

**BOROUGH OF EMERSON
MUNICIPAL LAND USE BOARD**

**RESOLUTION APPROVING THE APPLICATION OF
SERGIO AND JENNIFER RIQUELME FOR RESIDENTIAL SITE IMPROVEMENT WITH
VARIANCE APPROVAL RELIEF FOR THE PREMISES LOCATED AT
42 HOLLYWOOD AVENUE, EMERSON, NJ
DESIGNATED AS BLOCK 511, LOT 3**

**HEARING DATE: October 5, 2023
MEMORIALIZED: October 19, 2023**

WHEREAS, Sergio and Jennifer Riquelme (hereinafter “Applicants”) 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 semi in-ground pool with deck and patio, for the residential property located at 42 Hollywood Avenue, Emerson, New Jersey also respectively identified on the Borough of Emerson Tax Map as Block 511, Lot 3 (“Property”); and

WHEREAS, Applicants were self-represented with Sergio Riquelme appearing; and

WHEREAS, the Board, at its October 5, 2023 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 October 5, 2023 hearing, but not limited to, from the following;

1. Owner, Sergio Riquelme
2. Paul Gdanski, P.E.,

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

- a. Signed and sealed site plan consisting of one (1) sheets, entitled “Pool Plan, Soil Erosion Sediment Control, Plan Notes & Details for Riquelme” - Located in the Borough of Emerson , Lot 3, Block 511”, prepared by Paul Gdanski, P.E., P.L.L., N.J. Lic. # 4161. of Paul Gdanski, P.E., P.L.L., 633 Woodmont Lane, Sloatsburg, New York 10974 dated June 10, 2023.
- b. Borough of Emerson Application for Development.
- c. 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 October 5, 2023 Hearing

A-1 Site Plan- "Pool Plan, Soil Erosion Sediment Control, Plan Notes & Details for Riquelme" - Located in the Borough of Emerson , Lot 3, Block 511", prepared by Paul Gdanski, P.E., P.L.L., N.J. Lic. # 4161. of Paul Gdanski, P.E., P.L.L., 633 Woodmont Lane, Sloatsburg, New York 10974 dated June 10, 2023.

WHEREAS, this matter was opened to the public at the October 5, 2023 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 42 Hollywood Avenue, Emerson, New Jersey, Block 511, Lot 3, in the R-5 Residential One Family Zone.

2. The Applicants are the owners 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 semi in-ground pool with deck and patio at the premises of 42 Hollywood 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, 12.2 percent is existing, and 19.74 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.

6. The Applicants called owner, Sergio Riquelme, as their first witness. Mr. Riquelme testified that he currently owns the existing property at 42 Hollywood Avenue in Emerson, New Jersey, and is desirous of maintaining residency in the municipality. Mr. Riquelme testified as to her awareness of the comments, remarks and recommendations contained with the June 10, 2023 site plan of Paul Gdanski, P.E., P.L.L. Mr. Riquelme 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 October 5, 2023.

7. The Applicants called Engineer, Paul Gdanski, as their second witness. Mr. Gdanski testified that the proposed Project presents as an above-ground pool construction project to improve a portion of the Applicants’ parcel where a previously installed above-ground pool had been abandoned and near completely removed. The soil at the site of this earlier above-ground pool location had not been replanted with grass or vegetation. Mr. Gdanski also indicated to as to Applicant’s willingness to abide by and maintain the Property in accordance with the comments and specifications set forth in the site plan of June 10, 2023.

8. The combined testimony of Sergio Riquelme and Paul Gdanski, P.E., P.L.L. presented that if the “c” variance was 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 One 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 Applicants met their 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.

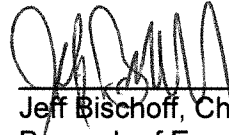
NOW, THEREFORE, BE IT RESOLVED that the Municipal Land Use Board of the Borough of Emerson, for the foregoing reasons as well as those stated on the record by the Board members, which are incorporated herein by reference, approves the within application for residential approval with applicable "c" bulk variance permitting the addition to and the alteration of the residential Property located at 42 Hollywood Avenue, Emerson, New Jersey, and also identified on the Borough of Emerson Tax Map as Block 511, Lot 3, all in accordance with the plans and testimony submitted to the Board, subject to the following conditions:

1. Applicants 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 Applicants and the documentary materials submitted by the Applicants' 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 Applicants. Any deviation from such submissions shall require the Applicants to return to the Board for further review and any necessary approvals.
4. The Applicants 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. Applicants shall be responsible for any other governmental approvals associated with the site.
6. All testimony given by the Applicants and Applicants' 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 Applicants seek clarification or amendment.
8. Applicants 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 October 19, 2023 and that the within Resolution was adopted by the Board and memorialized pursuant to N.J.S.A. 40:55D-10(g).

Marie Shust, Secretary
Borough of Emerson
Municipal Land Use Board



Jeff Bischoff, Chairman
Borough of Emerson
Municipal Land Use board

Motion to approve by: Vice Chairman Myers
Second by: Mr. Loschiavo
Ayes: 5
Nays: 0
Abstentions: 1