

**BOROUGH OF EMERSON  
MUNICIPAL LAND USE BOARD**

**RESOLUTION APPROVING THE APPLICATION OF  
WESLEY & JENELL REBISZ FOR RESIDENTIAL SITE IMPROVEMENT WITH  
VARIANCE APPROVAL RELIEF FOR THE PREMISES LOCATED AT  
14 CONGRESS ROAD, EMERSON, NJ  
DESIGNATED AS BLOCK 1005, LOT 2**

**HEARING DATES: April 18, 2024  
MEMORIALIZED: May 2, 2024**

**WHEREAS**, Wesley Rebisz and Jenell Rebisz, husband and wife, (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 remove an existing patio/walkway and replace with a new patio/walkway and an in-ground swimming pool for the residential property located at 14 Congress Road, Emerson, New Jersey also respectively identified on the Borough of Emerson Tax Map as Block 1005, Lot 2 (“Property”); and

**WHEREAS**, Robert L. Falkenstern, Esq. of The Law Offices of Stephen P. Sinisi, Esq. LLC, whose office is located at Two Sears Drive, 2<sup>nd</sup> Floor, Suite 204, Paramus, NJ 07652 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 Land Use Board conducted a public hearing with regard to the aforesaid application on Thursday, April 18, 2024 and said hearing was achieved by way of an in-person meeting; and

**WHEREAS**, the Land Use Board’s public hearing of April 18, 2024 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 Land Use Board conducted on April 18, 2024 by Applicant’s counsel,

Robert L. Falkenstern, Esq. of The Law Offices of Stephen P. Sinisi, Esq. LLC. Mr. Falkenstern appearing as counsel for the Applicant represented and established that legal notices were properly provided pursuant to the specifications set forth in the MLUL; and

**WHEREAS**, the Land Use Board giving due consideration to all facts and comments on behalf of the Applicant with participation from the Land Use 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 Board, at its April 18, 2024 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 April 18, 2024 hearings, but not limited to, from the following; and

APPLICANT'S WITNESSES
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**WHEREAS**, Paul Gdanski, P.E., of 833 Woodmont Lane, Sloatsburg, New York 10974, who was duly qualified and accepted as an expert in engineering, testified and specifically described the positive impact upon the Property for safety and welfare and authenticated the submitted documents related to the engineering aspects of the Applicant's proposal; and

**WHEREAS**, Wesley Rebisz, the owner of the Property, generally described the positive impact upon the Property for safety and welfare, testified that no covenants or deed restrictions exist on the Property which would adversely affect the implementation of the proposed improvements to the Property, and authenticated a portion of the Applicant's submitted documents; and

APPLICANT'S EXHIBITS

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

- a. Signed and sealed engineering plan consisting of one (1) sheet, entitled “Pool Plan, Soil Erosion Sediment Control Plan, Notes & Details for Rebisz Located in the Borough of Emerson, Bergen County, New Jersey Lot 2, Block 1005”, prepared by Paul Gdanski, P.E., PLLC of 633 Woodmont Lane, Sloatsburg, New York, 10974, N.J License # 41161 and dated December 4, 2023.
- b. Borough of Emerson Application for Development, dated March 11, 2024
- c. Borough of Emerson Application for Soil Permit.
- d. Borough of Emerson Tree Management Form.

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

**Exhibits of April 18, 2024 Hearing**

a. A-1 “Pool Plan, Soil Erosion Sediment Control Plan, Notes & Details for Rebisz Located in the Borough of Emerson, Bergen County, New Jersey Lot 2, Block 1005”, prepared by Paul Gdanski, P.E., PLLC of 633 Woodmont Lane, Sloatsburg, New York, 10974, N.J License # 41161 and dated December 4, 2023.

**WHEREAS**, the Board Engineer, David Atkinson, PE, PP, CME of Neglia Engineering testified as to his understanding of site specification standards and provided his remarks and recommendations regarding the proposed Project as well as further revision to the appropriate

extent and positioning of concrete surfacing best prevent any excessive flow of stormwater runoff about the Applicant's property and its adjacent properties; and

**WHEREAS**, this matter was opened to the public at the April 18, 2024 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 14 Congress Road, Emerson, New Jersey, Block 1005, Lot 2, in the R-10 Residential One 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 Residential Site Improvement with Variance approval to remove an existing patio/walkway and replace with a new patio/walkway and an in-ground swimming pool at the premises of 14 Congress Road, 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, 14.6 percent is existing, and 22.2 percent is proposed. While still a non-conforming use requiring “c” bulk variance relief, and in accordance with the modifications proposed by the Board at its April 18, 2024 meeting wherein the impervious coverage was adjusted to not exceed 20.3 percent, the Project works to so as not to foster any excessive stormwater runoff in the Property and surrounding property parcels which are positioned adjacent to the Property.

6. The Applicant called its engineer, Paul Gdanski, P.E., as its first witness.

Mr. Gdanski specifically described and authenticated the “Pool Plan, Soil Erosion Sediment Control Plan, Notes & Details for Rebisz” prepared on December 4, 2023 and further testified as to how the proposed Project, presented in its entirety, improves the Property and fosters an upgrade of the existing patio/walkway. Mr. Gdanski further testified regarding the soil moving plan and that there would be a potential need for a net export of 107.1 cubic yards of soil to create the cavity wherein the in-ground swimming pool would be positioned. Mr. Gdanski further testified, in response to Board inquiry from both its members and professionals, as to the removal of impervious surface otherwise created by the installation of concrete about the in-ground pool and patio/walkway areas. Mr. Gdanski testified as to how the proposed “Pool Plan, Soil Erosion Sediment Control Plan, Notes & Details for Rebisz” would be modified so as to achieve closer but not complete conformity with the specifications of Ordinance §290-2, by eliminating particular

areas of concrete, and scaling back other particular areas of concrete, to reduce the proposed impervious coverage that was initially sought by the Applicant. .

7. The Applicant called Property owner, Wesley Rebisz, as its second witness. Mr. Rebisz testified that he currently owns the existing property at 14 Congress Road in Emerson, New Jersey, and is desirous of maintaining residency in the municipality. Mr. Rebisz testified as to his awareness of the comments, remarks and recommendations contained with the December 4, 2023 site plan of Paul Gdanski, P.E. Mr. Rebisz 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 April 18, 2024

8. Additionally, and also as per Mr. Gdanski's and Mr. Rebisz's further remarks, the presently existing utility shed located upon the Property will be removed and not replaced, thereby reducing proposed impervious coverage about the Property.

9. The testimony of both Paul Gdanski, P.E. and Property owner Wesley Rebisz collectively 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.

10. On April 18, 2024, 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 R-10 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 14 Congress Road, Emerson, New Jersey, and also identified on the Borough of Emerson Tax Map as Block 1005, Lot 2, 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 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 May 2, 2024 and that the within Resolution was adopted by the Board and memorialized pursuant to N.J.S.A. 40:55D-10(g).

Approval April 18, 2024

Motioned by: Mayor Danielle DiPaola

Seconded by: Vice Chairman Michael Myers

Ayes: 7

Nays: , 0

Abstentions: 0

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Resolution Approved May 8, 2024

Motioned by: Vice Chairman Michael Myers

Seconded by: Paul Hurlburt

Ayes: 4

Nays 0

Abstentions: 1

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Marie Shust, Secretary  
Borough of Emerson  
Municipal Land Use Board

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Jeff Bischoff, Chairman  
Borough of Emerson  
Municipal Land Use Board