

BOROUGH OF RIVER EDGE MUNICIPAL LAND USE BOARD

RESOLUTION

**GRANTING VARIANCES FOR MAXIMUM IMPROVED LOT COVERAGE,
SCHEDULE OF ZONING AREA, BULK AND YARD REQUIREMENTS,
AND MAXIMUM FENCE HEIGHT
TO CATHERINE AND MICHAEL MONOPOLI FOR
700 MILLBROOK ROAD, RIVER EDGE, NJ
BLOCK 305, LOT 39
APPLICATION NO. 2020-__**

WHEREAS, Catherine and Michael Monopoli (the "Applicants") applied to the Municipal Land Use Board of the Borough of River Edge (the "Borough") for variances for maximum improved lot coverage; schedule of zoning area, bulk and yard requirements; and maximum fence height, precipitated by proposed deck and porch additions and installation of a new fence on property located at 700 Millbrook Road, River Edge, New Jersey, and identified on the Tax Map of the Borough of River Edge as Block 305, Lot 39 (the "Property"); and

WHEREAS, the Municipal Land Use Board of the Borough of River Edge (the "Board") deemed the application complete on March 4, 2020 and a public hearing was also conducted on March 4, 2020; and

WHEREAS, the Applicants were not represented by counsel; and

WHEREAS, the Applicants were duly sworn and provided testimony in support of the application; and

WHEREAS, the Applicants are not the owners of the Property but had express approval from the owner, Thomas Meehan ("Mr. Meehan"), to make this application; and

WHEREAS, at the public hearing, Brian J. Callahan, AIA (öMr. Callahanö), of Callahan Architecture, LLC, 333 Fairview Avenue, Westwood, New Jersey 07675, was duly sworn and qualified as an expert to provide testimony in support of the requested relief; and

WHEREAS, the public was given notice of the application and had an opportunity to participate in the hearing but no one appeared to be heard; and

WHEREAS, the Applicants submitted proof of notification, by mail or personal service at least 10 days prior to the date set forth for public hearing on all persons owning properties within 200 feet from the extreme limits of the subject property of the subject application, as set forth on a certified list of said owners furnished to the Applicants by the Tax Assessor of the Borough of River Edge and provided proof of service of such notice in accordance with the Zoning Ordinance of the Borough of River Edge, as amended and supplemented, and the Municipal Land Use Law (the öMLULö), N.J.S.A. 40:55D-1 to -163; and

WHEREAS, the Applicants have submitted proof that a copy of said notifications have been published at least 10 days prior to the date set forth for public hearing in the official newspaper of the Borough of River Edge in accordance with the Zoning Ordinance of the Borough of River Edge as amended and supplemented and N.J.S.A. 40:55D-1 to -163; and

WHEREAS, all jurisdictional requirements of the applicable state statutes and local ordinance have been met; and

WHEREAS, the Applicants submitted, in support of the application, a survey prepared by Christopher J. Lantelme, PE, LS, of Lantelme Kurens & Associates, PC, 101 West Street, Hillsdale, NJ 07642, dated September 28, 2016. The survey depicts an existing 1½-story frame dwelling.

WHEREAS, the Applicants submitted, in support of the application, architectural plans prepared by Brian J. Callahan, AIA, of Callahan Architecture, LLC. 333 Fairview Avenue, Westwood, New Jersey 07675, entitled "Meehan Residence" and dated November 3, 2019, consisting of the following sheets:

- A1: Site Plan, Zoning Data;
- A2: First Floor Plan;
- A3: Elevations;

WHEREAS, the Applicants submitted photographs of the proposed fence material to be installed on the Property; and

WHEREAS, the Applicants submitted a Letter of Noncompliance issued by Thomas Behrens, PP, AICP ("Mr. Behrens"), the Board Planner, dated January 2, 2019; and

WHEREAS, the Board, after carefully considering the evidence and testimony presented by the Applicants, as well as the January 2, 2020 Letter of Noncompliance issued by Mr. Behrens, has made the following factual findings and conclusions:

The Property

1. The Property is an undersized, corner lot containing 7,000 square feet located within the R-1 Zoning District and improved by a 1½-story dwelling.
2. The Property has pre-existing nonconforming conditions with respect to minimum lot area, side yard setbacks, front yard setback and lot width.

The Proposal

3. The Applicants seek to remove an existing shed and install a new shed; construct a new covered porch in the front of the dwelling; a new paver walkway to connect the front porch to the rear deck; a 4ø addition to the existing rear deck; install a new staircase along the side of the

dwelling connecting the deck to the rear yard; and a new 24øby 28øfenced area with a 4øtall fence and gates.

4. The Board reviewed the application and deemed it complete on March 4, 2020 during its work session. The Board scheduled a public hearing on the application immediately following the work session.

5. The Board considered the January 2, 2020 Letter of Noncompliance by Mr. Behrens. Pursuant to Mr. Behrensø letter, the proposed application triggers the following relief:

- §416-15 Maximum Improved Lot Coverage. The plans indicate a proposed improved lot coverage of 38.39%, where the R-1 Zone permits a maximum improved lot coverage of 35%. Variance relief is required.
- Schedule of Zoning Area, Bulk and Yard Requirements, Minimum Front Yard Setback. The R-1 Zone requires a minimum front yard setback of 30 feet, where the plans indicate proposed front yard setbacks of 25.2 feet for the deck and 27.4 feet for the covered porch. Variance relief is required.
- §416-29B(1) and (5) Maximum Fence Height. The proposed fence in the front yard on Continental Avenue is four feet in height, where a maximum fence height of three feet is permitted in front yards. Variance relief is required.

March 4, 2020 Hearing

6. The Board considered testimony from the Applicants, who were duly sworn and provided testimony in support of the requested relief.

7. The Board also considered testimony from Mr. Callahan, whose credentials as a professional architect of the State of New Jersey were accepted by the Board. Mr. Callahan was duly sworn prior to providing testimony in support of the application.

8. Mr. Callahan testified that the application requires variance relief for front yard setback, improved lot coverage and fence height. According to Mr. Callahan, the subject lot is 70 feet wide and 100 feet deep and is undersized. The property is a corner lot and, as such, there are two front yard setbacks, of which one is currently non-conforming. The rear yard of the property slopes significantly, as a result, the deck is one story above grade and there is a carport under the deck.

9. Mr. Callahan testified that the Applicants propose to construct an open, covered porch at the front door of the dwelling. This will provide safety for the senior owner, Mr. Meehan, to enter and exit the home with railings and will provide an improved aesthetic appearance for the dwelling. The proposed deck extension will allow for a stairway along the side of the building. This will provide a means of rear egress from the dwelling and will allow access from the deck to the yard. The Applicants also propose to install a 4-foot high fence to create a 24ø by 28ø fenced-in area for a dog run, with shrubbery to be planted on the inside of the fence. The proposed fence will not impair the sight line at the corner of the property. The existing shed will be removed and replaced with a larger shed.

10. Mr. Behrens addressed the Board and explained that the variance relief requested by the Applicants could fall under N.J.S.A. 40:55D-70(c)(1) or (2). Mr. Behrens explained that to obtain a (c)(1) variance, the Applicants had to demonstrate that the Property is subject to: (1) exceptional narrowness, shallowness or shape of the Property; or (2) exceptional physical features or topographical conditions unique to the Property; or (3) extraordinary or exceptional situation uniquely affecting the Property. Mr. Behrens explained that to obtain a (c)(2) variance, the Applicants had to demonstrate that: (1) the purpose of the MLUL would be advanced by allowing the variance; and (2) the benefits of any deviation would substantially outweigh any detriment. In

order to obtain either (c) variance, the Applicants would also have to demonstrate that the relief sought: (1) would not be substantially detrimental to the public good; and (2) would not substantially impair the intent and purpose of the zone plan and Zoning Ordinance.

11. The Applicants' architect opined that a (c)(1) variance would be justified because of the nonconforming shape of the property and steeply sloping topography that directly impacts the need for a variance for improved lot coverage and placement of the proposed deck stairs. In addition, the placement of the proposed staircase along the side of the dwelling provides the least amount of additional lot coverage when compared to other locations on the Property.

12. The Applicants' architect also opined that a (c)(2) variance would be justified because the benefit of providing safer means of ingress and egress at the front and rear of the dwelling outweigh any detriment from additional lot coverage. In addition, the proposed open, covered front porch and proposed landscaping along the fenced-in dog run would improve aesthetics on the Property and for the community.

13. Mr. Behrens asked the Applicants' architect where the additional 400 square feet of improved lot coverage was coming from in the application. In response, Mr. Callahan testified that the increase in lot coverage was from the deck addition, new shed, front porch and side walkway. The Applicants testified that the front door area of the dwelling currently has brick pavers, as such there is not a large increase in improved lot coverage at the front of the dwelling.

14. The Board raised concerns about a commercial vehicle that is parked on the Property and whether the vehicle could fit under the expanded deck. In response, the Applicants testified that the commercial vehicle is never parked in a manner that blocks the sidewalk abutting the Property. In addition, Mr. Callahan testified that the clearance under the deck addition would

be approximately 7 feet, which would permit the Applicants to park their smaller vehicle in the car port.

15. The Board also raised concerns that the proposed fenced-in dog run was located too close to the sidewalk along Continental Avenue. In response, the Applicants agreed to pull back the fence from the property line by 1 foot along Continental Avenue.

16. The Board raised additional concerns that the covered porch at the front of the dwelling would remain open and would not be enclosed by the Applicants or the Property owner in the future. In response, the Applicants agreed to keep the front porch open.

17. Mr. Behrensø opined that the proposed development was consistent with the neighborhood.

18. The meeting was opened to members of the public for comment but no one appeared to be heard.

19. The Board then entertained a motion to grant the application requesting variances for maximum improved lot coverage; schedule of zoning area, bulk and yard requirements; and maximum fence height, pursuant to the Borough of River Edge's Zoning Ordinance.

20. A motion to grant the application was made by Vice Chairman Mehrman and seconded by Alphonse Bartelloni. A vote was taken and the application was granted by the Board by a vote of 7 to 0.

Justification for Relief

21. The Board found good cause to grant the Applicants' request for variances for maximum improved lot coverage; schedule of zoning area, bulk and yard requirements; and maximum fence height.

22. The Board considered Mr. Behrensø opinion that the proposed development is consistent with the neighborhood.

23. The Board found that the application would improve safety of ingress and egress to the dwelling and would improve aesthetics on the Property. Specifically, the installation of a hand rails and a covered entry at the front of the dwelling and an exit at the back of the dwelling.

24. The Board found that the open-style fence proposed by the Applicants and landscaping along the inside of the fence mitigates the detriments associated with the nonconforming fence height, improves the appearance of the Property and does not interfere with the sight line at the corner intersection.

25. The Board found that the requested variance relief may be granted pursuant to N.J.S.A. 40:55D-70(c)(2), for the reasons discussed herein. The Board found that the purposes of the MLUL are advanced by the grant of the variances and that the benefits of the deviation substantially outweigh any detriments, and that those variances can be granted without substantially impairing the intent and purpose of the Master Plan and/or Zoning Ordinance and without causing substantial detriment to the public good. The Applicants demonstrated a basis for the grant of the variances pursuant to N.J.S.A. 40:55D-70(c)(2) and Kaufman v. Warren, 110 N.J. 551 (1998). The Applicants met their burden of proof. The grant of the variances is consistent with the neighborhood. As aforesaid, the Board was satisfied the variances could be granted without any substantial detriment to the public good, as well as the zone plan and Zoning Ordinance of the Borough of River Edge. The Board determined the grant of the variances will not impact surrounding properties in the R-1 District.

NOW THEREFORE, BE IT RESOLVED by the Borough of River Edge Municipal Land Use Board, Bergen County, New Jersey, that the Applicantsørequest for variance relief, as

described herein, be and is hereby approved for the reasons set forth herein and subject to the terms and conditions contained in the body of this Resolution:

1. The Applicants shall post all required application fees and provide sufficient funds with the Borough to satisfy any deficiency in the Applicants' escrow account. No permits or certificates will be issued, nor will any work be performed by Board professionals or staff at any time that the Applicants' escrow account balance is not paid current, which shall be set forth by certification by the Board Planner. The Applicants will have a continuing duty to maintain a positive balance in all escrow accounts until all conditions have been satisfied and all charges have been paid.

2. Completion of the proposed development and subsequent use of the Property shall be consistent with testimony offered at the public hearing as to the amended development application, the findings and conclusions of the Board herein, and the conditions set forth in this Resolution.

3. The Board's approval is expressly subject to all State, County and Borough statutes, ordinances, rules, regulations and requirements affecting development in the Borough, County and State.

4. The Applicants' obtaining of approvals from all outside agencies shall be a prerequisite for issuance of a building permit, including but not limited to, obtaining written final approval from the Bergen County Planning Board, Bergen County Soil Conservation District, New Jersey Department of Environmental Protection, and the Borough of River Edge, if applicable.

5. The Applicants shall apply for and obtain a soil movement permit, to the extent same may be required.

6. An escrow account shall be established for the Borough Engineer, in order that the Engineer can do a pre-construction inspection of the premises.

7. The Applicants shall move the fence back one foot from the property-line along Continental Avenue. Any and all landscaping of the fenced-in area shall be located along the inside of the fence.

8. The Applicants shall keep the covered front porch open and shall not enclose the front porch without obtaining approval from the Board.

9. The Applicants shall comply with all comments and conditions imposed by the Board, the Board Engineer and the Borough Engineer, as stated on the record and as may be stated in this Resolution.

Vote On the Application

<u>MEMBER</u>	<u>M</u>	<u>2D</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>	<u>ABSENT</u>	<u>INELG</u>
Mayor Thomas Papaleo			X				
Councilman Chinigo						X	
James Arakelian			X				
Eileen Boland						X	
Louis Grasso			X				
Alphonse Bartelloni		X					
Michael Krey			X				
Richard Mehrman	X						
Chris Caslin						X	
Ryan Gibbons [Alternate #1]						X	
Gary Esposito [Alternate #2]			X				

Vote on the Memorialization

<u>MEMBER</u>	<u>M</u>	<u>2D</u>	<u>YES</u>	<u>NO</u>	<u>ABSTAIN</u>	<u>ABSENT</u>	<u>INELG</u>
Mayor Thomas Papaleo							
Councilman Chinigo							X
James Arakelian							
Eileen Boland							X
Louis Grasso							
Alphonse Bartelloni							
Michael Krey							
Richard Mehrman							
Chris Caslin							X
Ryan Gibbons [Alternate #1]							X
Gary Esposito [Alternate #2]							

BE IT FURTHER RESOLVED that the Resolution adopted on this _____ day of _____, 2020 memorialized the action taken by the Board in accordance with N.J.S.A. 40:55D-10.g, as set forth above, at its March 4, 2020 meeting, and that a copy of this Resolution be provided to the Applicants, the Construction Code Official of the Borough of River Edge, and a notice of this decision shall be published in the official newspaper of the Borough of River Edge.

James Arakelian, Chairman

Dated: _____

CERTIFICATION

I, Alphonse Bartelloni, Secretary of the Board, do hereby certify that the above Resolution was adopted by the Board at its meeting held on _____, 2020. This Resolution memorializes the Board's approval of this matter at its meeting held on March 4, 2020.

Louis Grasso, Secretary
Borough of River Edge
Municipal Land Use Board