

**BOROUGH OF EMERSON
MUNICIPAL LAND USE BOARD**

**RESOLUTION APPROVING THE APPLICATION OF
KEVIN M. WALL FOR RESIDENTIAL SITE IMPROVEMENT WITH VARIANCE
APPROVAL RELIEF FOR THE PREMISES LOCATED AT
82 VIVIAN AVENUE, EMERSON, NJ
DESIGNATED AS BLOCK 101, LOT 13**

**HEARING DATE: October 17, 2024
MEMORIALIZED: December 5, 2024**

WHEREAS, Kevin M. Wall (hereinafter “Applicant”) and as Power of Attorney for his wife, applied to the Borough of Emerson Municipal Land Use Board (hereinafter “Board”) for residential plot improvement with applied variance(s) approval relief to perform the construction deemed appropriate to convert an existing garage to a residential living space for the purpose of easing the hardship created by his wife’s present medical condition and flooding, for their residential property located at 82 Vivian Avenue, Emerson, New Jersey also respectively identified on the Borough of Emerson Tax Map as Block 101, Lot 13 (“Property”); and

WHEREAS, Applicant was self-represented with Kevin M. Wall appearing; and

WHEREAS, the Board, at its October 17, 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 Applicant’s file was deemed complete; and

WHEREAS, testimony was received at the October 17, 2024 hearing, but not limited to, from the following;

1. Kevin M. Wall, Owner
2. Robert Schneider, Contractor

WHEREAS, the Applicant submitted the following documents in support of its Application prior to the Hearing:

- a. Signed and sealed property survey, consisting of one sheet, prepared by Job and Job, Consulting Engineers and Land Surveyors, - Located in the Borough of Emerson , Lot 3, Block 511”, prepared by Kenneth Job, P.E., N.J. License # 9339, 108 Hudson Street, Hackensack, New Jersey 07601 dated January 12, 1990.

- b. Borough of Emerson Application for Development, dated September 3, 2024.
- c. Borough of Emerson Appeal to Municipal Land Use Board, prepared by Joseph DeSalvo Jr. dated September 3, 2024.
- d. A copy of the Borough of Emerson Tax Account Detail Inquiry, dated September 4, 2024.
- e. A schematic drawing of the current and proposed conditions of the existing garage, dated September 9, 2024.
- f. A transmittal letter, prepared by Joseph DeSalvo Jr., containing a letter of denial.
- g. A Property List Request Form (Form A) for 82 Vivian Avenue, dated September 5, 2024.
- h. A copy of the State of New Jersey, New Jersey Office of the Attorney General, Division of Consumer Affairs, for Home Improvement Contractors, valid through March 31, 2025.

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

Exhibits October 17, 2024 Hearing

a. A-1 Signed and sealed property survey, consisting of one sheet, prepared by Job and Job, Consulting Engineers and Land Surveyors, - Located in the Borough of Emerson , Lot 3, Block 511”, prepared by Kenneth Job, P.E., N.J. License # 9339, 108 Hudson Street, Hackensack, New Jersey 07601 dated January 12, 1990.

b. A-2 A schematic drawing of the current and proposed conditions of the existing garage.

WHEREAS, this matter was opened to the public at the October 17, 2024 hearing, and whereas no members of the public spoke in opposition of 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

WHEREAS, the Board has made the following findings of fact and conclusions of law.

NOW THEREFORE BE IT RESOLVED by the Municipal Land Use Board of the Borough of Emerson that the following facts are made and determined:

FINDINGS OF FACT

1. The Property is located at 82 Vivian Avenue, Emerson, New Jersey, Block 101, Lot 13, in the R-5 Residential One Family Zone.
2. The Applicant is the owner of the subject Property, and therefore has standing to bring this matter before the Board.
3. The Applicant provided proper mailed and published notices of the hearing, and jurisdiction is proper in the Board.
4. The Applicant seeks a Residential Use Variance approval to perform the construction deemed appropriate to convert an existing attached garage to a residential living space at the premises of 82 Vivian Avenue, Emerson, New Jersey (“Project”).
5. The Application results in a change in use within the subject property requiring the following “c” variance relief:
 - A. Variance pursuant to conditions specified in Emerson Borough Code Ordinance §290-13E.2 “Off Street Parking, Driveways, and Garages in Residential Zones”;
“Existing residential structures which have a garage may not convert that garage to any other use without replacing it with another garage” While the Applicant is proposing to construct a living space in the existing garage area without replacing the garage area, and requires variance relief, the Project works to alleviate drainage and stormwater runoff in the Property and surrounding property parcels which are positioned adjacent to the Property by way of a seepage pit and/or drywell pit, said pit forming a sewerage easement.
6. The Applicant owner, Kevin M. Wall, spoke first on his own behalf. Mr. Wall testified that he currently owns the existing property at 82 Vivian Avenue in Emerson, New Jersey, and is desirous of maintaining residency in the municipality. Mr. Wall testified as to his awareness of the comments, remarks and recommendations contained with the January 12, 1990 property survey of Kenneth Job, P.E.. Mr. Wall 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 October 15, 2024.

7. The Applicant called contractor, Robert Schneider, as its second witness. Mr. Schneider testified that the proposed Project presents as a garage conversion construction project to convert an existing garage to a residential living space for the purpose of easing the hardship created by the wife of the Applicant's medical condition. Mr. Schneider also indicated to as to Applicant's willingness to abide by and maintain the Property in accordance with the comments and specifications set forth in the September 9, 2024 schematic drawing of the proposed condition of the converted garage as well as Neglia's Board engineering report.

8. The combined testimony of Kevin M. Wall and Robert Schneider, P.E., 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.

9. The matter was opened to the public generally to comment either in favor of or against the Application. There was public comment of a neighbor in favor of project.

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 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.

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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.

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.

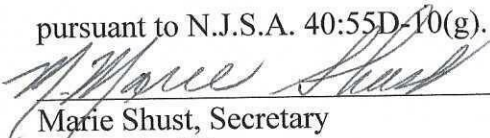
7. As the Application seeks “c” bulk variances, with possible waivers the MLUL requires an affirmative five (5) votes to approve the application.

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 82 Vivian Avenue, Emerson, New Jersey, and also identified on the Borough of Emerson Tax Map as Block 101, Lot 13, all in accordance with the plans and testimony submitted to the Board, subject to the following conditions:

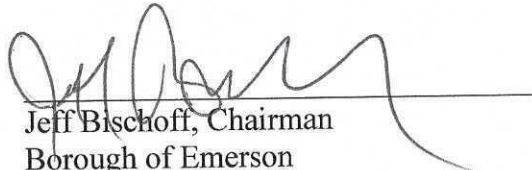
1. Applicant shall provide an architect affidavit as to plans conformity with “as built” plans.
2. Adherence to all representations made by the Applicant and the documentary materials submitted by the Applicant prior to and during the course of the public hearing, which representations are made conditions of the within approval.
3. Adherence to plans, renderings and engineering drawings and other exhibits submitted by the Applicant. Any deviation from such submissions shall require the Applicant to return to the Board for further review and any necessary approvals.

4. The Applicant 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.
5. Applicant shall be responsible for any other governmental approvals associated with the site.
6. All testimony given by the Applicant and Applicant's professionals in accordance with this application shall be binding.
7. The Board shall maintain jurisdiction of the application as to any of the conditions above in which Applicant seeks clarification or amendment.
8. Applicant 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 December 5, 2024 and that the within Resolution was adopted by the Board and memorialized pursuant to N.J.S.A. 40:55D-10(g).



Marie Shust, Secretary
Borough of Emerson
Municipal Land Use Board



Jeff Bischoff, Chairman
Borough of Emerson
Municipal Land Use Board

Resolution Approved Motioned December 5, 2024 by: Mike Cimino_

Seconded by: Anthony Khiami

Ayes: 3

Nays: 0

Abstentions: 0

Ineligible 4

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