Bulk variances for
Side-yard setback,
combined side-yard
setback, building coverage
and impervious coverage

**RESOLUTION**
**LEONIA PLANNING BOARD**
**APPLICATION OF GUSTAVO MIRON**
**CALENDAR NO. 2024-12**

WHEREAS, Gustavo Miron (hereinafter referred to as the "Applicant") applied for bulk variances for side-yard setback, combined side-yard setback, building coverage and impervious coverage (hereinafter referred to as the "Application"), as further described herein; and

WHEREAS, the property subject of the Application is identified on the Tax Map of the Borough of Leonia as Block 1206, Lot 16, and is more commonly known as 101 Leonia Avenue, Leonia, New Jersey (the "Property"); and

WHEREAS, the Property is located in the A-3 Zone; and

WHEREAS, the Property is improved with a single-family dwelling; and

WHEREAS, the Application was called for a public hearing on November 26, 2024 on proper notice, at which time the Applicant and Jacqueline Miron, his wife, were sworn and testified in support of the Application; and

WHEREAS, the Applicant presented the testimony of Peter Pulice, 344 Broad Avenue, Leonia, New Jersey, who was sworn and qualified as an expert in the fields of architecture and professional planning; and

WHEREAS, the following exhibits were marked into evidence at the hearing on November 26, 2024:

A-1: 3-page photo package, dated November 25, 2024

WHEREAS, the Applicant submitted a 3-page plan entitled "Proposed Addition/Rear Deck" prepared by Pulice Williams Architects dated September 23, 2024, last revised September 27, 2024 in support of the Application that depicted the Property, the existing conditions and proposed improvements; and

WHEREAS, no members of the public appeared at the hearing for the purpose of either asking questions or providing comments on the Application; and

WHEREAS, the Board has carefully considered the testimony of the Applicant, Mrs. Miron and Mr. Pulice; and

WHEREAS, the Board has made certain findings of fact and conclusions with respect to this Application.

**NOW THEREFORE BE IT RESOLVED** by the Planning Board of the Borough of Leonia that the following facts and conclusions of law are made and determined.

1. All of the recitals set forth above are incorporated herein by reference.

2. The Applicant is the owner of the Property.

3. The Property is located in the Borough of Leonia's A-3 Zone.

4. The Property has an area of 7,000 square feet, which is larger than the minimum lot area required in the A-3 Zone. It has dimensions of 60' (at its front lot line) x 125' and is irregularly shaped due to a right-angle jog in the southern side lot line.

5. The Property is improved with a dwelling that was constructed in 1913. The Borough's tax records indicate that the Property has been treated as a two-family dwelling for tax purposes.

6. The Applicant did not present evidence that prior to its purchase of the Property that the Property had been consistently used as a two-family dwelling since the prohibition on

two-family dwellings had been implemented in the A-3 Zone, but did discuss, in general terms, that the Property had been used as two-family dwelling in the past.

7. The Applicant seeks to make two distinct modifications at the rear of the dwelling for accessibility and quality of life purposes for the Applicant's elderly family members who live with them as part of the same household, but with their own separate space within the dwelling.

8. No changes to the front façade are proposed. First, a one-story addition intended for a kitchen expansion on the west side of the dwelling adjoining the driveway is proposed. That addition will add 240 square feet of floor area to the dwelling. Second, the Applicant seeks to construct a new deck, which is 433 square feet in area, at the rear of the dwelling that will include an ADA-compliant ramp.

9. As noted above, the irregular lot shape is the result of a jog in the southern lot line that reduces the width of the property by 10 feet at a point 75 feet from Leonia Avenue. The Property at its rear lot line is thus 50 feet wide.

10. The dwelling, constructed more than 110 years ago, has multiple pre-existing non-conformities under the current zoning requirements in the A-3 Zone. These pre-existing non-conformities are side-yard setback (7.5 feet existing, 10 feet required); combined side yard (17.7 feet existing, 24 feet required); and building coverage (26% existing, 25% required).

11. The proposed addition requires variance relief for side and combined side-yard setbacks. The deck is 7 feet from the southern property line and results in a combined side yard of 17.2 feet (as the kitchen addition is set back 10.2 feet from the northern property) because it is to provide ingress and egress to the deck from a first-floor bedroom where an existing door is currently located. That door cannot be relocated within the interior of the dwelling. Building coverage will increase as a result of the kitchen addition to 29.4%, while the impervious

coverage will increase as a result of the additions for the kitchen (which is partially an existing impervious area) and deck and will exceed the 50% limit by 2.6% (currently, the impervious coverage is 45.2%, which conforms to the limit in the A-3 zone).

10. The Board is authorized, pursuant to *N.J.S.A.* 40:55D-70(c)(1) to grant relief based upon a hardship arising from the physical conditions of the Property or an extraordinary situation caused by the lawfully existing the structures existing on the Property. Here, the Applicant seeks a side-yard setback variance because of the irregular shape of the Property and the location of the existing dwelling. Because the Property is 60 feet wide along Leonia Avenue, it must have 10-foot side yards, but the Property narrows to 50 feet in width near the rear building wall of the dwelling. Furthermore, the dwelling is serviced by a detached garage at the rear of the Property, and the access drive is 10 feet wide. Because the goal of the expansion was to provide access to a ground floor bedroom from the deck to be constructed where the door to that portion of the dwelling has a setback of 7 feet to the side yard of the Property after it jogs to the north, the Applicant would be unable to construct a reasonably-sized deck with an ADA-compliant ramp absent variance relief for side yard and combined side-yard setback

With respect to the requested building coverage variance, the Property is burdened by the exceptional condition of the irregular shape of the Property that reduces its area by 500 square feet, as the jog removes an area that is 10 feet wide and there is 50 feet of additional depth behind the jog to the rear property line. Additionally, the Property is burdened by the pre-existing non-conforming building coverage, including the 232 square foot garage. Without the garage, and if the Property were regularly shaped based upon its 60 feet of frontage, the dwelling would conform to the 25% building coverage limit in the A-3 Zone, thereby reflecting the

existing conditions are the cause of the hardship and without relief, the Applicant could not construct the modest addition on the rear of the dwelling.

Finally, the slight excess of impervious coverage proposed is the result of a long driveway servicing a detached garage. The Borough, cognizant of the problems associated with detached garages, has provided relief to property owners by limiting the impervious area counted for driveways associated with detached garages in the A-3 Zone, but only for lots under 5,000 square feet. Here, the Property exceeds 5,000 square feet, so the Applicant is ineligible for same. The proposed addition results in 182 square feet of impervious coverage beyond the total amount permitted in the A-3 Zone. Without the jog and the resultant loss of area therefrom, the improvements proposed on the Property would comply with the 50% limit in the A-3 Zone, so it is the shape of the Property, the long driveway and other improvements already in existence that limit the extent of the expansion without variance relief.

For these reasons, the Board finds the Applicant has met its burden under *N.J.S.A.* 40:55D-70(c)(1) regarding the positive criteria. Based upon these facts, the Board concludes that the Applicant has met its burden for relief under this section of the Municipal Land Use Law. The Board also concludes that without relief, the Applicant will suffer practical difficulties, and this justifies variances for side-yard setback, combined side-yard setback, building coverage and impervious coverage.

11. The Board concludes the grant of relief would not cause substantial detriment to the public good. The kitchen addition is 10 feet from the neighboring property while the deck addition is well screened and at a lower elevation than the rear yard of adjacent Lot 98 to the southwest. The kitchen addition, because it is one story tall and located at the rear of the Property will not give the appearance of overdevelopment or impact light, air and open space, while the

additional impervious area is comprised mostly of planked wooden decking, which will not spur stormwater runoff onto adjacent properties. Furthermore, as detailed in the conditions below, the Applicant shall comply with the Borough's Ordinance regarding stormwater runoff, so any increase in impervious area will not cause any harm to adjacent properties.

12. For these same reasons, the Board finds that the grant of the requested variances can be achieved without substantial impairment to the intent and purposes of the zone plan and zoning ordinances of the Borough of Leonia. The Board finds that there will not be any substantial overdevelopment of the Property, loss of light, air or open space, or impact upon any neighboring properties by way of shadowing, stormwater runoff, loss of open space, or similar, and therefore, there will not be any substantial detriments associated with these variances.

13. With respect to the issue of whether the Property was, or may be, a two-family dwelling, the Board finds and concludes that the Applicant does not intend to utilize the Property as a two-family dwelling. The definition of "family" in § 290-3 of the Borough's Zoning Ordinance is "A group of individuals, not necessarily related by blood, marriage, adoption or guardianship, living together on a relatively permanent basis in a dwelling unit as a single housekeeping unit." The Application was presented as one involving a "multigenerational household" according to the Applicant at the outset of his testimony, and therefore, there is not currently and no intent in the future to be more than one family living in the dwelling on the Property. The fact that there are two front doors, two refrigerators, two areas where food may be cooked does not change this fact. Accordingly, to the extent that there was, at one point, more than one family living in the dwelling on the Property and that it was qualified as a lawful pre-existing non-conforming two-family use, the Board concludes that this non-conforming use would have been abandoned had the Applicant demonstrated that there was a pre-existing non-

conforming use (which it neither sought to do nor was asked to do in this Application). Notwithstanding the same, the Board's grant of relief is predicated upon the determination that the physical expansion of the dwelling, notably the increase in building coverage, is only allowable within the context of a single-family use on the Property.

**NOW THEREFORE, BE IT RESOLVED** the Application of Gustavo Miron for side yard set-back, combined side yard set-back, building coverage and impervious coverage variances as set forth herein is hereby approved, subject to the following conditions:

1. **Location and Type**: The Applicant shall be permitted to construct the improvements shown on the Architectural Plans prepared by Pulice Williams Architects dated September 23, 2024, last revised September 27, 2024, subject to the following conditions:

A. Additional landscaping to shield A/C units from property line along retaining wall.

B. Comply with engineering review letter of Pennoni, dated November 6, 2024, including (i) provide a topographic survey showing existing grades and first floor elevations of existing structures; (ii) revise the Architectural Plans to indicate the proposed conditions for the existing dwelling, but not the addition, are 2.5 stories; (iii) install one seepage pit consisting of two (SC) chambers under the supervision of the Borough Engineer, who shall determine the location for same based upon the topographic survey to be provided; and (iv) submit a grading plan showing existing and proposed grades for the addition and deck.

C. The Applicant shall submit an as-built survey upon completion of all work on the Property to confirm conformance with this condition.

2. **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. This specifically includes payment of escrows for reviews by the Borough Engineer related to the conditions of approval in the resolution.

3. **Other Fees**: All additional fees, if any, required by the Borough Ordinances shall be paid. This specifically includes payment of affordable housing development fees related to the expansion of this dwelling, which shall be calculated in accordance with § 72-5(B) and § 72-6 of the Borough Code.

4. **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.

5. **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.

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

7. **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.

8. **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.

The Board rendered its decision at the meeting prior to the adoption of this Resolution by the following vote:

Moved by: Ira Gold
Seconded by: Sean Thompson

| | For | Against | Abstain | Absent | Not Qualified To Vote |
|---|---|---|---|---|---|
| Michael DeGidio, Chairman | X | | | | |
| Mayor Ziegler | | | | X | |
| Councilman Hesterbrink | | | | X | |
| Ira Gold, Vice Chairman | X | | | | |
| William Russell | | | | X | |
| Ron Wolf | X | | | | |
| Patrick Botten | X | | | | |
| Timothy Ford | X | | | | |
| Sean Thompson | X | | | | |
| Haesok Ko | | | | X | |
| Damee Choi | X | | | | |

Said Resolution was adopted by the following vote:

Moved by:
Seconded by:

| | For | Against | Abstain | Absent | Not Qualified To Vote |
|---|---|---|---|---|---|
| Michael DeGidio, Chairman | ✓ | | | | |
| Mayor Ziegler | | | | | X |
| Councilman Hesterbrink | | | | | X |
| Ira Gold, Vice Chairman | ✓ | | | | |
| William Russell | | | | | X |
| Ron Wolf | ✓ | | | | |
| Patrick Botten | ✓ | | | | |
| Timothy Ford | | | | ✓ | |
| Sean Thompson | ✓ | | | | |
| Haesok Ko | | | | | X |
| Damee Choi | ✓ | | | | |

Dated: December 18, 2024

LEONIA PLANNING BOARD

By: Michael B. DeGidio
Michael DeGidio, Chairman

CERTIFIED TO BE A TRUE COPY

By: Jonathan D. Mandel
~~Michael Greco, Administrative Secretary to the Planning Board~~
Jonathan Mandel, Borough Clerk



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