

**BOROUGH OF EMERSON
MUNICIPAL LAND USE BOARD**

**RESOLUTION APPROVING THE APPLICATION OF FABIENNE & KENJI TOMEDA
FOR RESIDENTIAL NEW CONSTRUCTION ADDITION WITH VARIANCES
APPROVAL RELIEF FOR THE PREMISES LOCATED AT
194 SANFORD AVENUE, EMERSON, NEW JERSEY
DESIGNATED AS BLOCK 323, LOT 2**

ZONE:

HEARING DATE: July 13, 2023

MEMORIALIZED: September 21, 2023

WHEREAS, FABIENNE & KENJI TOMEDA (hereinafter "Applicant") applied to the Borough of Emerson Municipal Land Use Board (hereinafter "Board") for residential dwelling new construction addition application with applied bulk variances along with impervious surface deviation relief. Applicant seeks to construct a one (1) story addition to the west side of existing dwelling as per submitted plans for the residential located along Sanford Avenue, Emerson, New Jersey also respectively identified on the Borough of Emerson Tax Map as Block 323, Lot 2 ("Property"); and

WHEREAS, Applicant was represented without legal counsel; and

WHEREAS, the Board, at its July 13, 2023 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 July 13, 2023 hearing, but not limited to, from the following:

1. Fabienne Tomeda and Kenji Tomeda (husband & wife).

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

- a. Signed and sealed architectural plan, entitled "Addition & Alterations to 194 Sanford Avenue," prepared by Cesar F. Padilla, R.A., dated November 30, 2023, last revised January 30, 2023.
- b. An unscaled, but signed copy of the survey prepared by Glucker & Den Bleyker dated January 2, 2019.
- c. Borough of Emerson Application for Development form, undated.
- d. Borough of Emerson Appeal to Municipal Land Use Board, undated.
- e. A copy of a drawing illustrating the proposed addition, undated.
- f. An unsigned and unsealed copy of the site plan which makes reference to the survey prepared by Den Bleyker, undated.

WHEREAS, this matter was opened to the public at the July 13, 2023 hearing, and whereas no members of the public spoke in opposition of the Application at said hearing, but a neighbor, John did speak in support if application. This matter was then 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

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 presently an existing residential dwelling.
2. The property is specified on the Tax Map of the Borough of Emerson as Block 323, Lot 2 and is in the R-7.5 Residential Single-Family Zone.
3. The Applicant is the owner of the subject Property, and therefore has standing to bring this matter before the Board.
4. The Applicant provided proper mailed and published notices of the hearing, and jurisdiction is proper in the Board.
5. The Applicant seeks residential new construction addition with "c" bulk setback variances relief as well as for impervious coverage deviation, as follows.
 - A. "Minimum Rear Yard Setback" variance as 35 feet is required, and 32.2 feet is proposed.
 - B. Minimum side yard variance, 8 feet required, 4 feet proposed.
 - C. Minimum side yard both variance, 20 feet required, 16.29 feet proposed.
 - D. Applicable impervious coverage deviation as per plans and Board Engineer findings.
6. The combined testimony of applicants. presented that the "c" variances proposed with impervious coverage deviation 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 residential use, with little to no negative impact. Further, as an ancillary benefit, the Project will benefit family housing.
7. The matter was opened to the public as noted above.

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) as well as impervious lot coverage deviation. 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 residential dwelling new construction with variance approval with regarding to the “c” variances and lot coverage deviation sought.

3. The Board, voting unanimously in favor of the Application concludes that the relief pertaining to the variances referencing Ordinances 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 residential project meets the objectives of the Borough of Emerson 2007 Master Plan and the 2015 Master Plan Amendment.

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 along with lot coverage impervious surface deviation as per the submitted plans, so as to permit the residential new construction of the residential Property located at 194 Sanford Avenue, Emerson, New Jersey (also identified on the Borough of Emerson Tax Map as Block 323, Lot 2), subject to the following conditions:

1. The Applicant shall comply with all the recommendations contained in the reports of the Board’s professionals.

2. Adherence to all representations made by the Applicant, or made on the Applicant’s behalf, and the documentary materials submitted by the Applicants’ architect and engineer prior to and during the course of the public hearing, which representations are made conditions of the within approval.

3. Applicant shall meet with the Board Engineer and Construction Official prior to the issuance of any building permit to confirm the new construction setback locations as well as a good faith effort to lessen applicant’s impervious surface coverage and cause a zero “0” site storm water runoff.

4. Adherence to plans, renderings and engineering drawings and other exhibits submitted by the Applicant and/or Applicant’s professionals. Any deviation from such submissions shall require the Applicant to return to the Board for further review and any necessary approvals.

5. The Applicant shall conform with all standard & customary 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.

6. Applicant shall be responsible for any other governmental approvals associated with the site.

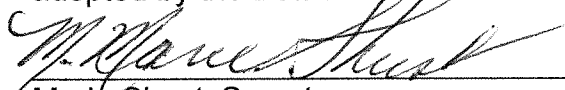
7. The Board shall maintain jurisdiction of the application as to any of the conditions above in which Applicant seeks clarification or amendment.

8. Subject to additional reasonable public health, safety and welfare construction conditions imposed by the Borough Construction Official and/or Board Engineer.

9. Applicant shall be responsible to obtain a Certificate of Occupancy for the newly constructed as well as renovated area prior to the habitability of same, with a copy being provided to the municipal tax assessor.

10. Applicant shall provide "as built" plans to the Emerson Construction Department upon the completion of the Project.

The undersigned, Secretary and Chairman of the Municipal Land Use Board of the Borough of Emerson, hereby certify that the above is a true copy of a Resolution duly memorialized by said Board on September 21, 2023 and that the within Resolution was adopted by the Board and memorialized pursuant to N.J.S.A. 40:55D-10g).



Marie Shust, Secretary
Borough of Emerson
Municipal Land Use Board



Jeff Bischoff, Chairman
Borough of Emerson
Municipal Land Use Board

Offered by:

Second by:

Ayes: 6

Nays: 0

Abstentions: 1: