

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

**RESOLUTION GRANTING VARIANCES FOR SWIMMING POOL MINIMUM
FRONT YARD SETBACK AND LOCATION IN FRONT YARD
TO TARIKBIN AND FATMA OK FOR
364 LEE AVENUE, RIVER EDGE, NJ
BLOCK 1002, LOT 54**

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, Tarikbin and Fatma Ok (the "Applicants") have filed an application with the Municipal Land Use Board of the Borough of River Edge (the "Board") for property known as Block 1002, Lot 54 on the tax map of the Borough of River Edge, located at 364 Lee Avenue (the "Property"), for variance relief to construct an in-ground swimming pool within a required front yard setback; and

WHEREAS, the Applicants are the owners of the Property; and

WHEREAS, the Board deemed the application complete on October 7, 2020 and a public hearing was also conducted on October 7, 2020 via Zoom video conference; and

WHEREAS, the Applicants were represented by Benjamin Wine, Esq. ("Mr. Wine") of the law firm Prime & Tuvel, 2 University Plaza Drive, Suite 109, Hackensack, New Jersey 07601; and

WHEREAS, the Applicants were present at the virtual meeting but were not sworn and did not provide testimony on the application; and

WHEREAS, Mathew R. Wilder, P.E. (öMr. Wilderö), 130 Central Avenue, Island Heights, New Jersey 08754, was duly sworn, qualified as an expert professional engineer and planner, and provided testimony in support of the requested relief; 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 an application and the following supporting documents:

1. Boundary and Topographic Survey prepared by David J. Von Steenburg, PLS, of Morgan Engineering & Surveying, P.O. Box 5232, Toms River, New Jersey 08754, dated July 6, 2020. The survey consisted of one sheet and depicted an existing 2-story frame dwelling; and

2. Building Permit Plot Plan prepared by Mathew R. Wilder, PE, of Morgan Engineering & Surveying, P.O. Box 5232, Toms River, New Jersey 08754, dated July 16, 2020. The plot plan consisted of one sheet and was marked as an Exhibit during the public hearing.

WHEREAS, the Applicants also submitted a Letter of Noncompliance issued by Thomas Behrens, PP, AICP (Mr. Behrens), the Board Planner, dated August 13, 2020; and

WHEREAS, the Board, after carefully considering the evidence and testimony presented by the Applicants, as well as the August 13, 2020 Letter of Noncompliance issued by Mr. Behrens, has made the following factual findings and conclusions:

The Property

1. The Property contains approximately 10,876 square feet located within the R-1 Zoning District and is improved by a 2-story frame dwelling.
2. The Property has pre-existing nonconforming conditions with respect to minimum lot depth and minimum rear setback.
3. The Property is unique in that it is a corner lot with 3 front yards abutting Lee Avenue, The Fenway and Howland Avenue.

The Proposal

4. The Applicants seek to construct a 15-foot by 32-foot in-ground swimming pool (480 square feet) in the northeast corner of the front yard along Lee Avenue.
5. The Board reviewed the application and deemed it complete on October 7, 2020 during its work session. The Board conducted a public hearing on the application immediately following the work session.

6. The Board considered the August 13, 2020 Letter of Noncompliance issued by Mr. Behrens. Pursuant to Mr. Behrens' letter, the proposed application triggers the following relief:

§416-28(B). Swimming Pool Minimum Front Yard Setback and Location in Front Yard Where Prohibited. The exterior wall face of the proposed in-ground swimming pool has a proposed minimum front yard setback of 16.4 feet where a minimum setback of 25 feet is required from any street property line and where such bodies of water shall not encroach on any front or side yard required by [Chapter 416].ö Variance relief is required.

Public Hearing

7. The Applicants' counsel, Mr. Wine, explained that the Applicants have three young children and are seeking to install a residential in-ground swimming pool on the Property. The Applicants have been spending more time at home and would like to install this feature for additional family time.

8. The Board considered testimony from the Applicants' expert, Mr. Wilder, who was duly sworn, qualified as an expert and provided expert testimony in support of the requested relief.

9. Mr. Wilder testified that the Property is fronted by 3 streets, which makes the Property uniquely burdened with 3 front yards.

10. Mr. Wilder testified that the proposed swimming pool would be 15 feet by 32 feet, which is a mid-sized residential pool, and located in the northeast corner of the front yard along Lee Avenue. Mr. Wilder explained that the swimming pool would not be visible from the street because of the existing 6-foot-high fence with trellising and evergreens along Lee Avenue. The swimming pool would have a 17.1-foot setback from the frontage along Lee Avenue, where 25

feet is required. Mr. Wilder explained that the application indicated a 16.4-foot setback in error and the plans submitted indicate a 17.4-foot setback but that figure did not accommodate the swimming pool's coping.

11. Mr. Wilder opined that the requested relief is justified under the (c)(1) hardship variance standard because the Property is subject to a hardship due to its unique shape. Mr. Wilder explained that under the MLUL, a (c) variance may be granted by reason of exceptional narrowness, shallowness or shape of a specific piece of property. N.J.S.A. 40:55D-70(c)(1)(a).

12. In addition, Mr. Wilder opined that the requested relief is justified under the (c)(2) flexible variance standard because the swimming pool: creates no detriment due to existing fencing and plantings creating a visual buffer, complies with all other setbacks and impervious coverage requirements, advances purpose (g) of the MLUL by creating a variety of uses to meet the needs of New Jersey citizens (see N.J.S.A. 40:55D-2(g)), and would not impair the Zone Plan or Zoning Ordinance because of the unique shape of the Property.

13. Mr. Behrens opined that the Property is uniquely shaped and disagreed that the proposed swimming pool would create no detriment. Mr. Behrens concurred that the proposed swimming pool is conforming with respect to all other setbacks and impervious coverage.

14. Mr. Behrens questioned Mr. Wilder about whether additional, more conforming locations for the swimming pool were considered and would be possible. In response, Mr. Wilder testified that there were no fully conforming locations on the Property and the proposed location was determined to be the most conforming because it only required a setback variance along the fenced frontage along Lee Avenue and conforms to the setback requirements along the neighboring property line, which is also fenced. Mr. Wilder testified that the location was selected in consideration of the neighbors. Mr. Wilder also explained that if the swimming pool was located

in the rear yard directly behind the home, it would occupy the entire rear yard and could require relocation of the air-conditioning equipment.

15. In response to questions from the Board, Mr. Wilder explained that this Property is unique and different from other corner lots because a traditional corner lot would only have 2 front yards, while this Property is encumbered by 3 front yards.

16. Mr. Wilder testified that the swimming pool would be surrounded by 4 feet of concrete and grading would be performed to send water around the pool and out toward Lee Avenue. Mr. Wilder explained that to perform the grading a panel of the existing fence may need to be temporarily removed and replaced.

17. The Applicants agreed to work with the Board Engineer and stipulate to the Board Engineer's reasonable approval of the project.

18. The Board questioned Mr. Wilder about the percentage of green yard space that would be eliminated in the fenced-in rear yard with the inclusion of the swimming pool. Mr. Wilder estimated that the swimming pool would occupy approximately 25% of the fenced-in rear yard. Several Board members raised concerns that the previous approval on the Property was based on the Applicants' request for green space for their children to play and the installation of the swimming pool would result in an overdeveloped fenced-in rear yard on the Property.

19. The Applicants suggested that the swimming pool could be reduced to 15 feet by 28 feet (420 square feet) to reduce the potential impact on the rear yard. Several Board members raised concerns that the reduction (approximately 60 square feet) would be *de minimis* and the reduced-size swimming pool would still result in an overdeveloped fenced-in rear yard on the Property.

20. The Applicants requested that the Board first take a vote on the original application with the requested swimming pool of 15 feet by 32 feet and a 17.1-foot swimming pool front yard setback variance. Then, if necessary, take a vote on the reduced sized-swimming pool.

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

22. The Board then entertained a motion to grant the application requesting a variance for a 17.1-foot swimming pool front yard setback, pursuant to the Borough of River Edge's Zoning Ordinance.

23. A motion to grant the application was made by Councilman Chinigo and seconded by Alphonse Bartelloni. A vote was taken and the application was granted by the Board by a vote of 6 to 3, with 2 alternates voting.

Justification for Relief

24. The Board found good cause to grant the Applicants' request for a variance for swimming pool minimum front yard setback.

25. The Board considered the Applicants' expert, Mr. Wilder's opinion, and Mr. Behrens' opinion that the Property is uniquely shaped and encumbered by 3 front yards, which could be considered a hardship. The Board also considered Mr. Wilder's opinion that the proposed project advances a purpose of the MLUL and is otherwise conforming.

26. The Board found that the Property is a uniquely shaped corner lot with 3 street frontages and, as such, is encumbered by 3 front yards.

27. The Board found that the proposed swimming pool is fairly typical of the size of an in-ground swimming pool installed at single-family residential properties.

28. The Board found that the proposed swimming pool would have a minimum impact, if any, on adjacent properties because it conforms with other setback requirements, including the setback along the neighboring property line, and impervious coverage requirements.

29. The Board found that the proposed swimming pool would have a minimum impact, if any, on the surrounding neighborhood and would not be noticeable from the street due to existing fencing and landscaping on the Property, which was previously approved by the Board. The existing fencing and landscaping would help to mitigate possible detriments associated with the 17.1-foot swimming pool front yard setback.

30. The Board found that the grant of the variance would have a minimum impact, if any, on surrounding properties within the R-1 Zone. No one from the public or within 200 feet of the Property appeared in opposition of the application.

31. Accordingly, the Board found that the variance relief may be granted pursuant to N.J.S.A. 40:55D-70(c)(1), for the reasons discussed hereinabove. The hardship on the Property was not self-created by the Applicants and the hardship inhibits the extent to which the Property can be used. See Commons v. Westwood Zoning Bd. of Adjustment, 81 N.J. 597, 606 (1980) (discussing self-imposed hardship); Kaufman v. Planning Bd. for Warren, 110 N.J. 551 (1998); and Lang v. N. Caldwell Bd. of Adjustment, 160 N.J. 41, 54-55 (1999) (discussing hardship standard). The Applicants established and the Board found that the variance may be granted without substantially impairing the intent and purpose of the Master Plan and/or Zoning Ordinance, without causing substantial detriment to the public good, and will enhance the residential use of the Property.

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 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 requirements of the Board Engineer, Costa Engineering, including but not limited to confirmation that runoff will not impact adjacent property owners, subject to the reasonable satisfaction and approval of the Board Engineer and the Board.

8. The Applicants 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

<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	
Lou Grasso						X	
Alphonse Bartelloni		X	X				
Michael Krey			X				
Richard Mehrman				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
Lou Grasso							X
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 21st day of October, 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 October 7, 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

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 October 7, 2020. This Resolution memorializes the Board's approval of this matter at its meeting held on October 21, 2020.

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