

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

In the matter of:

**JESSE SMITH
26 South Dorchester Road
Block 125, Lot 5
Emerson, New Jersey**

WHEREAS, Jesse Smith (“Applicant”) made application to the Land Use Board of the Borough of Emerson (the “Board”) for variance relief from the provisions of the Emerson Zoning Ordinance to permit Applicant to install a fence on the property located at Block 125, Lot 5, on the Tax Assessment Map of the Borough of Emerson, commonly known as 26 South Dorchester Road (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 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 was represented by Christopher E. Martin, Esq.; and

Smith

WHEREAS, the Board reviewed this matter at a virtual public hearing on March 18, 2021;
and

WHEREAS, the Applicant, Jesse Smith, gave testimony in support of the application and testified that as follows:

a. Applicant described the subject property and testified that he seeks to install a fence for the safety and security of his children.

b. Applicant seeks approval to install a fence that is six (6) feet in height on the Applicant's property which is a corner lot.

c. The Borough Police Department is satisfied that the proposed fence will not impede traffic safety, that the fence will not create any obstruction and that there are no sight line issues.

WHEREAS, Emerson Zoning Ordinance §290-40 (B) provides that any fence located along the front property line or anywhere within the required front yard setback area, including the side street required setback for corner properties, shall not exceed three feet in height;

WHEREAS, Applicant is seeking to install a fence of six (6) feet in height, requiring a variance; and

WHEREAS, after due consideration and deliberation at the aforementioned hearing, 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

Smith

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 26 South Dorchester Road, Block 125, Lot 5;

2) The Property is located in the Residential Single Family (“R-7.5”) Zone;

3) Emerson Zoning Ordinance §290-40 (B) provides that any fence located along the front property line or anywhere within the required front yard setback area, including the side street required setback for corner properties, shall not exceed three feet in height;

4) The Applicant proposes to install a fence that is six (6) feet in height, requiring a variance of three (3) feet from the Ordinance Section 290-40(B);

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 Applicant has met its burden of demonstrating the positive and negative criteria to justify
Smith

granting of the bulk variance and therefore the Applicant's request conforms with 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 Jesse Smith with respect to the subject Property requesting a variance from Ordinance Section 290-40(B) is hereby **APPROVED** subject to the terms and conditions hereinafter set forth:

- 1) The foregoing findings of fact and conclusions of law are incorporated herein as if set forth at length.
- 2) In reviewing this Application, the Board concludes that the proposed variance complies with requirements of the Municipal Land Use Law as to the necessary criteria to allow for a fence of six feet (6') in height on this corner property.
- 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 as applicable.
- 5) Approval from the Emerson Police and the Emerson Fire Department as 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.

Smith

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, the Board Planner, the 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 other fees and charges, and Borough approval of the property's tree management and landscape plans.

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.

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
Smith

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 April 15, 2021.

Dated: ___ April 16, 2021



Jeff Bischoff, Chairman

Dated: ___ April 16, 2021



Marie Shust, Secretary

OFFERED BY: Mr. Loschiavo

SECONDED BY: Mr. Myers

VOTE: Ayes: 3

Nays: 0

Abstain: 0

Smith