

PRIME & TUVEL

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 Attorney for Plaintiff, Meridia Regency on Valley, Clifton, LLC

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| MERIDIA REGENCY ON VALLEY, CLIFTON, LLC | : | SUPERIOR COURT OF NEW JERSEY |
| | : | PASSAIC VICINAGE |
| <i>Plaintiff,</i> | : | CIVIL PART - LAW DIVISION |
| | : | |
| v. | : | DOCKET NO. PAS-L-004067-19 |
| | : | Civil Action |
| CITY OF CLIFTON PLANNING BOARD | : | CONSENT ORDER OF REMAND |
| | : | |
| <i>Defendant.</i> | : | |

THIS MATTER, having been opened to the Court by way of a Complaint in Lieu of Prerogative Writ (hereinafter referred to as "Complaint") filed on December 24, 2019, by Jason R. Tuvel, Esquire, of the firm of Prime & Tuvel, attorney for Plaintiff, Meridia Regency on Valley, Clifton, LLC (hereinafter referred to as "Plaintiff"), with Robert A. Ferraro, Esquire, of Bruno & Ferraro, Esqs., attorney for Defendant, City of Clifton Planning Board (hereinafter referred to as the "Board"), appearing; and

WHEREAS, Plaintiff, a limited liability company of the State of New Jersey, is the contract purchaser and developer of certain real property located along Valley Road in the City of Clifton, County of Passaic, State of New Jersey, and designated as Block 62.04, Lots 28, 31, 32, 33, 36 & 37 on the City of Clifton Tax Map (hereinafter referred to as the "Property"); and

WHEREAS, Plaintiff previously filed an application with the Board for preliminary and final major subdivision approval and preliminary and final major site plan approval, together with bulk variance relief, to, *inter alia*, consolidate the Property into two (2) tax lots; remove the existing improvements on proposed Lot A and construct a new 102-unit hotel with related site

improvements thereon; and expand the existing restaurant/banquet hall on proposed Lot B¹ (hereinafter referred to as the "Application"); and

WHEREAS, the Board held hearings on the Application on May 30, 2018, July 26, 2018, September 27, 2018, October 25, 2018, December 13, 2018, January 24, 2019, March 28, 2019, May 8, 2019, May 23, 2019, June 27, 2019, July 25, 2019, and September 26, 2019 (hereinafter referred to, collectively, as the "Hearings," and, individually, each is a "Hearing"); and

WHEREAS, at the conclusion of the twelfth hearing, a motion was made to Approve the Application; however, the motion received five (5) negative votes and only four (4) affirmative votes, and as such, the Application was denied; and

WHEREAS, on December 12, 2019, the Board adopted a resolution memorializing its denial of the Application; and

WHEREAS, on December 24, 2019, Plaintiff filed the Complaint, challenging the Board's denial of the Application; and

WHEREAS, on February 13, 2020, the Board filed its answer to Plaintiff's Complaint; and

WHEREAS, the parties hereto have advised that they have reached a global settlement of all claims made by Plaintiff, subject to the entry of the within Consent Order of Remand and a subsequent Whispering Woods² hearing, at which time Plaintiff will present a revised site plan reflecting the modifications set forth below;

¹ Plaintiff initially proposed a third lot, designated as proposed Lot C, which would have contained the parking area for the restaurant/banquet facility. Ultimately, Plaintiff modified its plans so that proposed Lot A would contain the hotel and a combined Lot B and C would contain the restaurant/banquet facility and its off-street parking area.

² Whispering Woods at Bamm Hollow, Inc. v. Middletown Township Planning Board, 220 N.J. Super. 161 (Law Div. 1987).

NOW, THEREFORE, the Court having reviewed the terms and conditions set forth in the within Consent Order of Remand, and it appearing that the attorneys for all parties of record have each signed the within Consent Order of Remand, indicating their client's respective consent to the form and entry of same, and it further appearing that the terms of the within Consent Order of Remand are fair and reasonable;

IT IS ON THIS this 5TH day of NOVEMBER, 2020, hereby **ORDERED** that, consistent with the holding of the Court in Whispering Woods at Bamm Hollow, Inc. v. Middletown Township Planning Board, 220 N.J. Super. 161 (Law Div. 1987), the within matter is remanded to the Board, subject to and in accordance with the settlement terms and conditions set forth below:

1. The within matter is remanded to the Board for a duly noticed public hearing to consider and act upon revised plans submitted by Plaintiff in connection with its application for preliminary and final major subdivision approval and preliminary and final major site plan approval, together with bulk variance relief and any additional exceptions, waivers, variances, interpretations, de minimis exceptions to the New Jersey Residential Site Improvement Standards ("RSIS"), modifications of conditions of prior approvals, if any, continuation of any preexisting conditions and other approvals as may be determined to be necessary during the review and processing of the application (hereinafter referred to as the "Revised Application"), with said hearing to be held at the Board's next available scheduled meeting, taking into account the time needed to submit all necessary plans and reports in support of the Revised Application and to provide newspaper notice and mailed notice to all property owners within 200-feet of Plaintiff's property.

2. The Revised Application shall incorporate the following modifications to the Application that was previously denied by the Board:

- a. The relocation of the proposed hotel to the northern side of the Property, which will reduce the impact on neighboring residences, reduce the amount of tree disturbance, and reduce the number and size of retaining walls;
- b. The elimination of all setback and lot width variances; and
- c. An increase in the off-street parking associated with the restaurant/banquet hall by approximately 40 spaces.

3. At the time of the hearing held on the Revised Application pursuant to this Consent Order of Remand, the parties hereto shall have the right to rely on the record established at the prior Hearings on the Application, which shall be incorporated by reference therein, including all testimony, exhibits and other documentation.

4. Plaintiff shall provide notice as required by the Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq. (hereinafter referred to as the "MLUL"), for the hearing to be held on the Revised Application pursuant to this Consent Order of Remand.

5. In the event that the Board moves to approve the Revised Application and memorializes such approval in a resolution thereafter adopted by the Board in accordance with the MLUL, and no appeal of such approval is brought by a third-party, Plaintiff shall file a voluntary dismissal with prejudice of the Complaint.

6. In the event the Revised Application as approved by the Board pursuant to this Consent Order of Remand is appealed by a third-party, Plaintiff retains the right not to dismiss the Complaint.

7. In the event that the Board fails to approve the Revised Application or approves the Revised Application with one or more conditions not satisfactory to Plaintiff, Plaintiff retains the right not to dismiss the Complaint.

8. The Court shall retain jurisdiction over this matter so as to ensure the implementation of the within Consent Order of Remand.


9. A copy of the within Consent Order of Remand shall be deemed served by the uploading of same to eCourts.

IT IS SO ORDERED.




Honorable Ernest M. Caposela, J.S.C.

The undersigned hereby consent to the form and entry of the foregoing Consent Order.



JASON R. TUVEL, ESQUIRE
Prime & Tuvel
*Attorney for Plaintiff, Meridia Regency
On Valley, Clifton, LLC*
Dated: 10/9/2020



ROBERT A. FERRARO, ESQUIRE
Bruno & Ferraro, Esqs.
*Attorney for Defendant, City of
Clifton Planning Board*
Dated: 7/30/2020