

**BOROUGH OF EMERSON
MUNICIPAL LAND USE BOARD**

**RESOLUTION APPROVING THE APPLICATION OF
JASON LYONS FOR RESIDENTIAL SITE IMPROVEMENT WITH VARIANCE
APPROVAL RELIEF FOR THE PREMISES LOCATED AT
105 PASCACK AVENUE, EMERSON, NJ
DESIGNATED AS BLOCK 205, LOT 6**

**HEARING DATE: November 5, 2024
MEMORIALIZED: December 7, 2024**

WHEREAS, Jason Lyons (hereinafter “Applicant”) applied to the Borough of Emerson Municipal Land Use Board (hereinafter “Board”) for residential site improvement with applied variance(s) approval relief to regrade the rear yard, remove existing decking and a portion of an existing brick patio, install a retaining wall and construct a paver patio and canopy and semi-inground pool as well as associated fencing, of the residential property located at 105 Pascack Avenue, Emerson, New Jersey also respectively identified on the Borough of Emerson Tax Map as Block 205, Lot 6 (“Property”); and

WHEREAS, Applicants were self-represented with Jason Lyons appearing; and

WHEREAS, the Board, at its November 7, 2024 meeting, reviewed Applicant’s submittal and at which time, proper public notice to all property owners within two hundred (200) feet therefrom and publication in the official newspaper of the Municipality, at least ten (10) days preceding the date of hearing, was confirmed and Applicant’s file was deemed complete; and

WHEREAS, testimony was received at the November 7, 2024 hearing, but not limited to, from the following;

1. Owner, Jason Lyons
2. Tyler VanderValk, P.E.,

WHEREAS, the Applicant submitted the following documents in support of his Application prior to the Hearing:

- a. Signed and unsealed survey consisting of one (1) sheet, entitled “Survey of Property for 105 Pascack Avenue, situate in the Borough of Emerson, Bergen County, New Jersey”, prepared by Arthur J. Schappell Jr., PLS, PP, dated February 29, 2024;

- b. A copy of a correspondence letter from Westwood Dermatology and Dermatologic Surgery Group, PA, prepared by Michael J. Molinero, MD, dated March 26, 2024; and
- c. Signed and sealed copies of an engineering site plan, consisting of one (1) sheet, entitled, "Proposed Patio and Swimming Pool, Jason Lyons, 105 Pascack Avenue, Borough of Emerson, Block 205, Lot E, Bergen County, New Jersey", prepared by Tyler C. VanderValk, of Civilized Engineering, LLC, dated April 26, 2024.
- d. Borough of Emerson Application for Development.
- e. Borough of Emerson Appeal to Municipal Land Use Board

WHEREAS, the following additional documents also were marked for review and accepted into evidence; and

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A-1 Site Plan- "Lyons Residence – Plant Type – Planting Plan – LC.1", prepared by Applicant's engineer, Tyler VanderValk, P.E.

WHEREAS, this matter was opened to the public at the November 7, 2024 hearing, and whereas no members of the public spoke in opposition of the Application at said hearing, this matter was closed to the public; and

WHEREAS, pursuant to N.J.S.A. 40:55D-10g, a decision must be reduced to writing and shall include findings of facts, based upon the evidence presented at its public hearings; and

WHEREAS, the Board has made the following findings of fact and conclusions of law.

NOW THEREFORE BE IT RESOLVED by the Municipal Land Use Board of the Borough of Emerson that the following facts are made and determined:

FINDINGS OF FACT

1. The Property is located at 105 Pascack Avenue, Emerson, New Jersey, Block 205, Lot 6, in the R-7.5 (Residential Single Family) Zone.
2. The Applicant is the owner of the subject Property, and therefore has standing to bring this matter before the Board.
3. The Applicant provided proper mailed and published notices of the hearing, and jurisdiction is proper in the Board.

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4. The Applicant seeks Residential Site Improvements Plan with Variances approval to remove the existing deck and a portion of the brick patio and stepping stones, in order to construct a paver patio and canopy, as well as regrade a portion of the rear yard and install a retaining wall and also to install a semi-inground pool with associated fencing and further install a Cultec Recharger 330XLDD chamber to effectuate drainage improvement at the premises of 105 Pascack Avenue, Emerson, New Jersey ("Project").

5. The Application results in a non-conforming lot requiring the following "c" bulk variance relief:

A. "Maximum Impervious Coverage" Variance pursuant to N.J.S.A. 40:55-D-70c and further specified by the conditions of Ordinance §290-2, Attachment 2-Schedule 1: Lot, Yard, Height and Setback Requirements.

15.0 percent is permitted, 17.2 percent is existing, and 23.3 percent is proposed. While still a non-conforming use requiring "c" bulk variance relief, the Project works to include a Cultec Recharger 330XLHD chamber situated upon the Property to alleviate drainage and stormwater runoff in the Property and surrounding property parcels which are positioned adjacent to the Property.

B. "Minimum Side Yard Setback - Each" Variance pursuant to N.J.S.A. 40:55-D-70c and further specified by the conditions of Ordinance § 290-2, Attachment 2-Schedule 1: Lot, Yard, Height and Setback Requirements.

8 feet is required, 6.9 feet is existing, and 6.9 feet would remain unchanged after the completion of the Project.

C. "Minimum Side Yard Setback - Both" Variance pursuant to N.J.S.A. 40:55-D-70c and further specified by the conditions of Ordinance § 290-2, Attachment 2-Schedule 1: Lot, Yard, Height and Setback Requirements.

A total of 20 feet for both side yard setbacks is permitted, a total of 16.9 feet for both side yard setbacks is existing, and a total of 16.9 feet would remain unchanged after the completion of the Project.

D. "Minimum Rear Yard Setback" Variance pursuant to N.J.S.A. 40:55-D-70c and further specified by the conditions of Ordinance § 290-2, Attachment 2-Schedule 1: Lot, Yard, Height and Setback Requirements.

35 feet is required, 28.3 feet is existing and 5.2 feet is proposed.

6. The Applicants called owner, Jason Lyons, as the first witness. Mr. Lyons testified that he currently owns the existing property at 105 Pascack Avenue in Emerson, New Jersey, and is desirous of maintaining residency in the municipality. With reference to earlier provided medical correspondence, Mr. Lyons spoke of his particular dermatological condition which invites adverse consequence to his person should his exposure to sunlight be more than incidentally prolonged. These medical remarks served as the underlying basis as to why the Applicant believed the proposed improvements about the Property were appropriate and personally necessary to maintain his full use and enjoyment of the Property. Mr. Lyons testified as to his awareness of the comments, remarks and recommendations contained with the February 29, 2024 survey of Arthur J. Schappell Jr., PLS, PP. Mr. Lyons further testified as to his willingness to abide by and maintain the Property in accordance with the comments and specifications set forth in said site plan as presented to the Board on November 7, 2024.

7. The Applicant called Engineer, Tyler VanderValk, as the second witness. Mr. VanderValk testified that the proposed Project presents as a semi-inground pool construction project also requiring rear yard re-grading and the installation of a retaining wall about the rear portion of the property. Also included was believed necessary removal of the property's existing decking and a portion of its brick patio to make way for the subsequent installation of a paver patio and canopy which be of sufficient size to allow the Applicant to personally experience the outdoors without risk of injury or adverse consequence due to Applicant's particular dermatological medical condition. To alleviate the anticipated drainage concerns related to stormwater runoff, the use and installation of a Cultec Recharger 330XLHD chamber's installation upon the Property and the operation of such device was discussed. The Borough Engineer's responsive comments were further addressed by Mr. VanderValk.

8. The combined testimony of Jason Lyons and Tyler VanderValk, P.E., presented that if the "c" variances were granted, the positive criteria of the proposed Project outweighs any negative criteria, and that the application can be granted without any substantial detriment to the public good. The Project represents a positive reinvestment of a longstanding use, with little to no negative impact.

9. The matter was opened to the public generally to comment either in favor of or against the Application. There was no public comment.

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BE IT FURTHER RESOLVED by the Municipal Land Use Board of the Borough of Emerson that based upon the above findings of fact, that the following conclusions are made and determined.

CONCLUSIONS OF LAW

1. The Municipal Land Use Law, N.J.S.A. 40:55D-1, et seq, gives the Board the power when reviewing applications for bulk variances, to grant variances in accordance with N.J.S.A. 40:55D-70(c). In order for the Board to grant variances, however, the applicant must demonstrate either: (1) hardship arising out of exceptional narrowness, shallowness, shape or exceptional topographic conditions of a specific piece of property; or (2) that the purposes of the Municipal Land Use law would be advanced by a deviation from the requirements of the ordinances and that the benefits of granting a variance would outweigh any detriment to the public good (the "positive criteria"). The applicant must further demonstrate that granting the requested variance relief will not impair the intent and purposes of the zone and master plan and the zoning land use ordinances (the "negative criteria"). As in all variance cases, the applicant has the burden of establishing both criteria to the satisfaction of the Board.

2. The Board has considered the Application seeking relief from existing "c" variances.

3. The Board, voting in favor of the Application, concludes that the relief pertaining to the "c" bulk variance relief can be granted without substantial detriment to the zoning plan and zoning ordinance of the Borough of Emerson, nor substantial detriment to the public good.

4. The Board finds that the proposed use is compatible with the character of the area in which the Property is located, and the approval of the variances will not change the character of the neighborhood, which has been zoned as a R-7.5 (Residential Single Family) Zone.

5. The Board finds that the proposed Project meets the objectives of the Borough of Emerson 2007 Master Plan and the 2015 Master Plan Amendment because the Project improves the site overall.

6. The Board further finds that the Applicant met his burden of demonstrating that the "c" bulk variances can be granted without substantial detriment to the public good, while not substantially impairing the intent and purpose of the zoning plan and zoning ordinance.

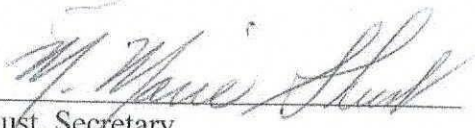
7. As the Application seeks "c" bulk variances, the MLUL requires an affirmative five (5) votes to approve the application.

NOW, THEREFORE, BE IT RESOLVED that the Municipal Land Use Board of the Borough of Emerson, for the foregoing reasons as well as those stated on the record by the Board members, which are incorporated herein by reference, approves the within application for residential approval with applicable “c” bulk variances permitting the addition to and the alteration of the residential Property located at 105 Pascack Avenue, Emerson, New Jersey, and also identified on the Borough of Emerson Tax Map as Block 205, Lot 6, all in accordance with the plans and testimony submitted to the Board, subject to the following conditions:

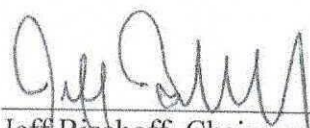
1. Adherence to all representations made by the Applicant and the documentary materials submitted by the Applicant’s engineer prior to and during the course of the public hearing, which representations are made conditions of the within approval.
2. Adherence to plans, renderings and engineering drawings and other exhibits submitted by the Applicant. Any deviation from such submissions shall require the Applicant to return to the Board for further review and any necessary approvals.
3. The Applicant shall conform with all requirements of the Construction Official, Board Engineer, Police and Fire Departments and any other official having jurisdiction with respect to the use of the subject premises.
4. Applicant shall provide “as built” plan certified by the applicant’s engineer to the Emerson Construction Department upon the completion of the Project reflecting the plot improvements noted hereto.
5. Applicant shall be responsible for any other governmental approvals associated with the site (plot) improvements.
6. All testimony given by the Applicant and Applicant’s professionals in accordance with this application shall be binding, even if not specifically noted herein.
7. The Board shall maintain jurisdiction of the application as to any of the conditions above in which Applicant seeks clarification or amendment.

The undersigned, Secretary of the Municipal Land Use Board of the Borough of Emerson, hereby certifies that the above is a true copy of a Resolution duly memorialized by said Board on November 7, 2024 and that the within Resolution was adopted by the Board and memorialized pursuant to N.J.S.A. 40:55D-10(g) at its December 5, 2024 monthly meeting.

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Marie Shust, Secretary
Borough of Emerson
Municipal Land Use Board



Jeff Bischoff, Chairman
Borough of Emerson
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Resolution Approved Motioned December 5, 2024 by: Paul Hulburt

Seconded by: Dominic Aramini

Ayes: 4

Nays: 0

Abstentions: 0

Ineligible: 3