

BOROUGH OF RIVER EDGE MUNICIPAL LAND USE BOARD

RESOLUTION

**GRANTING VARIANCES FOR MAXIMUM IMPROVED LOT COVERAGE AND
SCHEDULE OF ZONING DISTRICT AREA, BULK AND YARD REQUIREMENTS,
MAXIMUM IMPROVED LOT COVERAGE
TO BEN SHIM ON AN AMENDED APPLICATION FOR
186 RESERVOIR AVENUE, RIVER EDGE, NJ
BLOCK 1209, LOT 47
APPLICATION NO. 2020-__**

WHEREAS, Ben Shim (the "Applicant") applied to the Municipal Land Use Board of the Borough of River Edge (the "Borough") for variances for Maximum Improved Lot Coverage and for Scheduled of Zoning District Area, Bulk and Yard Requirements, Maximum Improved Lot Coverage, precipitated by the proposed expansion of a patio in the rear yard of property located at 186 Reservoir Avenue, River Edge, New Jersey, and identified on the Tax Map of the Borough of River Edge as Block 1209, Lot 47 (the "Property"); and

WHEREAS, the Municipal Land Use Board of the Borough of River Edge (the "Board") deemed the application complete on May 20, 2020 and a public hearing was also conducted on May 20, 2020; and

WHEREAS, the Applicant was not represented by counsel; and

WHEREAS, the Applicant was 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 Applicant 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 Applicant 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 Applicant 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 Applicant submitted, in support of the application, a survey prepared by Lantelme, Kurens & Associates, PC, 101 West Street, Hillsdale, New Jersey 07642. The survey consisted of two sheets and depicted an existing two-story frame dwelling and paver patio; and

WHEREAS, the Applicant submitted a sketch of the proposed expansion of the paver patio indicating size and distance from the Property's lot line; and

WHEREAS, the Applicant submitted a Letter of Noncompliance issued by Thomas Behrens, PP, AICP (Mr. Behrens), the Board Planner, dated April 20, 2020; and

WHEREAS, the Board, after carefully considering the evidence and testimony presented by the Applicant, as well as the April 20, 2020 Letter of Noncompliance issued by Mr. Behrens, has made the following factual findings and conclusions:

The Property

1. The Property contains approximately 7,536 square feet located within the R-1 Zoning District and is improved by a two-story dwelling.

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

The Proposal

3. The Applicant seek to expand the paver patio located in the rear yard from approximately 240 square feet to approximately 940.5 square feet, 20.9 foot by 45 foot. The proposed patio expansion would increase the Property's improved lot coverage to approximately 46.9%.

4. The Board reviewed the application and deemed it complete on May 20, 2020 during its work session. The Board scheduled a public hearing on the application immediately following the work session.

5. The Board considered the April 20, 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 20.9 foot by 45 foot patio (940.5 square feet) will increase the Property's improved lot coverage to approximately 46.9%. Variance relief is required.

May 20, 2020 Hearing

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

7. The Applicant testified that the purpose of the proposed patio expansion is to provide a safe environment for his children to play. The Applicant testified that Reservoir Avenue is a busy street and the Applicant is concerned about safety. The Applicant testified that the expanded patio would be made of brick pavers and would provide an area for his children to play basketball, ride a scooter and invite neighbors over to play safely.

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

9. Mr. Behrens stated that the proposed patio is conforming with regard to setbacks.

10. The Board raised issues with the significant amount of impervious coverage requested in the application and questioned whether the yard had drainage issues.

11. The Applicant testified that water does not build up in the yard but the Property takes a lot of drainage from neighboring properties because it is located downhill.

12. In response to the Board's concerns about the amount of impervious coverage, the Applicant agreed to amend his application to request a maximum of 42% impervious coverage and agreed to work with the Borough Engineer to determine if drainage improvements would be required as a condition to the amended application. As amended, the proposed patio would be approximately 600 square feet.

13. Mr. Behrens opined that the Applicant's reason for constructing expanding the patio, as amended, was reasonable and meets the criteria of the (c)(2) variance's benefit/detriment test. Mr. Behrens highlighted that the proposed patio, as amended and with conditions, could improve drainage on the Property, which would provide a benefit to the community.

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

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

16. A motion to grant the application as amended was made by Vice Chairman Mehrman and seconded by Ryan Gibbons. A vote was taken and the application was granted by the Board by a vote of 10 to 0, with two alternates in attendance.

Justification for Relief

17. The Board found good cause to grant the Applicant's request for a variance for maximum improved lot coverage as amended and with conditions.

18. The Board found that the application would improve safety on the Property as well as provide a benefit to the community by potentially improving drainage.

19. The Board found that the amendments to the application would help to mitigate possible detriments associated with the increased lot coverage.

20. 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 variances and that the benefits of the deviation substantially outweigh any detriments, and that the 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 Applicant 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 Applicant met his burden of proof. 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 Applicant's 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 Applicant shall post all required application fees and provide sufficient funds with the Borough to satisfy any deficiency in the Applicant's 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 Applicant's escrow account balance is not paid current, which shall be set forth by certification by the Board Planner. The Applicant 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 Applicant's 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 Applicant shall apply for and obtain a soil movement permit, to the extent same may be required.

6. The Applicant shall not exceed 42% maximum impervious coverage.

7. The Applicant shall submit the amended application for a patio expansion to the Borough Building Department prior to construction to determine if drainage improvements are required as a condition of construction.

8. The Applicant shall establish an escrow account for the Borough Engineer, in order that the Engineer can conduct a review of drainage related to the amended application and perform a pre-construction inspection of the Property.

9. The Applicant 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	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							
James Arakelian							
Eileen Boland							X
Lou Grasso							
Alphonse Bartelloni							
Michael Krey							
Richard Mehrman							
Chris Caslin							
Ryan Gibbons [Alternate #1]							
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 May 20, 2020 meeting, and that a copy of this Resolution be provided to the Applicant, 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 May 20, 2020.

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