

Bulk variance for front yard coverage and authorization for pre-existing non-conformities related to side and rear yard setbacks and maximum building coverage

**RESOLUTION  
LEONIA PLANNING BOARD  
APPLICATION OF MEL CONTI**

**CALENDAR NO. 19-18**

WHEREAS, Mel Conti (hereinafter referred to as the “Applicant”) applied for bulk variance approval to authorize the use of the dwelling on the subject property as a home professional office (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 1505, Lot 24, and is more commonly known as 138 Broad Avenue, Leonia, New Jersey (the “Property”); and

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

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

WHEREAS, the Applicant proposes to convert a portion of the existing single family dwelling on the Property into an office for his psychology practice to enable the Applicant to see patients; and

WHEREAS, the application was called for a public hearing on November 28, 2018 and continued to December 19, 2019, at which time the Applicant represented himself and presented the testimony of Peter Pulice, Pulice/Williams Architects, 344 Broad Avenue, Leonia, New

Jersey, who was sworn and qualified as an expert in the field of architecture and professional planning;

WHEREAS, the Applicant submitted a two (2) page Site Plan and Floor Plan prepared by Pulice/Williams Architects, dated October 7, 2019 (the "Plan") as part of the application; and

WHEREAS, the following documents were marked as exhibits during the hearing:

A-1 Two (2) page photo exhibit with four (4) photos

WHEREAS, no members of the public appeared to provide comments, testimony and/or objections to the application; and

WHEREAS, Robert Costa, P.E., the Board's consulting civil engineer provided testimony during the public hearing regarding the application; and

WHEREAS, the Board has carefully considered the testimony of the Applicant and the witness who testified at the hearings; 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 are made and determined.

1. The Applicant is the owner of the Property.
2. The Property is located in the Borough of Leonia's A-3 Zone.
3. The Property, which is slightly irregular in shape, has a width and frontage along Broad Avenue of 50.68 feet, and a depth of 100 feet. The Property comprises 5,068 square feet, which slightly exceeds the 5,000 square feet required in the A-3 Zone.
4. The Property is improved with a single family dwelling and maintains a front yard setback of 26.27 feet, side yard setbacks of 6.17 feet and 9 feet, which violates the minimum

required side yard of 10 feet and the required combined side yard setback of 20.27 feet, a rear yard setback of 22 feet, which violates the required 25 foot rear yard requirement, and a building coverage of 27.8%, which violates the 25% maximum building coverage. These deviations are pre-existing non-conformities and the Applicant does not seek to exacerbate any of these non-conformities.

5. The Applicant is a psychologist in practice in New York City, but lives in Leonia. The Applicant testified that he seeks to see patients in a setting closer to home, including on weekends, without having to travel to his office in New York City as a service to his patients who live in New Jersey. He testified that he intended to see patients who made an appointment.

6. As part of the application, the Applicant does not intend to undertake any modifications to the exterior of the structure. All construction related to the professional office will occur within the existing dwelling. However, as part of the application, the Applicant is required to provide handicapped-accessible parking, and proposes to do so in the front yard. Given the existing conditions, the Property, upon widening the driveway to provide the necessary width required by the Americans with Disabilities Act and the Barrier Free Subcode, will have a front yard impervious coverage percentage of 49.3% where a maximum of 40% is permitted in order to meet the off-street parking requirements (where 2 spaces are required for the dwelling and 1 space that is accessible for the professional office).

7. Additionally, the Applicant seeks approval to install an LED-illuminated ground sign for wayfaring purposes. The Plans depict a sign that is 3'x1', but during the course of the hearing, the Applicant agreed to reduce the sign's size to 2 square feet, and agreed that the sign would be on a timer and illuminated only during the early evening hours.

8. The Applicant's architect and planner confirmed that the Property was eligible to be utilized for a home professional office due to its location on Broad Avenue. He also testified that the use of the Property was consistent with other similar uses located nearby on Broad Avenue. Mr. Pulice also confirmed that the location of the dwelling on the Property rendered it impossible to locate the additional coverage necessary for off-street handicapped accessible parking anywhere on the Property but in the front yard.

BE IT FURTHER RESOLVED by the Planning Board of the Borough of Leonia that based upon the above findings of fact, that the following conclusions are made and determined:

1. The Applicant has satisfied its burden of proof relative to the bulk variance sought pursuant to N.J.S.A. 40:55D-70(c). As noted in this Resolution, the Applicant requires a variance to authorize a front yard impervious coverage of 49.3% where a maximum of 40% is permitted. The location of the existing dwelling constitutes a practical impairment and renders the Applicant unable to utilize the Property for a permissible home professional office in the absence of variance relief.

2. The Board concludes that the variance requested will not cause a substantial detriment to the public good. During the hearing, the Applicant agreed to install landscaping along the side lot lines to screen view of the parking area from the neighboring lots. The increased coverage is not deemed to be so substantial to cause significant impacts to nearby properties because, as testified to by the Applicant's planner, it amounts to approximately 116 square feet of additional impervious surface in the front of the house.

3. The Board also finds and concludes that the front yard impervious coverage variance will not substantially impair the intent and purposes of the zone plan and zoning ordinance. The purpose of the limitation is to prevent the overdevelopment of front yards with

hardscape, and given that the Applicant has agreed to install landscaping in the front yard, the purposes of the limitation are not being substantially impaired.

**NOW THEREFORE, BE IT RESOLVED** the Application of Mel Conti for bulk variance and signage approval is hereby approved as follows:

1. Location and Type: The Applicant shall be permitted to convert a portion of the existing dwelling on the Property into a home professional office as shown on the Plan prepared by Pulice/Williams Architects dated October 7, 2019 as testified to by the Applicant's witnesses during the public hearing.

2. Specific Conditions of Approval: The Applicant shall comply with the following specific conditions applicable to this Application:

A. The Applicant shall submit an as-built survey prepared by a licensed professional land surveyor prior to obtaining a final certificate of occupancy showing all setbacks and coverages applicable in the zone.

B. The Applicant shall reduce the size of the ground sign to a total of 2 square feet.

C. The Applicant shall install boxwoods and other landscaping along the side lot lines.

D. The lighting for the signage approved herein shall be turned off by 9:00 p.m.

E. The Applicant shall install ground lighting along the walkway to the entrance door to the office on the north side of the Property.

F. The Applicant shall comply with all requirements of the Borough Engineer with respect to the drainage necessary to accommodate the runoff from the increased impervious area.

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

Said Resolution was memorialized at the meeting after the Resolution was adopted (as set forth above), by the following vote:

Moved by: *Botten*  
 Seconded by: *Fusco*

	<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Absent</u>	<u>Not Qualified To Vote</u>
Patrick Botten, Chairman	✓				
Mayor Zeigler	✓				
Councilman Fusco	✓				
<del>Richard Stenken</del>					X
Vincent Petti	✓				
William Russell	✓				
Ron Wolf					X
Gregg Edelman				X	
Timothy Ford	✓				
Alicia Stewart					X
Sean Thompson				X	
Michel DeGidio					X
Ira Gold					X

Dated: January 29, 2020

LEONIA PLANNING BOARD

By: *Michael B. DeGidio*  
 Michael B. DeGidio, Chairman

CERTIFIED TO BE A TRUE COPY

By: *Tina Evans*  
 Tina Evans, Recording Secretary to  
 the Planning Board