

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

**In the matter of:**

**EDWARD AND LYNDA NIENSTEDT  
132 DEMAREST AVENUE  
BLOCK 511, LOT 10  
EMERSON, NEW JERSEY**

**WHEREAS**, Edward and Lynda Nienstedt (“Applicant”) have made application to the Municipal Land Use Board of the Borough of Emerson (the “Board”) for site plan and variance approval to construct a one-story addition on the single-family, one-story home on the subject property located at 132 Demarest Avenue, Block 511, Lot 10 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 minimum rear 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 public hearing on January 27, 2022; and

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**WHEREAS**, Applicant, Lynda Nienstedt, 132 Demarest Avenue, Emerson, New Jersey appeared, was sworn and testified in support of the application as follows:

- a. Applicant and her husband, Edward Nienstedt, are the owners of the subject property which has a single family, one story home on the lot. The Applicant proposes to construct an addition to accommodate a family room and deck. The Applicant is proposing to construct stairs, a platform, and a concrete walkway. Additionally, Applicant proposes to remove the existing slate patio and rear stair.
- b. The addition is being proposed for the comfort of Applicant's family. It is consistent with other homes in the neighborhood.
- c. A variance is required for minimum rear yard setback, whereas a minimum of 35 feet is required and Applicant is proposing construction of the addition 30.75 feet from the property line.
- d. Applicant agrees to comply with the requirements of the Borough Engineer and that the addition is subject to Engineering approval.

**WHEREAS**, Joseph Bruno, RA, was sworn and testified as follows:

- a. Mr. Bruno is a registered architect in the State of New Jersey and is a member of Nicholas Salerno Architect, LLC. He testified generally with regard to the plans prepared by Nicholas Salerno Architect for the proposed addition .

- b. The subject property is a corner lot and the neighboring property is the side yard of the subject property. There is no lighting proposed that would be directed toward or would impact the neighbor.

**WHEREAS**, the hearing was opened to the public and the following persons appeared:

- Dan Sweeney, 126 Demarest Avenue, is supportive of the application
- Pete Finnerty, 122 Demarest Avenue, is supportive of the application

**WHEREAS**, after due consideration and deliberation at the aforementioned hearing, 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 132 Demarest Avenue, Block 511, Lot 10. The site currently has a single-family, one-story home, covered porch, concrete walkway and macadam driveway.
  - 2) The Property is located in the R-10 Residential Single-Family Zone.
  - 3) The Applicant is seeking site plan and variance approval to construct a one-story addition to accommodate a family room and deck. Applicant proposes to remove the existing slate patio and rear stair and proposes to construct stairs, a platform, and a concrete walkway.
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4) The application results in expansion of an existing non-conforming lot, requiring variance relief. The existing non-conformities are as follows:

- Minimum lot area whereas 12,500 square feet is required and 7,628,25 square feet is existing and proposed
- Minimum lot width whereas 125 feet is required and 75.01 feet is existing and proposed
- Minimum side yard setback-side street, whereas 25 feet is required and 13.33 feet is existing and 27.34 feet is proposed
- Minimum side yard setback-interior lot, whereas 15 feet is required, 6.64 feet is existing and 15 feet is proposed.

5) A variance is required for minimum rear yard setback, whereas a minimum of 35 feet is required and Applicant is proposing construction of the addition 30.75 feet from the property line.

6) No other variances are required or being sought as a result of the proposed addition.

7) 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.

8) 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 Edward and Lynda Nienstedt 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. Applicant agrees to comply with the requirements of the Borough Engineer and that the construction of the addition is subject to Engineering approval

**GENERAL CONDITIONS:**

- 1) The foregoing findings of fact and conclusions of law are incorporated herein as if set forth at length.

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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 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.

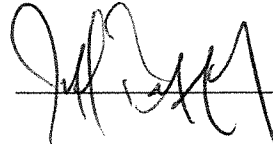
**NOW THEREFORE, BE IT RESOLVED** that the Chairman and Secretary of the Board are hereby authorized to affix their signatures to this Resolution granting the requested application, to advertise the action taken, by way of Resolution, in the local newspaper, and furthermore to send certified copies to the Zoning Officer, Construction Code Enforcement Official and/or Building Sub-Code Official, the Applicant and/or the Applicant's attorney, the subject property

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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 February 3, 2022.

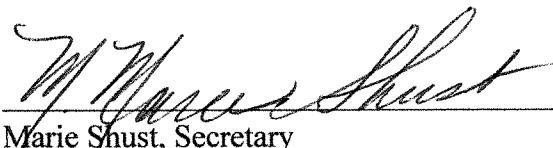
Dated: February 17, 2022



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Jeff Bischoff, Chairman  
Emerson Land Use Board

Dated: February 17, 2022



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Marie Shust, Secretary  
Emerson Land Use Board

OFFERED BY: Mayor DiPaola

SECONDED BY: Mr. Hulburt

VOTE: Ayes: 6

Nays: 0

Abstain: 0