

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

**RESOLUTION GRANTING VARIANCES FOR  
MAXIMUM IMPROVED LOT COVERAGE  
TO VISAR VICK JAKUPI FOR  
830 PARK AVENUE, RIVER EDGE, NJ  
BLOCK 213, LOT 13.01**

**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**, Visar Vick Jakupi (the "Applicant") filed an application with the Municipal Land Use Board of the Borough of River Edge (the "Board") for property known as Block 213, Lot 13.01 on the tax map of the Borough of River Edge, located at 830 Park Avenue (the "Property"), for variance relief to construct an in-ground swimming pool in the rear yard; and

**WHEREAS**, the Applicant and his wife are the owners of the Property; and

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

**WHEREAS**, the Applicant was not represented by counsel; and

**WHEREAS**, the Applicant and his wife, Gentiani Jakupi, were present at the virtual meeting and were duly sworn to provide testimony in support of the application; and

**WHEREAS**, Raymond Moraski, Project Manager ("Mr. Moraski"), Koestner Associates Professional Engineers & Land Surveyors, 61 Hudson Street, Hackensack, NJ 07601, was duly sworn, qualified as an expert, 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 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 an application and the following supporting documents:

1. Survey prepared by Steven L. Koestner, P.E. & L.S., Koestner Associates Professional Engineers & Land Surveyors, 61 Hudson Street, Hackensack, NJ 07602, dated November 3, 2020. The survey consisted of one sheet and depicted an existing 2-story vinyl and part stone frame dwelling; and
2. Proposed Pool Plan prepared by Steven L. Koestner, P.E. & L.S., Koestner Associates Professional Engineers & Land Surveyors, 61 Hudson Street, Hackensack, NJ 07602, dated August 21, 2020. The pool plan consisted of one sheet.

**WHEREAS**, the Applicant also submitted a Letter of Noncompliance issued by Thomas Behrens, PP, AICP (öMr. Behrensö), the Board Planner, dated October 14, 2020; and

**WHEREAS**, the Board, after carefully considering the evidence and testimony presented by the Applicant, as well as the October 14, 2020 Letter of Noncompliance issued by Mr. Behrens, has made the following factual findings and conclusions:

The Property

1. The Property contains approximately 8,256 square feet located within the R-1 Zoning District and is improved by a 2-story frame dwelling.

2. The Property has a pre-existing nonconforming condition with respect to maximum improved lot coverage with 38.78% existing where 35% is permitted.

3. The Property is unique in that the rear property line is supported by a 14-foot-high retaining wall which separates the Property from the New Jersey Transit railway below.

The Proposal

4. The Applicant seeks to construct a 16-foot by 32-foot in-ground swimming pool (512 square feet) in the southeast corner of the rear yard.

5. The Board reviewed the application and deemed it complete on December 2, 2020 during its work session. The Board conducted a public hearing on the application immediately following the work session.

6. The Board considered the October 14, 2020 Letter of Noncompliance issued by Mr. Behrens. Pursuant to Mr. Behrensö letter, the proposed application triggers the following relief:

§416-15 Maximum Improved Lot Coverage and §416b 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 pool and paved surface will increase the property's improved lot coverage to approximately 48.47% where the existing lot coverage is a nonconforming 38.78%. Variance relief is required.

### Public Hearing

7. The Applicant and his wife, Gentiani Jakupi (Mrs. Jakupi), explained that they have 3 young children and are seeking to install a residential in-ground swimming pool on the Property. Mrs. Jakupi explained that their youngest child has special needs. Having a swimming pool at home would be beneficial for their youngest child who enjoys swimming but needs more attention than can be provided at the community pool. Mrs. Jakupi explained that they have been spending more time at home and would like to install this feature for additional family time.

8. The Applicant testified that there are currently 2 underground seepage pits on the Property and an additional underground seepage pit has been considered to accommodate for additional lot coverage associated with the proposed swimming pool.

9. The Applicant also testified that landscaping along the rear yard, including planting arborvitaes, is planned.

10. Mr. Behrens explained that the Applicant is seeking a (c) bulk variance, of which there are two types a (c)(1) hardship variance and a (c)(2) benefit/detriment variance. Mr. Behrens further explained that to receive a (c)(1) variance, an applicant must establish that the property is subject to an extraordinary or exceptional situation uniquely affecting the property, including exceptional narrowness, shallowness, shape, physical features or topographical conditions. To receive a (c)(2) variance, an applicant must establish that the purpose of the MLUL would be advanced by the variance and the benefits of any variance would substantially outweigh any

detriment. Further, to obtain a (c)(1) or (c)(2) variance, an applicant must also prove that the relief sought would not be substantially detrimental to the public good and would not substantially impair the intent and purpose of the Borough's zone plan and Zoning Ordinance.

11. The Board considered testimony from the Applicant's expert, Mr. Moraski, who was duly sworn, qualified as an expert and provided expert testimony in support of the requested relief.

12. Mr. Moraski testified that the proposed 16-foot by swimming pool complies with all bulk requirements except improved lot coverage. The Property is supported along the rear property line by a 14-foot retaining wall. The in-ground swimming pool was designed to not interfere with the retaining wall. Mr. Moraski further explained that the location of the swimming pool was selected to avoid interference with the existing underground seepage pits, which were installed at the time of construction of the house.

13. In response to questions from the Board and Mr. Behrens, the Applicant explained that the existing non-conformity with respect to improved lot coverage was not previously approved by the Board. The Applicant pulled a permit to install a paver patio in the rear yard, which was intended to max out the Property's improved lot coverage to 35%. The Applicant testified that when the patio was installed, the Applicant was out of town and the contractor used all of the pavers delivered instead of only the amount that would reach 35%. The Applicant further explained that with this application he hoped to correct the non-conformity and receive full approval from the Board for all improved lot coverage over the 35% permitted.

14. In response to questions from the Board, the Applicant and Mr. Moraski advised that the 16-foot by 32-foot pool proposed is a standard size for residential homes. The Applicant explained that he had looked into installing a similar size above-ground pool but, upon consultation

with Mr. Moraski's firm, determined that an above-ground pool would impact the integrity of the retaining wall. The Applicant further explained that the 16-foot by 32-foot size in-ground pool would be better suited for his family's needs.

15. Several Board members raised concerns regarding the significant amount of improved lot coverage proposed by the Application. Substantial discussion was held regarding the location of the proposed swimming pool, patio and concrete walkway around the pool. In response, the Applicant agreed to reduce the size of the paver patio and reduce the concrete walkway around the proposed pool by approximately 5%. Mr. Moraski calculated that the amended improved lot coverage would total 43%.

16. Several Board members also raised concerns regarding the structural integrity of the retaining wall and the location of an underground additional seepage pit. Mr. Moraski testified that his firm is familiar with the retaining wall because it had assisted in its construction. He explained that the swimming pool and the additional seepage pit would not interfere with the retaining wall and the excavation for the pool would alleviate surcharge on the retaining wall.

17. In response to questions from the Board, Mr. Moraski opined that the existing underground seepage pits were most likely installed at the time of construction to mitigate the impact of going from no impervious coverage on the Property to the impervious coverage created by the home. Mr. Moraski testified that this is a standard practice.

18. The Applicant agreed to work with the Board Engineer to submit revised site plans for review and approval and to permit the Board Engineer to conduct inspection(s) to confirm the stability of the construction for the pool and seepage pits.

19. The Applicant agreed to install landscaping along the fence in the rear yard.

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

21. The Board then entertained a motion to grant the application requesting a variance for 43% maximum improved lot coverage, pursuant to the Borough of River Edge's Zoning Ordinance.

22. A motion to grant the application was made by Vice Chairman Mehrman and seconded by Alphonse Bartelloni. A vote was taken and the application was granted by the Board by a vote of 10 to 0, with 1 alternate voting.

#### Justification for Relief

23. The Board found good cause to grant the Applicant's request for a variance for maximum improve lot coverage.

24. The Board considered the Applicant's expert, Mr. Moraski's opinion, and Mr. Behrens's opinion that the Property is uniquely encumbered by a 14-foot retaining wall, which could be considered a hardship. The Board also considered Mr. Moraski's opinion that the impacts of the proposed project are mitigated by the installation of an additional seepage pit, landscaping and is otherwise conforming.

25. The Board found that the Property is subject to an exceptional physical or topographical condition because it is encumbered by a 14-foot retaining wall in the rear yard.

26. 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.

27. 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 lines.

28. 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 proposed landscaping on the Property. The existing fencing and proposed landscaping would help to mitigate possible detriments associated with the increased improved lot coverage.

29. The Board found that the increased improved lot coverage from 35% to 43% was not insignificant but could be mitigated by the installation of an additional seepage pit.

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 Applicant 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. 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 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 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 and inspection of the premises to confirm the stability of the retaining wall on the Property.

7. The Applicant is permitted to increase improved lot coverage on the Property to 43% for the installation of a 16-foot by 32-foot in-ground swimming pool in the rear yard, as set forth in this resolution.

8. The Applicant shall submit revised plans with updated improved lot coverage calculations to the Board and the Board Engineer.

9. The Applicant shall install an additional (or larger combined) seepage pit on the Property, subject to the reasonable satisfaction and approval of the Board Engineer and the Board.

10. The Applicant shall install landscaping along the fence in the rear yard.

11. The Applicant shall comply with all requirements of the Board Engineer, Costa Engineering, including but not limited to obtaining confirmation that the construction will not impact stability of the retaining wall on the Property, subject to the reasonable satisfaction and approval of the Board Engineer and the Board.

12. The Borough's Building Department is not authorized to issue a certificate of occupancy until the receiving confirmation from the Board Engineer regarding stability.

13. 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	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**

<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							
Lou Grasso							
Alphonse Bartelloni							
Michael Krey							
Richard Mehrman							
Chris Caslin							
Ryan Gibbons [Alternate #1]							
Gary Esposito [Alternate #2]							X

**BE IT FURTHER RESOLVED** that the Resolution adopted on this 16th day of December, 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 December 2, 2020 meeting, and that a copy of this Resolution be provided to the Applicant, the Borough Engineer, 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 December 16, 2020. This Resolution memorializes the Board's approval of this matter at its meeting held on December 2, 2020.

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