

**BOROUGH OF EMERSON  
MUNICIPAL LAND USE BOARD**

**RESOLUTION APPROVING THE APPLICATION OF  
CHRISTINE LOPEZ FOR RESIDENTIAL SITE IMPROVEMENT WITH VARIANCE  
APPROVAL RELIEF FOR THE PREMISES LOCATED AT  
124 ROSS AVENUE, EMERSON, NJ  
DESIGNATED AS BLOCK 1109, LOT 10**

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

**WHEREAS**, Christine Lopez (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 construct a new garage, for the residential property located at 124 Ross Avenue, Emerson, New Jersey also respectively identified on the Borough of Emerson Tax Map as Block 1019, Lot 10 (“Property”); and

**WHEREAS**, Bruce E. Whitaker, Esq. of McDonnell & Whitaker, LLC, whose office is located at 245 E. Main Street, P.O. Box 379, Ramsey, NJ 07465 appeared as attorney for the Applicant; and

**WHEREAS**, the Board, at its November 7, 2024 meeting, reviewed Applicants’ 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 Applicants’ file was deemed complete; and

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

1. Jennifer Palermo, R.A., and

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

- a. Topographical Survey consisting of one (1) sheet, entitled “On Lot 10 in Block 1019 as shown on the Tax Map of the Borough of Emerson, Bergen County, New Jersey”, prepared by Steven L. Koestner, P.E., P.L.L., N.J. Lic. # 27901 of Koestner Associates, P.O. Box 514 Hackensack, New Jersey 07602, dated July 25, 2023;

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- b. Architectural Plans consisting of five (5) sheets entitled “124 Ross Avenue, Emerson, N.J – Proposes New Two Car Garage and Interior Alterations to an Existing One Family Dwelling”, prepared by Jennifer Palermo, R.A., License # A1015932 of Palermo / Edwards Architecture, 600 Mountain Avenue, Kinnelon, NJ 07405, dated May 17, 2024;
- c. Borough of Emerson Application for Development, undated;
- d. A copy of the Addendum to the Borough of Emerson Application for Development, undated;
- e. A copy of the Deed for Block 1019, Lot 10, dated August 4, 2008;
- f. Borough of Emerson Appeal to Municipal Land Use Board;

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

**Exhibits December 7, 2024 Hearing**

a. A-1 Architectural Plans consisting of five (5) sheets entitled “124 Ross Avenue, Emerson, N.J – Proposes New Two Car Garage and Interior Alterations to an Existing One Family Dwelling”, prepared by Jennifer Palermo, R.A., License # A1015932 of Palermo / Edwards Architecture, 600 Mountain Avenue, Kinnelon, NJ 07405, dated May 17, 2024;

**WHEREAS**, this matter was opened to the public at the December 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 124 Ross Avenue, Emerson, New Jersey, Block 1019, Lot 19, in the R-10 (Residential Single Family) Zone.

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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.

4. The Applicant seeks Minor Site Plan with Variance approval to construct a new garage on the southerly side of the premises of 124 Ross 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, 28.0 percent is existing, and 22.0 percent is proposed. While still a non-conforming use requiring “c” bulk variance relief, the Project works 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.

15 feet is required, 14.29 feet is existing, and 11.5 feet is proposed.

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 35 feet for both side yard setbacks is permitted, a total of 49.78 feet for both side yard setbacks is existing, and a total of 25.79 feet is proposed.

6. Bruce E. Whitaker, Esq. in behalf of Christine Lopez stipulated that as owner Christine Lopez would abide by and maintain the property in accordance with the comments and specifications set forth in the Site Plan as presented to the Board on November 7, 2024 and further

stipulated that as owner, she could meet all of the requirements set forth in the Neglia report of October 15, 2024.

7. The Applicant called Architect, Jennifer Palermo, as a witness. Ms. Palermo testified that the proposed Project presents as the construction of a new garage on the southerly side of the property and, in undertaking such an effort, the very large driveway that currently exists shall be eliminated. In undertaking such an on-site improvement, the Applicant will be able to reduce overall improved lot coverage from twenty-eight (28%) percent to twenty-two (22%) While such an effort substantially reduces the impervious coverage of the property parcel, Applicant's architect further testified that a variance is still required percent as Ordinance §290-2, Attachment 2- Schedule 1: Lot, Yard, Height and Setback Requirements specifies an impervious coverage limit of fifteen (15%) percent. Jennifer Palermo further indicated the Applicant's need for a variance with respect to both and each of the side yard setback specifications. Ms. Palermo also completed her testimony by indicating the Applicant's willingness to abide by and maintain the Property in accordance with the comments and specifications set forth in the site plan of Architectural Plans of May 17, 2024.

8. The testimony of Jennifer Palermo, R.A. 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.

**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 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 her 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.

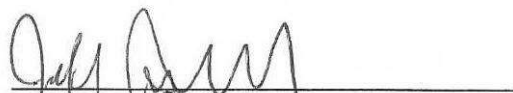
**NOW, THEREFORE, BE IT RESOLVED** that the Municipal Land Use Board of the Borough of Emerson, for the foregoing reasons as well as those stated on the record by the Board members, which are incorporated herein by reference, approves the within application for residential approval with applicable “c” bulk variance permitting the addition to and the alteration of the residential Property located at 124 Ross Avenue, Emerson, New Jersey, and also identified on the Borough of Emerson Tax Map as Block 1019, Lot 10, all in accordance with the plans and testimony submitted to the Board, subject to the following conditions:

1. Applicant shall provide an affidavit from the engineer of record representing that the nonconforming use expansions are consistent with final approved plans

2. 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.
3. 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.
4. 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.
5. Applicant shall be responsible for any other governmental approvals associated with the site.
6. All testimony given by the Applicant and Applicant's professionals in accordance with this application shall be binding.
7. The Board shall maintain jurisdiction of the application as to any of the conditions above in which Applicant seeks clarification or amendment.
8. Applicant shall provide "as built" plan to the Emerson Construction Department upon the completion of the Project.

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 December 5, 2024 and that the within Resolution was adopted by the Board and memorialized pursuant to N.J.S.A. 40:55D-10(g).

  
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Marie Shust, Secretary  
Borough of Emerson  
Municipal Land Use Board

  
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Jeff Bischoff, Chairman  
Borough of Emerson  
Municipal Land Use Board

Resolution Approved Motioned December 5, 2024 by: Paul Hulburt

Seconded by: Rich Taub

Ayes: 4

Nays: 0

Abstentions: 0

Ineligible 3

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