

BOROUGH OF RIVER EDGE MUNICIPAL LAND USE BOARD

**RESOLUTION GRANTING SITE PLAN APPROVAL ON
A FOOD HANDLER'S LICENSE FOR
7-ELEVEN STORE #36488B
584 KINDERKAMACK ROAD
BLOCK 619, LOT 3
RIVER EDGE, NEW JERSEY**

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, 7-Eleven Store #36488B (hereinafter referred to as the "Applicant") has filed an application with the Municipal Land Use Board of the Borough of River Edge (the "Board") for property known as Block 619, Lot 3 on the tax map of the Borough of River Edge, located at 584 Kinderkamack Road (the "Property"), for site plan approval for a food handler's license; and

WHEREAS, the Property is owned by 584 Kinderkamack Assoc LLC; and

WHEREAS, the Board deemed the application complete on September 2, 2020 and a public hearing was also conducted on September 2, 2020 via Zoom video conference; and

WHEREAS, the Applicant was not represented by counsel; and

WHEREAS, Bijaya Manandhar and Sarat Manandhar, 584 Kinderkamack Road, River Edge, New Jersey, the franchise owners and operators of the Applicant, 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 and one member of the public submitted a comment; 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 Property for 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 the Municipal Land Use Law (the MLUL), N.J.S.A. 40:55D-1 to -163; and

WHEREAS, the Applicant submitted proof that a copy of said notifications were 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 the MLUL; and

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

WHEREAS, pursuant to §350-4(e) of the Code of the Borough of River Edge, site plan approval shall be required for any building or structure (regardless of its previous use) which is to be used as a restaurant for sit-down service or take-out service, or as a fast food establishment, or any other intended use where a beverage or food handler's license is required; and

WHEREAS, the Applicant submitted a site plan prepared by Harry N. Tuvel, P.E., P.P., Tuvel Civil Engineering Services, 629 Ridge Court, Ridgefield, New Jersey, consisting of one sheet, dated March 5, 2011; and

WHEREAS, the Applicant submitted a Letter of Noncompliance issued by Thomas Behrens, PP, AICP (Mr. Behrens), the Board Planner, dated July 18, 2020; and

WHEREAS, the Board, after carefully considering the evidence and testimony presented by the Applicant, as well as the July 18, 2020 Letter of Noncompliance, has made the following factual findings and conclusions:

The Proposal

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

2. The Applicant is seeking site plan approval for the proposed change in franchise ownership of the 7-Eleven convenience store on the Property in accordance with §350-4E of the Borough Code, which states notwithstanding the provisions of Section 350-5B(3), site plan approval shall be required for any building or structure (regardless of its previous use) which is to be used as a restaurant for sit-down service or take-out service or as a fast-food establishment, or any other intended use where a beverage or food handlers license is required.

3. The Property is subject to the Planning Board's 2013 site plan and signage approvals. The Applicant proposes to continue to operate the convenience store on the Property in accordance with all prior approvals with no changes to the site, operations or signage.

4. The Property is located in the C-1 Commercial Neighborhood Business Zone, where the convenience store is a permitted use.

5. The site, identified as Block 619, Lot 3, is approximately 0.348 acre tract improved with a one-story building located on the corner of Kinderkamack Road and Van Buren Avenue.

There are 13 parking spaces provided on site and the change in franchise ownership does not require additional parking. Development surrounding the site includes commercial development to the north and south, across Van Buren Avenue, and residential developments to the east and west, across Kinderkamack Road.

Public Hearing

6. The Board considered the July 18, 2020 Letter of Noncompliance by Mr. Behrens. Pursuant to Mr. Behrens's letter, in accordance with Borough Code §350-4E, notwithstanding the provisions of §350-5B(3), site plan approval shall be required for any building or structure (regardless of its previous use) which is to be used as a restaurant for sit-down service or take-out service or as a fast-food establishment, or any other intended use where a beverage or food handlers's license is required.

7. The Board considered testimony from Bijaya Manandhar (Ms. Manandhar) and Sarat Manandhar (Mr. Manandhar) franchise owners and operators of the Applicant, who were duly sworn and provided testimony in support of the application.

8. Mr. Manandhar testified that the Applicant intends to operate the 7-Eleven convenience store with the same hours of operation, number of employees, delivery times and floor plan as the Board's prior approvals.

9. Mr. Behrens advised the Board that this was only a change in franchise ownership, there are no variance or parking issues. Mr. Behrens also testified that he visited the site and noticed that landscaping and maintenance on the Property needs to be addressed.

10. The Board also raised concerns regarding cleanup in the dumpster area of the Property and delivery times.

11. Prior to the public hearing, the Board Chairman contacted the Borough Police Chief regarding noise or issues on the Property. The Borough Police Chief advised that there have been no issues with the Property.

12. The Applicant agreed to work with the Board Planner to address landscaping issues and cleanup in the dumpster area of the Property. In addition, the Applicant testified that signage and delivery times on the Property will remain the same and will comply with prior approvals and with Borough regulations and requirements.

13. The meeting was opened to members of the public for comment. One member of the public, Kieran Corrigan, 118 Manning Street, River Edge, New Jersey, left a comment in the virtual meeting chat function regarding noise and signage on the Property.

14. The Board then entertained a motion to grant the application requesting site plan approval for a food handler license with the condition that landscaping and cleanup issues would be addressed by the Applicant. A motion to grant the application was made by Vice Chairman Richard Mehrman and seconded by Councilman Chinigo. A vote was taken and the Board approved the application by a vote of 8 to 0.

Justification for Relief

15. The application met the requirements of the Borough Ordinance, prior Board Resolutions associated with the Property and did not require variance relief.

16. The Board determined that the Applicant addressed all issues raised by Mr. Behrens in his July 18, 2020 Letter of Noncompliance to the satisfaction of the Board.

NOW THEREFORE, BE IT RESOLVED that the Municipal Land Use Board of the Borough of River Edge hereby grants the Applicant site plan approval for food handler's license, with the following conditions:

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 of 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. Operation of the convenience store and use of the Property shall be consistent with testimony offered at the public hearing, 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 will improve landscaping on the Property and cleanup the dumpster area of the Property, subject to the reasonable satisfaction and approval of the Board's Planner.

6. The proposed operation and use of the Property shall conform to the requirements of any prior approvals.

7. The Applicant shall comply with all requirements of Costa Engineering, subject to the reasonable satisfaction and approval of Costa Engineering and the Board.

8. 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	X				
James Arakelian			X				
Eileen Boland						X	
Louis 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				

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
Louis 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 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

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.

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