

BOROUGH OF RIVER EDGE MUNICIPAL LAND USE BOARD
RESOLUTION GRANTING AMENDED SITE PLAN APPROVAL TO
INCREASE THE NUMBER OF RESTAURANT SEATS; GRANTING
VARIANCES FOR MINIMUM FRONT YARD SETBACK, ACCESSORY
STRUCTURE SETBACK, ACCESSORY STRUCTURE DIMENSIONS,
AND NUMBER OF PARKING SPACES; AND GRANTING A PARKING
DESIGN EXCEPTION FOR
PATDOM, L.L.C.
259 JOHNSON AVENUE
BLOCK 1417, LOT 3
RIVER EDGE, NEW JERSEY

WHEREAS, the Municipal Land Use Board of the Borough of River Edge (the “Borough”) 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, PatDom, L.L.C. (hereinafter referred to as the “Applicant”) has filed an amended application with the Municipal Land Use Board (the “Board”) of the Borough of River Edge for property known as Block 1417, Lot 3 on the tax map of the Borough of River Edge, located at 259 Johnson Avenue (the “Property”), for amended site plan approval to increase the number of restaurant seats, install an Americans with Disabilities Act (“ADA”) compliant lift and an accessory structure for outdoor dining; and

WHEREAS, the Applicant previously received site plan approval, with conditions, from the Board for a food handler’s license on April 15, 2020, which was memorialized by Resolution on May 20, 2020; and

WHEREAS, the Board deemed the amended site plan application complete on August 19, 2020 and a public hearing was also conducted on August 19, 2020; and

WHEREAS, the Applicant was represented by Aiyana Gallardo, Esq. (“Ms. Gallardo”) and Perry Florio, Esq. (“Mr. Florio”) of Waters, McPherson, McNeill, P.C., 300 Lighting Way, Secaucus, New Jersey 07096; and

WHEREAS, Carmine Teta (“Mr. Teta”), the owner/operator of 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 and 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 Property and proposed off-site parking locations 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, the application for amended site plan approval requires the following relief:

1. Minimum front yard setback variance. The proposed ADA chairlift addition in the front yard which received Borough Council approval for a franchise license requires

variance relief for the proposed zero-foot front yard setback where the C-2 Zone requires a minimum front yard setback of 30 feet;

2. Parking variance. The amended site plan application proposes a total of 165 restaurant seats (120 indoor and 45 outdoor) where the Applicant received previous approval for 100 seats. In accordance with Section 350-25A of the Borough's Site Plan Ordinance, 1 parking space is required for each 2.5 restaurant seats, or 66 parking spaces where only 16 on-site parking spaces are proposed;
3. Parking stall dimension design exception. In accordance with Section 350-25D(1) of the Borough's Site Plan Ordinance, parking stalls shall be minimally 9 feet by 18 feet where many of the parking spaces on the site plan are less than this minimum dimension;
4. Accessory structure setback variance. The proposed outdoor seating canopy has a minimum setback of approximately two feet from the side lot line where Section 416-27C(2) of the Borough Zoning Ordinance requires a minimum accessory structure setback of 4 feet from all lot lines;
5. Accessory structure dimensions variance. The proposed outdoor seating canopy is 528 square feet in area where Section 416-27C of the Borough's Zoning Ordinance permits a maximum accessory structure area of 150 square feet; and

WHEREAS, in addition to an Amended Application, the Applicant submitted the following documents:

1. Amended Site Plan prepared by Robert J. Mueller, PLS and Michael J. Hubschman, P.E., P.P. of Hubschman Engineering, P.A., 263A South Washington Avenue, Bergenfield, New Jersey 07621, dated May 6, 2020;

2. Location Survey prepared by Robert J. Mueller, PLS, of Hubschman Engineering, P.A., 263A South Washington Avenue, Bergenfield, New Jersey 07621, dated October 29, 2014;
3. Floor Plan, consisting of 1 sheet, undated; and
4. Letter of Noncompliance issued by Thomas Behrens, PP, AICP (“Mr. Behrens”), the Board Planner, dated July 9, 2020; and

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

The Proposal

1. The Board reviewed the amended application and deemed it complete on August 19, 2020 during its work session. The Board held a public hearing on the application immediately following the work session.
2. The Applicant is seeking amended site plan approval to increase the number of restaurant seats, install an ADA lift and an accessory structure for an outdoor dining area on the Property.
3. The Applicant proposes to install the ADA lift at the front of the building in the Borough’s right-of-way. In July 2020, the Applicant obtained a franchise license from the Borough Council of the Borough of River Edge to install the ADA lift in the right-of-way. The ADA lift will have a zero-foot setback from the property line. In accordance with Section 416 Area, Bulk and Yard Requirements of the Borough’s Zoning Ordinance, the Applicant requires a front yard setback variance for the proposed zero-foot setback where 30 feet are required.

4. The Applicant proposes to increase the number of restaurant seats from 100 to 165 (120 indoor and 45 outdoor). In accordance with Section 350-25A of the Borough's Site Plan Ordinance, 1 parking space is required for each 2.5 restaurant seats, or 66 parking spaces, where only 16 on-site parking spaces are provided.

5. The Applicant proposes to keep existing parking stall dimensions. In accordance with Section 350-25D(1) of the Borough's Site Plan Ordinance, parking stalls shall be minimally 9 feet by 18 feet where many of the parking spaces on the site plan are less than this minimum dimension. A parking design exception is required.

6. The Applicant proposes an outdoor seating tent that will be approximately two feet from the side lot line where Section 416-27C(2) of the Borough's Zoning Ordinance requires a minimum accessory structure setback of four feet from all lot lines.

7. The Applicant's proposed outdoor seating tent will be approximately 33 feet by 16 feet, totaling 528 square feet. Section 416C(2) of the Borough's Zoning Ordinance permits a maximum accessory structure area of 150 square feet. The outdoor seating tent will be 12 feet tall, which is the permitted accessory structure height.

8. As presented in the Applicant's prior site plan approval, the Applicant intends to operate a restaurant called "Sonny T" on the Property.

9. The Property is located in the C-2 Commercial Zoning District, where the restaurant is a permitted use.

10. The Property, identified as Block 1417, Lot 3, is a 0.3148 acre tract developed with a two-story restaurant building with frontage on Johnson Avenue. There are 16 parking spaces on-site and the Applicant has arranged agreements for valet parking services and shared

parking for approximately 50 off-site parking spaces on neighboring property, located at 65 East, NJ-4 (Block 1417, Lot 1) and 277 Johnson Avenue (Block 1417, Lot 2.01).

11. The Applicant proposes to operate the restaurant with an increased number of seats from 100 to 165, which will be comprised of 120 indoor and 45 outdoor seats. The restaurant will operate from 12 p.m. to 2 a.m. and will have approximately eight (8) employees.

Public Hearing

12. The Board considered the July 9, 2020 Letter of Noncompliance by Mr. Behrens. Pursuant to Mr. Behrens' letter, in accordance with Borough Ordinance, the Applicant requires variances for minimum front yard setback, accessory structure setback, accessory structure dimensions and number of parking spaces. In addition, in accordance with the Borough Ordinance, the Applicant requires a parking design exception for parking stall dimensions.

13. The Applicant's counsel, Ms. Gallardo explained that the Applicant had received site plan approval for a food handler's license from the Board and a franchise license from the Borough Council of the Borough of River Edge. Ms. Gallardo further explained that the amended application for site plan approval seeks to install the ADA lift in the right-of-way pursuant to the franchise license, increase the number of restaurant seats from 100 to 165 and construct an outdoor seating area.

14. The Board heard testimony from Carmine Teta ("Mr. Teta"), owner/operator of the Applicant, who was duly sworn and provided testimony in support of the application.

15. Mr. Teta testified that the ADA lift will be installed in the area permitted by the Applicant's franchise license with the Borough and will not interfere with the sidewalk. The ADA lift will be concealed behind an existing concrete wall. The concrete wall will be opened up at one section to permit access to the ADA lift.

16. Mr. Teta testified that on August 19, 2020 he had negotiated with the property owner for 65 East, NJ-4 (Block 1417, Lot 1) and 277 Johnson Avenue (Block 1417, Lot 2.01) to enter into a shared parking agreement to utilize Lots 1 and 2.01 for restaurant patron parking. Mr. Teta testified that he will work with the neighboring property owner to clean up Lots 1 and 2.01, re-pave and seal coat the parking lot. The Applicant and the neighboring property owner entered into a formal agreement for 50 parking spaces on Lots 1 and 2.01. The Applicant agreed to provide the shared parking agreement to the Board.

17. Mr. Teta testified that he will not terminate his valet services agreement with Paragon Parking Management, as presented in the Applicant's original site plan application. Mr. Teta testified that the parking spaces used for the restaurant, including on-site parking, will be valet-only with limited exceptions for unforeseen circumstances. The Applicant agreed to provide all valet service agreements to the Board.

18. The Board raised concerns about the use of one parking space located on Block 1417, Lot 2.01, which is partially located in the Borough's right-of-way. The Applicant agreed that he will not permit his restaurant patrons or valet service to park vehicles in the subject space and will place a traffic cone or other barrier in the subject space.

19. The Board raised concerns about the undersized parking stalls. Mr. Behrens advised that the undersized spaces are a pre-existing non-conformity on the Property. Mr. Teta testified that, with limited exceptions for unforeseen circumstances, all parking will be conducted by professional valets and the undersized spaces will not create an issue for restaurant patrons.

20. Mr. Teta testified that the proposed outdoor seating tent does not cut into parking. The original amended site plan application indicated that the tent will be 30 feet by 15 feet for a total of 450 square feet. At the public hearing, the Applicant requested an increase in the tent size

to 33 feet by 16 feet for a total of 528 square feet in area, which fits within the footprint of the prior outdoor seating area created by the Rugova Restaurant. Despite the increase in size, the outdoor seating area will remain 45 seats.

21. Mr. Teta testified that the outdoor seating tent will be 12 feet high, which is within the Borough's requirements for accessory structure height. The tent will be secured to a six-inch concrete pad that will be level with the parking lot. The tent will be held up by steel poles and will be able to withstand 120 mph winds and 50 pounds per inch of snow load. Two sides of the tent will be able to roll up and will comply with any and all State requirements for outdoor dining, including any Executive Orders issued during the coronavirus disease 2019 (COVID-19) pandemic.

22. The Board raised concerns about runoff from the tent. Mr. Teta testified that the tent is pitched side-to side and will runoff into the parking lot. The Applicant agreed to provide drawings and a picture of the tent to the Board and Board Engineer.

23. Mr. Teta testified that the lighting on the property will be updated to LED and security cameras will be installed.

24. The Board raised concerns about noise from the outdoor seating area located near neighboring apartments. Ms. Gallardo explained that the Property is separated from the neighboring apartments by Coles Brook and trees. Mr. Teta also testified that he intends to install fencing to buffer the noise.

25. The Board raised concerns about access to the outdoor seating area from the restaurant and smoking in the outdoor seating area. Mr. Teta testified that there is no direct access to the building from the tent. Patrons will have to walk approximately 30 feet to the back door. Mr. Teta also testified that he does not intend to permit smoking in the outdoor seating

area. Mr. Behrens testified that the Applicant will have to comply with Borough standards regarding smoking.

26. The Board raised concerns about the valet parking services, including unavailability of valet attendants, drop-off and pick-up locations and safety standards for valet parking spaces. Mr. Teta testified that he has contracted the professional valet service for the entire day, open to close, and anticipates that the valet service will always be available. Mr. Teta testified that if unforeseen circumstances arise where the valet service is unavailable, then patrons will be required to self-park. The Applicant agreed that if the valet parking agreement is cancelled, terminated or otherwise ends, the Applicant must notify the Borough and the Board within 60 days to determine if additional approvals are required.

27. Mr. Teta testified that the drop-off and pick-up area for the valet will be located in the front of the building along Johnson Avenue where there is no street parking. Mr. Behrens advised that any valet parking vehicle arrangements will be subject to the Borough's safety standards, including any required inspection by the Fire Prevention Official.

28. Mr. Behrens testified that the Applicant is requesting N.J.S.A. 40:55D-70(c)(2) variances where the purposes of the MLUL would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment. Mr. Behrens testified that the public benefits of the variances include handicap access and aesthetic enhancements to the Property. Likewise, the addition of outdoor dining on the Property increases outdoor options available in the Borough. Finally, the variance for number of parking stalls is *de minimis* with a decrease in 2 spaces from what is required and the parking design exception for existing undersized parking stalls will be managed by valet services to mitigate the detriment of undersized stalls. Overall, Mr. Behrens opined that the benefits of

granting the variances, design exception and increased restaurant seating requested by the Applicant outweigh any detriments and will advance the purposes of the MLUL, including encouraging development of lands to promote public health and safety and to promote a desirable visual environment. See N.J.S.A. 40:55D-2(a) and (i).

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

30. The Board then entertained a motion to grant the application, with conditions described herein, for the following variances, exceptions and approvals:

- a. A variance for minimum front yard setback to permit a zero-foot setback where 30 feet is required;
- b. A variance for accessory structure setback to permit a two-foot side yard setback where four feet are required;
- c. A variance for accessory structure area to permit a 528 square foot outdoor seating area where 150 square feet are permitted;
- d. A variance for number of parking spaces to permit 16 on-site and 48 off-site spaces for a total of 64 spaces where 66 are required;
- e. A parking design exception for undersized parking stalls; and
- f. An increase in restaurant patrons from 100 to 165, comprised of 45 outdoor and 120 indoor seats.

31. A motion to grant the application with conditions was made by Richard Mehrman and seconded by Ryan Gibbons. A vote was taken and the application was granted by the Board by a vote of 9 to 0. Board member Alphonse Bartelloni abstained from the hearing, discussion and vote on this application.

Justification for Relief

32. The Board found good cause to grant the Applicant's request for variances for minimum front yard setback, accessory structure setback, accessory structure area, number of parking spaces and design exception for parking stall dimensions.

33. The Board considered Mr. Behrens' opinion that the benefits of the proposed variances, design exception and increased restaurant seating requested by the Applicant outweigh any detriments and will advance the purposes of the MLUL.

34. The Board found that the application will improve handicap access, safety of ingress and egress to the Property and will improve aesthetics on the Property. Specifically, the installation of the ADA lift, improved parking lot, valet services and lighting on the Property.

35. The Board found that the valet services will mitigate the potential detriments associated with the pre-existing non-conforming parking stalls on the Property and the variance for number of parking spaces is *de minimis* and will not substantially impair the intent and purpose of the Master Plan and/or Zoning Ordinance and will not cause substantial detriment to the public good.

36. 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 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 would advance the above-referenced purposes of the MLUL.

37. The Board determined that the Applicant addressed all issues raised by Mr. Behrens in his July 9, 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 amended site plan approval, variances and parking design exception, 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. Completion of the proposed development and subsequent 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 shall operate the proposed restaurant with 120 indoor dining seats and 45 outdoor dining seats, for a total of 165 restaurant seats.

6. The Applicant shall maintain 16 on-site parking spaces and 48 off-site parking spaces, for a total of 64 parking spaces.

7. The Applicant shall provide all shared parking agreements and valet service agreements to the Board.

8. The Applicant shall not permit his restaurant patrons or valet service to park vehicles in the parking space on Block 1417, Lot 2.01 that extends into the Borough's right-of-way and will place a traffic cone or other barrier in the subject space.

9. The Applicant shall provide drawings and a picture of the outdoor dining tent to the Board and Board Engineer for review.

10. Valet parking services shall be provided for parking vehicles on the Property. The drop-off and pick-up for valet parking will occur in the front of the building along Johnson Avenue. If the valet parking agreement is cancelled, terminated or otherwise ends, the Applicant shall notify the Borough and the Board within 60 days to determine if additional approvals are required.

11. The Applicant shall comply with all requirements of any prior approvals on the Property that are consistent with this approval and Resolution.

12. 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.

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

14. 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

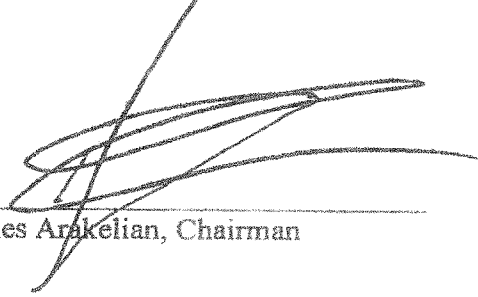
MEMBER	M	2D	YES	NO	ABSTAIN	ABSENT	INELG
Mayor Thomas Papaleo			X				
Councilman Chinigo						X	
James Arakelian			X				
Eileen Boland			X				
Louis Grasso			X				
Alphonse Bartelloni					X		
Michael Krey			X				
Richard Mehrman	X		X				
Chris Caslin			X				
Ryan Gibbons [Alternate #1]		X	X				
Gary Esposito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

Vote on the Memorialization

MEMBER	M	2D	YES	NO	ABSTAIN	ABSENT	INELG
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	X				
Chris Caslin			X				
Ryan Gibbons [Alternate #1]	X		X				
Gary Esposito [Alternate #2]			X				

15.

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 August 19, 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 August 19, 2020.



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

BOROUGH OF RIVER EDGE MUNICIPAL LAND USE BOARD

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