

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

**RESOLUTION GRANTING VARIANCES FOR MAXIMUM
IMPROVED LOT COVERAGE
TO YACKOV SHAMIS FOR
230 KENSINGTON ROAD, RIVER EDGE, NJ
BLOCK 707, LOT 24**

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, Yackov Shamis (the "Applicant" or "Mr. Shamis") has filed an application with the Municipal Land Use Board of the Borough of River Edge (the "Board") for property known as Block 707, Lot 24 on the tax map of the Borough of River Edge, located at 230 Kensington Road (the "Property"), for variance relief to install a stone paver patio and small retaining wall in the rear yard; and

WHEREAS, the Applicant is the owner of the Property; and

WHEREAS, the Board deemed the application complete on October 21, 2020 and a public hearing was also conducted on October 21, 2020 via Zoom video conference; and

WHEREAS, the Applicant was not represented by counsel; and

WHEREAS, Mr. Shamis 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 of the subject application, 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, 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 notification of the subject application was 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 an application and the following supporting documents:

1. Survey prepared by Lantelme, Kurens & Associates, PC, 101 West Street, Hillsdale, New Jersey 07642, which was undated. The survey consisted of one sheet and depicted an existing 2-story frame dwelling; and
2. Site Plan drawing, which consisted of one sheet and depicted the size and location of the proposed patio and retaining wall.

WHEREAS, the Applicant also submitted a Letter of Noncompliance issued by Thomas Behrens, PP, AICP (öMr. Behrensö), the Board Planner, dated October 6, 2020; and

WHEREAS, the Board, after carefully considering the evidence and testimony presented by the Applicants, as well as the October 6, 2020 Letter of Noncompliance issued by Mr. Behrens, has made the following factual findings and conclusions:

The Property

1. The Property contains approximately 6,000 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 lot size and impervious coverage.

The Proposal

3. The Applicant seeks to construct a 232 square foot stone paver patio and 12-inch tall by 12-foot long retaining wall to support the patio in the rear yard of the Property.
4. The Board reviewed the application and deemed it complete on October 21, 2020 during its work session. The Board conducted a public hearing on the application immediately following the work session.
5. The Board considered the October 6, 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 §416(b) Schedule of Zoning District Area, Bulk and Yard Requirements, Maximum Improved Lot Coverage. The R-1 Zone wherein the subject site is located permits a maximum improved lot coverage of 35% where the proposed patio (±250 square feet) will increase the property's improved lot coverage to approximately 44.4% where the property has an existing nonconforming improved lot coverage of 41.1%. Variance relief is required.

Public Hearing

6. Mr. Shamis testified that he and his spouse have young children and are seeking to install a stone paver patio and retaining wall in the rear yard of the Property. Mr. Shamis explained that he and his family have been spending more time at home and would like to install the patio to accommodate a grill, table and chairs.

7. Prior to the hearing, Mr. Shamis worked with Mr. Behrens to reduce the size of the proposed patio from ~250 square feet to ~232 square feet.

8. Mr. Shamis testified that he purchased the house in 2019 from a builder.

9. Mr. Behrens explained that the builder had received approval for 35% impervious coverage on the Property, but had pushed the limits of coverage to 41.1% without seeking additional approvals from the Borough. Mr. Behrens testified that, as a result, the Property has a pre-existing nonconforming condition for impervious coverage. In addition, Mr. Behrens testified that the 6,000 square foot lot is undersized for the R-1 Zone, where 7,500 square feet are required.

10. Mr. Behrens opined that the proposed patio is not an uncommon feature in the neighborhood and community. Several of the properties neighboring the Property include patios.

11. Mr. Behrens questioned Mr. Shamis about whether there is a seepage pit on the Property. In response, Mr. Shamis testified that there is a seepage pit on the Property and he would be willing to work with the Borough Engineer to direct patio drainage to the seepage pit.

12. In response to questions from the Board, Mr. Shamis explained that he is not looking to take away any existing stepping stones from the Property just looking to add the patio and retaining wall.

13. Mr. Behrens explained that the stepping stones and other features on the Property were included in the calculation of the 41.1% impervious coverage on the Property.

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

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

16. The Board then entertained a motion to grant the application requesting variances for maximum improved lot coverage pursuant to Sections 416-15 and 416(b) of the Borough of River Edge's Zoning Ordinance.

17. A motion to grant the application was made by Vice Chairman Richard Mehrman and seconded by Eileen Boland. A vote was taken and the application was granted by the Board by a vote of 7 to 0, with 1 alternate voting.

Justification for Relief

18. The Board found good cause to grant the Applicant's request for variances for maximum improved lot coverage pursuant to Sections 416-15 and 416(b) of the Borough of River Edge's Zoning Ordinance.

19. The Board considered Mr. Behrens's opinion that the Property is undersized, the pre-existing nonconforming impervious coverage was not due to the Applicant, and the proposed patio and retaining wall are not out of character with the surrounding neighborhood.

20. The Board found that the Property is subject to an exceptional situation due to the builder's disregard of approvals for impervious coverage on the Property, which restricted all subsequent owner's ability to develop the Property to meet their needs.

21. The Board also found that the grant of the variance would have a minimum impact, if any, on surrounding properties within the R-1 Zone. The proposed patio is a common feature in the R-1 Zone and surrounding neighborhood. The proposed patio was reduced in size by the

Applicant. The drainage from the proposed patio is able to be connected to the seepage pit on the Property so neighboring properties will not be impact. No one from the public or within 200 feet of the Property appeared in opposition of the application.

22. 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 herein. 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 Applicant 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 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 Applicant shall be permitted to increase impervious coverage on the Property to 44% in order to construct a paver patio and retaining wall that is consistent with testimony offered at the public hearing and in the application.

3. 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.

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. The Applicant's obtaining of approvals from all outside agencies shall be a prerequisite for issuance of a building permit, if applicable.

5. The Applicant shall apply for and obtain a soil movement permit, to the extent same may be required.

6. If required, the Applicant shall establish an escrow account 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 the Board Engineer, Costa Engineering, including but not limited to confirmation that runoff from the proposed patio can be directed to the Property's seepage pit and will not impact adjacent property owners, subject to the reasonable satisfaction and approval of the Board Engineer and the Board.

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

<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	X				
Lou 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							X
Councilman Chinigo							X
James Arakelian							
Eileen Boland							
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 ____ day of November, 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 21, 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 21, 2020. This Resolution memorializes the Board's approval of this matter at its meeting held on November ____, 2020.

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