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March 20, 2025

## **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 #2  
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, revised through February 26, 2025, consisting of 2 sheets.
2. Plan entitled "Addition to: 109 Lake Rd. Demarest NJ 07627", prepared by Mario Navedo, RA, dated August 14, 2024, revised through February 19, 2025, 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 below for the approximate location of the subject property shown in red.<sup>1</sup>



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 feet<sup>2</sup>
- Minimum Side Yard Setback Abutting a Street – 25 feet
- Minimum Side Yard Setback Abutting a Lot – 10 feet
- Minimum Rear Yard Setback Depth – 30 feet<sup>3</sup>
- Maximum Number of Families per Building – 1
- Maximum Building Coverage – 20%
- Maximum Height of Building – 24 feet/30 feet<sup>4</sup>
- Maximum Livable Floor Area (1 or 2-stories) – 30%<sup>5</sup>
- Maximum Improved Lot Coverage – 30%<sup>6</sup>
- 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 4,530 square feet or 55.32%. It should be noted that the existing FAR is 44.38% of the lot area. See Comment #2 for a discussion of the existing and proposed FAR calculations.

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 2,400 square feet or 29.31% of the lot area, which includes the existing dwelling (1,589 square feet), existing covered porch (49 square feet), existing window well (14 square feet), existing steps and walkways (132 square feet), and proposed addition (616 square feet). It should be noted that the existing building coverage is 1,770 square feet or 21.61% of the lot area.

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 2,984 square feet or 36.44% of the lot area, which includes the proposed building coverage (2,400 square feet), existing driveway (462 square feet), existing wall (100 square feet), and existing AC units and generator (22 square feet). It should be noted that the existing improved lot coverage is 2,594 square feet or 31.68% 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 2,848 square feet or 34.78% of the lot area, which includes the proposed building coverage (2,400 square feet) and the existing driveway (462 square feet). It should be noted that the existing residential and parking coverage is 2,232 square feet or 27.26% of the lot area, which includes the existing building coverage (1,770 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. Note that the current status of previously issued comments is provided in italics.

#### 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.

*The Zoning Requirements table on the Architectural Plan indicates the existing floor area totals 3,634 square feet, which includes the heated basement area (1,162 square feet), first floor excluding the unheated garage (1,162 square feet), and the second floor excluding the doubled ceiling height area (1,310 square feet). This equates to an FAR of 44.38%. The proposed floor area totals 4,530 square feet, which includes the existing heated basement area (proposed basement area will not be heated), proposed first floor area excluding the unheated garage (1,442 square feet), and proposed second floor area excluding the doubled ceiling height area (1,926 square feet). This equates to an FAR of 55.32%. Based on the information provided, the Applicant has calculated the Livable Floor Area and FAR in accordance with the Ordinance's definition.*

*It should be noted that the Architectural Plans indicates the lot size is 8,193 square feet instead of 8,189 square feet, which results in an FAR of 55%. The relief the Applicant is requesting from the Board is for 55.32%.*

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.

*The Building and Code Data table has been revised to indicate the existing floor area is 2,472 square feet, including a 1,162 square foot first floor and 1,310 square foot second floor. The proposed floor area is noted to be 3,368 square feet, including a 1,442 square foot first and a 1,926 square foot second floor. These areas are noted to exclude the basement, garage, and attic areas, which is why the square footage does not match the Livable Floor Area calculation. As noted above, the revised Zoning Requirements table has calculated the existing and proposed floor areas based on the Ordinance's definition. This comment has been addressed.*

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.

*The Building and Code Data table has been revised to indicate the proposed first floor addition is 280 square feet (14 feet by 20 feet). This comment has been addressed.*

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.

*The Building and Code data table has been revised to indicate the proposed second floor addition is 616 square feet (14 feet by 44 feet). This comment has been addressed.*

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.

*The proposed Floor Area in the Building and Code Data table has been revised to be 3,368 square feet, which is the total of the proposed first floor area (1,442 square feet) and proposed second floor area (1,926 square feet). This comment has been addressed.*

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.

*The Site Plans and Architectural Plans indicate the existing rear left corner side yard setback is 12.3 feet and the side yard setback to the proposed rear left corner of the two-story addition is 12.1 feet. Testimony was provided at the February 18, 2025 hearing that this is due to the slight angle of the property line. This comment has been addressed.*

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.

*The Existing Improved Lot Coverage calculation has been revised to include the existing window well (contained within the building coverage line item). It should be noted that the existing window well has been included in the calculations for existing and proposed building coverage. This comment has been addressed.*

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.

*Paul Ercolano, the Applicant's Engineer, testified at the February 18, 2025 hearing that the proposed building height is 28.8 feet. Sheet 01 of the Site Plans has been revised to include a Proposed Building Height calculation. According to this information, the 19 spot elevations along the perimeter of the building equate to an average natural grade of 103.9 feet. The ridge height of the dwelling, which is not proposed to be modified, is 132.7 feet, which equates to a building height of 28.8 feet. This comment has been addressed.*

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.

*Mario Navedo, the Applicant's Architect, testified at the February 2025 hearing that the proposed basement will be unfinished and unheated. Additionally, the Basement Level plan has been revised to indicate the proposed basement will be for storage. This comment has been addressed.*

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.

*Mr. Ercolano testified at the February 2025 hearing that no trees are proposed to be removed. This comment has been addressed.*

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](mailto:mgreco@demarestnj.gov))  
Nick Chelius, Board Engineer (via email [nick.chelius@collierseng.com](mailto:nick.chelius@collierseng.com))  
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- <sup>1</sup> Image courtesy of <https://www.nearmap.com/us/en>, dated October 4, 2024.
- <sup>2</sup> 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.
- <sup>3</sup> 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.
- <sup>4</sup> 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.
- <sup>5</sup> 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.
- <sup>6</sup> 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%.