

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

In the matter of:

**MICHAEL AND TALIA FILIPPELLI
39 TARNAPOLL ROAD
BLOCK 801.04, LOT 3
EMERSON, NEW JERSEY**

WHEREAS, Michael and Talia Filippelli (“Applicant”) has made application to the Municipal Land Use Board of the Borough of Emerson (the “Board”) for site plan and variance approval to construct a two-story addition to the east side of the dwelling and other improvements on the subject property located at 39 Tarnapoll Road, Block 905, Lot 5 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 the following variance relief from the requirements of the Emerson Zoning Ordinance in the R -10 (Residential Single Family) Zone: (1) as to minimum front yard setback, whereas 25’ is required, 16.83’ is existing and non-conforming and 16.83’ is proposed; (2) as to side yard setback, whereas 15’ is required, 26’ is existing and 12.1’ is proposed; (3) as to combined side yard setback whereas 35’ is required, 41.1’ is existing and 27.4’ is proposed; (4) as to maximum building overage for all structures, whereas a maximum of 25% is permitted, 21.64% is existing and 29.12% is proposed; (5) as to maximum impervious coverage, whereas maximum permitted is 15%, 20.40% is existing and non-conforming and 19.88% is proposed; and (6) as to driveway setback, whereas 3’ is required, and 0.58’ is proposed;

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 September 15, 2022; and

WHEREAS, the following exhibits were admitted into evidence during the course of the hearing:

Exhibit A- Plans/ Drawings prepared by Blueline Architecture, L.L.C., dated July 18, 2022, consisting of three (3) sheets, (Z1-Z3)

Exhibit B- Photographs of property

WHEREAS, based upon the sworn and qualified testimony of Eric Kiellar, A.I.A., of Blueline Architecture, 397 Franklin Avenue, 2nd Floor, Wyckoff, New Jersey 07481, the Board made the following findings of fact:

- a. Mr. Kiellar testified generally with regard to the architectural plans he prepared. The property contains an existing split level frame dwelling with an attached garage, asphalt driveway, and asphalt walkway. The property also contains a concrete patio, vinyl fence, PVC Fence, framed deck, A/C units, generator and landscaping.
- b. The Applicant is proposing to remove the existing concrete patio and a portion of the vinyl fence and to construct a two (2) story addition on the east side of the dwelling, which will contain a one-car garage within the existing side yard setback. In addition, Applicant also proposes a covered patio, a balcony over

outdoor kitchen, patio, covered front entrance, new paved driveway, in-ground pool, vinyl fence with swinging gate, and a paver walkway.

- c. Applicant is seeking to make these improvements as the family wants to remain in town. Applicant, Talia Filippelli is a psychotherapist, and requires additional office space for tele-health visits with her patients.
- d. The application requires the following variance relief: (1) as to minimum front yard setback, whereas 25' is required, 16.83' is existing and non-conforming and 16.83' is proposed; (2) as to side yard setback, whereas 15' is required, 26' is existing and 12.1' is proposed; (3) as to combined side yard setback whereas 35' is required, 41.1' is existing and 27.4' is proposed; (4) as to maximum building overage for all structures, whereas a maximum of 25% is permitted, 21.64% is existing and 29.12% is proposed; (5) as to maximum impervious coverage, whereas maximum permitted is 15%, 20.40% is existing and non-conforming and 19.88% is proposed; and (6) as to driveway setback, whereas 3' is required, and 0.58' is proposed.
- e. The existing side facing garage is difficult to navigate and the applicant currently uses same for storage. The proposed over-sized garage will allow for one car to be kept in the garage as well as room for storage of sports equipment, lawn furniture and the like.
- f. The proposed second floor addition over the garage is set back from the front and side and complies with the side yard setback. In addition, the proposed addition has no visual impact on the adjacent neighboring property as it faces a windowless wall.

- g. The proposed application will result in a reduction in impervious coverage as there will be removal of a large portion of the driveway surface and allows for a larger landscape buffer between the properties.
- h. The Architect testified with regard to the water concerns on the property. A 1,000-gallon seepage pit will be installed to address these concerns. The storm drain is located in the backyard of the neighboring property.
- i. In addition, the gas line is being relocated and the impervious coverage is being reduced as a result of the proposed improvements.
- j. The addition will be consistent with a number of other homes in the neighborhood and has no negative impact on neighboring properties.
- k. Applicant has agreed to abide by all the recommendations of the Borough Engineer set forth in the Neglia Engineering review letter of September 12, 2022, and as may be required by the Borough Engineer in the future.
- l. Applicant will install concrete pavers for the patio and will replace the current existing curb cut with a full faced curb.
- m. A soil moving permit is not required to construct the proposed improvements as the soil movement required is 223 cubic yards and does not exceed 400 cubic yards.
- n. Pursuant to correspondence dated September 17, 2022, Applicant has provided revised documents and supporting information required by the Neglia Engineering review letter dated September 12, 2022 which are incorporated herein by reference.

WHEREAS, the meeting was open to the public and the following members of the public appeared:

Matthew Parodi, 37 Tarnapoll Road, who resides to the right of the subject property. Mr. Parodi is supportive of the application.

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 39 Tarnapoll Road, Block 801.04, Lot 3.
- 2) The Property is located in the R-10 Residential Single-Family Zone.
- 3) The Applicant proposes to construct an addition The Applicant is proposing to remove the existing concrete patio and a portion of the vinyl fence and to construct a two (2) story addition on the east side of the dwelling, which will contain a one-car garage within the existing side yard setback.
- 4) The property contains certain existing non-conforming conditions, and the application requires the following variance relief: (1) as to minimum front yard setback, whereas 25' is required, 16.83' is existing and non-conforming and 16.83' is proposed; (2) as to side yard setback, whereas 15' is required, 26' is existing and 12.1' is proposed; (3) as to combined side

yard setback whereas 35' is required, 41.1' is existing and 27.4' is proposed; (4) as to maximum building overage for all structures, whereas a maximum of 25% is permitted, 21.64% is existing and 29.12% is proposed; (5) as to maximum impervious coverage, whereas maximum permitted is 15%, 20.40% is existing and non-conforming and 19.88% is proposed; and (6) as to driveway setback, whereas 3' is required, and 0.58' is proposed.

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. 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 proposed application will result in a reduction in impervious coverage as there will be removal of a large portion of the driveway surface and allows for a larger landscape buffer between the properties. In addition, a seepage pit will be installed to address water concerns.

7) 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 Michael and Talia Filippelli 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:

CONDITION SPECIFIC TO THIS APPLICATION

- 1) The application is subject to the review and approval of the Borough Engineer and the Building Department.
- 2) Applicant shall comply with all the recommendations of the Borough Engineer as set forth in the Neglia Engineering review letter dated September 12, 2022, and as may be required by the Borough Engineer in the future.

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.

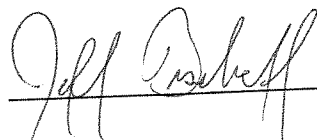
13) Applicant agrees to comply with all conditions of the Borough Engineer.

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 October 6, 2022.

Dated: Oct 13, 2022



Jeff Bischoff, Chairman
Emerson Land Use Board

Dated: Oct 13, 2022



Marie Shust, Secretary
Emerson Land Use Board

OFFERED BY: Vice Chairman Myers

SECONDED BY: Mayor DiPaola

VOTE: Ayes: 9

Nays: 0

Abstain: 0