, MSN Services, LLC (hereinafter referred to as the "Applicant") applied for preliminary and final site plan approval with variances before the Leonia Planning Board (the "Board") to permit development of a multi-family residential building with four units in violation of the lot size required for multi-family residential use in the B Zone, minimum lot width, minimum front yard setback, minimum side yard setback, minimum rear yard setback, maximum building height (number of stories), maximum lot coverage, and density permitted by the Borough of Leonia Zoning Ordinance thereby necessitating variance relief pursuant to *N.J.S.A. 40:55D-70(c)*, *N.J.S.A. 40:55D-70(d)(3)*, and *N.J.S.A. 40:55D-70(d)(5)*, as well as several design exceptions; and

WHEREAS, the property subject of the application is identified on the Tax Map of the Borough of Leonia as Block 1205, Lot 4, and is more commonly known as 180 Fort Lee Road, Leonia, New Jersey (the "Property"); and

WHEREAS, the Property is located in the B Zone and is owned by the Applicant; and

WHEREAS, the application was considered at public hearings held on September 23, 2015 and November 18, 2015 at which time the Applicant was represented by Kevin Conway, Esq., 646 Chestnut Ridge Road, Spring Valley, New York, 10977; and

WHEREAS, the Applicant offered the testimony of its architect and planner, Peter Pulice, AIA, P.P., Pulice/Williams Architects, 344 Broad Avenue, Leonia, New Jersey, who was qualified as an expert in the fields of architecture and professional planning; and Mark Martins, P.E., P.L.S., Mark Martins Engineering, LLC, 55 Walnut Street, Suite 201, Norwood, New Jersey 07648, who was qualified as an expert in the field of civil engineering; and

WHEREAS, the Applicant provided proof that notice in accordance with the Municipal Land Use Law was provided; and

WHEREAS, the Applicant submitted architectural plans prepared by Williams/Pulice Architects, dated September 3, 2015 (and which were revised during the hearing on October 1, 2015) consisting of 7 pages; and engineering plans prepared by Mark Martins Engineering, LLC, dated September 10, 2015 (and which were revised during the hearing on October 15, 2015) consisting of 7 pages as part of the application; and

WHEREAS, Daniel Melfi, the Borough Building Inspector / Zoning Officer provided testimony during the public hearing regarding the application; and

WHEREAS, Robert Costa, P.E., the Board Engineer provided testimony during the public hearing regarding the application; and

WHEREAS, William Torres, 124 Leonia Avenue, Leonia, New Jersey indicated during the witnesses' testimony on September 23, 2015 that he had a comment, but did not return when the hearings were opened to the public for comment on November 18, 2015; and

WHEREAS, Ronald Chace, 120 Leonia Avenue, Leonia, New Jersey indicated that he was in favor of the proposed development; and

WHEREAS, the Board marked the following items into evidence during the hearing:

1. A-1: Architectural Plans dated September 3, 2015;

2. A-2: 3-page photo package and density summary prepared by Peter Pulice;
3. A-3: Architectural Plans, last revised October 1, 2015;
4. A-4: Photograph of the Property;
5. A-5: Density summary prepared by Peter Pulice; and

WHEREAS, the Board has carefully considered application documents, plans, exhibits introduced into evidence and the testimony of the Applicant's professionals; and

WHEREAS, the Board, after considering the aforesaid hereby makes the following findings of fact:

- A. The Applicant, MSN Services, LLC, is the owner of the Property commonly known as 180 Fort Lee Road, Leonia, New Jersey, which Property is identified as Block 1205, Lot 4 on the current Tax Map of the Borough of Leonia.
- B. The Property is located in the B Zone and is currently undeveloped.
- C. The Applicant has proposed a four-unit multi-family development consisting of two two-townhouse groups. Each townhouse unit will contain three bedrooms and will provide two internal parking spaces.
- D. The Property comprises 13,447 square feet and is generally rectangular in shape. As the minimum lot area in the B Zone is 43,560 square feet for multi-family development, the Applicant requires a conditional use variance. Additionally, because the Applicant proposes a density of 13 dwelling units per acre (and 38.87 bedrooms per acre) where the applicable zoning permits a maximum of 8 units per acre and 24 bedrooms per acre, the Applicant requires a density variance.
- E. As shown on Exhibit A-3, on the ground floor of each townhouse unit will be a two-car garage, a half bathroom, storage closet, family room and a mechanical closet. For each

group of townhouses, there is a shared exterior staircase to the landing and ingress/egress door. Within each unit is a two-story entry that contains a staircase to the second floor of the unit. The second floor of each unit will contain a dining/living area, an eat-in kitchen with laundry facilities, and a half bathroom. A shared terrace between the southern townhouse building and the northern building is accessible from the units that are adjacent to that terrace, and underneath the terrace are two guest parking spaces. The shared terrace will be separated by a privacy fence. A handicapped space is located on the south side of the Property. On the third floor of each unit are two guest bedrooms, a full bathroom, and a master suite with bathroom. Each unit also has access to a private, landscaped rooftop terrace. The rooftop terrace will be accessible via a hatch door, the height of which will not exceed the maximum height permitted in the B Zone.

F. The Applicant's architect described the building materials proposed. In particular, the building facades will be finished with masonry and brick. The dormers for the master bedroom and other areas of the roof are to be clad in zinc sheet metal for visual interest. Part of the units is cantilevered over the building footprint. This provides additional floor area on the second and third floors of the buildings but permits there to be additional landscaped area on the Property.

G. The Property is surrounded by other multi-family developments that are on smaller lots and maintain higher densities. For example, as shown on Exhibit A-5, the adjacent lot to the west, 176 Fort Lee Road is roughly equivalent in size with the Property having a lot area of 14,585 square feet. However, that lot is improved with an apartment building containing 21 units. This represents a density of 62 units per acre. Southwest of the Property is 107 Romaine Plan, which is 12,000 square feet in size and is developed with five units.

H. The 21-unit apartment building located at 176 Fort Lee Road is a significant overdevelopment of that property. In particular, the apartment building covers virtually all of the adjacent lot and is four stories in height. The configuration of the building on that lot, with a very long, high wall in close proximity to the side lot line of the Property makes development of the Property without variances unlikely because if a one or two family home were developed, the structure would be burdened with little privacy and a high wall in the side yard. Instead, the Applicant is proposing a design that turns the units to face the north, which allows them to serve as a transition to the less intense uses located to the east of the Property on Fort Lee Road. As testified to by the Applicant's architect, the buildings were designed and to provide a visual transition between that building and the structures to the east, as well as buffering that building's façade.

I. The Board, through its engineer, has reviewed the Applicant's drainage plan and finds it to be compliant with the Borough's stormwater management ordinance. The Applicant's drainage plan includes piping underneath the driveway that will infiltrate runoff into the ground, but which will also be connected into the municipal sewer system in Fort Lee Road. A swale will be located on the west side of the Property to direct stormwater into the drainage system rather than onto adjacent properties or into the right o

J. The Applicant is proposing a significant amount of new landscaping. In addition to the green roofs referenced above in Paragraph E, the Applicant intends to plant mature trees along the Property's frontage on Fort Lee Road and landscaping on the sides and rear of the units. The site landscaping will include red maple trees, rhododendrons, azaleas and arbor vitae.

K. Because of the slope of the Property, the Applicant will construct a keystone retaining wall at the northwest corner of the Property adjacent to the 21-unit apartment complex

located at 176 Fort Lee Road. As shown on the site plan, the maximum height of the retaining wall is 3 feet. A larger, concrete retaining wall will be installed along the south and east side of the Property for the driveway. That retaining wall will have a maximum height of 6.5 feet to account for the slope of the Property.

L. Site lighting will be achieved via one light pole near the Property's frontage on Fort Lee Road and by wall mounted light fixtures on the front of each unit. The lighting plan is sufficient to provide illumination to the vehicle and pedestrian areas without spilling over onto the adjacent lots.

M. The development requires variances from lot size required for multi-family residential use in the B Zone, minimum lot width, minimum front yard setback, minimum side yard setback, minimum rear yard setback, maximum building height (number of stories), maximum lot coverage, and density permitted by the Borough of Leonia Zoning Ordinance. It also requires exceptions from the Borough's site plan design requirements for the entrance driveway, height of retaining walls, and location of parking spaces relative to the buildings. The details of the deviations are set forth in paragraphs N through U, below.

N. The minimum lot area required in the B Zone for multi-family development is 43,560 square feet. As noted above, because the Property is 13,447 square feet, the Applicant requires a conditional use variance.

O. The maximum density permitted in the B Zone is 8 units per acre and 24 bedrooms per acre; the Applicant's proposes a density of 13 units per acre and 39 bedrooms per acre in violation of the Borough of Leonia Zoning Ordinance, which requires a density variance.

P. The required lot width in the B Zone is 100 feet; the Property is 79.66 feet wide in violation of the Borough of Leonia Zoning Ordinance.

Q. The required front yard setback in the B Zone is 25 feet; the Applicant proposes a front yard setback of 18.2 feet in violation of the Borough of Leonia Zoning Ordinance.

R. The required side yard setback in the B Zone is 15 feet; the Applicant proposes a side yard setback of 6.67 feet along the west side of the Property in violation of the Borough of Leonia Zoning Ordinance.

S. The maximum building height in the B Zone is 2.5 stories/35 feet; the Applicant proposes buildings that are 35 feet tall, which complies with the Borough of Leonia Zoning Ordinance, but because the townhouse units are 3 stories, a variance is required.

T. The maximum building coverage in the B Zone is 20%; the Applicant proposes to cover 37.2% of the Property with buildings in violation of the Borough of Leonia's Zoning Ordinance.

U. The Applicant also requires relief from the minimum distance required between parking spaces and a principal building (10 feet required, 8 feet provided); number and width of driveway access points (2 driveways, each 16 feet wide required; 1, 24-foot wide driveway provided); the requirement to provide concrete sidewalks between the townhouses and parking; minimum common open space (15% required, 0% provided); and maximum retaining wall height (6 feet permitted, 6.5 feet provided).

V. The Applicant offered testimony that confirmed that the site could accommodate the deviation occasioned by the conditional use variance and density variance, and explained that many of the bulk variances were mitigated by virtue of the Applicant's design, particularly with respect to the setback variances, building coverage and height. In particular, the testimony of the Applicant's witnesses demonstrated that the Property had sufficient space to provide for parking for all of the building's residents, by proposing 11 parking spaces where 8 spaces are required by

the Residential Site Improvement Standards (2 spaces per unit). As noted by the Applicant's witnesses, the proposed development, although yielding more units and bedrooms than otherwise permitted, will not create adverse traffic impacts. Moreover, the scale and intensity of the development on the Property are compatible with surrounding development.

W. Although the proposed building exceeds the maximum number of stories, it complies with the total height requirements of the Borough of Leonia Zoning Ordinance as the building height is 35 feet. The Property will serve as a transitional visual buffer between the tall and exceptionally dense apartment building located at 176 Fort Lee Road and properties located to the east on Fort Lee Road.

X. The Applicant has demonstrated that the benefits of granting the following bulk variances substantially outweighs the negatives arising therefrom because it advances purposes of zoning as set forth in the Municipal Land Use Law: (i) building height; (ii) lot width, (iii) front yard setback; (iv) side yard setback; and (v) building coverage. In particular, as testified by the Applicant's witnesses, the project will provide more parking than is required by the Residential Site Improvement Standards, thereby ensuring that there will be no overflow parking on Fort Lee Road. Because there is often a parking shortage in the Borough of Leonia, the Board finds that providing more parking than is required is a substantial benefit to the general welfare in furtherance of *N.J.S.A. 40:55D-2(a)*. This also helps to ensure that traffic on Fort Lee Road is not impeded, thereby furthering the goal of the MLUL set forth in *N.J.S.A. 40:55D-2(h)*. Additionally, by virtue of the design, which sites the buildings close to the large, unattractive structure on the adjacent lot, the Applicant is offering a visual screen that helps to mitigate an eyesore. This, combined with the substantial additional landscaping and attractive, well-designed multifamily townhouse development building that will help create an aesthetically

pleasing visual environment in furtherance of *N.J.S.A. 40:55D-2(i)*. Furthermore, the Applicant is proposing a type of housing that is not commonly found in the Borough of Leonia – specifically, 3-bedroom townhouses– that the Board believes will be a benefit to the Borough as encouraged by *N.J.S.A. 40:55D-2(g)*.

Y. The Board also finds that without variance relief on account of the narrow lot width, the Applicant would suffer a hardship as it would be unable to develop the Property without variance relief.

Z. The Board finds that the grant of the aforesaid variances can be granted without substantial detriment to the public good. It reaches this conclusion based upon the physical design of the proposed development, its location on Fort Lee Road, and the adjacent uses (which include many other multi-family developments on lots that are similar in size and that maintain higher densities). The Property will be attractively designed, well-landscaped, and will not interfere with the use of any adjacent property, particularly because there is substantially more on-site parking for the residents and guests than is required. Additionally, the Applicant is proposing substantial drainage upgrades over the existing condition.

AA. The Board also finds that the grant of the aforesaid variances can be granted without substantial impairment of the zone plan and zoning ordinance. In particular, the Board notes that the Governing Body of the Borough of Leonia has zoned the Property to conditionally permit multi-family use. While proposed development exceeds the maximum number of units per acre and maximum number of bedrooms permitted per acre, it is not out of character with nearby developments. In particular, the Board relies on the testimony of the Applicant's planner, who offered Exhibit A-5 to demonstrate that the proposed development is actually less dense than most of the surrounding uses. Thus, while there is a density variance, the Board concludes

that its grant does not substantially impair the intent and purposes of the zone plan and zoning ordinance.

BB. The Board also finds that it can grant the requested exceptions to the Borough of Leonia's Site plan Review Ordinance. The requested exceptions, as noted in Paragraph U, are reasonable and within the intent and purpose of the Site Plan Review ordinance. Without the requested exceptions, the enforcement of the requirements would exact undue hardship upon the Applicant, and because enforcement of same is impracticable. This is because of the somewhat tight confines of the Property. For example, the Property is only 79.66 feet wide and there simply is not enough space to provide two driveways that are each sixteen feet wide. The Applicant is instead providing a 24-foot wide single point of ingress and egress. Similarly, the slope and topography of the Property requires a retaining wall that exceeds the maximum retaining wall height. At the same time,

NOW THEREFORE, BE IT RESOLVED that the Application of MSN Services, LLC for preliminary and final site plan approval with variances to develop a four-unit multi-family townhouse development on the Property is approved subject to the following conditions:

1. **Location and Type:** The Applicant shall be permitted to construct the proposed 4-unit multi-family townhouse development in a manner and location as testified by the Applicant and witness during the public hearing and as shown on the Plans submitted to the Board

2. **Specific Conditions of Approval:** During the course of the hearings, the Applicant agreed to be bound by the following conditions:

A. The Applicant shall comply with the conditions of approval set forth in the review letter of the Board's Engineer, Robert Costa, P.E., dated October 20, 2015, including but not limited to:

1. The Applicant shall submit calculations to the Board Engineer to assure the adequacy of sewer flow;

2. The sanitary sewer main must be inspected with a fiber-optic (or equivalent) cable camera to ensure that there is no deterioration of same. If any deterioration is found, the Applicant shall agree to all reasonable requirements of the Board Engineer. Sanitary sewer connections must be inspected and approved by the Board Engineer.

3. The Applicant must dig soil test pits at the location of its underground stormwater management systems and provide a soil analysis to the Board Engineer. The soil test pits shall be dug in the presence of the Board Engineer (or his representative);

4. The Applicant shall submit retaining wall calculations and construction details to the Board Engineer for his review and approval;

B. The Applicant shall submit a drainage report and stormwater maintenance manual to the Board Engineer, Robert Costa, P.E., for review and approval. The drainage report shall confirm that the stormwater management system is designed to accommodate the 100-year storm.

D. The Applicant shall submit its plans to the Borough of Leonia Shade Tree Commission for review and shall comply with any landscaping changes requested by the Shade Tree Commission.

E. The Applicant shall comply with the memorandum of the Borough of Leonia Fire Prevention Bureau, dated September 8, 2015.

F. The Applicant shall revise its site plan to add additional landscaping in the rear of the Property. The revisions to the landscaping plan shall be reviewed and approved by the Board Engineer.

G. The Applicant's architect shall submit a LEED Checklist at the time of the application for a certificate of occupancy demonstrating that the green features of the development would qualify it for LEED Silver Certification. The Applicant is not required to actually obtain certification from the Green Building Council, but instead must merely demonstrate to the satisfaction of the Construction Code Official that the development has been constructed in an environmentally friendly manner.

I. The Applicant shall be required to provide "will serve" letters from all utility companies intended to provide service for the development prior to the issuance of any permits for construction.

J. The Applicant, or any successor, shall be required to maintain or replace all landscaping on the Property to ensure aesthetics and screening. The Applicant shall be required to install sprinklers on the Property for the landscaping.

K. The Applicant shall be required to enter into and execute a Developer's Agreement with the Borough of Leonia to be prepared by the Board Attorney, and the Applicant shall be further required to fully perform the obligations, terms and conditions listed therein, including, but not limited to, the payment of all fees and the posting and maintenance of all deposits, bonds and escrows thereby required.

L. All proposed and required storm water management and drainage required or proposed on the Property shall be subject to final review and approval of the Board's engineering consultant.

M. The Applicant shall submit an as-built survey to the Borough of Leonia Construction Code Official prior to the issuance of a Certificate of Occupancy that shows all structures on the Property.

N. The Applicant shall be required to obtain all other necessary governmental agency approvals, which include but are not limited to (i) Bergen County Planning Board; (ii) Bergen County Soil Conservation District; (iii) Borough of Leonia Police, Fire and Ambulance Departments; (iv) Borough of Leonia Shade Tree Commission; (v) New Jersey Department of Environmental Protection Treatment Works Approval; and (vi) Bergen County Road Opening Permit. No building permit shall be issued until the Applicant submits copies of all required approvals.

3. **Legal and Engineering Fees:** The Applicant shall be responsible for all legal and engineering fees of the Planning Board in connection with this application and no Certificate of Occupancy shall be issued until all such fees are paid.

4. **Other Fees:** All additional fees, if any, required by the Borough Ordinances shall be paid.

5. **Reliance by Board on Testimony and Application:** This approval is specifically granted based upon the testimony of the Applicant, the exhibits, the application, any and amendments to same, submitted to the Board, all of which have been relied upon by the Board.

6. **Compliance with Ordinance:** Except for the variance(s) approved herein, the Applicant shall comply with all other provisions of the Zoning Code of the Borough of Leonia.

7. **Compliance with Laws:** The Applicant shall comply with all Borough Ordinances, and any and all State and Federal laws and applicable regulations.

8. **Non-Severability of Conditions:** The relief granted to the Applicant is specifically made subject to the conditions referred to herein. In the event any condition is held to be invalid, unenforceable, or unlawful, the entire variance shall be unenforceable. It is the intent of the Board that the variance(s) not be approved if any condition is invalid, and that the conditions are not severable from any variances or relief granted herein.

9. **Appeal Period:** The Applicant has been advised that there is an appeal period for the relief granted herein for a period of forty-five (45) days from the date of publication of notice of the relief granted pursuant to this Resolution in a newspaper of general circulation approved by the Board. Accordingly, any work or construction done prior to the expiration of the appeal period is accomplished at the sole risk of the Applicant.

Said Resolution was adopted by the following vote at the meeting prior to adoption of the memorializing Resolution:

Moved by: Patrick Botten
 Seconded by: Vincent Petti

	<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Absent</u>	Not Qualified To Vote
Ron Chace, Chairman					X
Mayor John DeSimone					X
Councilman Mark Minichiello					X
Richard Stenken	X				
Vincent Petti	X				
William Russell					
Anthony Cassano	X				
Patrick Botten	X				
Timothy Ford				X	
Leah Roland, Alt. #1					X

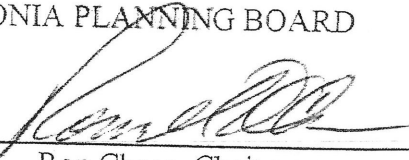
Said Resolution was adopted by the following vote:

Moved by: Botten
 Seconded by: Stenken

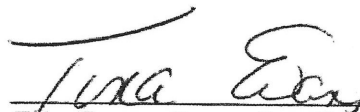
	<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Absent</u>	<u>Not Qualified To Vote</u>
Ron Chace, Chairman					X
Mayor John DeSimone					X
Councilman Mark Minichiello					X
Richard Stenken	✓				
Vincent Petti	✓				
William Russell	✓				
Anthony Cassano	✓				
Patrick Botten	✓				
Timothy Ford					X
Leah Roland, Alt. #1					X
Brad Wilds, Alt. #2					X
Paul Poretzky, Alt #3					X
Yvonne Oliveri, Alt #4				✓	

Dated: December 16, 2015

LEONIA PLANNING BOARD

By: 
 Ron Chace, Chairman

CERTIFIED TO BE A TRUE COPY

By: 
 Tina Evans, Recording Secretary to
 the Planning Board

Brad Wilds, Alt. #2				X	
Paul Poretzky, Alt #3				X	
Yvonne Oliveri, Alt #4	X				