

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

In the matter of:

**JOSEPH HENCHENSKI
344 GRAND BOULEVARD
BLOCK 109, LOT 10
EMERSON, NEW JERSEY**

WHEREAS, Joseph Henchenski (“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 patio on the subject property located at Block 109, Lot 10 on the Tax Assessment Map of the Borough of Emerson, commonly known as 344 Grand Boulevard (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 Chapter 290 of the Emerson Zoning Ordinance in the R -7.5 Zone: as to Maximum Impervious Coverage whereas a maximum of 15% is permitted, 29.90% is existing and nonconforming and Applicant proposes 37.74%; and as to minimum pool setback to rear property line, whereas ten (10) feet is required, and nine (9) feet is proposed; 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 public hearing on August 5, 2021; and

WHEREAS, Applicant, Joseph Henschenski, 344 Grand Boulevard, Emerson, New Jersey appeared, was sworn and testified in support of the application as follows:

- a. Applicant, Joseph Henschenski, is the owner of the subject property. Mr. Henschenski generally described the project, including the installation of the inground pool, associated paver walkways and proposed patio. The proposed improvements also include an equipment pad, retaining wall and the installation of a seepage/water retention system to avoid any flooding to the area. The improvements are sought for the use and enjoyment of Applicant's family.
- b. The application originally sought variances for maximum impervious coverage and for minimum pool setback to side property line. With regard to maximum impervious coverage, under the Ordinance, 15% is permitted, 29.9% is existing and nonconforming and applicant is proposing 37.74%. It was noted that the pool area is included in the calculation of impervious coverage which is not entirely accurate. With regard to the variance sought for minimum pool setback to the property line, Applicant testified that since the lot is oversized, there is no reason for the pool to be set so close to the property line. Accordingly, the plans were revised, and this variance relief is no longer required.

- c. Applicant testified that the removal of one (1) tree is required in order to install the retaining wall. Councilman Hoffman stated that a tree management plan was not required as only one tree is involved.
- d. Applicant agreed, as a condition of this approval, to comply with all the recommendations and requirements of the Borough Engineer, which primarily address the prevention of flooding in the neighborhood.
- e. Applicant testified that his engineer was working with the Borough Engineer on a percolation test and will provide the results of same to the Borough Engineer and Building Department. The percolation test results are subject to the approval of the Borough Engineer and Building Department to ensure that the proper seepage/retention system is installed.
- f. Applicant agreed, as a condition of this approval, that Applicant would comply with the rules and regulations the Borough Building Department.

Board counsel inquired whether the sealed survey had been received as noted in the Borough Engineer's review. The Board Secretary confirmed that she had received several copies and that she sent one copy of the sealed survey to the Borough Engineer for his files.

A number of Board members indicated that their primary concern was the possibility of flooding in the neighborhood due to the excessive impervious coverage but indicated that the percolation test would resolve any issue.

Mr. Cimino noted that this application is proposing to exceed the maximum impervious coverage by 22% . The Chair stated that he had met with the Zoning Officer on this application

3. 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.

4. The Board finds from the above testimony and evidence presented by the Applicant that the application satisfies the positive and negative criteria. The installation of the pool and associated patio will be an aesthetic improvement. It will improve 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 Joseph Henchenski 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 agrees, as a condition of this approval, to comply with all the recommendations and requirements of the Borough Engineer prior to the issuance of any permits.
2. Applicant agrees, as a condition of this approval, that Applicant shall comply with the rules and regulations the Borough Building Department.
3. Applicant agrees, as a condition of this approval, to comply with all the recommendations and requirements of the Borough Engineer, which primarily address the prevention of flooding in the neighborhood.
4. Applicant shall have a percolation test performed and shall provide the results of same to the Borough Engineer and Building Department. The percolation test results are subject to the approval of the Borough Engineer and Building Department to ensure that the proper seepage/retention system is installed.

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.

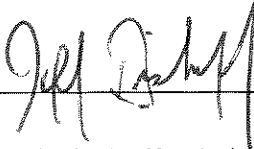
13) Applicant agrees to comply with all conditions of the Borough Engineer.

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.

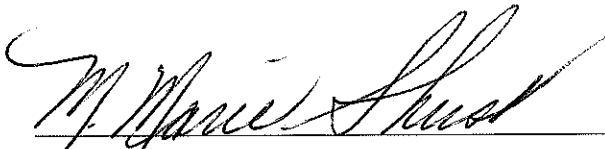
The undersigned certifies that the within Resolution was adopted by the Board and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on September 2, 2021.

Dated: September 2, 2021



Jeff Bischoff, Chairman
Emerson Land Use Board

Dated: September 2, 2021



Marie Shust, Secretary
Emerson Land Use Board

OFFERED BY:	Mr. Myers
SECONDED BY:	Mr. Cimino
VOTE: Ayes:	4
Nays:	0
Abstain:	0