

RESOLUTION OF THE MUNICIPAL LAND USE BOARD

THE BOROUGH OF EMERSON

In the matter of:

**LESTER MARTIN, JR.
104 VIVIAN AVENUE
BLOCK 101, LOT 7
EMERSON, NEW JERSEY**

WHEREAS, Lester Martin, Jr. (“Applicant”) has made application to the Municipal Land Use Board of the Borough of Emerson (the “Board”) for variance approval to construct a new deck in the rear of the single-family, two story home on the subject property located at 104 Vivian Avenue, Block 101, Lot 10 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 a variance from the requirements of the Emerson Zoning Ordinance in the R-7.5 Zone as to rear yard setbacks; an

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

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

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WHEREAS, Applicant, Lester Martin, Jr., 104 Vivian Avenue, Emerson, New Jersey appeared, was sworn, and testified in support of the application as follows:

- a. Applicant is the owner of the subject property which has a two-story single-family frame dwelling on the lot. The property contains an attached garage and asphalt driveway connecting to Vivian Avenue. The property contains a wooden deck in the rear of the dwelling and concrete walkways in the front, rear and side of the property.
- b. The Applicant proposes to remove an existing rear deck and to construct a new deck against the rear of the dwelling. The proposed new deck will be 4 feet larger than the existing deck.
- c. The application results in the need for variance relief as to minimum rear yard setback. The required minimum rear yard setback is 35 feet, which is existing. Applicant is proposing a rear yard setback of 28.2 feet, requiring variance relief.
- d. The addition is being proposed to allow the family to have a barbeque table and enjoy the property. It would improve the neighborhood and increase the value of the home.
- e. Applicant did not receive any negative input or comments from neighbors.

WHEREAS, Jeralyn Chico, 104 Vivian Avenue, Emerson, New Jersey appeared, was sworn, and testified in support of the application as follows:

- a. Ms. Chico is the Applicant's wife and testified that many neighboring properties have similar decks.
- b. All neighbors were notified of the application and there was no objection to the application.

Martin

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 104 Vivian Avenue, Block 101, Lot 10.
- 2) The Property is located in the R-7.5 Residential Single-Family Zone.
- 3) The subject property has a two-story single-family frame dwelling on the lot. The Applicant proposes to remove an existing deck in the rear of the dwelling and to construct a new deck that is four (4) larger than the existing deck.
- 4) The application requires variance relief from the Borough Ordinance requirements as to rear yard setback. The Ordinance requires a 35 rear yard setback and the Applicant is proposing a 28.2 ft rear yard setback, requiring a variance of 6.8 feet for rear yard setback.
- 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

Martin

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 variance application satisfies the positive and negative criteria. The construction of the new deck is an aesthetic improvement. The new deck improves the home and the aesthetic of the neighborhood and there is no negative impact from same. The Applicant has met its burden of demonstrating the positive and negative criteria to justify granting of the variance for combined side yard setback. 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 Lester Martin, Jr. with respect to the subject Property requesting variance approval for rear yard setback be and is hereby **APPROVED** subject to the terms and conditions hereinafter set forth:

Martin

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 addition 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.

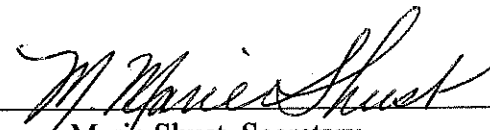
The undersigned certifies that the within Resolution was adopted by the Board and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on May 4, 2021.

Date: May 7, 2021



Jeff Bischoff, Chairman
Emerson Land Use Board

Dated: May 7, 2021



Marie Shust, Secretary
Emerson Land Use Board

OFFERED BY: Mr. Myers

SECONDED BY: Mr. Pierro

VOTE: Ayes: 4

Nays: 0

Abstain: 0

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