

**BOROUGH OF EMERSON  
MUNICIPAL LAND USE BOARD**

**RESOLUTION APPROVING THE APPLICATION OF  
CYNTHIA KHATCHADOURIAN FOR RESIDENTIAL SITE IMPROVEMENT WITH VARIANCE  
APPROVAL RELIEF FOR THE PREMISES LOCATED AT  
64 DYER AVENUE, EMERSON, NJ  
DESIGNATED AS BLOCK 406, LOT 15**

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

**WHEREAS**, Cynthia Khatchadourian (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 an expanded master bedroom and bathroom addition, for the residential property located at 64 Dyer Avenue, Emerson, New Jersey also respectively identified on the Borough of Emerson Tax Map as Block 406, Lot 15 ("Property"); and

**WHEREAS**, Applicant was self-represented; and

**WHEREAS**, the Board, at its October 5, 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 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, Cynthia Khatchadourian
2. Jacob Solomon, R.A., A.I.A.

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

- a. Signed and sealed architectural plan consisting of two (2) sheets, entitled "Proposed Addition and Alterations 64 Dyer Avenue – Khatchadourian Residence - Block 406, Lot 15", prepared by Jacob Solomon, R.A., A.I.A., Registered Architect, N.J. Lic. # 21AI01255200. of Jacob Solomon Architect, A.I.A. 14-25 Plaza Road, Suite S35, Fair Lawn, New Jersey 07410 dated May 30, 2023.
- b. Borough of Emerson Application for Development.
- c. Borough of Emerson Appeal to Municipal Land Use Board
- d. Borough of Emerson Tree Management Form

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

**Exhibits October 5, 2023 Hearing**

A-1 Architectural Plan- “Proposed Addition and Alterations 64 Dyer Avenue – Khatchadourian Residence - Block 406, Lot 15”, prepared by Jacob Solomon, R.A., A.I.A., Registered Architect, N.J. Lic. # 21AI01255200. of Jacob Solomon Architect, A.I.A. 14-25 Plaza Road, Suite S35, Fair Lawn, New Jersey 07410 dated May 30, 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 64 Dyer Avenue, Emerson, New Jersey, Block 406, Lot 15, in the R-5 Residential One-and-Two Family Zone.
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 an expanded master bedroom and bathroom at the premises of 64 Dyer Avenue, Emerson, New Jersey (“Project”).
5. The Application results in a non-conforming lot requiring the following “c” bulk variance relief:
  - A. “Minimum Rear Yard Setback” 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.

35 feet is required, 32.6 feet is existing, and 32.6 feet is proposed. While still a non-conforming use requiring "c" bulk variance relief, the Project does not alter an existing condition of the Property

- B. "Maximum Building 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.

25.0 percent is permitted, 26.03 is existing, and 29.23 percent is proposed. While still a non-conforming use requiring "c" bulk variance relief, the Project works to improve alleviate drainage and stormwater runoff in the Property and surrounding property parcels which are positioned adjacent to the Property, by way of a reduction in the surface area of the Applicant's rear-yard patio.

- C. "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, 17.03 percent is existing, and 15.81 percent is proposed. While still a non-conforming use requiring "c" bulk variance relief, the Project works to improve the condition of impervious coverage and should help alleviate drainage and stormwater runoff in the Property and surrounding property parcels which are positioned adjacent to the Property.

6. The Applicant called owner, Cynthia Khatchadourian, as its first witness. Ms. Khatchadourian testified that she currently owns the existing property at 64 Dyer Avenue in Emerson, New Jersey, and is desirous of maintaining residency in the municipality. Ms. Khatchadourian testified as to her awareness of the comments, remarks and recommendations contained with the May 30, 2023 architectural plans of Jacob Solomon, R.A., A.I.A. Cynthia Khatchadourian further testified as to her willingness to abide by and maintain the Property in accordance with the comments and specifications set forth in said architectural plans as presented to the Board on October 5, 2023.

7. The Applicant called Architect, Jacob Solomon, as its second witness. Mr. Solomon testified that the proposed Project presents as a one-story rear addition to expand an existing master bedroom and to also add a bathroom and that said Project shall be undertaken upon an undersized lot. Mr. Solomon further testified that the Property's existing rear yard setback, while presently non-conforming as it measures 32.6 feet, shall remain unchanged. Mr. Solomon also testified that the Property's patio surface area shall actually be reduced so as to reclaim area which is presently covered by impervious material. Said reduction shall actually reduce the

Property's existing percent of impervious coverage from 17.03 percent to the proposed lower 15.81 percent. Mr. Solomon also indicated concurrent to as to Applicant's willingness to abide by and maintain the Property in accordance with the comments and specifications set forth in the architectural plans of May 30, 2023.

8. The combined testimony of Cynthia Khatchadourian and Jacob Solomon, R.A., A.I.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. Further, as an ancillary and unintended benefit, the Project would, by reducing the percent of impervious coverage from 17.03 percent presently existing upon the parcel identified as Block 416, Lot 15, to 15.81 percent upon said parcel, modestly improve the stormwater runoff and drainage capability of the Property.

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 unanimously in favor of the Application, (with the exception of Board Member Cimino who abstained as he resides within the Applicant's notice area) 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-and-Two 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 and/or waivers permitting the addition to and the alteration of the residential Property located at 64 Dyer Avenue, Emerson, New Jersey, and also identified on the Borough of Emerson Tax Map as Block 416, Lot 15, 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 architect 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 architect 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.

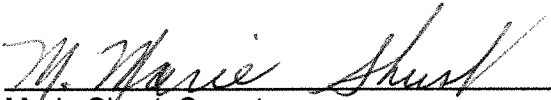
4. The Applicant shall conform with all requirements of the Construction Official, Board Engineer, Police and Fire Departments and any other official having jurisdiction with respect to the use of the subject premises.

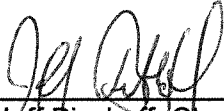
5. Applicant shall be responsible for any other governmental approvals associated with the site.

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.
9. Applicant shall be responsible to obtain a certificate of occupancy for the newly renovated area prior to the habitability of same.

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  
 Recusal 1