

January 23, 2023

Borough of Leonia Planning Board
312 Broad Ave
Leonia, NJ 07605

**Re: MSN Services, LLC
Preliminary and Final Site Plan with Use Variance
Block 1205, Lot 4
180 Fort Lee Road
H2M Project No.: LEON2207**

Dear Borough of Leonia Zoning Official:

In preparation of this review letter, I have reviewed the application materials provided to our office below, reviewed the Borough Land Use Ordinance and Master Plan. H2M reserves the right to continue to review and provide additional technical comments as the application progresses through the process. **Updates to the original review letter dated November 11, 2022 are denoted in BOLD font.**

I am in receipt of the following items submitted in connection with this application:

- Site Plan for 4 Unit Multi Family Residence, prepared by Mark S. Martins, PE, of Mark Martins Engineering, LLC, dated May 14, 2021
- Architectural Drawings for Multi-Family Development, prepared by Pulice/Williams Architects, dated September 20, 2022
- **Architectural Drawings for Multi-Family Development, prepared by Pulice/Williams Architects, dated September 20, 2022; revised December 28, 2022**
- **Survey of Property 180 Fort Lee Road, prepared by Mark S. Martins, P.L.S., of Mark Martins Engineering, LLC, dated December 6, 2022**



The subject site is located mid-block between Romaine Place and Leonia Avenue on the south side of Fort Lee Rd. The area has a mix of multi- and two-family uses as the site immediately west is occupied by a four-story multifamily building, and the site immediately east is occupied by a two-family home. The site is currently a vacant lot with a paved driveway on the eastern end of the lot, concrete stairs in the front of the property with accompanying retaining walls in the front and side yards.

Project Overview

The applicant, MSN Services, LLC, have submitted a preliminary and final major site plan application with use and bulk variances for Block 1205 Lot 4, to construct a four-unit multifamily residence on a lot with approximately 0.31 acres in area and located in the B Multifamily Zone. The site is a rectangular-shaped lot located at 180 Fort Lee Road with a greater depth than width. The site is currently a vacant lot with a paved driveway on the eastern end of the lot, concrete stairs in the front of the property with accompanying retaining walls in the front and side yards.

The applicant is proposing to construct a four-unit multifamily building with accessory parking for residents. The multifamily building would be accessed through a single access drive on the eastern portion of the property off of Fort Lee Road. Each of the residential units is proposed to contain three bedrooms, three bathrooms, and a two-car garage. The garages are proposed to be located on the ground floor of the units with two additional stories above for a total of three stories. The applicant is proposing two additional parking spaces to be utilized by guests and one ADA parking space for a total of 11 off-street parking spaces. Due to the unit count of the development, the applicant is not required to provide residential units set aside for very low-, low- and moderate-income households nor provide parking spaces that can accommodate the charging of electric vehicles.

Project History

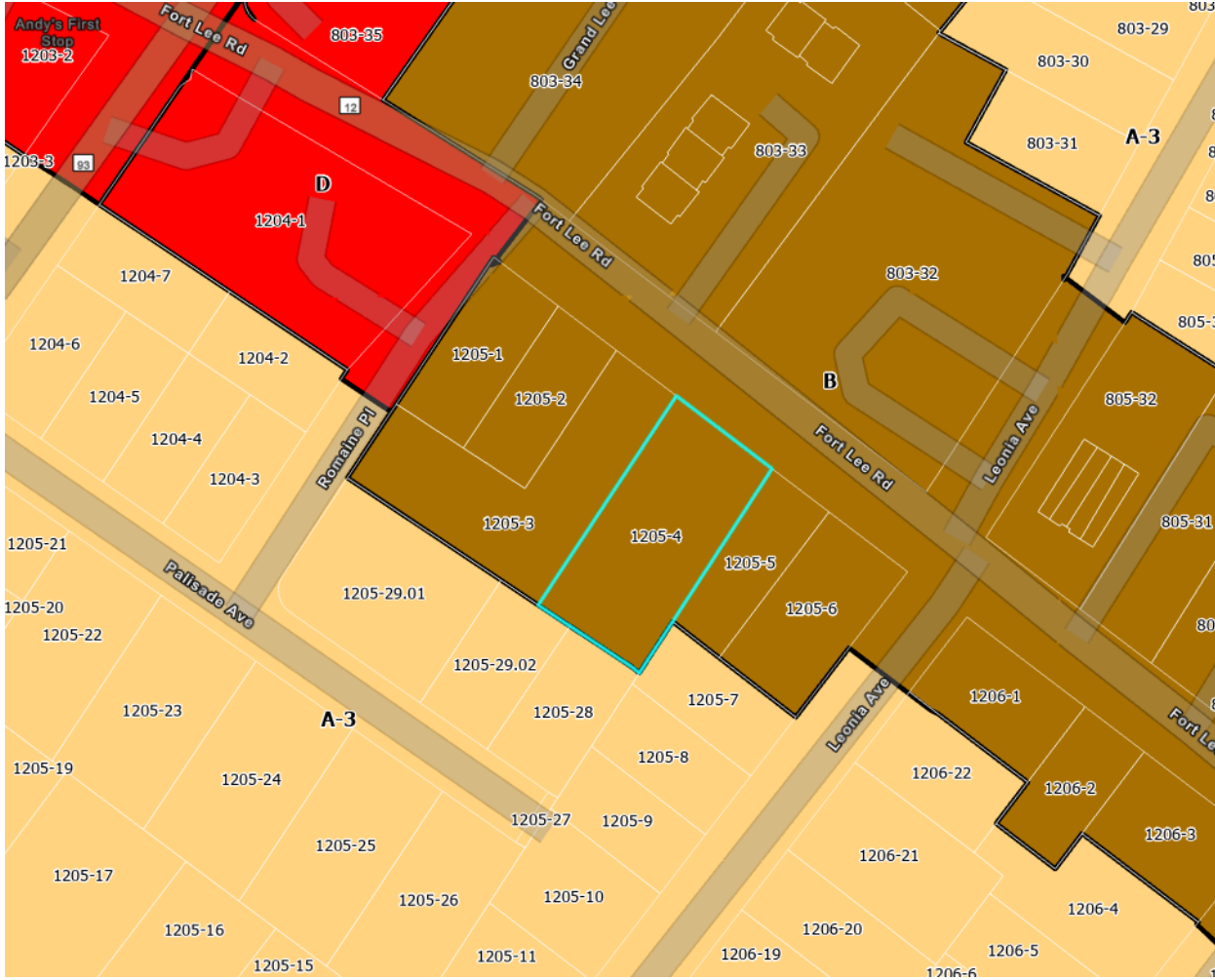
There is an approval associated with the subject site pursuant to Resolution No. 2015-19, which was granted on December 16, 2015, for preliminary and final site plan with variances. The variances granted were a conditional use variance pursuant to NJSA 40:55-70d(3), density variance pursuant to NJSA 40:55-70d(5) and bulk or c variances pursuant to NJSA 40:55-70(c) for lot area, density, front yard setback, side yard setback, maximum building height (number of stories), building coverage, minimum distance between parking spaces and a principal building, number and widths of driveway access points, retaining wall height, and other associated design waivers for the proposed multi-family town house development in the B Zone District. Section 37-18 stipulates that variances shall expire within one year since granting of the approval unless construction has commenced on each and every structure. The applicant did not undertake the required steps since the memorialization of the resolution, and it has been almost seven years since approval. Thus, the application requires variance relief from the Board of Adjustment as the variances have expired.

The Board also granted preliminary and final site plan approval. The MLUL pursuant to NJSA 40:55D-52a grants an application protection from any zoning changes for a period of two years (and grants three extensions of one year subsequent to the two-year period) but if at the expiration of two years (and the end of the extension period) there has been no changes in zoning, the site plan continues to remain in full force. There have not been any changes to the requirements of the B Zone District, therefore the site plan approval continues to remain. However, regulations such as the revised Stormwater Controls are applicable to this project. **The applicant should provide testimony that the proposed development complies with the revised stormwater management regulations.**

Update to Previous Plan

Since the last Planning Review Letter dated November 11, 2022, the applicant has made several changes to the proposed development based on comments from the November Planning Board meeting. The applicant has increased the rear yard setback to 25 feet from the previous setback of 16.54 feet. The rear yard setback still requires a “c” variance as the setback is 10 feet less than the required minimum of 35 feet. The applicant has increased the rear yard setback primarily through relocating the two guest parking spaces from the previous location under the roof terrace between Unit B and Unit C to the rear of Unit D. This has reduced the length of the roof terrace to 16.26 feet and the distance between Unit B and Unit C to 10.26 feet. The ADA parking space has been relocated to the area underneath the roof terrace. The change in the location of the parking spaces has also reduced the overall length of the building to 124.90 feet from the previous length of 131.36 feet. The following sections have been updated to reflect these changes to the proposed development based on the updated application materials provided.

Zoning and Use Variance



The site is located in the B Multifamily Zone. As per Leonia Borough zoning regulations, multi-family dwellings are a permitted use subject to the required conditions in § 290-20. These conditions and the proposed development's compliance with the requirements pertaining to said development are shown in the table on the following page.

Ordinance Requirement	Regulation	Required	Existing	Proposed	Status
Use	§290-19	Multiple-family dwellings	Vacant	Multifamily	<i>Compliant</i>
Minimum Lot Area	§290-20A(1)	1 acre	0.31 acres	0.31 acres	Requires bulk variance
Maximum Density	§290-20A(2)	8 dwelling units/acre 24 bedrooms/acre	N/A	13 units/acre 39 bedrooms/acre	Requires d(5) variance
Minimum Frontage	§290-20A(3)	100 feet	79.66 feet	79.66 feet	Requires bulk variance
Minimum Front Yard Setback	§290-20B(1)	25 feet	N/A	18.2 feet	Requires bulk variance
Minimum Rear Yard Setback	§290-20B(2)	35 feet	N/A	48.54 feet 25 feet	Requires bulk variance
Minimum Side Yard Setback	§290-20B(3)	25.1 feet	N/A	6.67 feet	Requires bulk variance
Minimum Distance between Buildings	§290-20C	30 feet	N/A	N/A	N/A
Maximum Building Height	§290-20D(1)	2.5 stories/35 feet	N/A	3 stories/35 ft	Requires bulk variance
Maximum Building Length	§290-20D(2)	140 feet	N/A	131 feet 124.90 feet	<i>Compliant</i>
Units per Building	§290-20D(3)	Min.3; Max. 8	N/A	4 units	<i>Compliant</i>
Maximum Building Coverage	§290-20D(5)	20%	N/A	37.2%	Requires bulk variance
Minimum Living Floor Area	§290-20E(2)	1,275 square feet	N/A	2,566 square feet	<i>Compliant</i>
Minimum Basement Storage Space	§290-20E(6)	500 cubic feet/unit	N/A	0 cubic feet	Requires bulk variance
Minimum Garage Space Size	§290-20F(1)	10'x20'	N/A	Two-car garage: 20'x21.1'	<i>Compliant</i>
Parking Requirements	§290-20G(1)	2 spaces per unit	N/A	2 spaces/unit	<i>Compliant</i>
Minimum Open Space	§290-20H	15%	N/A	26%	<i>Compliant</i>
Parking Location: Min. Distance from lot line	§236-28B(2)	8 feet	N/A	5.5 feet*	Requires design waiver
Parking Location: Min. Distance from Building	§290-20G(2)	10 feet	N/A	Guest space: 0ft 6.25 ft** ADA space: 8 ft 0 ft	Requires bulk variance

Parking Stall Size	§236-28C(2)(a)	10'x20'	N/A	8x18'	Requires design waiver
Driveway Aisle Width	§236-28C(1)(b)	24 feet	N/A	20 feet	Requires design waiver
Maximum Wall Height in Side Yard	§290-47A	6 feet	N/A	6.5 feet	Requires bulk variance

***The updated architectural drawings dated December 28, 2022 do not include a measurement of the distance between the relocated guest parking space and the rear lot line. Based on measurements of the updated drawings, it appears that the distance between the parking space and the rear lot line remains at 5.5 feet.**

****The updated architectural drawings dated December 28, 2022 do not include a measurement of the distance between the relocated guest parking spaces and Unit D. Based on measurements of the updated drawings, it appears that the distance between the parking space and Unit D is about 6.25 feet.**

Variance Comments

- D(5) Density Variance** – The applicant is proposing to construct a four-unit multifamily town house development in the B Zone District. The B Zone District allows for a maximum density of eight (8) units per acre and 24 bedrooms per acre. The lot has an area of roughly 0.31 acres which translates to a proposed density of 13 units per acre. This represents a proposed density on the property in excess of the permitted density of the zone, thus requiring variance relief pursuant to NJSA 40:55D-70d(5) or a d(5) variance. While this office defers to the Board attorney in advising the Board on the application of relevant variance criteria; this report identifies the variance criteria for the purposes of establishing a framework for review. For a Board to consider an application for a d(5) variance, the applicant has to satisfy both the positive and negative criteria.

Positive Criteria: To satisfy the positive criteria for variance relief pursuant to NJSA 40:55D-70d(5), also known as “special reasons”, the stringent *Medici* standards are not applicable but instead standards established by *Coventry Square v. Westwood Zoning Board of Adjustments* are applicable. The applicant need not show that the site is particularly suited for the intensive development, which in this case is because of the higher density but rather how the site will accommodate the problems associated with a density higher than the maximum permitted in the zone district.

Negative Criteria: Should the applicant satisfy the positive criteria; it must also satisfy the negative criteria. The first prong is that the variance can be granted “without substantial detriment to the public good.” In that the Board must focus on the effect on the surrounding properties from the variance. In respect to the second prong that the variance will not “substantially impair the intent and purpose of the zone plan,” the Board must evaluate that the granting of the variance relief reconciles with the legislative determination of the maximum density imposed for the said use in the zone district. The applicant should address any impacts to the character of the neighborhood resulting from not complying with the maximum permitted density of 8 du/acres. Thus, testimony should be provided that the proposed development:

- Will not cause a substantial detriment to the public good.
- Impacts on the surrounding properties and the character of neighborhood should be evaluated.
- Will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

It should be noted that there are multiple multifamily developments in the immediate area that exceed the allowable density of the B Multifamily Zone.

2. Bulk and Area Variances “c” variances. The applicant requires **ten (10)** bulk and area variances as outlined in the table above. While this office defers to the Board attorney in advising the Board on the application of the relevant variance criteria, this report identifies the variance criteria for the purposes of establishing a framework for review. The applicant bears the burden of proof, which is divided into two parts, in the justification of the “c” variance. When the bulk variances are sought with variance relief pursuant to NJSA 40:55D-70d, the required bulk variances are subsumed in the considerations of the use variance.

A. Positive Criteria. The applicant bears the burden of proof (which is divided into two parts – positive criteria and negative criteria) in the justification of the “c” variance. To satisfy the positive criteria for a “c” variance, the applicant has two choices. First, known as “c(1)” variance relief, the applicant may demonstrate that strict application of the regulation would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship due to one of the following:

- 1) By reason of exceptional narrowness, shallowness or shape of a specific piece of property;
- 2) By reason of exceptional topographic conditions or physical features uniquely affecting the specific piece of property; or
- 3) By reason of an extraordinary and exceptional situation uniquely affecting a specific piece of property or the structures lawfully existing thereon.

The applicant should provide testimony regarding any peculiar and exceptional practical difficulties or exceptional and undue hardship if seeking c(1) variance relief for the proposed variances.

Alternatively, and known as “c(2)” variance relief, the applicant may demonstrate the following positive criteria in support of the request for relief:

- 4) Where in an application or appeal relating to a specific piece of property the purposes of the Act (N.J.A.C. 40:55D-2) would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.
- 5) The applicant should provide testimony regarding any public benefits of the project if seeking c(2) variance relief.

B. Negative Criteria. Should the applicant satisfy the positive criteria, it must also be demonstrated that the granting of the variance can be accomplished without resulting in substantial detriment to the public good and without substantial impairment of the intent and purpose of the zoning ordinance and zone plan.

- 1) Negative Criteria: Impact to the public good. Impact to the public good, typically relates to any substantial detriment to the adjoining neighbors or within the surrounding neighborhood. The applicant should provide testimony regarding any potential negative impacts to the character of the neighborhood resulting from the proposed variance relief and any proposed mitigation measures to reduce potential negative impacts to the public good.
- 2) Negative Criteria: Impact to the zone plan. In considering the potential negative impacts to the zoning ordinance and zone plan, the Board should consider potential impact of the variances on the zoning standards the B Zone.

The Board should consider the extent to which the variances may result in any substantial impairment of the intent and purpose of the B Zone.

Other Planning Comments

1. General. Per Resolution 2015-19, site plan approval was previously granted by the Board, and remains in full force as mentioned earlier in this review. This approval is subject to certain conditions as detailed on pages 11-13 of the Resolution:
 - 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 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 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 of the landscaping plan shall be reviewed and approved by the Board Engineer.*

Testimony shall be provided in regard to compliance with the conditions of Resolution 2015-19 and whether the site plan has been updated to reflect the conditions of approval. Subsequent to the 2015 approvals, there were changes to the stormwater management regulations as per the new NJDEP regulations. Testimony should be provided regarding compliance with the same. We defer to the Board Engineer.

Should the Board grant the variances then the applicant is required to comply with the conditions set forth for the preliminary and site plan approval within Resolution 2015-19.

2. Parking Access. §290-20G(3) of the ordinance states the following:

Two access drives, each a minimum of 16 feet wide, leading to a street shall be required unless the Planning Board determines that one such drive is sufficient for the safe ingress and egress of traffic. Parking areas and access drives shall be so located and arranged as to provide safe traffic movement. No such facilities shall be approved that are likely to involve any risk to vehicular or pedestrian traffic safety.

The applicant proposes one access drive that is 24 feet wide at the ingress/egress point to the proposed multifamily units, requiring a bulk "c" variance. The access drive narrows to 20 feet wide roughly at the start of the building line and remains as such to the rear of the property. Testimony should be provided to demonstrate that the access drive configuration as proposed is sufficient for the safe ingress and egress of traffic. It should be noted that §236-28C(1) states, "Only one-way traffic shall be permitted in aisles of less than 24 feet.

3. **Lighting.** The applicant is proposing to install six wall mounted lamps along the building's exterior and one 12' high pole mounted light in the front of the property. The applicant shall provide to demonstrate that the lighting plan is in compliance with §290-20G(5).
4. **General.** The applicant is proposing one parking space designed and designated for physically handicapped persons. However, the parking space as designed on the site plan appears to be only eight (8') feet wide. §236-37C(3) requires that each space shall be 12 feet wide to allow room for persons in wheelchairs or on braces or crutches to get in and out of either side of the automobile. Testimony should be provided how the applicant intends to ensure that a physically handicapped person would be able to utilize the parking space without excessive difficulty.

The applicant has updated plans for the proposed development to relocate the one parking space designed and designated for physically handicapped persons to the area underneath the roof terrace. This area is 16.26 feet wide, which is able to accommodate a space with the required width of 12 feet. The space is flush with the building line. Has the applicant considered setting the parking space a few feet off the building façade and perhaps distinguishing it by either change in surface or landscaped strip?

5. **General.** The applicant shall provide testimony to the intended method of trash and recycling collection for the proposed development. Is the intention that each residence would have its own trash and recycling container? The site plan does not indicate a location for a common outdoor container.

Testimony was provided indicating the trash and recycling containers would be stored within the garages of each individual townhome unit.

6. **General.** Testimony should be provided as to the responsibility of snow removal from the access drive on the proposed development.
7. **General.** For all other aspects of this application regarding the site layout and design, this office defers to the Board Engineer.
8. **General.** The applicant has submitted updated architectural drawings that indicate changes to the overall site plan of the proposed development. However, it does not appear that the applicant has submitted an updated site plan that corresponds with the changes shown in the architectural drawings. The applicant's engineer shall provide an updated site plan to the Board prior to any approval.
9. **General.** As indicated in the Variances Table on pages 5 and 6 of this review letter, the updated architectural drawings do not include a measurement of the distance between the relocated guest parking space and the rear lot line nor a measurement of the distance between the relocated guest parking spaces and Unit D. Testimony shall be provided to confirm these measurements and the number of variances and design waivers required.

H2M reserves the right to provide additional comments as we continue through the review of this application. If you have any further questions regarding the above letter, please contact the undersigned at (862) 207-5900 extension 2232.

Very truly yours,



Sanyogita Chavan PP, AICP

Photos of the site (Courtesy of Google, April 2022)

