

Bulk variances for
driveway buffer setback

**RESOLUTION
LEONIA PLANNING BOARD
APPLICATION OF IKE KITMAN
CALENDAR NO. 2024-07**

WHEREAS, Ike Kitman (hereinafter referred to as the “Applicant”) applied for a bulk variance for a driveway buffer setback (hereinafter referred to as the “Application”), as further described herein; and

WHEREAS, the property that is the subject of the Application is identified on the Tax Map of the Borough of Leonia as Block 1211, Lot 10, and is more commonly known as 147 Crescent 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 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

WHEREAS, the Applicant submitted a 1-page plan entitled “Topographic Survey of Property” prepared by Lakeland Survey, dated February 28, 2024 in support of the Application that depicted the proposed driveway and garage improvements (the “Site Plan”); and

WHEREAS, no members of the public appeared at the hearing and either asked questions or provided comments; 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 9,660 square feet, which is larger than the minimum lot area required in the A-3 Zone. The Property is an irregularly shaped polygon.
5. The Property is improved with a single family dwelling.
6. The Applicant proposes to construct a detached garage in the northern corner of the Property in the location where a garage once existed (as evidenced by a foundation). The garage will comply with all dimensional requirements of the Borough's Zoning Ordinance. Vehicular access to the garage is to be provided via an extension of the existing driveway that is to wrap around the rear of the dwelling.
7. The relief sought pertains to the location of the driveway that is to service the detached garage. At its closest point to the rear property line, the edge of pavement is proposed to be six (6") inches from the common property line with Lot 7 where a minimum of three (3') feet is required pursuant to § 290-95(B) of the Zoning Ordinance.
8. 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 to construct a driveway in the rear yard buffer because it is prevented from

constructing the driveway in a conforming location due to the location of the dwelling. The dwelling has an eleven (11') foot rear yard setback at the point where the driveway is proposed to be closest to the rear lot line. The Site Plan depicts that this is 1.5 feet from the dwelling to the driveway, 6 inches from the driveway to the property line and a 9-foot wide driveway. Since the Applicant cannot move the dwelling, he could either reduce the distance between the driveway and the dwelling, which would create an unsafe condition (and not achieve compliance with § 290-95(B) of the Zoning Ordinance anyway) or reduce the width of the driveway to less than 6.5 feet, which would defeat the purpose of the Application because the garage would not be accessible as the driveway could not safely support vehicular traffic. Inasmuch as the driveway cannot be feasibly constructed on the west side of the Property due to topography and mature tree cover, the Applicant has no practical alternatives but to seek a variance based upon the existing conditions of the Property arising from the location of the dwelling. 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.

9. The Board concludes grant of relief will not cause substantial detriment to the public good because the paved area within the 3-foot buffer is behind (and screened by) the detached garage on Lot 7, and the Property is lower in elevation than Lot 7 so stormwater will not run off towards the property line.

10. 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 purpose of the buffer requirement is to prevent runoff onto adjacent properties and mitigate the visual impact of vehicular parking very near to adjacent properties. The topography of the Property and the condition imposed by the Board requiring the installation of

open cell pavers will prevent runoff to Lot 7 while the geometry of the Property, the location of the garage on this Property and on Lot 7, and the design of the house suggest that the reasons why § 290-95(B) of the Zoning Ordinance limits requires a 3-foot driveway buffer for residential properties will not be impaired by the approval of the Application, let alone in a substantial way. The Borough's Master Plan is silent on this issue, so there is no impairment to the intent and purposes of the zone plan either.

NOW THEREFORE, BE IT RESOLVED the Application of Ike Kitman for a driveway buffer variance pursuant to § 290-95(B) of the Borough of Leonia Zoning Ordinance 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 February 28, 2024 subject to the following conditions:
 - A. The Applicant shall install pervious open cell pavers subject to review and approval by Board Engineer.
 - B. The Applicant shall comply with the Board Engineer's review memorandum dated August 22, 2024.
 - 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.
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: Mayor Ziegler
 Seconded by: Mr. Botten

| | <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: Mayor Ziegler
Seconded by: Mr. Botten


| | <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: 9/25/2024

LEONIA PLANNING BOARD

By: 
Michael DeGidio, Chairman

CERTIFIED TO BE A TRUE COPY

By: 
Michael Greco, Administrative Secretary to
the Planning Board