

Bulk variance for
side, combined side
and rear yard
setbacks, building
coverage and lot
coverage

**RESOLUTION
LEONIA PLANNING BOARD
APPLICATION OF JACY MILLER & MEL CONTI**

CALENDAR NO. 24-09

WHEREAS, Jacy Miller and Mel Conti (hereinafter referred to as the “Applicant”) applied for bulk variance approval to expand the existing dwelling on the subject property while simultaneously using a portion of the dwelling 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 a single family dwelling; and

WHEREAS, the Applicant previously sought approval to utilize a portion of the existing dwelling as a home professional office, which was approved by the Board in Calendar No. 19-18 via a resolution adopted on December 19, 2019; and

WHEREAS, the Applicant seeks to renovate the interior of the dwelling and expand the dwelling by adding a habitable floor level above the existing habitable floor level; and

WHEREAS, the application was called for public hearings on June 26, 2024 and July 24, 2024, 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 three (3) page Site Plan and Floor Plan prepared by Pulice/Williams Architects, dated May 1, 2024 and last revised July 10, 2024 (the "Plan") as part of the application; and

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

A-1 Photographic exhibit (1 page, 5 photos), dated June 21, 2024

A-2 Architectural schematic section (1 page), dated June 26, 2024

A-3 Revised Survey prepared by Schmidt Surveying, dated July 11, 2024

WHEREAS, the following members of the public provided comments, testimony and/or objections to the application:

Joe Reilly, 201 Moore Avenue, Leonia, New Jersey;

Debby Marty, 195 Moore Avenue, Leonia, New Jersey;

Yongbin Lee, 130 Broad Avenue, Leonia, New Jersey; and

WHEREAS, Drew DiSessa, 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 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. The dwelling is a split-level design and there is an evergreen buffer along the common property line with 130 Broad Avenue.
5. In the prior application, the Applicant sought approval to install a home professional office for his psychology practice that was located fully in New York City, because he wanted the ability to see patients without having to travel to his office in New York City as a service to those who live in New Jersey, and would do so by appointment only. The Board approved that application, however, on account of the COVID-19 pandemic, the Applicant did not make the site modifications then proposed. In that prior application, the Board granted a front yard lot coverage variance to allow 49.3% of the front yard to be covered by impervious surfaces, and confirmed pre-existing non-conformities as to side and rear yard setbacks (6.4 feet and 21.9 feet, respectively, where 10 feet and 25 feet are required), and combined side yard setback (16.7 feet existing, 20.2 feet required).
6. As part of this application, the Applicant has presented a proposed modification of the dwelling to expand the dwelling by adding an upper-level addition, roofed entry over the

steps to the rear yard, and new impervious areas in the front and rear yards. The upper-level addition is for a proposed primary bedroom suite, and the Applicant intends to retain the home professional office approved in the prior application that is located on the basement level of the dwelling. The Zoning Officer determined that the upper floor addition violated the 2.5-story building height limit in the A-3 Zone. The Application requires variances for side yard setback (10 feet required, 6.4 feet proposed), combined side yard (20.2 feet required, 19.7 feet proposed); rear yard setback (25 feet required, 21.9 feet proposed); maximum building coverage (25% permitted, 30% proposed); and maximum lot coverage (50% impervious permitted, 58% proposed).

7. With respect to the proposed building height, the Zoning Officer determined that the primary bedroom addition constituted an additional floor. However, based upon the details in the Site Plan, it appears that the basement of the dwelling is actually a cellar because more than half of the story is below grade (as evidenced by the fact that average grade is at elevation 99.1 and the main living level is at elevation 102.6, which is a difference of 3.5 feet and which includes the space between the ceiling of that level and the floor above, so it is clear that more than half of that level is below grade). As defined in the Borough's Zoning Ordinance, the cellar is not a story, and, as such, the addition of a floor above the main living level of the dwelling, which is above the cellar, represents a second floor. No variance relief is required for that level because the dwelling does not exceed the 2.5-story limitation in the zoning district.

8. The upward expansion of the main living level creates additional building volume within the site yard setback. As shown on Elevation 1 on Sheet 3 of the Site Plan, a small triangle of the new roof extends above the existing roof line and is within the side yard setback. Consistent with the Board's prior decisions, this upward expansion, which modestly reduces the

side yard, requires variance relief. The rear yard setback is a product of the same configuration, because the building wall of the dwelling is not square to the rear property line. The second-floor addition, however, is set back the required 10 feet from the side lot line and 25 feet from the rear lot line and does not require any variances.

9. The increase in building coverage from 28.2% to 30% is the result of new roofed entries to the front and rear of the dwelling. These roof extensions add 100 square feet of building coverage to the Property; none are supported by columns or walls, but instead cantilever out from the building façade.

10. The Applicant proposes to install pervious pavers in the driveway and rear patio. 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 lot coverage percentage of 44% 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), which is less than the variance previously granted in 2019. Additionally, the enlarged rear yard patio and walkway to the home professional office will result in a total lot coverage of 58%, which the Applicant seeks to mitigate through the use of pervious pavers.

11. The Board previously found that the Property was eligible to be utilized for a home professional office due to its location on Broad Avenue and was consistent with other similar uses located nearby on Broad Avenue. Given the nature of the home professional use, the existing building setbacks and driveway design, the Board also found it was 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 the following variances: side yard setback (10 feet required, 6.4 feet proposed), combined side yard (20.2 feet required, 19.7 feet proposed); rear yard setback (25 feet required, 21.9 feet proposed); maximum building coverage (25% permitted, 30% proposed); and maximum lot coverage (50% impervious permitted, 58% proposed).

2. With respect to the side yard, combined side yard and rear yard setback variances, the Board finds the location and size of the existing dwelling creates a hardship in that the dwelling was constructed in the required side and rear yards, and in excess of the current building coverage limit, and that the proposed expansion would not be reasonably undertaken in the absence of the minor relief associated with the small triangular portion of the first floor addition that is within the side and rear yard setbacks, or without the covered entries at the front or back, which are consistent with the architectural revisioning of the dwelling.

3. With respect to the lot coverage variance, the Board concludes that the benefits of granting the relief substantially outweigh the detriments because the Applicant intends to utilize pervious pavers that mitigate stormwater runoff while approving the Application allows for the use of the Property as a home professional office while still permitting the Applicant to fully utilize the dwelling and its exterior spaces. The proposal advances the purposes of zoning for these reasons.

4. The Board also finds and concludes that the requested variances will not cause significant detriments to the public good. The setback variances are limited in nature, and will not block light, air and open space. This is particularly true on account of the mature landscaping that separates the Property from the lot to the south (130 Grand Avenue). The building coverage variances are also limited and relate to the awnings/roofed entries above the front and rear door, which do not add to the mass of the building. The increased lot coverage will not produce excess stormwater runoff because the Applicant proposes to install pervious pavers.

5. For similar reasons, the Board concludes that the requested variances will not substantially impair the intent and purposes of the zone plan and zoning ordinance. The purpose of the affected limitations is to preserve light, air and open space, overdevelopment of property and stormwater runoff. As designed, the proposed expansion will not cause significant impacts to any of these goals.

NOW THEREFORE, BE IT RESOLVED the Application of Jacy Miller and 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 and add a story on the left side of the existing dwelling as shown on the Site Plan prepared by Pulice/Williams Architects dated May 1, 2024 and last revised July 10, 2024 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 comply with the requirements of the Board Engineer concerning grading and development of the Property, as described in the Engineering Review letter dated June 18, 2024, as well as any additional requirements that the Board Engineer determines are necessary during construction.

C. The Applicant shall eliminate the step up into the home professional office to comply with the barrier free subcode.

D. The Applicant shall install frosted glass windows on the south façade of the addition (proximate to side yard abutting 130 Broad Avenue).

E. The Applicant shall comply with the requirements of the Board Engineer concerning the pervious pavers to be installed in the front and rear yards.

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 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.

Said Resolution was adopted by the following vote at the meeting prior to adoption of the memorializing Resolution:

Moved by: Mr. Ford
 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	✓				
Councilman Hesterbrink	✓				
Ira Gold, Vice Chairman		✓			
Patrick Botten	✓				
William Russell	✓				
Ron Wolf				X	
Sean Thompson	✓				
Timothy Ford	✓				
Damee Choi				X	
Haesok Ko				X	

Dated: July 24, 2024

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

Moved by: Mr. Botten
 Seconded by: Mr. Ford

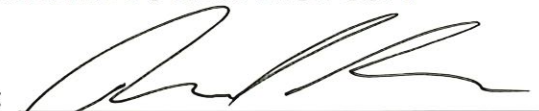
	<u>For</u>	<u>Against</u>	<u>Abstain</u>	<u>Absent</u>	<u>Not Qualified To Vote</u>
Michael DeGidio, Chairman	✓				
Mayor Ziegler	✓				
Councilman Hesterbrink	✓				
Ira Gold, Vice Chairman					X
Patrick Botten	✓				
William Russell	✓				
Ron Wolf					X
Sean Thompson	✓				
Timothy Ford	✓				
Damee Choi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

Dated: August 28, 2024

LEONIA PLANNING BOARD

By: 
 Michael DeGidio, Chairman

CERTIFIED TO BE A TRUE COPY

By: 
 Michael Greco, Recording Secretary to
 the Planning Board