

**RESOLUTION  
LEONIA PLANNING BOARD  
APPLICATION OF JESSICA SIM  
CALENDAR NO. 24-08**

WHEREAS, Jessica Sim (hereinafter referred to as the “Applicant”) applied for a use variance to enlarge and reconfigure an existing two-family dwelling in a zone that does not permit two-family dwellings (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 1608, Lot 1, and is more commonly known as 168 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 a two-family dwelling; and

WHEREAS, the application was called for public hearings on July 26, 2024 and August 28, 2024 on proper notice, at which time the Applicant was sworn and testified in support of the Application; and

WHEREAS, the Applicant testified under oath and presented the sworn testimony of David Kim, the owner of the Property, along with her architect and planner, Peter Pulice, who was qualified as an expert in those fields; and

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

A-1 OPRA Request and Borough of Leonia Building Department File

WHEREAS, the Applicant submitted in support of the Application a 5-page plan entitled “Sim Residence” prepared by Pulice/Williams Architects, dated May 28, 2024 that depicted the Property, the structures located on the Property and the floorplan of the existing dwelling, along with the proposed internal renovation, and submitted a revised Sheet SP-1, dated July 30, 2024, which collectively are referred to herein as the “Site Plan”; and

WHEREAS, the following members of the public appeared at the hearing and either asked questions or provided comments:

Horst Becker, 211 Highwood Avenue, Leonia, New Jersey;

Helen Torr, 312 Highwood Avenue, Leonia, New Jersey; and

WHEREAS, the Board has carefully considered the testimony of the Applicant; and

WHEREAS, the Board is in receipt of review letters from its engineers, Pennoni, and its planner, H2M Associates, which it considered in connection with the Application; 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. David Kim is the owner of the Property and has consented to the Application.
3. The Property is located in the Borough of Leonia’s A-3 Zone.
4. The Property has an area of 13,746 square feet, which is substantially larger than

the minimum lot area required in the A-3 Zone. It has dimensions of 101.15 feet along Broad Avenue and 1475.07 feet along Highwood Avenue. Due to the geometry of the Highwood Avenue and Broad Avenue intersection, the northwest corner of the Property is not at a right

angle, and the interior lot lines are shorter than the lot frontages. As a result, the Property is roughly rectangular in shape.

5. The Property is improved with a two-family dwelling, which is a non-conforming use in the A-3 Zone. The evidence presented to the Board confirms that the Borough issued a Certificate of Continued Occupancy to the owner in 2010, and further, that the Property has been continuously used as a two-family dwelling for at least 50 years.

6. The dwelling is divided into two separate apartments. The ground floor and second floor are utilized together for a single housekeeping unit, while the third floor is for a separate family. The separate units are not physically separated and do not have separate entrances. According to one of the Board Members, that configuration existed decades ago, as a member of the Board Member's family was familiar with the interior of the dwelling.

7. The Applicant proposes to expand the first floor's interior floor area by enclosing a portion of the covered porch, and to attach the second floor to the top floor apartment. Doing so will allow the kitchen that currently exists on the third floor to be moved to the second floor and will permit the Applicant to fully separate the units, including the installation of fire separation, sprinklers and separate entrances. A full gut-renovation of the interior is proposed to address aging electrical and plumbing issues, and to reconfigure the two-family dwelling so that the Applicant can reside on the second and third floors while the owners of the Property (her parents) can reside on the first floor.

8. The proposed addition to the first floor encloses 511 square feet of area currently occupied by a covered porch and porte cochere, and the first-floor unit will, upon completion, comprise 1,608 square feet (not including the 272 square feet for the foyer for the upper-level unit located on that floor). The unit has only one bedroom and one-and-a-half bathrooms.

9. The unit to be created out of the second floor and third floor will have its kitchen and living areas on the second floor, along with a primary bedroom suite, and will comprise 1,409 square feet on the second floor and the two bedrooms and recreation room on the third floor will comprise 1,071 square feet for a total of 2,480 square feet.

10. Under existing conditions, the lower unit has four bedrooms, and the upper unit has two bedrooms, so the proposed reconfiguration eliminates two bedrooms from the two-family dwelling, though it is noted that there are several rooms that could be converted into bedrooms with the addition of closets. Any such conversion shall require amended approval from the Board.

11. Because the Applicant intends to enclose the porte cochere, vehicular circulation from the driveway curb cut on Broad Avenue to the curb cut on Highwood Avenue is no longer possible. To prevent the need for jockeying of parked vehicles on to Broad Avenue, the Applicant proposes to install an additional parking space in the area adjacent to the driveway in the front of the dwelling where one such space already exists and intends to install landscaping to screen the parking area from the travelled way due to its location near the front corner of the Property. Other changes to the exterior of the dwelling include the construction of an ADA-compliant ramp to provide ingress/egress to the ground floor unit (because the Property's owner, who intends to live in the ground floor unit has a permit for a home occupation) that will allow handicapped access for customers to the side entry door, and the removal of 568 square feet of paved area at the back of the dwelling.

12. Based upon the evidence presented, the Board concludes that the two-family dwelling on the Property constitutes a pre-existing use that may only be expanded with relief from the Board. The Board reaches this conclusion based principally upon the issuance of a

Certificate of Continued Occupancy to the owner of the Property fourteen years ago, the fact that there are separate utility meters for the two units, and the testimony from a neighbor that the dwelling structure has always housed two separate families. According to the Borough's tax records, the dwelling was constructed more than 100 years ago, which precedes the imposition of any zoning regulation preventing the Property from being utilized as a two-family dwelling.

13. The Board is authorized, pursuant to *N.J.S.A. 40:55D-70(d)(2)* to grant relief based upon special reasons that permits the expansion of a pre-existing non-conforming use, along with a finding that the grant of relief will not cause substantial detriments to the public good or substantial impairment to the intent and purpose of the zone plan and zoning ordinance. The Board concludes that special reasons to allow the expansion of the non-conforming two-family dwelling exist because doing so will preserve the essential character of the dwelling in furtherance of the Borough's planning goals and will allow for better internal organization for safety purposes while also reducing the number of bedrooms on the Property from six to four. The internal reorganization of the units produces a configuration that is safer from a fire safety perspective because the Applicant will be installing sprinklers and fire separation, as well as relocating a kitchen from the third floor to the second floor. This advances purpose (b) of the Municipal Land Use Law, which is a sufficient basis for the Board to conclude that there are special reasons to allow the modest expansion of the two-family dwelling, particularly because the Applicant is not seeking to increase the effective footprint of the dwelling.

14. The Board concludes that there is an absence of detrimental impacts associated with the proposal. The conversion of the porte cochere area is addressed by the provision of an extra parking space adjacent to the driveway in the front yard, and this front yard impervious

area is to be concealed with landscaping that shall screen it from view from vantage points on Highwood Avenue and Broad Avenue.

15. There will not be a substantial impairment to the intent and purpose of the zone plan through the expansion of the dwelling. Although the Borough does not permit two-family dwellings in the A-3 Zone, the Property has been used as a two-family dwelling for decades, and the physical expansion allows the Applicant to retain the architectural character and details that the Borough's Master Plan seeks to preserve. Given that the alternative – a full knockdown – would be against the Borough's planning goals, the proposal does not undermine the Borough's zoning intent.

**NOW THEREFORE, BE IT RESOLVED** the Application of Jessica Sim to allow the expansion of a two-family dwelling seeking a use variance to expand a pre-existing non-conforming use 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 Site Plan dated May 28, 2024 and last revised July 30, 2024 (as to page SP-1), including the required removal of impervious area behind the dwelling, subject to the following condition:

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

B. The Applicant shall comply with all requirements of the Borough Engineer as set forth in his revised review letter dated August 23, 2024, , as well as any additional requirements that the Board Engineer determines are necessary during construction.

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 and adopted this Resolution 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 | ✓          |                |                |               |                              |
| Mayor Ziegler             |            |                |                |               | X                            |
| Councilman Hesterbrink    |            |                |                |               | X                            |
| Ira Gold, Vice Chairman   |            |                |                |               | X                            |
| William Russell           | ✓          |                |                |               |                              |
| Ron Wolf                  |            |                |                |               | X                            |
| Patrick Botten            | ✓          |                |                |               |                              |
| Timothy Ford              | ✓          |                |                |               |                              |
| Sean Thompson             | ✓          |                |                |               |                              |
| Haesok Ko                 |            |                |                |               | X                            |
| Damee Choi                |            |                |                |               | X                            |

Dated: August 28, 2024

LEONIA PLANNING BOARD

By: Michael DeGidio  
 Michael DeGidio, Chairman

CERTIFIED TO BE A TRUE COPY

By: [Signature]  
 Michael Greco, Administrative Secretary to  
 the Planning Board