

**BOROUGH OF EMERSON
MUNICIPAL LAND USE BOARD**

**RESOLUTION APPROVING THE APPLICATION OF ROBERT OBERNAUER FOR
AMENDED SITE PLAN RELIEF
FOR THE PREMISES LOCATED AT
161 KINDERKAMACK ROAD, EMERSON, NEW JERSEY
DESIGNATED AS BLOCK 616, LOT 1.01**

HEARING DATE: SEPTEMBER 7, 2023

MEMORIALIZED: OCTOBER 19, 2023

WHEREAS, an application has been submitted and presented to the Emerson Land Use Board (“Board”) by **Robert Obernauer**, property owner (“Applicant”) for a gas station. “Valero sign package approval,” with related relief for the subject property in Emerson, New Jersey otherwise known as Block 616, Lot 1.01 on the Tax Maps of the Borough of Emerson (hereinafter the “Property”); and

WHEREAS, the Property is located in the CBD-10 Central Business District Zone; and

WHEREAS, the Property is controlled by **Robert Obernauer** with the commonly known address of 161 Kinderkamack Road, Emerson, NJ 07630; and whereas Levi Kool, Esq. of Huntington Bailey LLP, whose office is located at 373 Kinderkamack Road, Westwood, NJ 07603 appeared as attorney for Applicant; and

WHEREAS, pursuant to the requirements of the Municipal Land Use Law (hereinafter “MLUL”) and due process of law, the Planning Board conducted a public hearing with regard to the aforesaid application on Thursday, September 7, 2023 and said hearing was achieved by way of an in-person meeting; and

WHEREAS, the Planning Board’s public hearing of September 7, 2023 was opened to the public, for comment, and an audio recording was maintained for the in-person meeting; and

WHEREAS, the facts and evidence in support of this application were detailed at the public hearing before the Planning Board conducted on September 7, 2023 by applicant's counsel, Levi Kool, Esq. of Huntington Bailey LLP whose offices are located at 373 Kinderkamack Road, Westwood, NJ 07675. Mr. Kool appearing as counsel for the Applicant represented and established that legal notices were properly provided pursuant to the MLUL; and

WHEREAS, the Planning Board giving due consideration to all facts and comments on behalf of the Applicant with participation from the Planning Board's land use professionals and the public, all being part of the record and incorporated herein as if set forth at length; and

WHEREAS, the Planning Board giving due review and consideration to the particular facts concerning the nature of the signage proposed, and the Applicant's desire to maintain its branding identified by way of its specialized coloring and style and logo associated with the Valero signage package as well as public health, safety of vehicular passage and vehicular line of site improvements; and

WHEREAS, the Applicant's submitted request for a "sign package approval" as filed was deemed sufficiently complete to address and specify its proposed modification of the property's existing signage and acknowledge that said proposed signage modification shall not survive, if Applicant's gas station operator vacates the subject property; and

WHEREAS, the justification for approval was established through the testimony of the applicant Robert Obernauer, whose testimony summarized the proposed Valero gas station signage to be positioned along and about the awning of the structure presently located upon the Property in detail and concluding as set forth below applicant's meritorious position; and

APPLICANT'S WITNESSES (ES)

WHEREAS, Robert Obernauer, the property owner, also testified and generally described the positive impact upon the Property for public health, safety & welfare and authenticated the submitted documents.

BOARD ENGINEER

WHEREAS, the Board Engineer, Norberto Hernandez, PE, PP, CME of Neglia Engineering had submitted a report or engineering review letter regarding the proposed signage, dated September 1, 2023, and authored by David Atkinson, PE, PP, CME, Applicant agreed on the record as to comply with the same; and

WHEREAS, the public's comments were solicited, and Councilman Brian Gordon spoke during the public comment period advising the Board that he lives at 112 Linwood Avenue across the street from the site (and for this reason Councilman Gordon had earlier left the podium during the Applicant's presentation), and thereafter Councilman Gordon had voiced his concerns regarding that the site's signage and lighting on Linwood Avenue be directed away from adjacent residences. Applicant promised to make adjustments to the lighting's direction should it be, or cause to be, directed upon adjacent residences. Applicant further agreed on the record to signage illumination time limitations; and

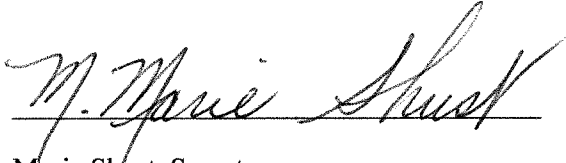
THE BOARD HAVING MADE THE FOLLOWING LEGAL CONCLUSIONS:

WHEREAS, through review of the plans submitted and lay testimony on behalf of the Applicant Robert Obernauer, with an address of 161 Kinderkamack Road, Emerson, NJ 07630, Applicant has demonstrated an acceptable signage package proposal for public, health, safety and welfare reasons; and

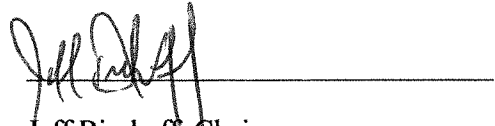
NOW THEREFORE BE IT RESOLVED, that the Land Use Board of the Emerson, on this 19th day of October, 2023 hereby approves Applicant's request for a signage package pursuant to N.J.S.A. (40:55D et al) in order to permit the proposed Valero gas station signage package upon the canopy of the structure located upon the subject property, subject to the following conditions:

- 1) The Applicant shall be bound by the hearing content and testimony as if the testimony was incorporated herein; and
- 2) The Applicant shall obtain any and all required local, county, state and federal governmental approvals which may be necessary as related to this signage application; and
- 3) The applicant's signage construction shall be constructed as per the herein hearing approved plan.
- 4) Applicant acknowledges that its business operations and related activities shall be conducted in a manner in furtherance of public health & safety and welfare. If it is determined by a Court of competent jurisdiction that the applicant's operation is not in compliance with generally accepted public, health & safety welfare standards, such event may be deemed a violation of this approval. Thereby applicant may be required to present additional review and approval by this Land Use Board, which could affect applicant's property Certificate of Occupancy; and
- 5) This signage approval hereon relates to applicant's testified operation and thereby such approval shall not run with the property.
- 6) The Applicant acknowledges that as long as there are no additional number of signs, changes in size or the number of colors, no additional variance shall be required for normal maintenance replacement panels.
- 7) The Applicant acknowledges that should the specifications of the signage package change, the Applicant shall be required to appear before the Board to obtain an Amended Site Plan approval with possible variance(s).
- 8) Applicant shall comply with Neglia Engineering's report directives, as agreed to on the record.
- 9) Applicant signage shall not illuminate upon the surrounding properties as agreed to on the record and shall not be illuminated when the business operation is closed.
- 10) Applicant shall provide "as built" plans to the Emerson Construction Department upon the completion of the Project.
- 11) This Board shall retain jurisdiction as to any interpretation of the approved resolution.

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 authorized by said Board on September 7, 2023 and that the within Resolution was adopted by the Board and memorialized pursuant to N.J.S.A. 40:55D-10(g) on October 19, 2023.



Marie Shust, Secretary
Borough of Emerson
Municipal Land Use Board



Jeff Bischoff, Chairman
Borough of Emerson
Municipal Land Use Board

Motion to Approve by:	Mr. Ciavaglia
Second by:	Mr. Massero
Ayes:	5
Nays:	1
Abstain:	0
Recusal:	1