

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

In the matter of:

**KBC PROPERTIES, LLC
17 CHESTNUT STREET
BLOCK 405, LOT 14
EMERSON, NEW JERSEY**

WHEREAS, KBC Properties, LLC (“Applicant”) has made application to the Municipal Land Use Board of the Borough of Emerson (the “Board”) for variance approval to construct a three-sided covered storage shed on the northern portion of the subject property located at 17 Chestnut Street, Block 405, Lot 14 on the Tax Assessment Map of the Borough of Emerson (the “Property”); and

WHEREAS, the Property is located in the IM (Industrial and Manufacturing) Zone of the Borough of Emerson; and

WHEREAS, the application seeks variance relief from the requirements of the Emerson Zoning Ordinance in the IM Zone as to front-yard setback and the location of secondary structures; 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 June 2, 2022; and

WHEREAS, Applicant was represented by Levi J. Kool, Esq. of Huntington Bailey, LLP 373 Kinderkamack Road, Westwood, NJ 07675 at the hearing on the application; and

WHEREAS, the Land Use Board was represented John W. McDermott, Esq.; and

WHEREAS, the following materials were admitted into evidence by the Board in connection with the application:

Exhibit A-1-Signed and sealed architectural set plan consisting of three (3) sheets, entitled "Amended Site Plan Application for: Kuiken Brothers Co., Inc., 17 Chestnut Street, Emerson, New Jersey, Bergen County, Bergen County, Lot:14, Block: 405," prepared by Eric Kiellar, A.I.A., of Blueline Architecture, L.L.C., dated January 25, 2022;

Exhibit -2- Pictures of proposed shed

WHEREAS, the Board also considered the following in connection with the application: Engineering Review letter of Neglia Engineering dated May 16, 2022.

WHEREAS, the following persons appeared and gave testimony in support of the application: Matthew D. Kuiken, of Kuiken Brothers Company Inc. and Eric Kiellar, A.I.A, of Blueline Architecture; and

WHEREAS, Matthew D. Kuiken, of Kuiken Brothers Company Inc., 145 Lake Avenue, Midland Park, New Jersey 07432, appeared, was sworn, and testified in support of the application as follows:

1. Mr. Kuiken is Vice President of Operations for Kuiken Brothers Company, Inc. The proposed shed is a 3-sided storage shed which would replace a current exposed storage rack on the property. The proposed shed is approximately 24' x 140' and

will be located on the north side of the property. The area behind the shed is an Industrial Auto Body area.

2. Due to the irregular shape of the property, a variance is required for the location of the accessory structure. The variance relief sought was originally for front yard setback. The variance relief required is for side yard setback, not front yard setback, which will be 6' as per the report of Neglia Engineering.
3. The purpose of the covered shed is to provide covered storage.. The shed would protect the lumber from the elements and improve the appearance of the property.
4. There is sufficient room for onsite vehicular circulation.

WHEREAS, Eric Kiellar, A.I.A, of Blueline Architecture, 397 Franklin Avenue, 2nd Floor, Wyckoff, New Jersey, 07481, was sworn, and testified in support of the application as follows:

1. Mr. Kiellar is an Architect and a co-principal of Blueline Architecture.
2. The proposed shed would be constructed of the same materials as the existing buildings on the property. The color scheme of the accessory structure shall match and be consistent with the other building on the property which will be aesthetically acceptable.
3. The location of the proposed shed will not change the traffic pattern which now exists in the yard.
4. Mr. Kiellar testified that the drainage/storm water management system had previously been updated and there would be no change or expected increase.
5. Applicant agrees to comply with the recommendations made by the Borough Engineer, Neglia Engineering, in his report.

6. Mr. Kiellar testified that interior lighting will be installed which will be directed downward so as not to impact neighboring properties.
7. Any utility changes would be in accordance with the instructions of the Borough Construction Official.
8. The construction of the accessory structure will increase the building coverage on the property, but there is no increase in overall impervious coverage.

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 17 Chestnut Street, Block 221, Lot 3 which is located in the IM (Industrial Manufacturing) Zone.
2. The subject property is an irregular shaped interior lot located on the south side of Chestnut Street near the intersection with Kinderkamack Road. The property also has frontage on the north side of Lozier Avenue in close proximity to the NJ Transit Railroad.
3. The site currently contains a warehouse building, two covered sheds for storage of lumber, an asphalt parking lot, and asphalt industrial yard that is enclosed by 6' chain link fence.

4. The Applicant proposes to construct a three-sided covered shed for storage of additional lumber.
5. Pursuant to the denial letter issued by the Zoning Officer of the Borough of Emerson, a bulk variance is required from Borough Zoning Code Chapter 290, Attachment 2, Schedule One, for front-yard setback and Borough Code 290-32A pertaining to the location of secondary structure.
6. The property contains existing non-conforming conditions as to Minimum Lot Width (ft) whereas 100 feet is required and 71.76 ft. is existing and proposed; and as to Minimum Rear Yard Setback (ft), whereas 40 feet is required and 10 feet is existing and proposed.
7. The application requires the following variance relief: the proposed accessory structure not being compliant with front yard setback; and from 290 Attachment 2, Schedule I and 290-32 A- for construction of an accessory structure within the front yard.

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. There is no increase in impervious coverage, therefore no new stormwater management measures are required. The accessory structure will be consistent in material and color with other structures on the property. In addition, there will be an aesthetic improvement as the shed will provide covered storage rather than open, visible storage of wood and wood products. The property to the rear of the subject property is an Industrial Auto Body Area. The construction of the accessory structure does not have a negative impact on neighboring properties. 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 KBC Properties, LLC with respect to the subject Property requesting variance approval be and is hereby **APPROVED** subject to the terms and conditions hereinafter set forth:

CONDITIONS SPECIFIC TO THIS APPLICATION

1. The covered shed must be constructed six (6) feet from the property line and a sufficient number of feet away from the 15" RCP pipe and stormwater manhole to ensure that the stormwater conveyance system is not damaged.
2. The utilities on the property shall be in compliance with all Borough and Engineering standards and requirements.
3. The subject approval is conditioned upon and subject to Applicant obtaining all required permits, and satisfaction of all engineering, zoning and borough approvals.
4. Applicant shall obtain any and all approvals required by outside agencies, including but not limited to NJDOT, NJDEP, BCUA, Bergen County and Bergen Soil Conservation District. It is applicant's responsibility to determine what outside agency permits are required. Copies of said approvals shall be provided by Applicant upon receipt.
5. New and revised materials shall be filed with the Borough and shall not be sent directly to their professionals. Materials sent directly to Neglia Engineering will not be reviewed.

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.

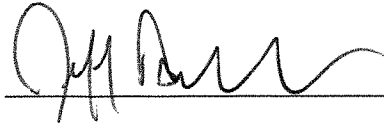
13. Applicant agrees to comply with all conditions of the Borough Engineer.

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.

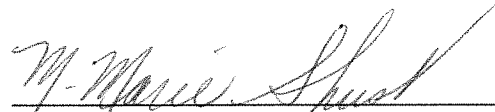
The undersigned certifies that the within Resolution was adopted by the Board and memorialized herein pursuant to N.J.S.A. 40:55D-10(g) on June 16, 2022.

Dated: August 4, 2022



Jeff Bischoff, Chairman
Emerson Land Use Board

Dated: August 4, 2022



Marie Shust, Secretary
Emerson Land Use Board

OFFERED BY: Mr. Myers

SECONDED BY: Ms. Garis

VOTE: Ayes: 7

Nays: 0

Abstain: 0