

BOROUGH OF RIVER EDGE MUNICIPAL LAND USE BOARD

RESOLUTION

**GRANTING VARIANCES FOR MAXIMUM IMPROVED LOT COVERAGE
TO MARK AND MERRI NEIDORFF FOR
268 JEFFERSON AVENUE, RIVER EDGE, NJ
BLOCK 506, LOT 27
APPLICATION NO. 2020-__**

WHEREAS, Mark and Merri Neidorff (the "Applicants") applied to the Municipal Land Use Board of the Borough of River Edge (the "Borough") for variances for Maximum Improved Lot Coverage, precipitated by the proposed construction of a shed in the rear yard of property located at 268 Jefferson Avenue, River Edge, New Jersey, and identified on the Tax Map of the Borough of River Edge as Block 506, Lot 27 (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 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 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 Andrew A. Schmidt, PLS, of Schmidt Surveying, 66 Huntting Drive, Dumont, NJ 07628, dated January 11, 2020. The survey consisted of two sheets and depicted an existing two-story frame dwelling; and

WHEREAS, the Applicants submitted a sketch of the proposed shed indicating size and distance from the Property's lot line; and

WHEREAS, the Applicants submitted a Letter of Noncompliance issued by Thomas Behrens, PP, AICP (Mr. Behrens), the Board Planner, dated January 24, 2020; and

WHEREAS, the Board, after carefully considering the evidence and testimony presented by the Applicants, as well as the January 24, 2020 Letter of Noncompliance issued by Mr. Behrens, has made the following factual findings and conclusions:

The Property

1. The Property contains approximately 7,800 square feet located within the R-1 Zoning District and is improved by a 2½ story dwelling.

2. The Property has pre-existing nonconforming conditions with respect to maximum improved lot coverage.

The Proposal

3. The Applicants seek to construct an 8-foot by 12-foot wooden shed (96 square feet), with a 7-foot roof pitch, on the northeast corner of the rear yard. The proposed shed will be placed on a permeable gravel bed so as not to cause a drainage issue. The shed will be set back 4 feet from both the north and east property lines. The proposed shed will comprise 1.2% of the improved property coverage. The proposed shed will be painted to match the house and will not have light, electricity or water.

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 24, 2020 Letter of Noncompliance issued by Mr. Behrens. Pursuant to Mr. Behrens' letter, the proposed application triggers the following relief:

- §416-15 Maximum Improved Lot Coverage and §416b Schedule of Zoning District Area, Bulk and Yard Requirements, Maximum Improved Lot Coverage. The R-1 Zone wherein the Property is located permits a maximum improved lot coverage of 35%, where the proposed 8-foot by 12-foot shed (96 square feet) will increase the Property's improved lot coverage from approximately 38.6% to approximately 39.8%. 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 Applicants testified that the proposed shed will be used to store typical yard maintenance equipment and tools. The Applicants testified that the additional storage created by the shed will permit them to park and charge their vehicle in the garage, instead of in the existing driveway. The Applicants testified that they are currently parking and charging their vehicle in the driveway using a long cord. This has created a safety concern in inclement weather and has created a tripping hazard for those on the Property.

1. Mr. Behrens addressed the Board and explained that the variance relief requested by the Applicants would fall under N.J.S.A. 40:55D-70(c)(2). 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 addition, to obtain any (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.

8. Mr. Behrens stated that the proposed shed is conforming with regard to height and setbacks. Mr. Behrens opined that the Applicants' reason for constructing the shed is reasonable and meets the criteria of the (c)(2) variance's benefit/detriment test. Mr. Behrens highlighted that the shed will permit the Applicants to park an additional car in the existing garage, which provides an aesthetic benefit and will benefit the community by taking cars off the street. Mr. Behrens

further opined that the Application imposes no substantial detrimental impact on the neighborhood and is consistent with the neighborhood.

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

10. The Board then entertained a motion to grant the application requesting a variance for maximum improved lot coverage, pursuant to the Borough of River Edge's Zoning Ordinance.

11. A motion to grant the application was made by Vice Chairman Mehrman and seconded by Gary Esposito. A vote was taken and the application was granted by the Board by a vote of 7 to 0.

Justification for Relief

12. The Board found good cause to grant the Applicants' request for a variance for maximum improved lot coverage.

13. The Board considered Mr. Behrens' opinion that the proposed development is consistent with the neighborhood.

14. The Board found that the application would improve safety and aesthetics on the Property as well as provide a benefit to the public by allowing space for an additional vehicle to be parked in a driveway and off of the street.

15. The Board found that the permeable gravel foundation to improve drainage and the Applicants' testimony that the color of the shed will match the dwelling on the Property would help to mitigate possible detriments associated with the increased lot coverage.

16. The Board also found that the proposed shed would not be noticeable from the street.

2. The Board found that the variance relief may be granted pursuant to N.J.S.A. 40:55D-70(c)(2), for the reasons discussed hereinabove. The Board found that the purposes of the MLUL are advanced by the grant of the variance and that the benefits of the deviation substantially outweigh any detriments, and that the variance 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 variance 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 variance is consistent with the neighborhood. As aforesaid, the Board was satisfied the variance 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 variance 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 Applicants' request 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 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	
Lou Grasso			X				
Alphonse Bartelloni			X				
Michael Krey			X				
Richard Mehrman	X		X				
Chris Caslin						X	
Ryan Gibbons [Alternate #1]						X	
Gary Esposito [Alternate #2]		X	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
Lou 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, Louis Grasso, 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