

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

In the matter of:

**JOHN TARABOCCHIA
232 PARK AVENUE
BLOCK 118, LOT 3
EMERSON, NEW JERSEY**

WHEREAS, John Tarabocchia (“Applicant”) has made application to the Municipal Land Use Board of the Borough of Emerson (the “Board”) for variance approval to construct an in-ground pool with associated paver walkways and proposed spa, and to construct a wall in the rear of the dwelling and remove and construct a new shed on the subject property located at Block 118, Lot 3 on the Tax Assessment Map of the Borough of Emerson, commonly known as 232 Park Avenue (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 the following variance relief from the requirements of the Emerson Zoning Ordinance in the R -7.5 Zone: as to Maximum Building Coverage for all Structures whereas a maximum of 28% is permitted and Applicant proposes 31.74%; Maximum Impervious Coverage whereas a maximum of 15% is permitted and Applicant proposes 21.91%; from Section 290-13F, whereas only one utility shed is permitted on each residential lot and Applicant proposes two sheds; and from Section 265-5B as to installation of the pool within the front yard setback; 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 reviewed this matter at a remote online public hearing on June 3, 2021; and

WHEREAS, based upon the sworn testimony of Darren Pellegrino of Aquatic Pools, Inc., 710 Braen Ave, Wyckoff, New Jersey 07481, the Board made the following findings of fact:

- a. Mr. Pellegrino testified generally with regard to the construction and installation of the inground pool on the property. The Applicant proposes to construct the swimming pool located partially within the front yard setback along Hillcrest Avenue.
- b. Mr. Pellegrino was asked about the number of variances required, which he confirmed were four: impervious coverage; excess building coverage; number of sheds, and setback. The ordinance requires that a swimming pool shall be located behind the front setback line and not closer than 10 feet from either sideline or five feet from the property line. Here, the proposed setbacks are 10 feet on one side and 6 feet in the rear, while 5 feet is proposed.
- c. Mr. Pellegrino testified that he hired a licensed engineer to provide the missing calculations and measurements that were needed and that the revised calculations will be provided to Neglia Engineering and to the Land Use Board. Mr. Pellegrino testified that the engineer would provide all information Neglia had requested.

Vice Chairman Myers asked if the Police had reviewed the corner property. Mr. Pierro said there was an email from the Police Dept stating there was no issue with the fence on the corner.

WHEREAS, Applicant, John Tarabocchia, 232 Park 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. Mr. Tarabocchia generally described the project, including the installation of the inground pool, associated paver walkways and proposed spa. Applicant also seeks to construct a wall in the rear of the dwelling and to remove and construct a new shed, so that there will be a total of two sheds on the property, requiring variance relief.
- b. Applicant agreed, as a condition of this approval, to comply with all the recommendations and comments of the Borough Engineer prior to the issuance of any permits.
- c. Applicant agreed as a condition of this approval, to provide calculations from a Professional Engineer, Chris Lantilman, P.E., of Hillsdale.
- d. Applicant agreed, as a condition of this approval, that Applicant would comply with the rules and regulations the Borough Building Department and all Borough Ordinances.

WHEREAS, after due consideration and deliberation at the aforementioned hearings, the Board did vote in favor of the Application on the condition that the requirements of Neglia

Engineering and the Borough are satisfied 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 232 Park Avenue, Block 118, Lot 3, which currently contains a one (1) story brick and frame dwelling with an attached garage, asphalt driveway connecting to Park Avenue and a concrete driveway connecting to Hillcrest Avenue.

2. The Applicant proposes to construct an in-ground swimming pool with associated paver walkways and proposed spa partially within the front and side yard along Hillcrest Avenue. The proposed improvements will include the construction of a retaining wall in the rear of the dwelling as well as the removal and construction of a new shed.

3. The application requires the following variance relief: Maximum Building Coverage for all Structures - a maximum of 28% is permitted, whereas Applicant proposes a total 31.74%; Maximum Impervious Coverage - a maximum of 15% is permitted whereas Applicant proposes 21.91%; from Section 290-13F- only one utility shed shall be permitted on each residential lot. Applicant proposes to demolish one of the two existing sheds and reconstruct the second shed; and from section 265-5B as to setbacks. The ordinance requires that a swimming pool shall be located behind the front setback line and not closer than 10 feet from

either sideline or five feet from the property line. Here, the proposed setbacks are 10 feet on one side and 6 feet in the rear, while 5 feet is proposed.

4. 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.

5. 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 addition is an aesthetic improvement. The addition improves the home and is consistent with homes in 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 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 John Tarabocchia with respect to the subject Property requesting minor site plan and variance approval be and is hereby **APPROVED** subject to the terms and conditions hereinafter set forth:

CONDITIONS SPECIFIC TO THIS APPLICATION

1. Applicant has agreed, as a condition of this approval, to comply with all the recommendations and comments of the Borough Engineer prior to the issuance of any permits.
2. Applicant agreed as a condition of this approval, to provide calculations from a Professional Engineer, Chris Lantilman, P.E., of Hillsdale.
3. Applicant agreed, as a condition of this approval, that Applicant shall comply with the rules and regulations the Borough Building Department and all Borough Ordinances.
4. Applicant is required to review the plans and to demonstrate that the fence meets all applicable codes and is also required to provide details relating to the fencing around the pool.
5. Applicant shall submit plans and application documents to the Borough of Emerson Shade Tree Committee regarding removal, and potential replacement of the trees to be removed, prior to commencement of tree removal activities on-site. The Applicant shall revise the plan to indicate all trees to be removed with an "X" and provide tree protection for any surrounding trees to remain.

6. Applicant shall revise the plans to include the approximate area of disturbance. The Applicant has been advised that disturbances in excess of 5,000 square feet require Soil Erosion and Sediment Control Plan Certification from the Bergen County Soil Conservation District ("BCSCD"). The Applicant shall apply for, obtain, and furnish copies of the required permit from the BCSCD to the Borough for review, prior to commencing soil disturbance activities on-site.
7. The signed/stamped revised plans, construction detail and corrected paperwork as set forth in and required by the Neglia review letter shall be submitted by Applicant before the next meeting to both Neglia Engineering and to the Board Secretary.

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 variances comply 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, 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.

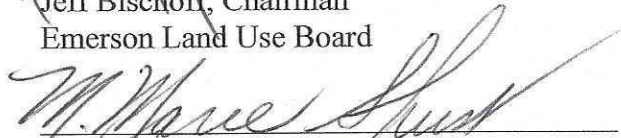
The undersigned certifies that the within Resolution was adopted by the Board and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on July 1, 2021.

Dated: July 2, 2021



Jeff Bischoff, Chairman
Emerson Land Use Board

Dated: July 2, 2021



M. Marie Shust, Secretary
Emerson Land Use Board

OFFERED BY: Vice Chairman Myers
SECONDED BY: Mr. Hulburt
VOTE: Ayes: 3
Nays: 0
Abstain: 3 (Not eligible)