

**BOROUGH OF EMERSON
MUNICIPAL LAND USE BOARD**

**RESOLUTION APPROVING THE APPLICATION OF
EMERSON AFFORDABLE HOUSING, LLC
FOR PRELIMINARY AND FINAL MAJOR SITE PLAN,
USE VARIANCES AND BULK VARIANCES AND TREE MANAGEMENT PLAN
FOR THE PREMISES LOCATED AT
324 MAIN STREET, EMERSON, NEW JERSEY
DESIGNATED AS BLOCK 304, LOT 3**

**HEARING DATE: JANUARY 18, 2024
MEMORIALIZED: FEBRUARY 1, 2024**

WHEREAS, an application has been submitted and presented to the Emerson Land Use Board (“Board”) by Emerson Affordable Housing, LLC, (“Applicant”), an entity owned by The Housing Development Corporation of Bergen County, for preliminary and final site plan, use variances, bulk variances and tree management plan and such other relief deemed necessary with respect to the subject property know as 324 Main Street, in Emerson, New Jersey and otherwise known as Block 304, Lot 3 on the Tax Map of the Borough of Emerson (hereinafter the “Property”); and

WHEREAS, the Applicant is the Tenant under a ground lease for the Property owned by the American Legion Emerson Post #269 (the “American Legion”), which has consented to this application; and

WHEREAS, Karl P. Kemm, Esq. of McManimon Scotland & Bauman LLC, whose office is located at 75 Livingston Avenue, Second Floor, Roseland, NJ 07068 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, January 18, 2024 and said hearing was achieved by way of an in-person meeting; and

WHEREAS, the Land Use Board's public hearing of January 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 January 18, 2024 by Applicant's counsel, Karl P. Kemm, Esq. of McManimon Scotland & Bauman LLC. Mr. Kemm 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 Land Use Board giving due review and consideration to the particular facts concerning the nature of the site plan and tree management plan as well as the nature of all the use variances and bulk variances sought and requested by the Applicant during the presentation of its proposal, and the Applicant maintaining a desire to construct a new 2½ story building on the eastern side of the Property, which will contain four (4) affordable one (1) bedroom units apartments with a veterans preference, with one (1) unit on the first floor, and three (3) on the second floor. The first floor will also contain a center hall room, a meeting area, utility and storage rooms, bathrooms, a small kitchen and meeting hall, which will also be used by the American Legion for its meetings and events, and related common uses (collectively the "Meeting Hall"). A new shed for the storage of yard maintenance equipment and storage is also proposed off the northwest corner of the parking lot. The parking lot is also being expanded and reconfigured to

add eight (8) additional parking spaces for a total of 39 parking spaces which includes two (2) handicapped parking spaces four (4) EV Make-Ready Spaces and two (2) spaces with installed electrical vehicle charging stations, and 31 spaces were previously approved. The existing trash/recycling enclosure in the parking lot will be reconfigured, and a new sign is also proposed. The existing two (2) flagpoles are to remain, One in front of the new meeting building and one in the rear. (collectively the “Project”); and

WHEREAS, the Applicant, (at the time was The Housing Development Corporation of Bergen County) previously received approvals for a Use Variance pursuant to N.J.S.A. 40:55D-70(d)(1) to construct affordable housing units with a veterans preference as memorialized by the Resolution of the Land Use Board adopted on August 21, 2014, as the multi-family use is not permitted in the R-7.5 Single Family Residential District. The Housing Development Corporation of Bergen County then received Site Plan approval with Bulk Variances and other relief as memorialized by the Resolution of the Land Use Board adopted on November 6, 2014 (the “Prior Approvals”). That approved project has been constructed and includes seven (7) one-story buildings each with two (2) residential units, for a total of fourteen (14) units, which are fully occupied; and

WHEREAS, the proposed Meeting Hall will be primarily used by the residents of the Property, and also will be used by the American Legion for meetings and events, and that the American Legion’s use of the Meeting Hall is not ancillary to the residential use; and

WHEREAS, the Applicant’s submitted request for a Preliminary and Final Major Site Plan with use variances, bulk variances and tree management plan as filed was deemed sufficiently complete to address and specify its proposed improvements and modification to the Property; and

WHEREAS, the justification for approval was established through the combined testimony of Edward A. Arcari of Arcari + Iovino Architects, Robert L. Costa of Costa Engineering Corporation and John Barree P.P. of Heyer Gruel & Associates, whose collective testimony summarized the proposed Project upon the Property, including without limitation the construction of the multifamily building, the drainage improvements, landscaping and the tree management plan to be undertaken along and about the Property in general, and concluded with the Applicant's meritorious position as further detailed below; and

WHEREAS, the Land Use Board sat in its capacity as a Zoning Board of Review and Adjustment, and as such, Board Members Mayor Danielle DiPaolo and Council President Timmerman each recused themselves from the judicial aspects of the Land Use Board in reviewing the Application (but each remained in the hearing room, seated in the audience); and

APPLICANT'S WITNESSES

WHEREAS, Edward A. Arcari of Arcari + Iovino Architects, of One Katherine Street, Little Ferry, NJ 07643, who was duly qualified and accepted as an expert in architecture, testified and specifically described the positive impact upon the Property for public health, safety and welfare and authenticated the submitted documents related to the architectural aspects of the Applicant's proposal; and

WHEREAS, Robert L. Costa, P.E., of Costa Engineering Corporation, of 325 So. River Street, Suite 302, Hackensack, NJ 07601, who was duly qualified and accepted as an expert in engineering, testified and specifically described the positive impact upon the Property for public health, safety, and welfare and authenticated the submitted documents related to the engineering aspects of the Applicant's proposal; and

WHEREAS, John Barree, P.P., of Heyer Gruel & Associates, of 236 Broad Street, Red Bank, NJ 07701, who was duly qualified and accepted as an expert in planning, testified and specifically described how the positive impact of the proposed Project outweighed any perceived negative criteria related to Applicant’s proposal; and

WHEREAS, John S. Hogan of American Legion Emerson Post #269 spoke of the Project’s importance and its anticipated positive effect upon veterans in the Borough of Emerson, including those living on the Property, and surrounding communities; and

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

- a. Signed and sealed engineering site plan consisting of eight (8) sheets entitled “Emerson Veteran Housing - Phase II, 324 Main St - Block 304, Lots 3, Borough of Emerson, Bergen County, New Jersey” prepared by Robert L. Costa, P.E., of Costa Engineering Corporation, dated December 8, 2023;
- b. Drainage calculations for Emerson Veteran Housing Phase II, Block 304, Lot 3, prepared by Robert L. Costa, P.E., of Costa Engineering Corporation, consisting of two (2) pages, dated December 14, 2023;
- c. As-Built-Survey of Block 304, Lot 3, prepared by David Jamiolkowski, PLS of Costa Engineering Corporation, consisting of one (1) sheet, dated August 30, 2017;
- d. Signed and sealed architectural plan consisting of four (4) sheets entitled “Emerson Veteran’s Housing – Phase II, 324 Main Street, Emerson, NJ” depicting floor plans, elevations and renderings, prepared by Edward A. Arcari of Arcari + Iovino Architects, dated October 6, 2023;
- e. A copy of the Borough of Emerson Application for a Soil Permit, dated August 30, 2023;
- f. A copy of the Tree Removal Application (Form B), dated October 25, 2023, along with a list of tree removals, prepared by Robert L. Costa, P.E., dated November 6, 2023;

- g. A copy of the Borough of Emerson Application for development, signed by Lynn Bartlett of Emerson Affordable Housing LLC and with attached application check lists A, B, C, D and E, undated;
- h. A copy of an Ownership Disclosure statement, by the Housing Development Corporation of Bergen County, undated, stating it has a one-hundred (100%) percent ownership in the Applicant;
- i. A copy of the Lease Agreement between American Legion Emerson Post #269 and the Applicant, dated March 18, 2016;
- j. A copy of a letter addressed to Emerson Affordable Housing, LLC, about Site Plan exemption, prepared by Eric V. Timsak, P.P. of the County of Bergen Department of Planning and Engineering, dated November 9, 2023;
- k. A copy of a letter addressed to Bergen County Soil Conservation District, containing the Applicant's submission, prepared by Karl P. Kemm. Esq. of McManimon Scotland & Bauman, LLC dated October 31, 2023;
- l. A copy of a letter addressed to the Land Use Board Chair, in support of the Application, authored by Post Commander John S. Hogan, of American Legion Emerson Post #269, dated November 6, 2023;

WHEREAS, the following documents, either submitted earlier or initially presented during the January 18, 2024 hearing, were marked for review and accepted into evidence; and

Exhibits Presented at the January 18, 2024 Hearing

Affidavit of Service and Publication of McManimon Scotland & Bauman, dated October 19, 2023, establishing that notice has been provided in accordance with the MLUL and Borough ordinances vesting the Board with jurisdiction hear this matter, which was not given an exhibit number;

A-1 Colorized renderings depicting the Applicant's Project as envisioned when completed entitled "Emerson Veteran's Housing – Phase II, 324 Main Street, Emerson, NJ", prepared by Edward A. Arcari of Arcari + Iovino Architects, dated October 6, 2023;

A-2 A separate and colorized version of sheet 3 of 8, entitled: Site Plan, from the plan set entitled: Emerson Veteran Housing - Phase II, 324 Main St - Block 304, Lots 3, Borough of

Emerson, Bergen County, New Jersey” prepared by Robert L. Costa, P.E., of Costa Engineering Corporation, dated December 8, 2023;

WHEREAS, the Board Engineer, David R. Atkinson, P.E., P.P., C.M.E. testified as to the Board Engineer’s report, dated December 1, 2023, as revised January 9, 2024 (the “Board Engineer’s Report”), and articulated recommendations regarding Applicant’s Project including compliance with the stormwater regulations as set forth by the New Jersey Department of Environmental Protection; and

WHEREAS, the Board Planner, Caroline Z. Reiter, P.P., testified as to the Board Planner’s report, dated January 12, 2024 (the “Board Planner’s Report”), and as to the impact of the proposed Project upon the Borough of Emerson and outlined the criteria by which the Applicant’s Project should be considered; and

WHEREAS, this matter was opened to public, and whereas public inquiries and comments were made, as described in further detail below; and

WHEREAS, the Board has made the following findings of fact and conclusions of law.

NOW THEREFORE BE IT RESOLVED by the 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 324 Main Street, Emerson, New Jersey, and is comprised of Block 304, Lot 3 in the R-7.5 Single Family Residential Zone, as per the Borough of Emerson Zoning Map.

2. The Applicant is the Tenant of the subject Property and 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 has proposed a new 2.5 story multifamily building that includes four (4) one-bedroom residential apartment 100% affordable units with a veterans preference, a center hall room, meeting area, bathrooms, utility room, storage and related common uses (again, collectively the “Meeting Hall”) to be used in part by the American Legion for meetings and events not ancillary to residential use, on the eastern side of the Property (again, the “Project”).

5. The Board recognizes a real, extensive and urgent need, existing throughout the State of New Jersey, to provide affordable housing to veterans.

6. The Application results in a non-conforming lot requiring “c” bulk variance relief in various forms: The following “c” bulk variances are required:

A. “Minimum Rear Yard Setback” Variance pursuant to N.J.S.A. 40:55-D-70(c) and further specified by the conditions of Ordinance § 290-16, Attachment 2- Schedule 1: Lot, Yard, Height and Setback Requirements.

35 feet is permitted, and 34.85 feet is proposed as measured from rear of Project.

B. “Maximum Free Standing Sign Square Footage” Variance pursuant to N.J.S.A. 40:55-D-70(c) and further specified by the conditions of Ordinance § 290 Attachment 3.

A maximum freestanding sign square footage of 12 square feet is permitted, and 13.3 square feet is proposed.

C. “Maximum Height of a Utility Shed” Variance pursuant to N.J.S.A. 40:55-D-70(c) and further specified by the conditions of Ordinance § 290-13.F.3.

A maximum height of 10 feet is permitted, 11 feet is proposed.

D. “Maximum Driveway Width” Variance pursuant to N.J.S.A. 40:55-D-70(c) and further specified by the conditions of Ordinance § 290-13.E.4.

A maximum driveway width of 22 feet within 40 feet of the curb line is permitted, A driveway width of 27 feet is provided. While an existing non-conformity, a variance is nonetheless required.

E. “Maximum Building Height” Variance pursuant to N.J.S.A. 40:55-D-70(c) and further specified by the conditions of Ordinance § 290-16. A maximum height of 32 feet is permitted, 33.92 feet is proposed.

F. “Maximum Garages per Unit” Variance pursuant to N.J.S.A. 40:55-D-70(c) and further specified by the conditions of Ordinance § 290-13.E.2. A minimum of one (1) garage per unit (four (4) garages in total) is required, whereas zero (0) garages are proposed.

G. “Maximum Impervious Coverage” Variance pursuant to N.J.S.A. 40:55-D-70(c) and further specified by the conditions of Ordinance § 290-16. A maximum impervious coverage of 15 percent is permitted, whereas a total of 53.9 percent is

proposed. While the property presents an existing non-conformity, a variance is nonetheless required.

- H. “Maximum Flag Poles” Variance pursuant to N.J.S.A. 40:55-D-70(c) and further specified by the conditions of Ordinance § 290-248.1.d(2). A maximum of one (1) flagpole is permitted, whereas (2) flagpoles are provided. While the property presents an existing non-conformity, a variance is nonetheless required.
 - I. “Minimum Off-Street Parking Space Dimensions” Variance pursuant to N.J.S.A. 40:55-D-70(c) and further specified by the conditions of Ordinance § 290-30B.1. A minimum parking space dimension of 10 feet by 20 feet is required, whereas 9 feet by 18 feet is provided. While the property presents an existing non-conformity, a variance is nonetheless required.
 - J. “Minimum Aisle Width – Two Way Traffic” Variance pursuant to N.J.S.A. 40:55-D-70(c) and further specified by the conditions of Ordinance § 290-30B.2. A minimum aisle width of 23 feet is required for perpendicular parking, whereas an aisle width of 22 feet is provided. While the property presents an existing non-conformity, a variance is nonetheless required.
 - K. “Minimum Off-Street Parking Spaces” Variance pursuant to N.J.S.A. 40:55-D-70(c) and further specified by the conditions of Ordinance § 290-30E. A minimum of 54 off-street parking spaces are required, whereas 39 are proposed.
7. The following “d” use variances are required: The proposed multi-family housing use, and, the proposed Meeting Hall use by the American Legion are not permitted uses within the R-7.5 Zoning District. Therefore, “d(1)” Use Variances are required as follows:
- A. The proposed multi-family housing is not a permitted use within the R-7.5 Zoning District, therefore, a “d(1)” Use Variances is required. The collective testimony of Applicant’s professional experts specified the nature and extent of the Project’s deviation from surrounding structures and how such deviation was not of such degree to deny the variance requested.
 - B. The proposed Meeting Hall use by the American Legion is not a permitted use within the R-7.5 Zoning District, therefore, a “d(1)” Use Variance is required. The collective testimony of Applicant’s professional experts specified the nature and

extent of the Project's deviation from surrounding structures and how such deviation was not of such degree to deny the variance requested.

8. The Applicant called its architect, Edward A. Arcari, as its first witness. Mr. Arcari specifically described the architectural drawings, submitted on October 6, 2023 and as highlighted by his presentation's exhibit(s), depicting the proposed Project. Mr. Arcari also testified that nature and dimensions of the proposed Project as indicated by its floor plans. Mr. Arcari also testified as to how the proposed Project necessitates a building height that, while appropriate to provide the best functionality to the Project's intended purpose, also requires bulk variances as specified in Findings of Fact, Paragraph 7, immediately above.

9. The Applicant called its engineer, Robert L. Costa, P.E., P.P. as its second witness. Mr. Costa specifically described the Overall Site Plan and drainage calculations that were prepared on August 2, 2023 and further revised on December 14, 2023. Mr. Costa also testified as to how the proposed Project, presented in its entirety, improves the Property by way of the proposed multifamily housing and an upgrade of existing drainage conditions so as to comply or exceed the requirements the New Jersey Department of Environmental Protection (hereinafter "NJDEP") Stormwater Management Regulations. Mr. Costa testified as to the number, dimensions and overall spacing of the off-street parking spaces associated with the Project and as specified above. Mr. Costa also testified that the proposed freestanding sign associated with the Project will not create any lighting spillage onto adjacent properties as its light-emitting-diode (LED) technology is not only directly and easily programmable by the user/owner, but also the proposed ground mounted lighting shall be positioned to provide illumination exclusively for the proposed freestanding sign.

10. The Applicant called its planner, John Barree, P.P., who as its third witness spoke without the aid or benefit of exhibits. In support of the use variance pursuant to N.J.S.A. 40:55D-70(d)(1) for the multi-family housing use, Mr. Barree testified that the 100% affordable housing units with a veterans preference is an inherently beneficial use. That use satisfies the d(1) criteria as modified by the Court in Sica v. Board of Adjustment of Tp. of Wall, 127 N.J. 152 (1992) and the use creates no substantial detriment, while there is a substantial benefit to the municipality. He went on to state that if the use was not inherently beneficial, it would still meet the criteria d(1) on the basis of the Project is providing 100% affordable housing units with a veterans preference alone. Mr. Barree also testified that for the same reasons the d(1) use variance for the American

Legion use of the Meeting Hall is also justified as it also serves the tenants on the Property as well as the American Legion's use is not primary, and the two (2) uses support and complement each other. Mr. Barree testified 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 both use variances would outweigh any detriment to the public good (the "positive criteria"). Mr. Barree further testified that granting the requested use variance relief will not impair the intent and purposes of the Borough of Emerson's zone and master plan and the Borough of Emerson's zoning land use ordinances (the "negative criteria").

11. Mr. Barree also testified that the bulk variances meet the requirements of N.J.S.A. 40:55D-70(c)(2) in that the variances are reasonably required to support the inherently beneficial use, and as such it satisfies the positive criteria for all of the variances. Also, many variances were granted in the Prior Approvals and are being similarly continued, and in some instances expanded, by the current Project. Mr. Barree noted that all of the variances advance purposes of the Municipal Land Use Law as contained in N.J.S.A. 40:55D-2, thereby also satisfying the positive criteria. The negative impact of the existing variances are negligible as they have been existence for years without adverse impact to the neighboring properties and surrounding community, and, the new variances also do not create an adverse impact to the neighboring properties and surrounding community. Further, the variances do not substantially impair the purpose and intent of the zoning ordinances or the master plan.

12. The combined testimony of Edward A. Arcari, AI, Robert L. Costa, P.E. and John Barree, P.P., collectively presented that if the "c" and "d" variances for the proposed Project were granted along with the variances for off-street parking, the positive criteria of the proposed Project would outweigh any negative criteria, and that the application can be granted without any substantial detriment to the public good. As per the combined testimony of these three (3) professional experts, the Applicant communicated its belief that the Project represents a positive reinvestment of a longstanding use, with little to no negative impact upon the surrounding community.

13. The testimony and documentary submissions of Robert L. Costa, P.E. have presented that the Applicant has sufficiently satisfied the criteria set forth in the Borough of Emerson's tree removal specifications and requirements.

14. The matter was opened to the public generally to comment either in favor of or against the Application. There was public comment. Specifically, Mayor Danielle DiPaola spoke (as a private citizen from the audience) inquiring as to whether the Project might be used in the future as a catering hall-type use not directly associated with veteran activities.

15. The Applicant agreed as conditions of approval to:

- A. comply with the Board Engineer's Report, except as modified through testimony, and to submit revised plans and reports as required;
- B. to comply with the Board Planner's Report, except as modified through testimony, and to submit revised plans and reports as required;
- C. the American Legion's use of the Meeting Hall will be limited to its routine meetings and occasional special events throughout the year, but will not be used for large gatherings such as birthday parties or other celebrations of its members and/or their family members, and it will not rent the meeting hall to third parties (i.e.: a catering hall-type use).

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 Board has considered the Application and the Applicant's request for approval of the two (2) use variances pursuant to N.J.S.A. 40:55D-70(d)(1) for the multi-family housing use; and, for the American Legion's use of the Meeting Hall. The Board, as it previously found in the Prior Approvals, again finds that the 100% affordable housing units with a veterans preference is an inherently beneficial use.

- A. The Board finds from the testimony presented, subject to the conditions agreed upon by the Applicant and those imposed by the Board, that the Applicant has satisfied the positive and negative criteria requirements such that N.J.S.A. 40:55D-70(d)(1) has been satisfied for the multifamily use for the 100% affordable housing units with a veterans preference is an inherently beneficial use. That use satisfies the d(1) criteria as modified by the Court in *Sica v. Board of Adjustment of Tp. of Wall*, 127 N.J. 152 (1992) and the use creates no substantial detriment, while there is a substantial benefit to the municipality. The Board also finds that the use of the

Property continues to be an appropriate location for multifamily use, notwithstanding the deviation from the use requirements. The Board also adopts the Applicant's testimony, specifically that of its professionals in support of this variance.

- B. The Board finds from the testimony presented, subject to the conditions agreed upon by the Applicant and those imposed by the Board, that the Applicant has satisfied the positive and negative criteria requirements such that N.J.S.A. 40:55D-70(d)(1) has been satisfied for the American Legion's use of the Meeting Hall. As that use supports the inherently beneficial use of the Property, it satisfies the d(1) criteria as modified by the Court in Sica v. Board of Adjustment of Tp. of Wall, 127 N.J. 152 (1992) and the use creates no substantial detriment, while there is a substantial benefit to the municipality. The Board also finds that if the use was not inherently beneficial, it would still meet the criteria d(1) on the basis of the Project providing 100% affordable housing units with a veterans preference. The Board finds that the use of the Property continues to be an appropriate location for the American Legion's use of the Meeting Hall, notwithstanding the deviation from the use requirements. The Board also adopts the Applicant's testimony, specifically that of its professionals in support of this variance.

2. 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.

3. The Board has considered the Application and the Applicant's request for approval of bulk variances pursuant to N.J.S.A. 40:55D-70(c)(2) to permit the deviations specified in

Findings of Fact, point 7. The Board finds from the testimony presented, subject to the conditions agreed upon by the Applicant and those imposed by the Board, that the Applicant has satisfied the positive and negative criteria requirements such that N.J.S.A. 40:55D-70(c)(1) has been satisfied for the required Bulk Variances. The Board finds from the testimony presented, subject to the conditions agreed upon by the Applicant and those imposed by the Board, that the Bulk Variance applied for can be granted without substantial detriment to the Master Plan, and the Zoning Ordinance, and, without substantial detriment to the surrounding area. The Board also adopts the Applicant's testimony, specifically that of its professionals in support of these variances.

4. To the extent that the prior Residential Site Improvement Standards ("RSIS") for the minimum number of parking spaces attributable to the residential apartments required by N.J.A.C. 5:21-4.14 applies to this application (the new regulations only provide for a maximum number of spaces), the Board also grants a de minimis exception, as the Board finds that the requirements of N.J.A.C. 5:21-3.1 of the RSIS, have been met, and also for the same reasons that justify the bulk variances. The Board also adopts the Applicant's testimony, specifically that of its professionals in support of the RSIS de minimis exception.

5. The Board finds from the testimony presented, subject to the conditions agreed upon by the Applicant and those imposed by the Board, that the Preliminary and Final Site Plan is in substantial compliance with N.J.S.A. 40:55D-38, 39, 41 and 50, and the applicable Borough Ordinances, and advances sound land use principals and grants Preliminary and Final Site Plan approval.

6. 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.

7. 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 overall use and operation of the site.

8. The Board further finds that the Applicant has met its burden of demonstrating that the "c" and "d" 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.

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 the required “c” and “d” variances, Preliminary and Final Site Plan, permitting the construction of the Project upon the Property located at 324 Main Street, Emerson, New Jersey, and also identified on the Borough of Emerson Tax Map as Block 304, Lot 3, all in accordance with the plans and testimony submitted to the Board, subject to the following conditions:

1. Adherence to all representations made by the Applicant and the documentary materials submitted by the Applicant’s engineer, architect and planner prior to and during the course of the public hearing, which representations are made conditions of the within approval.
2. Adherence to plans, renderings and engineering and architectural drawings and other exhibits submitted by the Applicant, subject to deviations and field changes as permitted pursuant to the MLUL and the Board’s professionals. Any other deviation from such submissions shall require the Applicant to return to the Board for further review and any necessary approvals.
3. The Applicant shall, upon notice and consultation, 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.
4. Applicant shall be responsible for any other governmental approvals associated with the site.
5. All testimony given by the Applicant and Applicant’s professionals in accordance with this application shall be binding.
6. Applicant shall demonstrate compliance with the make-ready electrical vehicle parking space requirements, if applicable, and as required by state law, prior to issuance of the final certificate of occupancy.
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. The Applicant shall provide a Stormwater Operations and Maintenance manual, signed and sealed by a New Jersey Licensed Professional Engineer, for review and for future maintenance purposes.
10. The Board Engineer’s Report shall be attached and incorporated herein.

11. Applicant was given the opportunity to review this Resolution prior to the Board's passage.

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 February 1, 2024 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

Approval Motioned January 18, 2024 by: Bischoff

Seconded by: Hulbert

Ayes: 5, Bischoff, Hulbert, Chang, Todd, Khiami

Nays: 0

Abstentions: 0

Resolution Approved Motioned February 1, 2024 by: _____

Seconded by: _____

Ayes: _____

Nays: _____

Abstentions:

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