

**BOROUGH OF RIVER EDGE MUNICIPAL LAND USE BOARD**

**RESOLUTION GRANTING VARIANCES FOR MAXIMUM IMPROVED LOT  
COVERAGE, MAXIMUM LOT COVERAGE AND MINIMUM ACCESSORY  
STRUCTURE SETBACK  
TO MATTHEW TERHUNE FOR  
206 BERKELEY ROAD, RIVER EDGE, NJ  
BLOCK 902, LOT 18**

**WHEREAS**, the Municipal Land Use Board of the Borough of River Edge is a duly constituted body as authorized by statute with responsibility to supervise and be concerned with the orderly development and planning of the Borough, as authorized by the statutes and ordinances made and provided; and

**WHEREAS**, Matthew Terhune (the "Applicant") applied to the Municipal Land Use Board of the Borough of River Edge (the "Borough") for variances for Maximum Improved Lot Coverage, Maximum Lot Coverage and Minimum Accessory Structure Setback, precipitated by the proposed construction of a shed in the side yard of property located at 206 Berkeley Road, River Edge, New Jersey, and identified on the Tax Map of the Borough of River Edge as Block 902, Lot 18 (the "Property"); and

**WHEREAS**, the Municipal Land Use Board of the Borough of River Edge (the "Board") deemed the application complete on September 2, 2020 and a public hearing was also conducted on September 2, 2020 via Zoom video conferencing; 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 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 John J. Butler, PLS, Butler Surveying & Mapping, Inc., 177 Franklin Avenue, Midland Park, New Jersey 07432, dated January 7, 2014, consisting of one sheet and depicting an existing 2 ½ story frame dwelling; and

**WHEREAS**, the Applicant submitted a sketch of the proposed shed indicating size and proposed location on the Property; and

**WHEREAS**, the Applicant submitted a Letter of Noncompliance issued by Thomas Behrens, PP, AICP (öMr. Behrensö), the Board Planner, dated July 9, 2020; and

**WHEREAS**, the Board, after carefully considering the evidence and testimony presented by the Applicant, as well as the July 9, 2020 Letter of Noncompliance issued by Mr. Behrens, has made the following factual findings and conclusions:

## The Property and Proposal

1. The Property contains approximately 7,579 square feet located within the R-1 Zoning District and is improved by a 2 ½ story frame dwelling.

2. The Applicant seeks to construct an 8-foot by 12-foot wooden shed (96 square feet), on the southeast corner of the side 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 6 inches from side lot line to be flush with the existing fence.

3. The Board reviewed the application and deemed it complete on September 2, 2020 during its work session. The Board scheduled a public hearing on the application immediately following the work session.

4. The Board considered the July 9, 2020 Letter of Noncompliance issued by Mr. Behrens. Pursuant to Mr. Behrens' letter, the proposed application triggers the following relief:

- Section 416-15 Maximum Improved Lot Coverage and Section 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 to approximately 39.8%. Variance relief is required.
- Section 416-14 Maximum Lot Coverage and Section 416b Schedule of Zoning District Area, Bulk and Yard Requirements. The R-1 Zone wherein the Property is located permits a maximum lot coverage of 25%, where the proposed 8 foot by 12

foot shed (96 square feet) will increase the Property's lot coverage to approximately 26.7%. Variance relief is required.

- Section 416-27C(2) Minimum Accessory Structure Setback. Accessory structures and buildings, including sheds, must have a minimum setback of 4 feet from lot lines where the proposed location of the shed is within approximately 6 inches of the side lot line. Variance relief is required.

### Public Hearing

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

6. The Applicant testified that the proposed shed will be used to store typical yard maintenance equipment and tools along with toys for the Applicants growing family. The Applicant testified that the additional storage created by the shed could permit the Applicant's family to park an additional vehicle in the garage, which would remove a vehicle from the street when guests visit.

7. 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 would have 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.

8. Mr. Behrens asked the Applicant if an alternative, conforming location for the shed was considered. The Applicant testified that he considered placing the shed in the rear yard but existing landscaping and a swing set in the rear yard limited available locations for the shed. The Applicant testified that the proposed location for the shed was a vacant area of the Property and the Applicant thought it was well suited for additional storage.

9. The Board raised concerns about the location of the shed along the side lot line. The Applicant testified that the shed would be approximately 10 feet from the house and the required 4-foot setback would prevent the doors of the shed from opening. In addition, the Applicant testified that the shed would be approximately 8 feet tall. The Applicant testified that the shed would be partially concealed by the existing 4-foot fence in the Property's side yard and his neighbor's existing fence along the relevant side lot line.

10. The Board raised concerns about screening of the shed. The Applicant testified that he intends to keep existing arborvitaes that are planted along the front of the existing fence in the side yard. The Applicant testified that he planted a maple tree in the front yard that would provide additional screening of the shed. The Applicant agreed to provide some additional screening for the shed in the front yard of the Property.

11. Mr. Behrens opined that the Applicant's 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 Applicant 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.

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

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

14. A motion to grant the application was made by Vice Chairman Mehrman and seconded by Chris Caslin. A vote was taken and the Board approved the application by a vote of 8 to 0.

#### Justification for Relief

15. The Board found good cause to grant the Applicant's variance requests for maximum improved lot coverage, maximum lot coverage and accessory structure setback.

16. The Board considered Mr. Behrens' opinion that the proposed shed would provide an aesthetic and public benefit to the community by placing a vehicle in the garage and removing vehicles from the street.

17. 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.

18. The Board found that the permeable gravel foundation to improve drainage on the Property would help to mitigate possible detriments associated with the increased lot coverage.

19. The Board also found that the proposed shed would not be noticeable from the street with additional screening in the front yard, as agreed to by the Applicant.

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 requested 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 variance 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. The grant of the variances will provide an aesthetic and public benefit to the community and potential detriments were mitigated. 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. The construction of the shed and subsequent use of the Property shall be consistent with testimony offered at the public hearing as to the development application, the findings and conclusions of the Board herein, and the conditions set forth in this Resolution.

3. The Applicant shall provide some additional screening for the shed in the front yard of the Property, subject to the reasonable satisfaction and approval of the Board's Planner.

4. 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.

5. 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.

6. If necessary, 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 Applicant shall comply with all requirements of Costa Engineering, subject to the reasonable satisfaction and approval of Costa Engineering and the Board, if applicable.

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



**Vote On the Application**

<b><u>MEMBER</u></b>	<b><u>M</u></b>	<b><u>2D</u></b>	<b><u>YES</u></b>	<b><u>NO</u></b>	<b><u>ABSTAIN</u></b>	<b><u>ABSENT</u></b>	<b><u>INELG</u></b>
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	X				
Ryan Gibbons [Alternate #1]						X	
Gary Esposito [Alternate #2]			X				

**Vote on the Memorialization**

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

**BE IT FURTHER RESOLVED** that the Resolution adopted on this 16th day of September, 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 September 2, 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.

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James Arakelian, Chairman

**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 September 16, 2020. This Resolution memorializes the Board's approval of this matter at its meeting held on September 2, 2020.

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