

REGULAR MEETING of the Moonachie Planning Board called to order, J. Molinari in the chair, at the Municipal Building (Via Zoom) on Thursday, September 16th , 2021 at 7:08 P.M.

J. Molinari called for Pledge of Allegiance to the Flag.

ROLL CALL: J. Molinari- present, N. Derevyaniuk- not present, J. Campbell- present, M. Meehan- not present, V. Drozd- present, G. Tessaro-present, J. Wende- not present A. Arroyo- present, R. Petrella- not present, Attorney Novello- not present

Secretary stated that notice of the meeting was announced in accordance with the Open Public Meeting Act and notice of this Zoom Meeting was published in the Record on January 28 and in the Star Ledger on January 28, 2021 to join the Zoom Meeting please follow The Zoom Information is as follows:

<https://zoom.us/j/95646506880>

Meeting ID: 956 4650 6880
Passcode: 034604

By Phone
+1 929 205 6099
Meeting ID: 956 4650 6880
Passcode: 034604

Meeting agenda and other documents will be available on the Borough’s website:

<http://moonachie.us/planningboard.html>

Chairperson stated “This meeting is a judicial proceeding. Any questions or comments must be limited to issues that are relevant to what the board may legally consider in reaching a decision and decorum appropriate to a judicial hearing must be maintained at all time.”

Motion by V. Drozd and second by G. Tessar to approve Minutes of August 19th, 2021.
ROLL CALL: Molinari, Campbell, Drozd, Tessaro, Arroyo.
All ayes. So ordered.

COMMUNICATIONS: NONE
REPORTS: None
NEW BUSINESS: None
OLD BUSINESS:

Variance/Site Plan application (21-V2) for 150 Moonachie Road, Block 44, Lot 5

Motion by G. Tessar and second by V. Drozd to approve Resolution#2021-5

**MEMORIALIZING RESOLUTION
RESOLUTION #2021-5**

* * * * *

WHEREAS, CASTREMAR, INC. D/B/A SEGOVIA RESTAURANT, (hereinafter the “Applicant”) the being owner of, 150 Moonachie Road a/k/a 145 Moonachie Road, located in the Borough of Moonachie, County of Bergen, State of New Jersey (hereinafter the “Borough”), said premises also being known as, Block 44, Lot 5 as indicated on the Borough’s Tax Assessment Map (hereinafter the “Site”), has applied to the Borough’s Planning Board (hereinafter the “BOARD”), seeking bulk variance relief to demolish an existing deck area and construct a new patio area with a mechanical pergola system.

WHEREAS, The Applicant was represented by Daniel R. Lagana, Esq., of the Law Firm of Cleary, Giacobbe, Alfieri & Jacobs, LLC, 169 Ramapo Valley Road, Oakland, New Jersey 07436.

WHEREAS, Applicant has submitted various documents which were considered by BOARD including:

1. Borough of Moonachie, Appeal For Variance from Certain Provisions of the Zoning Ordinance, undated;
2. Verification and Authorization, dated February 12, 2021;
3. Affidavit of Proof of Payment of Taxes and/or Local Assessments, dated February 12, 2021;
4. Borough of Moonachie Building Department Zoning Denial Letter, dated January 10, 2021;
5. Borough of Moonachie, 200 Feet Property Owner List, dated February 8, 2021;
6. Borough of Moonachie, Tax Certification, dated May 5, 2021;
7. Borough of Moonachie, Sewer Tax Requirement, as per Lisa Ciannamea, C.T.C., dated May 15, 2021;
8. Five (5) photographs of deck area and parking lot, undated;
9. Borough of Moonachie, Tax and Sewer Certification, certified May 19, 2021;
10. Architectural plans prepared by Cesar F. Padilla, R.A., entitled, "Patio, Segovia Restaurant, 150 Moonachie Road, Moonachie, NJ 07074", dated April 26, 2014, consisting of two (2) sheets:

<u>Sheet No.:</u>	<u>Sheet Title:</u>
1 of 1	Key Map, Site Plan, General
2 of 2	Floor Plan, Front Elevation, Side Elevation

11. Architectural plans prepared by Cesar F. Padilla, R.A., entitled, "Proposed Enclosure of Exit Door Eating Area, Segovia Restaurant, 150 Moonachie Road, Moonachie, NJ 07074", dated November 23, 2020, consisting of two (2) sheets:

<u>Sheet No.:</u>	<u>Sheet Title:</u>
1 of 1	Site Plan, Floor Plans, Notes, Legend
2 of 2	Elevations, Typical Wall Section

12. Pergola plans, entitled, "Proposed Pergola, Outdoor Living Solution, 93 Moonachie Avenue, Moonachie, NJ 07074", dated July 13, 2021; and
13. Power Point Presentation by SKYFREE, consisting of 10 sheets.

WHEREAS, all reports, correspondence, and all other memoranda from Borough agencies and officials are incorporated herein and made a part hereof by reference in conjunction with this application as if set forth verbatim, including the following:

1. Board Engineer's review memorandum, dated June 24, 2021, last revised August 12, 2021.

WHEREAS, the Applicant seeks the following variance relief from the Township's Zoning Ordinances:

1. Section 21-17.2- To permit 40 on-site parking spaces where 60 on-site parking spaces (48 spaces for patrons and 12 spaces for employees) are required.

WHEREAS, the Applicant seeks to continue the existing non-conformities, which will not be exacerbated as a result of this application:

1. Attachment 2.1- To permit a rear yard setback of 8.5 feet where a minimum side yard setback of 15 feet is required.

WHEREAS, the BOARD determined it had jurisdiction and upon due notice as required by law, public hearings were conducted on August 19, 2021.

NOW, THEREFORE, BE IT RESOLVED BY THE BOROUGH OF MOONACHIE PLANNING BOARD that the BOARD hereby makes the following findings of fact:

1. The Site is located in the B-1 General Business Zone, which permits restaurants as a principle use on 10,000 square-foot lots.
2. The Site is oversized at 20,600 square feet.
3. The Site is improved with an existing restaurant.
4. The building is a pre-existing non-conforming structure with deviations from minimum rear yard setback requires of 8.5 feet where 15 feet is required. The Applicant seeks to continue this pre-existing non-conformity that will not be exacerbated as a result of this application.
5. Also, the Site provides 40 on-site parking spaces where 60 parking spaces are required. The Applicant seeks a variance from the parking requirement.
6. The building complies with minimum front yard setback requirements, minimum side yard setback requirements, maximum building coverage requirements, and maximum building height requirements.
7. In support of the application, the Applicant presented testimony of Mr. Anthony M. Treus, General Manager of Segovia Restaurant. Mr. Treus was sworn, qualified, and accepted by the BOARD as a fact-witness.
8. Mr. Treus testified Segovia Restaurant was founded in 1980 and has been in continuous operation since that time.
9. Mr. Treus testified that the proposed application seeks to remove an existing composite wood deck and replace with a concrete patio and mechanical pergola system. The existing deck area is approximately 362 square feet.
10. Mr. Treus testified a composite wooden deck is deteriorating and is causing an unsafe condition for patrons. Relying on photographs submitted to the BOARD, Mr. Treus testified the deck is pulling away from the building and is causing raised planks that could cause a tripping hazard.
11. Also, Mr. Treus testified the existing awning also creates a welfare issue for the patrons as birds are constantly nesting in the area. Also, Mr. Treus testified the awning does not provide adequate cover for patrons in windy weather.
12. As part of this application, the Applicant seeks to remove the existing deck and replace it with a poured concrete foundation. Fixed atop the concrete foundation will be a mechanical pergola system. The new area will be 390 square feet measured as 25 x 15.6. The proposed patio area will be 28 square feet larger than the existing area. Mr. Treus testified the increase in the square footage is based on the design of the mechanical pergola system.
13. Regarding parking, Mr. Treus testified that the Site provides parking for 40 vehicles, including two ADA accessible parking spaces located at the main entrance. Mr. Treus testified no employees are permitted to park on-Site aside from himself and the owner. Mr. Treus testified that more than 75% of the staff arrives via mass transportation or carpooling. Two bus stops are located in front of the restaurant. The employees that do arrive via their personal vehicle are expressly not permitted to park on-Site. Mr. Treus testified there is substantial off-street parking

Rooney Place, Garden Street, and Maple Street located within walking distance for both employees and restaurant patrons.

14. Furthermore, Mr. Treus testified that the Applicant currently has a lease agreement with the owner of the adjacent property located at 155 Moonachie Road. That agreement provides for an additional 21 parking spaces. Also, there is a parking agreement with the owner of 111 Moonachie Road, which nets 14 parking spaces and a parking agreement with the owner of 141 Moonachie Road, which nets 9 parking spaces, for a total of 44 off-site parking spaces.
15. Mr. Treus testified the Site has operated successfully as such for decades and this project does not change the overall function of the restaurant's operations.
16. In addition, Mr. Treus testified there are two additional Segovia Restaurants within approximately one linear mile of this location: one in Little Ferry and one in Carlstadt. Mr. Treus testified that those restaurants being in such close proximity creates a symbiotic relationship by providing overflow on busy occasions.
17. Regarding lighting, Mr. Treus testified that no new lighting is provided as part of this application.
18. Regarding stormwater management, Mr. Treus testified that the existing conditions will be remain and will not be further exacerbated. No additional impervious coverage is being added on-site as a result of this application. Mr. Treus testified the existing roof run-off currently exits toward the side yard away from the pedestrian parking field and that will continue. Also, Mr. Treus testified that during severe inclement weather the pergola system will be opened and the patio area exposed to the elements as is the current condition.
19. Regarding landscaping, Mr. Treus testified that currently there exists large planters with shrubs and flowers that buffer the existing deck area and the parking field. Mr. Treus testified that those planters will remain.
20. Mr. Treus testified that a small ramp is used by wheelchair bound and/or others with decreased mobility to access the existing patio and the restaurant interior. The ramp will remain and used by those patrons once the pergola is completed.

WHEREAS, the public was given the opportunity to present sworn testimony and none was so produced:

NOW, THEREFORE, BE IT RESOLVED BY THE BOROUGH OF MOONACHIE PLANNING BOARD the BOARD makes the following findings of fact and conclusions of law:

1. The Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-70c provides the Board with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain proofs which are enunciated in the statute. Specifically, an applicant may be entitled to relief if this specific parcel is limited by exceptional narrowness, shallowness or shape. An Applicant may show that exceptional topographic or physical features exist that uniquely affect a specific piece of property. Further, the applicant may also provide evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Those categories specifically enumerated above constitute the positive criteria necessary in order to obtain "bulk" or C variance relief.
2. Moreover, the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-70c (2) further provides the Board with the power to grant variances based on whether the Applicant's proofs advance the purposed of the MLUL by the deviation from the

zoning ordinance requirements and if the benefits of the deviation from the zoning ordinance requirements substantially outweigh any detriment.

3. In addition, the applicant must show that the proposed variance relief sought will not have a substantial detriment to the public good and further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. See, Jacoby v Englewood Cliffs Zon. Bd. Of Adjustment, 442 N.J. Super. 450, 471 (App. Div. 2015). This is known as the negative criteria. It is only in those instances when the Applicant has satisfied that the positive criteria outweigh the negative criteria can relief be granted.
4. The burden of proof rests upon the Applicant to establish these criteria.
5. After a review of the record evidence, the BOARD finds the Applicant has satisfied its burden of proof pursuant to the N.J.S.A. 40:55D-70c showing the positive criteria outweighs the negative criteria.
6. The BOARD finds the restaurant is a permitted use in the Business Zone. Also, the building is a pre-existing non-conforming structure.
7. The BOARD finds the proposed patio and pergola system will encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare. The BOARD finds the existing deck area must be replaced as it creates a hazard to the restaurant patrons. Also, the existing awning system also creates potential for unsanitary conditions.
8. In addition, the BOARD finds the proposed patio and pergola system will further provide adequate light, air and open space. The BOARD finds the pergola system will provide open air dining, which is now more critical than ever considering the COVID-19 pandemic. Further, the BOARD notes a diminimus increase of 28 square feet from the existing condition.
9. The BOARD further finds the positive criteria outweighs and detriments.
10. The BOARD finds the Site has operated successfully as a restaurant since 1980. There is sufficient off-street on Rooney Place, Garden Street and Maple Street. The Applicant has secured parking agreements with the adjacent properties to provide an additional 44 parking spaces for a total of 84 parking spaces where 60 is required. No employees are permitted to park on the Site, which further reduces the total parking requirement. Also, there are two bus stops in front of the restaurant, that further mitigates the need for on-site parking. Finally, there are two “sister” restaurants in close proximity, which are used as over-flow.
11. Moreover, the BOARD finds there will be no changes to lighting, impervious coverage, or stormwater management.
12. Finally, the BOARD found that no member of the public spoke in opposition to the granting of the variance relief requested.

NOW, THEREFORE, BE IT RESOLVED by the Borough of Moonachie Planning Board, that the Applicant is hereby GRANTED site plan approval with variance relief pursuant to N.J.S.A. 40:55D-70c, subject to the following conditions:

1. All improvements are to be completed in accordance with the testimony and evidence submitted to the BOARD;
2. The Applicant shall secure all permits and pay all fees necessary for the proposed construction;
3. Applicant shall provide an “as built” plan as to the herein approvals prior to the issuance of its final certificate of occupancy;

4. This resolution is subject to any other applicable public health, safety and welfare local, County, State and/or Federal regulations;
5. Any ambiguities regarding the interpretation of this Resolution related to major site plan modifications of shall be resolved by the BOARD upon due notice to the public.

The Board thereby retains jurisdiction as to same.

ROLL CALL: Molinari- recused, Campbell, Drozd, Tessaro, Arroyo- ayes.
One recused and four ayes. Motion Carried.

PUBLIC HEARING: (Regular) No body wished to be heard
Motion by J. Molinari and second by J. Campbell to close public hearing.
ROLL CALL: Molinari, Campbell, Drozd, Tessar, Arroyo.
All ayes. So ordered.

Motion by J. Campbell and second by J. Molinari to adjourn meeting at 7:13 P.M.
ROLL CALL: Molinari, Campbell, Drozd, Tessar, Arroyo.
All ayes. So ordered.

ATTEST:
Supriya Sanyal
Secretary