

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

RESOLUTION

**GRANTING VARIANCES FOR MAXIMUM IMPROVED LOT COVERAGE
AND MAXIMUM LOT COVERAGE
TO TINA XUE FOR
226 MANCHESTER ROAD, RIVER EDGE, NJ
BLOCK 901, LOT 22**

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, Tina Xue (the "Applicant" or "Ms. Xue") filed an application with the Municipal Land Use Board of the Borough of River Edge (the "Board") for property known as Block 901, Lot 22 on the tax map of the Borough of River Edge, located at 226 Manchester Road (the "Property"), for variance relief to construct a deck in the rear yard of the Property; and

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

WHEREAS, the Board deemed the application complete on December 16, 2020 and a public hearing was also conducted on December 16, 2020 via Zoom video conference; and

WHEREAS, the Applicant was not represented by counsel; and

WHEREAS, Ms. Xue was present at the virtual meeting and was duly sworn to provide testimony in support of the application; and

WHEREAS, the Applicant's contractor, Howard Ridkes ("Mr. Ridkes"), 2210 Hilltop Road, Mahwah, NJ 07430, 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 the Municipal Land Use Law (the öMLULö), 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 have been met; and

WHEREAS, the Applicant submitted an application and the following supporting documents:

1. Survey prepared by Daniel M. Dunn, PLS, Dunn Surveying & Mapping, PA, 40 East Prospect Street, Waldwick, NJ 07463, dated February 27, ,2019. The survey consisted of one sheet and depicted an existing 2 story dwelling and the size and location of the proposed deck; and

2. Deck Plan prepared by Robert P. De Pippa Jr., Architect & Consultant, 57 Kaufman Avenue, Little Ferry, NJ 07643, dated August 27, 2020, depicting the size, details and elevation of the proposed deck. The site plan consisted of two sheets; and

WHEREAS, the Applicant 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 Applicant, 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 6,000 square feet located within the R-1 Zoning District and is improved by a 2-story dwelling.
2. The Property has pre-existing nonconforming conditions with respect to lot size with 6,000 square feet existing and 7,500 square feet required and with respect to improved lot coverage where 35.1% is existing and 35% is permitted.

The Proposal

3. The Applicant seeks to construct a 390 square foot wood composite deck in the rear yard.
4. The Board reviewed the application and deemed it complete on December 16, 2020 during its work session. The Board conducted a public hearing on the application immediately following the work session.
5. 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:

§416-15 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 30-foot by 13-foot (390 square feet) deck will increase the property's improved lot coverage to approximately 41.6%. Variance relief is required.

§416-14 Maximum Lot Coverage and §416b Schedule of Zoning District Area, Bulk and Yard Requirements. The R-1 Zone wherein the subject site is located permits a maximum lot coverage of 25% where the proposed deck will increase the property's lot coverage to approximately 27.1%. Variance relief is required.

Public Hearing

6. The Applicant explained that she has a young child and a dog and is looking to install a deck with a gate to provide a safe space to spend time and entertain outside. The Applicant testified that there is currently a small patio in the rear yard along the neighboring property that does not provide privacy, security or enough space for her family's needs.

7. The Applicant testified that nearly all of the neighboring properties have a deck or patio similar to or larger than the proposed deck.

8. Mr. Behrens explained that the Property is undersized and that the impervious coverage is maxed out on the Property. Mr. Behrens stated that the proposed deck would increase improved lot coverage but the application meets all other bulk requirements of the Borough's Zoning Ordinance.

9. In response to questions from Mr. Behrens, the Applicant testified that she chose the size of the proposed deck to match the envelope of the house and to have enough space for a

grill, table and chairs. The Applicant further testified that the rear yard is fairly flat but there are irregularities where a tree may have once been located.

10. In response to questions from the Board and Mr. Behrens, Mr. Ridkes testified that the deck would be wood composite with spaces between the planks and beneath the deck would be grass. Mr. Ridkes further testified that the deck was chosen instead of a patio because a patio would require the installation of concrete steps down from the dwelling to the rear yard and the deck would create less runoff than a patio.

11. In response to questions from the Board, the Applicant testified that she had not considered removing the small paver patio on the Property because it provides an entry to her mud room and garage.

12. Mr. Behrens explained that the Applicant are seeking (c) bulk variances, 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)(2) variance, an applicant must establish that the purpose of the MLUL would be advanced by the variances and the benefits of any variances would substantially outweigh any detriment. Further, to obtain a (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.

13. In response to questions from the Board, the Applicant agreed to have the plans reviewed by the Board Engineer.

14. The Board then entertained a motion to grant the application requesting variances for 41.6% maximum improved lot coverage and 27.1% maximum lot coverage, pursuant to the Borough of River Edge's Zoning Ordinance.

15. A motion to grant the application to install an elevated exterior deck in the rear yard of the Property, consistent with the drawings submitted in the application, subject to review by the Board Engineer was made by Mr. Caslin and seconded by Councilman Chinigo. A vote was taken and the application was granted to by the Board by a vote of 8 to 0, with 1 alternate voting.

Justification for Relief

16. The Board found good cause to grant the Applicant's request for variances for maximum improved lot coverage and maximum lot coverage.

17. The Board considered Mr. Behrens's opinion that the proposed addition would advance purpose (i) of the MLUL, by improving aesthetics and maintaining consistency of design in the neighborhood. See N.J.S.A. 40:55D-2(i).

18. The Board found that the proposed deck would improve the aesthetic of the Property and the neighborhood by bringing the Property more in line with other neighboring properties.

19. The Board found that the grant of the variances 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.

20. 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 the 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 Applicant 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 Applicant met her burden of proof. The grant of the variances is consistent with the neighborhood. As aforesaid, 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 will not impact surrounding properties in the R-1 District.

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, and as follows:

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 deck and subsequent use of the Property shall be consistent with testimony offered at the public hearing, the plans submitted with the application, the findings and conclusions of the Board stated 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 review the plans and conduct an inspection of the premises.

7. The Applicant is permitted to increase improved lot coverage to 41.6% and lot coverage to 27.1% for the installation of an elevated exterior deck in the rear yard, as described in the plans submitted in the application and as set forth in this Resolution.

8. To the extent required, the Applicant shall comply with all requirements of the Board Planner and the Board Engineer, including but not limited to obtaining confirmation that the construction will not impact runoff onto neighboring properties, subject to the reasonable satisfaction and approval of same and the Board.

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

10. 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	X				
James Arakelian			X				
Eileen Boland			X				
Lou Grasso						X	
Alphonse Bartelloni			X				
Michael Krey			X				
Richard Mehrman						X	
Chris Caslin	X		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							
Lou Grasso							X
Alphonse Bartelloni							X
Michael Krey							
Richard Mehrman							X
Chris Caslin							
Ryan Gibbons [Alternate #1]							X
Gary Esposito [Alternate #2]							

BE IT FURTHER RESOLVED that the Resolution adopted on this 6th day of January, 2021 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 16, 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.

James Arakelian, Chairman

CERTIFICATION

I, _____, Secretary of the Board, do hereby certify that the above Resolution was adopted by the Board at its meeting held on January 6, 2021. This Resolution memorializes the Board's approval of this matter at its meeting held on December 16, 2020.

_____, Secretary
Borough of River Edge
Municipal Land Use Board