

Bulk variances for
accessory structure side
yard setback and
impervious coverage

**RESOLUTION
LEONIA PLANNING BOARD
APPLICATION OF PETER COSTANZO
CALENDAR NO. 2024-04**

WHEREAS, Peter Costanzo (hereinafter referred to as the “Applicant”) applied for bulk variances for side yard setback (accessory structures) 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 1214, Lot 35, and is more commonly known as 163 Christie Street, 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 public hearings on April 24, 2024 and June 26, 2024 on proper notice, at which time the Applicant was sworn and testified in support of the Application; and

WHEREAS, the Applicant testified and presented the testimony of Steven Koestner, P.E., P.L.S., Koestner Associates, 61 Hudson Street, Hackensack, New Jersey, who was sworn and qualified as an expert in the field of civil engineering and surveying; and

WHEREAS, the following exhibits were marked into evidence at the hearings:

- B-1 Letter of Adam Myzka, dated April 12, 2024
- B-2 Comparison of 2016 and 2021 Site Plan colored by Adam Myzka
- A-1 As-built survey, last revised June 1, 2024, prepared by Koestner Associates

WHEREAS, the Applicant submitted in support of the Application a 1-page plan entitled “Final As-Built Survey for Pool” prepared by Koestner Associates, bearing a last revision date of June 1, 2024 that depicted the improvements on the Property; and

WHEREAS, no members of the public appeared at the hearing and either asked questions or provided comments; and

WHEREAS, the Board was assisted in the hearing by the Borough of Leonia Zoning Officer, Adam Myzka, who gave sworn testimony concerning the improvements on the Property; and

WHEREAS, the Board has carefully considered the testimony of the Applicant; 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 8,856 square feet, which is significantly larger than the minimum lot area required in the A-3 Zone. It has dimensions of 50’ x 177.25’ and is rectangularly shaped.
5. The Property is improved with a single-family dwelling and multiple accessory structures in the rear yard of the Property that were apparently added over time and where the Applicant or the former owner of the Property did not close out permits and/or did not construct the improvements based upon the plans that had been submitted to the Building Department.

The rear yard of the Property contains (1) a detached garage located in 4.02 feet from the northern side lot line and 5.15 feet from the rear lot line, where a minimum of 3 feet is required because the garage is located in the rear yard of the Property, and currently, there is no driveway to permit vehicle access to the garage; (2) an inground swimming pool; (3) a spa/hot tub; (4) a storage shed within the required 8-foot side yard setback for accessory structures; and (5) a kitchen area that includes plumbing and electrical service that has a setback of 0.9 feet, where a side yard setback of 3 feet is required because the kitchen area is located in the rear yard of the Property. The Survey does not delineate the side yard setback for the shed but based upon the Survey and the photographs attached to Exhibit B-1, it is closer than 1 foot to the side property line.

6. The Applicant testified that he and his wife purchased the Property from her father but that her father continued to live in the dwelling on the Property and make improvements. According to the Applicant, permits were sought but that changes to the pool and garage were made after permits were issued, which reflects why there are deviations between what was submitted to the Building Department in 2016 and 2020, and that once he became aware of the changes that resulted in violations of the Borough's Zoning Ordinance, he sought to correct them.

7. The Survey indicates that the driveway to the detached garage has been removed. During the hearing, the Board raised inquiry about whether the removal of the driveway effected a transformation of what was supposed to be a garage into a storage shed that exceeded the 10-foot height limit and 120 square foot limitation imposed upon accessory structures in Section 290-45(A)(1) of the Zoning Ordinance.

8. The kitchen area, located approximately 1 foot off the side property line where a minimum of 3 feet is required, is immediately adjacent to the dwelling and was constructed on a paved area that is partially enclosed by a rounded retaining wall that is approximately 1.5 feet tall at the point where the retaining wall intersects the kitchen structure. It appears from the Zoning Officer's photographs that are part of Exhibit B-1 that the kitchen structure is actually built into the retaining wall in some fashion, and moving the kitchen would impact more than simply that accessory structure because a relocation would also require repair work to the retaining wall.

9. Based upon a review of the Survey, it appears that the structure that encloses the kitchen area is 3.8 feet deep and relocating the kitchen area to a point more than 3 feet from the side property line may be difficult based upon the wall geometry. The Applicant cannot relocate the kitchen area into the side yard (i.e., towards the street) because once an accessory structure crosses into the side yard, it must comply with the setback for a principal structure, and there is insufficient room between the dwelling and the property line to do so. Absent relief from the side yard setback requirement, the Applicant may have difficulty relocating the kitchen area to a conforming location.

10. The shed is located entirely within the side yard of the Property, and requires an 8-foot side yard setback because the Property is 50 feet wide and the A-3 Zone requires a 10-foot side yard for lots that exceed 50 feet in width and an 8-foot setback for lots that are 50 feet or less in width. The Survey does not delineate a setback for the shed, which is in very close proximity to the side property line and in violation of the setback requirement, and the Applicant indicated that the shed was used primarily for storage of pool equipment. The Applicant conceded that pool equipment could be stored in the detached garage.

11. When the swimming pool and garage were constructed and/or enlarged, the Borough's Zoning Ordinance allowed a maximum impervious coverage of 65% on lots in the A-3 Zone. However, the Borough reduced the maximum impervious coverage permitted in the zone to 50% in recent years. Because the Applicant deviated from the plans that the Borough's Building Department approved, the coverage on the Property (50.56%) is not a pre-existing nonconforming condition because the Municipal Land Use Law requires that the structures lawfully exist to qualify as pre-existing nonconforming structures, and the Applicant never secured permits for the design ultimately constructed. Therefore, a variance to allow 50.56% impervious coverage (where up to 50% of the area of a lot may be covered with impervious surfaces) is required.

12. 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 structures on the Property. Here, the Applicant initially sought side yard accessory structure setback variances for the kitchen area and shed and an impervious coverage variance. During the hearing, the Applicant agreed to remove the shed and in response to the Board's concerns about the garage that lacked a means of vehicular ingress and egress, the Applicant agreed to install wheel path strips to the northern garage bay to permit one car to reach the garage structure. The Board concludes that under the circumstances, because the kitchen area was constructed into the retaining wall, there may be limited alternative locations for the kitchen area that do not interfere with access to the pool, which is a lawfully existing structure on the Property. Similarly, when the improvements were constructed, the Borough's ordinances permitted 65% impervious coverage but because the Applicant never closed out its permits and the Borough reduced the permitted impervious area, the Property

currently exceeds the 50% limit by 0.56% (or approximately 50 square feet) under current conditions, and will require additional impervious area for the wheel strip paths to the garage. Absent relief, the Applicant will suffer a hardship.

13. The Board finds that there are limited negative impacts associated with the side yard setback variance given that the kitchen area is already constructed and has not caused any problems with the adjacent property owner, but this is dependent on the plumbing and electric fixtures that were installed without approval satisfying all of the requirements of the Building and Fire Code. With respect to the impervious coverage variance, the Applicant offered, during the hearing, to replace the paver area adjacent to the dwelling with pervious grass block pavers to mitigate stormwater runoff, so there will be no impact from the existing impervious area coverage or the impervious area to be installed to provide vehicular ingress/egress to the garage.

14. For these same reasons, the Board concludes that the grant of the requested variances will not substantially impair the intent and purposes of the zone plan and zoning ordinance. The situation presented regarding the impervious coverage variance presented is highly unusual and the Applicant has made concessions to mitigate impacts of the increased impervious area. The size of the kitchen area implies that if it remains (subject to the condition of approval delineated below) on the Property, it will not diminish light, air and open space, and therefore will not cause a substantial impairment to the intent and purpose of the zone plan and zoning ordinance.

NOW THEREFORE, BE IT RESOLVED the Application of Peter Costanzo for accessory structure side yard setback 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 maintain the improvements on the Property shown on the Survey dated June 1, 2024 prepared by Koestner Associates subject to the following conditions:

A. The Applicant shall replace the pavers in the rear yard of the Property with pervious grass block pavers in consultation with the Board Engineer. The paver replacement shall be undertaken and completed within six (6) months of the date of adoption of this resolution.

B. The Applicant shall install a wheel strip path to the northern garage bay so that a vehicle could park in the garage. The increased impervious coverage required by this site modification is expressly authorized, subject to the review and approval of the Board Engineer to confirm that no more impervious area that is reasonably required is installed.

C. The shed structure located in the side yard of the Property shall be removed.

D. The Applicant shall arrange for the inspection of the kitchen area within one (1) month of the adoption of this resolution by the Borough of Leonia Building Official and all necessary Subcode Officials. In the event that the Borough of Leonia Building Official or any Subcode Official with jurisdiction determines that the kitchen area has been constructed in violation of the requirements of the Uniform Construction Code or any applicable subcode, the Applicant shall remove the kitchen area in its entirety from the side yard setback. In such an instance, the Board's grant of a side yard setback variance shall be deemed void and of no force and effect.

E. 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.

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

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: Mr. Russell
 Seconded by: Councilman Hesterbrink

| | <u>For</u> | <u>Against</u> | <u>Abstain</u> | <u>Absent</u> | <u>Not Qualified To Vote</u> |
|---------------------------|------------|----------------|----------------|---------------|------------------------------|
| 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: Mr. Botten
Seconded by: Mr. Russell


| | <u>For</u> | <u>Against</u> | <u>Abstain</u> | <u>Absent</u> | <u>Not Qualified To Vote</u> |
|---------------------------|------------|----------------|----------------|---------------|------------------------------|
| 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 |

Dated: 7/24/2024

LEONIA PLANNING BOARD

By: 
Michael DeGidio, Chairman

CERTIFIED TO BE A TRUE COPY

By: 
Michael Greco, Administrative Secretary to
the Planning Board