

RESOLUTION NO. _____

**BOROUGH OF EMERSON
MUNICIPAL LAND USE BOARD**

**RESOLUTION APPROVING THE APPLICATION OF
DAMON AND JOANNE GIARITTA FOR RESIDENTIAL PLOT IMPROVEMENT
WITH VARIANCE APPROVAL RELIEF FOR THE PREMISES LOCATED AT
43 VIVIAN AVENUE, EMERSON, NJ
DESIGNATED AS BLOCK 203, LOT 1**

HEARING DATE: December 5, 2024

MEMORIALIZED: January 9, 2025

WHEREAS, Damon and Joanne Giaritta (hereinafter “Applicants”), applied to the Borough of Emerson Municipal Land Use Board (hereinafter “Board”) for residential plot improvement with related variance(s) approval relief to remove the property’s existing paver patios, deck and rear/side walkways in order to construct a first and second floor addition to the dwelling situated upon the property as well as install related plot improvements described as a new deck and stairs, new stone walkways and new condenser units positioned upon a new ground slab. Said construction is to be performed upon their residential property located at 43 Vivian Avenue, Emerson, New Jersey also respectively identified on the Borough of Emerson Tax Map as Block 203, Lot 1 (“Property”); and

WHEREAS, Applicants were self-represented by Damon Giaritta and Joanne Giaritta, husband and wife, appearing; and

WHEREAS, the Board, at its December 5, 2024 meeting, reviewed Applicants’ submittal and at which time, proper public notice to all property owners within two hundred (200) feet therefrom and publication in the official newspaper of the Municipality, at least ten (10) days preceding the date of hearing, was confirmed and Applicants’ file was deemed complete; and

WHEREAS, testimony was received at the December 5, 2024 hearing, but not limited to, from the following;

1. Damon Giaritta, Owner
2. Joseph J. Bruno, Architect

WHEREAS, the Applicants submitted the following documents in support of their Application prior to the Hearing:

- a. Signed and sealed property survey, consisting of one (1) sheet and entitled “Boundary Survey, Block 203, Lot 1, Borough of Emerson, Bergen County, New Jersey”, prepared by Joseph E. Romano, PLS, N.J. License No. 36273, of Langan, 300 Kimball Drive, Parsippany, New Jersey dated January 13, 2009.
- b. Borough of Emerson Application for Development, dated September 15, 2024.
- c. Borough of Emerson Appeal to the Municipal Land Use Board, prepared by Applicant Damon Giaritta and dated May 28, 2024.
- d. Borough of Emerson Tax Account Detail Inquiry dated September 16, 2024.
- e. Borough of Emerson Mandatory Submission Items and Application Checklists, undated.
- f. A signed and sealed architectural plan consisting of three (3) sheets, entitled, “Addition and Alterations for the Giaritta Residence, 43 Vivian Avenue, Emerson, New Jersey”, prepared by Joseph J. Bruno, AIA, N.J. License No. A110379 and dated April 19, 2024 and last revised September 16, 2024.
- g. Attachment #1 and Waiver Request, entitled “Addition and Alterations for the Giaritta Residence, 43 Vivian Avenue, Emerson, New Jersey”, prepared by Joseph J. Bruno, AIA, N.J. License No. A110379 and dated September 10, 2024.

WHEREAS, the following additional documents also were marked for review and accepted into evidence; and

Exhibits Presented During the December 5, 2024 Hearing

- a. A-1 A set of five (5) indexed photographs of the subject residence and the adjacent residence to the east of the subject residence was submitted. These photographs depict the views of the areas of proposed construction about the subject residence. The photographs were obtained and organized by Joseph J. Bruno, AIA, N.J. License No. A110379 and dated December 5, 2024.

WHEREAS, this matter was opened to the public at the December 5, 2024 hearing, and whereas no members of the public spoke as to the Application at said hearing, this matter was closed to the public; and

WHEREAS, pursuant to N.J.S.A. 40:55D-10g, a decision must be reduced to writing and shall include findings of facts, based upon the evidence presented at its public hearings; and

BE IT FURTHER RESOLVED by the Board that the following findings of facts are made and determined:

FINDINGS OF FACT

1. The Property is located at 43 Vivian Avenue, Emerson, New Jersey, Block 203, Lot 1, in the R-7.5 Residential Single-Family Zone.

2. The Applicants are the owners of the subject Property, and therefore have standing to bring this matter before the Board.

3. The Applicants provided proper mailed and published notices of the hearing, and jurisdiction is proper in the Board.

4. The Applicants seek variance approval to perform the construction deemed appropriate to construct a first and second floor addition to the dwelling situated upon the property as well as install related improvements to the residential premises of 43 Vivian Avenue, Emerson, New Jersey (“Project”).

5. The Application’s construction requires the following “c” variance relief: Variance pursuant to N.J.S.A. 40:55-D-70c and also to conditions further specified in Emerson Borough Code Ordinance §290-2 “Minimum Rear Yard Setback”, Attachment 2-Schedule 1: Lot, Yard, Height and Setback Requirements.

35 feet is required, 29.5 feet, as measured from the northwest corner of the proposed first floor addition (the closest distance from the exterior of the dwelling to the Property’s rear yard boundary).

6. The Applicant owner, Mr. Damon Garitta, spoke first in support of the application. Mr. Garitta testified that he and his wife own the property at 43 Vivian Avenue in Emerson, New Jersey, and are desirous of maintaining residency in the municipality. Mr. Garitta testified as to his awareness of the comments, remarks and recommendations contained with the January 13, 2009 property survey of Joseph E. Romano, P.E.

7. Mr. Garitta further testified as to his willingness to abide by and maintain the Property in accordance with the comments and specifications of the Board Engineer's written report dated November 27, 2024 and authored by Neglia Engineering.

8. The Applicants called Architect, Joseph J. Bruno, A.I.A., as their second witness. Mr. Bruno testified that the proposed Project presents as construction which would begin by first removing the property's existing paver patios, deck and rear/side walkways. This removal, in its entirety, would create the necessary area upon which a first and second floor addition to the Property's existing dwelling could be constructed. Further, within this area, installation of related improvements to support the operation of the expanded dwelling would be positioned. Specifically, a new deck and stairs, new stone walkways and new condenser units positioned upon a new ground slab would be installed. Said condenser units would be positioned as per Board Engineer's directive. Mr. Bruno articulated that the proposed improvements to the subject property will result in an overall increase in the dwelling's lot coverage by approximately eighty-six (86) square feet. During this testimony it was acknowledged that the eighty-six (86) square foot increase shall be considered de minimis by the Board and that the Applicants will not be required to set forth or maintain any stormwater management measures that would otherwise be resultant from this modest increase in square footage. This aspect of understanding was achieved with the recognition that any future expansion of the building or improvements to the Property shall be considered cumulous of said eighty-six (86) square feet and may likely require future stormwater management measures as required by the Board Engineer. Mr. Bruno also provided commentary affirming the Applicants' willingness to abide by and maintain the Property in accordance with the specifications set forth in the April 19, 2024 signed and sealed architectural plan and as said architectural plan was last revised on September 16, 2024 as well as the Board Engineer's recommendation.

9. The combined testimony of Damon Giaritta and Joseph J. Bruno, A.I.A., presented that if the "c" variance relief was granted, the positive criteria of the proposed Project outweighs any negative criteria, and that the application can be granted without any substantial detriment to the public good. The Project represents a positive reinvestment of a longstanding use, with little to no negative impact.

10. This residential improvement furthers the goals of the Emerson Master Plan.

This matter was opened to the public generally to comment either in favor of or against the Application. There was no public comment.

BE IT FURTHER RESOLVED by the Municipal Land Use Board of the Borough of Emerson that based upon the above findings of fact, that the following conclusions of law are made and determined.

CONCLUSIONS OF LAW

1. 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 the variance requested, the applicant must demonstrate either: (1) hardship arising by reason of an extraordinary and exceptional situation uniquely effecting a specific piece of property or the structures lawfully existing thereon; 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.

2. The Board has considered the Application seeking relief from the existing “c” variance.

3. The Board, voting in favor of the Application, concludes that the relief pertaining to the “c” bulk variance relief can be granted without substantial detriment to the zoning plan and zoning ordinance of the Borough of Emerson, nor substantial detriment to the public good.

4. The Board finds that the proposed use is compatible with the character of the area in which the Property is located, and the approval of the variances will not change the character of the neighborhood, which has been zoned as a Residential One Family Zone in furtherance of the Borough’s Master Plan.

5. The Board finds that the proposed Project meets the objectives of the Borough of Emerson 2007 Master Plan and the 2015 Master Plan Amendment because the Project improves the site overall.

6. The Board further finds that the Applicants met their burden of demonstrating that the “c” bulk variances can be granted without substantial detriment to the public good, while not substantially impairing the intent and purpose of the zoning plan and zoning ordinance.

7. As the Application seeks a “c” bulk variance, with possible waivers the MLUL requires an affirmative five (5) votes to approve the application.

NOW, THEREFORE, BE IT RESOLVED that the Municipal Land Use Board of the Borough of Emerson, for the foregoing reasons as well as those stated on the record by the Board members, which are incorporated herein by reference, approves the within application for residential approval with applicable “c” bulk variance permitting the addition to and the alteration of the residential Property located at 43 Vivian Avenue, Emerson, New Jersey, and also identified on the Borough of Emerson Tax Map as Block 203, Lot 1, all in accordance with the Board reviewed plans and testimony submitted, subject to the following conditions:

1. Adherence to all representations made by the Applicants and the documentary materials submitted by the Applicants prior to and during the course of the public hearing, which representations are made conditions of the within approval.
2. Adherence to plans, renderings and engineering drawings and other exhibits submitted by the Applicants. Any deviation from such submissions shall require the Applicants to return to the Board for further review and any necessary approvals.
3. The Applicants shall conform with all requirements of the Construction Official, Board Engineer, Police and Fire Departments and any other official having jurisdiction with respect to the use of the subject premises.
4. Applicants shall be responsible for any other governmental approvals associated with the site.
5. All testimony given by the Applicants and/or Applicants’ professionals in accordance with this application shall be binding.
6. The Board shall maintain jurisdiction of the application as to any of the conditions above in which Applicants seek clarification or amendment.
7. Applicants shall provide “as built” plan to the Emerson Construction Department upon the completion of the Project, prior to the Borough’s issuance of a Certificate of Occupancy.

The undersigned, Secretary of the Municipal Land Use Board of the Borough of Emerson, hereby certifies that the above is a true copy of a Resolution duly memorialized by said Board on January 24, 2025 and that the within Resolution was adopted by the Board and memorialized pursuant to N.J.S.A. 40:55D-10(g).

Marie Schust, Secretary
Borough of Emerson
Municipal Land Use Board

Approval Motioned December 5, 2024 by:

Seconded by:

Ayes:

Nays:

Abstentions:

Resolution Approved Motioned January 9, 2025 by: _____

Seconded by: _____

Ayes: _____

Nays: _____

Abstentions: