

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

**In the matter of:**

**KATHLEEN KINCEL AND SCOTT JEFFERY  
119 ACKERMAN AVENUE  
BLOCK 512, LOT 1  
EMERSON, NEW JERSEY**

**WHEREAS**, Kathleen Kincel and Scott Jeffery (“Applicant”) have made application to the Municipal Land Use Board of the Borough of Emerson (the “Board”) for variance approval to construct a detached garage to be located against the existing shed, on the property located at 119 Ackerman Avenue, Block 512, Lot 1 on the Tax Assessment Map of the Borough of Emerson (the “Property”); and

**WHEREAS**, the Property is located in the R-10 Residential Single-Family Zone of the Borough of Emerson; and

**WHEREAS**, the subject lot contains pre-existing non-conformities and the application requires variance relief from the requirements of the Emerson Zoning Ordinance in the R -10 Zone as to minimum side yard setback, whereas 40 feet is required for a corner lot, 8.8 feet is existing and non-conforming and 20.9 feet is proposed;

**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 Laws of the State of New Jersey; and

Kincel Jeffery

**WHEREAS**, Applicant was represented at the meeting by Frederic C. Goetz, Esq., 167 Main Street, Hackensack, New Jersey 07601; and

**WHEREAS**, John W. McDermott, Esq. represented the Board; and

**WHEREAS**, the Board reviewed this matter at a remote online public hearing on May 20, 2021; and

**WHEREAS**, Applicant, Scott Jeffery, 119 Ackerman Avenue, Emerson, New Jersey appeared, was sworn and testified in support of the application as follows:

- a. Applicant and his wife, Kathleen Kincel, are the owners of the subject property which is a corner lot. The property has a single family, two story home with a covered porch on the lot. The property also contains a shed and detached garage. Applicant proposes to demolish the existing detached garage along the southern property line to construct a new detached garage which will be located against the existing shed, and approximately eleven (11) feet away from the existing dwelling. Applicant also seeks to replace the existing shed with a larger one.
- b. The existing garage is a one car garage, whereas the new garage us a prefabricated two car garage which will be used for cars and storage.
- c. The proposed garage is in compliance with the Borough Code, except for the pre-existing lot conditions, with all electrical in accordance with Borough regulations. The new garage will be further from the property line, which will increase the existing side yard setback, which is currently nonconforming, and reduce the variance required.

- d. There is no other location on the property that is appropriate to place the garage. In addition, no major soil movement is required as the garage is prefabricated.
- e. The plans show an opening to one side of the garage. In accordance with the correspondence from Neglia Engineering, Applicant agrees to add an additional curb-cut on the Hollywood side of the property to allow better access to the new garage as well as a widened curb-cut.
- f. A drainage system has been included in the proposal.
- g. Applicants agree to abide by the recommendations of the Board Engineer and the regulations of the Borough.

**WHEREAS**, the matter was opened to the public and the following persons appeared:

Boris Leschinsky, 75 Hollywood Road, Emerson, New Jersey, a neighbor, who asked about the distance of the garage from his property. Applicant's counsel stated that the new garage was actually further from his property line than the existing garage.

**WHEREAS**, after due consideration and deliberation at the aforementioned hearings, 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 119 Ackerman Avenue, Block 512, Lot 1. The property has a single family, two story home with a covered porch on the lot. The property also contains a shed and detached garage.

2) The Property is located in the R-10 Residential Single-Family Zone.

3) Applicant proposes to demolish the existing detached garage along the southern property line to construct a new detached garage which will be located against the existing shed, and approximately eleven (11) feet away from the existing dwelling.

4) The property contains certain existing non-conforming conditions and the application requires the following variance relief: variance from the requirements of the Emerson Zoning Ordinance in the R -10 Zone as to minimum side yard setback, whereas 40 feet is required for a corner lot, 8.8 feet is existing and non-conforming and 20.9 feet is proposed.

5) 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.

6) 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 garage is an aesthetic improvement and there is no negative impact from same. The new garage will be further from the property line, which will increase the existing side yard setback, which is currently nonconforming, and reduce the variance required. 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.

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

**CONDITIONS SPECIFIC TO THIS APPLICATION**

- 1) Applicants shall comply with the recommendations of the Borough Engineer, Neglia Engineering.
- 2) Applicants shall comply with the regulations of the Borough.

- 3) Applicant agrees to add an additional curb-cut on the Hollywood side of the property as well as a widened curb-cut, in accordance with the recommendation of the Borough Engineer.

**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 variance complies with the Municipal Ordinances and 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.

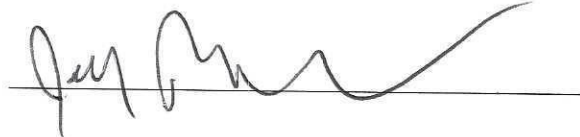
**BE IT FURTHER RESOLVED** that this Resolution does not constitute approval or recommendation for approval for any variance or any exception not requested by the Applicant,  
Kincel Jeffery

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.

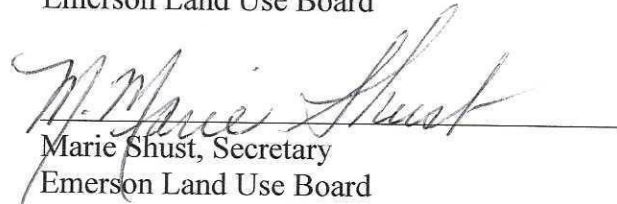
The undersigned certifies that the within Resolution was adopted by the Board and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on June 3, 2021.

Dated: June 3, 2021



Jeff Bischoff, Chairman  
Emerson Land Use Board

Dated June 3, 2021



Marie Shust, Secretary  
Emerson Land Use Board

OFFERED BY: Vice Chairman Myers

SECONDED BY: Chairman Bischoff

VOTE: Ayes: 2

Nays: 0

Abstain: 0

Kincel Jeffery