

February 17, 2024

PLANNING REPORT

Zoning Board of Adjustment
Borough of Demarest
118 Serpentine Road
Demarest, NJ 07627

RE: Jonathan & Lindsay Kestenbaum

109 Lake Road
Block 82.04, Lot 7
Review Letter #1
Project No. DEZ-0048

Dear Board Members,

Jonathan and Lindsay Kestenbaum, the Applicant, seek variance relief to construct a two-story addition with a basement to the rear of their home. The Applicant also proposes to remove the existing paver patio and construct a new paver patio with an outdoor kitchen under a portion of the second-story addition. Other site improvements include stormwater management. The Application requires a D(4) floor area ratio variance and "C" variances, which are detailed in Section B.

The following documents, which were submitted in support of the Application, have been reviewed:

1. Plans entitled "Proposed Addition", prepared by Paul R. Ercolano, PE, PP of Ercolano Engineering, dated August 28, 2024, consisting of 2 sheets.
2. Plan entitled "Addition to: 109 Lake Rd. Demarest NJ 07627", prepared by Mario Navedo, RA, dated August 14, 2024, consisting of 1 sheet.
3. Survey entitled "Topographic Survey", prepared by Andrew A. Schmidt, PLS of Schmidt Surveying, dated July 8, 2024, consisting of 1 sheet.
4. Variance Application, stamped September 30, 2024.
5. Document entitled "Rider to Application for Variance Approval", unknown author, no date, consisting of 1 page.

A. Existing Zoning and Surrounding Land Use

The subject property is located on the northwest side of Lake Road in the Residence D (R-D) District. The property is surrounded by residential uses. See the image on the following page for the approximate location of the subject property shown in red.¹



Yard and bulk requirements in the R-D District are:

- Minimum Lot Area – 10,000 square feet
- Minimum Lot Frontage – 100 feet
- Minimum Lot Depth – 100 feet
- Minimum Front Yard Setback – 25 feet²
- Minimum Side Yard Setback Abutting a Street – 25 feet
- Minimum Side Yard Setback Abutting a Lot – 10 feet
- Minimum Rear Yard Setback Depth – 30 feet³
- Maximum Number of Families per Building – 1
- Maximum Building Coverage – 20%
- Maximum Height of Building – 24 feet/30 feet⁴
- Maximum Livable Floor Area (1 or 2-stories) – 30%⁵
- Maximum Improved Lot Coverage – 30%⁶
- Maximum Residential Parking Coverage – 25%

B. Variances

The Application requires the following “D” variance:

1. Section 175-16 – D(4) variance for floor area ratio (“FAR”). The Ordinance limits the livable floor area for one- or two-story dwellings in the R-D District to 30% of the lot area. (It should

be noted that a footnote for livable floor area describes the method to calculate said area, which is the same as a FAR calculation.)

The Applicant proposes a livable floor area (FAR) of 4,511 square feet or 55.09% of the lot area according to the FAR Calculations on page 8 of the Application. It should be noted that the existing FAR is 3,400 square feet or 41.52% of the lot area.

The Application requires the following "C" variances:

1. Section 175-16 – Variance for maximum building coverage. The Ordinance limits building coverage to 20% of the lot area.

The Applicant proposes a building coverage of 2,254 square feet or 27.52% of the lot area, which includes the existing dwelling (1,589 square feet), existing covered porch (49 square feet), and proposed addition (616 square feet).

2. Section 175-16 – Variance for maximum improved lot coverage. The Ordinance limits improved lot coverage to 30% of the lot area.

The Applicant proposes an improved lot coverage of 2,970 square feet or 36.27% of the lot area, which includes the proposed building coverage (2,254 square feet), existing driveway (462 square feet), existing steps and walkways (132 square feet), existing wall (100 square feet), existing AC units and generator (22 square feet) but excludes the existing patio (226 square feet), which is to be removed. It should be noted that the existing improved lot coverage is 2,580 square feet or 31.51% of the lot area.

3. Section 175-16 – Variance for maximum residential parking coverage. The Ordinance limits residential parking coverage to 25% of the lot area, which includes the area of the residential use and vehicle access and parking areas.

The Applicant proposes a residential and parking coverage of 2,716 square feet or 33.17% of the lot area, which includes the proposed building coverage (2,254 square feet) and the existing driveway (462 square feet). It should be noted that the existing residential and parking coverage is 2,100 square feet or 25.64% of the lot area, which includes the existing building coverage (1,638 square feet) and existing driveway.

Additionally, the following pre-existing non-conforming conditions exist:

1. Section 175-16 – The Ordinance requires a minimum lot area of 10,000 square feet in the R-D District. The existing lot is only 8,189 square feet.
2. Section 175-16 – The Ordinance requires a minimum lot frontage of 100 feet in the R-D District. The existing lot only has 70.03 feet for frontage along Lake Road.

C. Variance Proofs

D(4) Variance

The Board should note that the court found, in Coventry Square v. Westwood Zoning Bd. of Adjustment, 138 N.J. 285 (1994), that the Applicant need not show “special reasons” that a site is particularly suited for more intensive development if the use is permitted. The Applicant is only required to demonstrate that the site will accommodate the problems associated with a larger floor area than that permitted by Ordinance. These problems typically involve the relationship of the proposal to the neighboring properties, such as intrusion into the side yard or visual incompatibility with the existing and surrounding buildings. The Board needs to determine whether the intent of zone plan and zoning ordinance will be substantially impaired by the proposed increase floor area.

“C” Variances

NJSA 40:55D-70(c) sets forth the criteria by which a variance can be granted from the bulk requirements of a zoning ordinance. The first criteria is the C(1) or hardship reasons including exceptional narrowness, shallowness or shape of a specific piece of property, or exceptional topographic conditions or physical features uniquely affecting a specific piece of property, or extraordinary and exceptional situation uniquely affecting a specific piece of property.

The second criteria involves the C(2) or flexible “C” variance where the purposes of the MLUL would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment.

D. Waivers/Exceptions

The Application does not require any waivers/exceptions based on the information provided.

E. Comments

Based on our review of the above-referenced materials, we offer the following comments:

General

1. The Applicant’s professionals must provide testimony to support the grant of the D(4) FAR variance and “C” variances required by the Application. Testimony must address both the negative and positive criteria requirements of the MLUL.
2. The Ordinance defines “Livable Floor Area” as

The aggregate area of all floors included within the outer walls of a building, excluding basements, garages and other unheated areas, and including only such floor area under a sloping ceiling for which the headroom is not less than five feet six inches, and then only if at least 75% of such floor area has a ceiling height of not less than seven feet six inches and if any such floor that is situated above another story has access to the floor below by a permanent built-in stairway and has a permanent, complete floor and a means of heating to 70° F. at all times.

According to the FAR Calculations on page 8 of the Application, the proposed livable area is 4,511 square feet. This includes the existing dwelling (3,400 square feet), the proposed addition (896 square feet), and "other" (215 square feet). Based on this information it is unclear if the livable floor area was calculated pursuant to the definition above. The Architectural and/or Site Plans shall be revised to include a detailed calculation of the livable floor area to clarify.

3. The Building and Code Data table on the Architectural Plan indicates the existing floor area is 2,892 square feet with 1,625 square feet on the first floor and 1,267 square feet on the second floor. The proposed floor area is noted to be 3,766 square feet with 1,918 square feet on the first floor and 1,855 square feet on the second floor. (Note that the first and second floor areas total to 3,773 square feet.) The Maximum Livable Floor Area line at the bottom of the table indicates the existing area is 3,400 square feet and the proposed area is 4,511 square feet. It is unclear how these areas were calculated and why the areas fail to match. Testimony shall be provided to clarify.
4. The proposed first floor area in the Building and Code Data table is 293 square feet greater than the existing floor area. The proposed first floor addition is 20 feet by 14 feet or 280 square feet, which is 13 square feet less than noted in the table. The Applicant shall provide testimony to clarify this discrepancy.
5. Similarly, the proposed second floor area in the Building and Code Data table is 588 square feet greater than the existing floor area. The proposed second floor addition is 44 feet by 14 feet or 616 square feet, which is 28 square feet greater than noted in the table. The Applicant shall provide testimony to clarify this discrepancy.
6. The proposed floor area in the Building and Code Data table totals to 3,773 square feet. However, the first and second floor areas total to 3,766 square feet. This discrepancy shall be eliminated. This can be a **condition** of any potential Board approval.
7. The Survey indicates the western corner of the house is 12.3 feet from the property line (rear left corner). The Architectural Plan and Site Plans indicate the second-floor addition at this same corner will have a setback of 12.1. However, neither document indicates there will be an overhang or expansion of the existing footprint. Testimony shall be provided regarding this discrepancy.
8. The Existing and Proposed Improved Lot Coverage calculations on Sheet 1 of the Site Plans does not appear to include the existing or proposed window wells on the southwest side of the dwelling. The Applicant shall provide testimony on the material to be used within the window well and whether said material will be pervious. Depending on the testimony, the improved lot coverage calculations may need to be revised. This information is necessary to determine the exact variance relief required.
9. The Ordinance defines "Building, Height of" as "The vertical distance measured from the average natural grade all around the building to the highest point of the roof." Additionally, "Average Natural Grade" is defined as "An average of a natural grade adjacent to the

perimeter of a building measured at points 10 feet apart starting at the lowest elevation.” The Proposed Building Height calculations on Sheet 1 of the Site Plans indicates the proposed height is 28.85 feet from the average grade (103.85 feet) to the roof ridge (132.7 feet). However, the average natural grade was calculated only using four points around the building. The average natural grade calculation shall be revised as defined above to determine the proposed building height. Said grades shall also be shown on Sheet 2. Furthermore, the average natural grade should be noted on the elevations shown on the Architectural Plan. This can be a **condition** of any potential Board approval.

10. The Basement Level plan on the Architectural Plans indicates the area under the proposed addition will be an unfinished room. Testimony shall be provided regarding the use of this room.
11. Sheet 2 of the Site Plans includes a tree protection detail. Testimony shall be provided if any tree removal will be required as a result of the proposed improvements.

Should you have any questions concerning the above comments, please do not hesitate to contact my office. We reserve the right to make additional comments based upon further review or submission of revised plans or new information.

Sincerely,

Colliers Engineering & Design



Darlene A. Green, PP, AICP
Borough Planner

cc: Michael Greco, Board Secretary (mgreco@demarestnj.gov)
Nick Chelius, Board Engineer (via email nick.chelius@collierseng.com)
Jonathan & Lindsay Kestenbaum, Applicants (via email kestey15@gmail.com)
Carmine R. Alampi, Applicant's Attorney (via email calampi@alampi-law.com)
Paul R. Ercolano, Applicant's Engineer (via email paul@ercolanoengineering.com)
Mario Navedo, Applicant's Architect (via email marioavedo.design@gmail.com)
David Spatz, Applicant's Planner (via email davidspatz@optimum.net)

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¹ Image courtesy of <https://www.nearmap.com/us/en>, dated October 4, 2024.

² On all streets other than Knickerbocker Road, Hardenburgh Avenue, County Road, Anderson Avenue, Piermont Road, and Lenox Avenue, an alternate setback will be required, conforming to the established average setback on the street on which the lot fronts, within the same district and within 300 feet on each side of the lot along the same side of the street, but not beyond any intersecting streets, established by three or more houses.

³ For other than rectangular lots, a rear yard width is required that is equal to the frontage requirement in the district, such width to be measured between points on each side line which are distant from the frontage line the number of feet

specified as the minimum lot depth requirement in the district, such side line points to be measured at right angles to the frontage line. This requirement applies to all residence districts.

⁴ Measured from the average natural grade around the perimeter of the proposed structure. No more than 50% of the roof area shall exceed the specified average height. Flat roofs above 30 feet in height are expressly prohibited in all zones.

⁵ Maximum livable floor area (as defined in §175-27) is calculated as a square foot percentage of the total square footage of the lot to be developed.

⁶ The part of the site that is covered by buildings or accessory buildings; impervious or pervious tennis courts, basketball courts, decks, swimming pool decks, patios, firepits, hot tubs, or other recreational structures or improvements; impervious or pervious parking areas, driveways, walls, walkways, pavers, or similar improvements; and any other structures or impervious surfaces. Total improved lot coverage shall not exceed 30% of the lot area. The percentage of the lot to be used for the principal residential use and all vehicle access and parking areas shall not be greater than 25%.