

**RESOLUTION OF THE MUNICIPAL LAND USE BOARD
OF THE BOROUGH OF EMERSON**

In the matter of:

**SCHUBERT, LLC
55 EMWOOD DRIVE
BLOCK 314, LOT 18
EMERSON, NEW JERSEY**

WHEREAS, Schubert, LLC (“Applicant”) made application to the Municipal Land Use Board of the Borough of Emerson (the “Board”) for bulk variance approval to construct a second-floor addition on the single-family, one-story home on the subject property located at 55 Emwood Drive, Block 314, Lot 18 on the Tax Assessment Map of the Borough of Emerson (the “Property”); and

WHEREAS, the Property is located in the R-7.5 Residential Single-Family Zone of the Borough of Emerson; and

WHEREAS, the application requires variances from the requirements of the Emerson Zoning Ordinance in the R -7.5 Zone as to minimum rear yard setback, minimum front yard setback and minimum side yard setback; and

WHEREAS, the Applicant has filed the appropriate application materials timely; and

WHEREAS, the Applicant has presented satisfactory proof to the Board that Notice of the application was published and served in accordance with the Municipal Land Use Law of the State of New Jersey; and

WHEREAS, the Board reviewed this matter at a public hearing on December 1, 2022; and

WHEREAS, the applicant was represented by Benjamin Wine, Esq. of Prime & Tuvel, 1 University Plaza Drive, Suite 500, Hackensack, New Jersey 07601; and

WHEREAS, the Board was represented by John W. McDermott, Esq. at the hearing on the application; and

WHEREAS, the following exhibits were submitted in support of the application:

Exhibit A-1- Survey of property prepared by Andrew A. Schmidt of Schmidt Surveying, dated September 16, 2022

Exhibit A-2- Drawing A-2 of signed and sealed Architectural Plan entitled “Proposed Additions/Alterations 55 Emwood Drive Emerson, NJ,” prepared by Joseph M. Donato, R.A., A.I.A dated September 16, 2022, “Elevations”

Exhibit A-3 - Drawing A-3 of signed and sealed Architectural Plan entitled “Proposed Additions/Alterations 55 Emwood Drive Emerson, NJ,” prepared by Joseph M. Donato, R.A., A.I.A dated September 16, 2022, “First Floor footprint”

Exhibit A-4- Drawing A-1 of signed and sealed Architectural Plan entitled “Proposed Additions/Alterations 55 Emwood Drive Emerson, NJ,” prepared by Joseph M. Donato, R.A., A.I.A dated September 16, 2022, “Existing Conditions”

WHEREAS, Joseph M. Donato, AIA, 14 Route 4 West, River Edge, New Jersey 07661, was sworn and testified as follows:

- a. Mr. Donato is a licensed architect in the State of New Jersey since 1991 and is the principal of Joseph M. Donato, AIA, Architect. He testified generally with regard to the plans dated September 16, 2022, which he prepared for the proposed addition.

- b. The addition will be constructed over that existing dwelling. Applicant is proposing to demolish the roof to add a second story addition. The footprint of the subject property will remain. There will be a bump out in the front and rear of the dwelling to meet the current bump-out as well as a bump-out in the rear to match the existing extension. The landing is slightly larger to allow access to the second floor. The second floor will match and extend to the existing bump out. The front yard setback of 19.8' is measured from the roof, not the wall. The wall will remain and there will be no reduction in the setback.
- c. The current dwelling consists of 1,436 square feet comprised of the 1,057 square feet interior and the 379 s.f. garage. The addition totals 1,574 s.f. The square footage of the dwelling after the proposed addition will total 3,010 sf including the garage.
- d. The current windows are non-conforming with regard to egress guidelines. The handicapped ramp was previously demolished, and the yard will be cleaned up. The removal of the handicap ramp reduced the impervious coverage.
- e. The height of the proposed dwelling with the addition will be nearly 9 ft. below the maximum permitted height of 32 feet.
- f. The exterior lighting will be within the boundaries of the property, with no spillage on adjoining properties. No new lighting is proposed to be installed.

- g. The HVAC unit will be located at the rear left corner of the dwelling.
- h. The Property is undersized according to the local zoning ordinance (8,292.75 ft. rather than 8,500 ft.).
- i. The Property is also oriented in a peculiar manner whereby the width exceeds the depth (the lot is 110 ft. wide by 75 ft. deep).
- j. The size and orientation of the Property present a hardship to the owners in expanding their home in a suitable manner, and the existing non-conformity exacerbates the issue.
- k. The variance would provide no substantial detriment to the public good and would maintain existing conforming lot coverage with only *de minimis* increases to the existing setback nonconformities. The proposal builds above existing nonconformities rather than increasing building or lot coverage.
- l. Comment 1.2 of the Borough Engineer review regarding a discrepancy as to front and rear yard setbacks was satisfactorily addressed by the testimony of the architect.

WHEREAS, the hearing was opened to the public and no persons appeared in favor of or against the application;

WHEREAS, after due consideration and deliberation at the aforementioned hearing, the Board did vote in favor of the Application and did instruct the Board Attorney to prepare a Resolution memorializing the vote taken;

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

WHEREAS, the Municipal Land Use Board of the Borough of Emerson makes the following factual findings and conclusions:

1) The Applicant is the owner of the Property located at 55 Emwood Drive, Block 314, Lot 18. The property is a corner lot located on the east side of Emwood Drive at the intersection of Summer Court. The site currently has a single-family, one-story home, with an attached 2 car garage, a concrete walkway and patio, handicap ramp in the front of the dwelling and a wall in the front and another wall in the rear of the dwelling.

2) The Property is located in the R-7.5 Residential Single-Family Zone.

3) The Applicant is seeking bulk variance approval to remove the existing ramp and walls and to construct a one-story addition over the existing footprint. Applicant proposes to demolish the existing roof structure to accommodate the second-floor addition. Applicant also proposes the addition of an air conditioning unit and building overhangs in the front and rear of the dwelling.

4) The application results in expansion of an existing non-conforming lot, requiring variance relief. The existing non-conformities are as follows:

- Minimum lot area whereas 8,500 square feet is required, and 8292.75 square feet is existing and proposed
- Minimum rear yard setback, whereas 35 feet is required, 27.5 feet is existing, and 27.0 feet is proposed.

- Minimum side yard setback-side street, whereas 22 feet is required, and 20.5 feet is existing and is proposed
- A variance is required for minimum front yard setback, whereas a minimum of 20 feet is required, 20.5 feet is existing, and 19.8 feet is proposed.
- No other variances are required or being sought as a result of the proposed addition.

7) 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 the 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.

8) The Board finds from the above testimony and evidence presented by the Applicant that the application satisfies the positive and negative criteria. The construction of the addition is an aesthetic improvement. The addition improves the home and is consistent with homes in the neighborhood and there is no negative impact from same. Moreover, the lot is located on a corner and the existing home sits on the lot in a manner so as to be impractical to expand in any capacity in conformance with the required setbacks, thereby constituting undue hardship. Additionally, the Applicant has demonstrated to the satisfaction of the Board that there will be no substantial

detriment to the public good, nor substantial impairment of the zone plan or zoning ordinance, in that the coverage and height of the building will be conforming, and the setbacks are only minimally decreased from their current conditions. The Applicant has met its burden of demonstrating the positive and negative criteria to justify granting of the bulk variances and therefore the Applicant's request conforms within the requirements of the Borough and may be granted without substantial detriment to the public safety, health and general welfare and will not deter the efforts of the Borough to effectuate the general purposes of municipal planning. Accordingly, the benefits of the relief sought substantially outweigh any detriments associated therewith.

NOW, THEREFORE, BE IT RESOLVED by the Municipal Land Use Board of the Borough of Emerson that the Application of Schubert LLC with respect to the subject Property requesting bulk variance approval be and is hereby **APPROVED** subject to the terms and conditions hereinafter set forth:

CONDITION SPECIFIC TO THIS APPLICATION

- a. Applicant agrees to comply with the requirements of the Borough Building Department.
- b. Applicant agrees to comply with the requirements of the Borough Engineer and agrees that construction of the addition is subject to Engineering approval.
- c. Applicant agrees to comply with all municipal requirements.
- d. Applicant shall not install any new lighting on the subject property.

GENERAL CONDITIONS:

- 1) The foregoing findings of fact and conclusions of law are incorporated herein as if set forth at length.
- 2) In reviewing the Application, the Board concludes that the proposed variances do not substantially impair the Municipal Ordinances and promote the purposes of the Municipal Land Use Law.
- 3) Approval as necessary from the Bergen County Planning Board. If any material changes are required by Bergen County Planning Board to what is approved by this Resolution, said changes are to be brought by the Applicant on a forthwith basis before this Board, which retains jurisdiction over the Application.
- 4) Approval from the Bergen County Soil Conservation District if applicable.
- 5) Approval from the Emerson Police if applicable.
- 6) The Applicant shall at all times comply with the applicable rules, regulations, ordinances and statutes of the Borough of Emerson, County of Bergen, State of New Jersey, and the Federal Government with regard to the construction of the Property including but not limited to the Americans with Disabilities Act.
- 7) The Applicant shall obtain all other required permits and approvals, inclusive of but not limited to the Applicant's satisfaction of the Ordinances imposed conditions which relate to tree removal and replacement and water drainage.
- 8) Building permits as needed must be obtained before any work begins at the site and in accordance with the approval(s) conferred herein.

9) The Applicant shall comply with any and all conditions and requirements rendered by this Board's Engineer and/or the Borough's Engineer and the Construction Code Official.

10) The Applicant shall comply with any and all other federal, state, county and local government rules and regulations regarding the subject application, including, but not necessarily limited to, the payment of all fees and charges as established by the Borough of Emerson for the application and as applicable compliance with all sign ordinances and the payment of any and all COAH fees and charges.

11) Nothing contained in this Resolution shall supersede the provisions of the Uniform Construction Code of the State of New Jersey or any other applicable law or regulation.

12) Any damage to the public areas, including streets, curbs or sidewalks, a result of the construction of the additions and site work must be remediated to the satisfaction of the Borough Engineer.

13) Applicant agrees to comply with all conditions of the Borough Engineer.

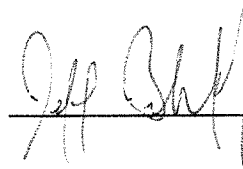
BE IT FURTHER RESOLVED that this Resolution does not constitute approval or recommendation for approval for any variance or any exception not requested by the Applicant, nor any variance or exception which may not be expressly or specifically created by this Resolution.

NOW THEREFORE, BE IT RESOLVED that the Chairman and Secretary of the Board are hereby authorized to affix their signatures to this Resolution granting the requested application, to advertise the action taken, by way of Resolution, in the local newspaper, and furthermore to

send certified copies to the Zoning Officer, Construction Code Enforcement Official and/or Building Sub-Code Official, the Applicant and/or the Applicant's attorney, the subject property Owner if other than the Applicant, and to the Borough Attorney, Borough Engineer and Board Engineer.

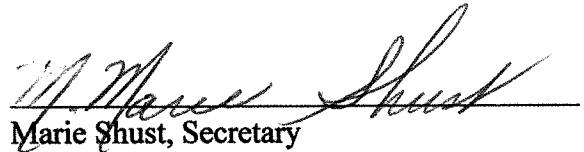
The undersigned certifies that the within Resolution was adopted by the Board and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on January 19, 2023.

Dated: January 19, 2023



Jeff Bischoff, Chairman
Emerson Land Use Board

Dated: January 19, 2023



Marie Shust, Secretary
Emerson Land Use Board

OFFERED BY: Mike Cimino
SECONDED BY: Bill Loschiavo
VOTE: Ayes: 4
Nays:
Abstain: 4 (ineligible)