

RESOLUTION OF THE MUNICIPAL LAND USE BOARD

THE BOROUGH OF EMERSON

In the matter of:

**KEVIN TOFTS
28 COLONIAL ROAD
BLOCK 1006, LOT 4
EMERSON, NEW JERSEY**

WHEREAS, Kevin Tofts (“Applicant”) has made application to the Municipal Land Use Board of the Borough of Emerson (the “Board”) for variance approval to expand and construct a second floor addition to the existing the single-family home on the subject property located at 28 Colonial Road, Block 1006, Lot 4 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 application requires a variance from the requirements of the Emerson Zoning Ordinance in the R -10 Zone as to side 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

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WHEREAS, the Board reviewed this matter at a remote online public hearing on May 6, 2021; and

WHEREAS, Applicant, Kevin Tofts, 28 Colonial Road, Emerson, New Jersey appeared, was sworn and testified in support of the application as follows:

1. The Applicant is seeking to construct this addition so his children can have their own room.
2. The Applicant proposes to remove an existing window and parts of the back roof in order to construct the addition over about half of the footprint of the existing home.
3. The zoning officer denied the permit application due to the existing non-conforming side yard setback. The existing right-side yard setback to the existing garage is only 10 feet, whereas 15 feet is required in the R-10 Zone.
4. There will be no new construction on the right side of the property. There will be no expansion of the nonconforming condition and all new construction will be conforming. The pre-existing nonconforming side yard setback will continue and remain unchanged.
5. Applicant agrees to comply with all rules of the Building Department.

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;

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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 28 Colonial Road, Block 1006, Lot 4.

2) The subject property is an interior lot located on the side of Colonial Road between the intersections with Soldier Hill Road and Concord Street in the R-10 (Residential Single Family) Zone.

3) The site currently has a one-and-a-half (1 ½) two-story, single-family frame dwelling on the lot. The property contains an asphalt driveway, concrete walkway and covered porch in the front of the dwelling and an attached garage on the southern side of the dwelling. There is also a patio and an existing one (1) story portion of the dwelling in the rear of the property.

4) The Applicant proposes to remove an existing window and parts of the back roof to construct a second-floor addition over approximately one-half the footprint of the existing home.

5) The property contains an existing non-conforming condition and the application requires the following variance relief : the existing right side yard setback to the existing garage is only ten (10) feet, whereas fifteen (15) feet is required for the R-10 Zone. The prior owner

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received variance approval in 2004 to construct the non-conforming garage. Applicant does not propose any improvements or modifications to the existing garage in this application. The exiting non-conforming side yard setback will be continued under the application.

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 for the granting of variance for a right side yard setback of 10 feet whereas 15 feet is required due to the existing nonconformity. 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 Tofts

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 Kevin Tofts with respect to the subject Property requesting variance approval be and is hereby **APPROVED** subject to the terms and conditions hereinafter set forth:

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 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 private or 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.

14) The Applicant shall ensure that all disturbed work areas are stabilized to ensure lawn growth.

15) The Applicant shall notify the Building Department upon completion of improvements to schedule a final inspection. The Applicant shall provide a minimum 24-hour advanced notice for inspection.

16) The Applicant shall ensure that stormwater runoff does not negatively affect neighboring properties. Any damages caused by an increase in runoff or improper drainage shall be restored by the Applicant.


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 Tofts

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.

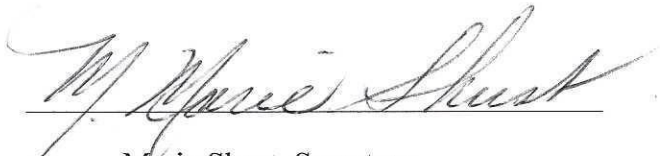
The undersigned certifies that the within Resolution was adopted by the Board and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on May 20, 2021.

Dated: May 20, 2021



Jeff Bischoff, Chairman

Dated: May 20, 2021



Marie Shust, Secretary

OFFERED BY:	Mr. Loschiavo
SECONDED BY:	Vice-Chairman Myers
VOTE: Ayes:	3
Nays:	0
Abstain:	0

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