

**BOROUGH OF EMERSON  
MUNICIPAL LAND USE BOARD**

**RESOLUTION DENYING THE APPLICATION OF  
FAMILY PROMISE OF BERGEN COUNTY  
FOR USE VARIANCE APPLICATION WITH ADDITIONAL  
PRELIMINARY & FINAL SITE PLAN APPROVAL  
FOR THE PREMISES LOCATED AT  
436 OLD HOOK ROAD, EMERSON NJ  
DESIGNATED AS BLOCK 1101, LOT 5.04**

**HEARING DATES: May 16, 2024, July 11, 2024, September 19, 2024, and February 20, 2025**

**MEMORIALIZED: April 3, 2025**

**AMENDED, CLARIFYING FAMILY PROMISE RESOLUTION**

**WHEREAS**, an application has been submitted and presented to the Emerson Land Use Board (hereinafter the “Board”) by **FAMILY PROMISE OF BERGEN COUNTY** (hereinafter the “Applicant”), for Use Variance with additional relief of Preliminary and Final Site Plan approval. The relief sought is to convert the commercial property use of the existing commercial structure and commercial property parcel, identified as Block 1101, Lot 5.04 on the Tax Map of the Borough of Emerson, New Jersey and commonly known as 436 Old Hook Road (hereinafter the “Property”), to residential apartments and office structure for housing of a non-profit use; and

**WHEREAS**, the Property measures an area of 22,011.50 square feet (approximately 0.51 acres) and is located in the RC (Retail Commercial) Zone District; and

**WHEREAS**, the Applicant’s submitted Use Variance and site approval plan which were deemed complete; and

**WHEREAS**, the Property is presently owned by **RONALD MORGAN** with the commonly known address of 436 Old Hook Road, Emerson, NJ 07630 and who has a proposed

sales agreement with the Applicant to sell the property that is conditional upon the Applicant receiving the required Use zoning variances and other requisite municipal approvals; and

**WHEREAS**, Mark D. Madaio, Esq. of the Law Office of Mark D. Madaio, 29 Legion Drive, Bergenfield, New Jersey 07621 has been authorized as attorney for Applicant, to file the present application on the owner's behalf; and

**WHEREAS**, pursuant to the requirements of the Municipal Land Use Law (hereinafter "MLUL") and due process of law, the Board conducted public hearings with regard to the aforesaid application on May 16, July 11, September 19, 2024 and February 20, 2025 (each a Thursday evening) and said hearings were achieved by way of in-person meetings; and

**WHEREAS**, the Board's public hearings of May 16, July 11, September 19, 2024 and February 20, 2025 were each opened to the public, with comment, and an audio recording was maintained for each in-person meeting; and

**WHEREAS**, the facts and evidence in support of this application were detailed at the public hearings before the Board conducted on May 16, July 11, September 19, 2024 and February 20, 2025 and Mark D. Madaio, Esq. appearing as counsel for the Applicant established that legal notice was properly provided pursuant to the MLUL; and

**WHEREAS**, the Board, sitting so as to function as a Zoning Board of Adjustment, as to the upon proposed residential use in a commercial economic zone, and giving due consideration to all facts and comments submitted on behalf of the Applicant with participation from the Board's expert witnesses, and all facts and comments submitted on behalf of the Applicant for the use variance(s) requested, and the public, all being part of the record and incorporated herein as if set forth at length; and

**WHEREAS**, the Board provided due review and consideration to the particular facts

concerning the nature of the Use variance with site plan, as well as bulk deficiencies. The Applicant sought. To renovate the commercial premises so as to create a residential apartments property for supportive housing for non-profit use with an accessory office space, said renovation maintaining the existing two (2) story building size of 5,481.07 square feet (collectively the “Project”); and

**WHEREAS**, the Applicant sought to establish its’ burden through the combined testimony of Michael Dipple, P.E. of L2A Land Design LLC, Kate Duggan, the Executive Director of Family Promise of Bergen County, Robert Zampolin, A.I.A, of Zampolin & Associates Architects, Steve M. Lydon, P.P., AICP of Burgis Associates, Inc., Elizabeth Dolan, P.E. of Dolan & Dean Consulting Engineers, LLC and Paul R. Shackford, President of the Board of Trustees of Family Promise of Bergen County. The collective testimony proffered that the proposed Project upon the Property and its neighborhood, including without limitation the construction of a residential and office structure and residential property parcel for supportive housing for non-profit use was sought; and

**APPLICANT’S WITNESSES**

**WHEREAS**, Michael E. Dipple, P.E. of L2A Land Design, LLC, 66 Grand Avenue, 2<sup>nd</sup> Floor, Englewood, New Jersey 07631, who was duly qualified and accepted as an expert in engineering, testified and specifically described the impact upon the Property for public health, safety, and welfare and authenticated the submitted documents related to the engineering aspects of the Applicant’s proposal; and

**WHEREAS**, Kate Duggan, Executive Director of Family Promise of Bergen County, detailed aspects of the history, purpose and circumstances related to the ongoing activities of the

non-profit organization and who, throughout the course of all hearings related to the Applicant's presentation, also answered multiple inquiries advanced by members of the Board regarding the operation and practices of the non-profit organization; and

**WHEREAS**, Anthony Zampolin, A.I.A. of Zampolin & Associates Architects of 187 Fairview Avenue, Westwood, New Jersey 07675, who was duly qualified and accepted as an expert in architecture, testified and specifically described the operations' internal floor plans and impact upon the Property for public health, safety and welfare and authenticated the submitted documents related to the architectural aspects of the Applicant's proposal. Mr. Zampolin explained that the interior of the renovated building would be purposed to provide residential housing comprising of eight (8) separate dwelling units. Said units, as depicted upon the Applicant's Architectural Plans would be configured as six (6) two-bedroom units and two (2) one-bedroom units; and

**WHEREAS**, Steven M. Lydon, P.P., AICP of Burgis Associates, Inc., 25 Westwood Avenue, Westwood, New Jersey 07675, who was duly qualified and accepted as an expert in planning, testified and specifically described how the impact of the proposed Project could be measured against any perceived negative criteria related to Applicant's proposal; and

**WHEREAS**, Elizabeth Dolan, P.E., of Dolan & Dean Consulting Engineers, LLC of 181 West High Street, Somerville, New Jersey 08876, who was duly qualified and accepted as an expert in traffic analysis, testified and specifically described how the impact of the proposed Project could be measured against any perceived negative criteria related to Applicant's proposal; and

**WHEREAS**, Paul Raymond Shackford, President of the Board of Trustees of Family Promise of Bergen County, further detailed aspects of the history, purpose and circumstances related to the ongoing activities of the non-profit organization and who, throughout the course of all hearings related to the Applicant's presentation, also answered multiple inquiries advanced by members of the Board regarding the operation and practices of the non-profit organization; and who, throughout the course of all hearings related to the Applicant's presentation, also answered multiple inquiries advanced by members of the Board regarding the operation and practices of the non-profit organization, and

**APPLICANT'S DOCUMENTARY MATERIALS**

**WHEREAS**, the Applicant submitted and the Board reviewed the entirety of the following documentary materials in support of the Application prior to the Hearing:

- a. Applicant's completed Emerson Land Use Board Application for Development and supplemental attachments consisting of twenty-five (25) pages, dated April 23, 2024;
- b. Variance Application for 436 Old Hook Road, consisting of seven (7) pages, dated March 7, 1991;
- c. Resolution for Approval for 436 Old Hook Road, consisting of three (3) pages, dated July 17, 1991;
- d. Applicant's Colored Renderings of Proposals, consisting of two (2) pages, undated;
- e. Applicant's Topographic Survey of 436 Old Hook Road, prepared by Jeffrey S. Grunn, P.L.S. of Lakeland Surveying, consisting of one (1) page, dated December

15, 2024, last revised April 12, 2024;

- f. Applicant's Architectural Plans prepared by Robert E. Zampolin, A.I.A., of Zampolin & Associates Architects, consisting of three (3) pages, dated April 5, 2024; and
- g. Applicant's Preliminary and Final Site Plan, prepared by Michael E. Dipple, P.E., of L2A Land Design, LLC., consisting of six (6) pages, dated April 5, 2024; and
- h. Review of Applicant's Application prepared by Sgt. Daniel Kalyoussef, Emerson Police Department, consisting of one page, dated May 14, 2024; and
- i. Engineering Review of Application, prepared by David R. Atkinson, P.E., P.P., C.M.E, of Neglia Engineering, consisting of ten (10) pages, dated May 10, 2024; and
- j. Engineering Review of Application, prepared by David R. Atkinson, P.E., P.P., C.M.E, and Katherine Orellana of Neglia Engineering, and supplemented by revisions of June 14, July 5, December 11, 2024 and January 6, 2025, consisting of fifteen (15) pages; and
- k. Planning Review No. 1 of Application, prepared by Caroline Z. Reiter, P.P., A.I.C.P. and Timothy Jessen, A.I.C.P. of T&M Associates, consisting of fifteen (15) pages; and

**WHEREAS**, the Board also reviewed Engineering Review No. 1 consisting of ten (10) pages prepared by David R. Atkinson, P.E., P.P., C.M.E. of Neglia Engineering, 200 Central Avenue, Suite 102, Mountainside, New Jersey 07092, dated May 10, 2024 and submitted subsequent to Neglia Engineering's review of the Applicant's April 23, 2024

Application for Development; and

**WHEREAS**, the Board also reviewed Engineering Review No. 1 supplemented by Neglia Engineering's Revisions No. 1 and No. 2, respectively dated June 14, and July 5, 2024, the entire report consisting of fourteen (14) pages prepared by David R. Atkinson, P.E., P.P., C.M.E. and Katherine Orellana of Neglia Engineering, 200 Central Avenue, Suite 102, Mountainside, New Jersey 07092; and

**WHEREAS**, the Board also reviewed Engineering Review No. 1 supplemented by Neglia Engineering's Revisions No. 1, No. 2, and No. 3 respectively dated June 14, July 5, and December 5, 2024, the entire report consisting of fourteen (14) pages prepared by David R. Atkinson, P.E., P.P., C.M.E. and Katherine Orellana of Neglia Engineering, 200 Central Avenue, Suite 102, Mountainside, New Jersey 07092; and

**WHEREAS**, the Planning Board also reviewed Engineering Review No. 1 supplemented by Neglia Engineering's Revisions No. 1, No. 2, No. 3 and No. 4 respectively dated June 14, July 5, December 5, 2024, and January 6, 2025 the entire report consisting of fifteen (15) pages prepared by David R. Atkinson, P.E., P.P., C.M.E. and Katherine Orellana of Neglia Engineering, 200 Central Avenue, Suite 102, Mountainside, New Jersey 07092; and **WHEREAS**, the Board also reviewed Planning Review No. 1 consisting of fifteen (15) pages prepared by Caroline Z. Reiter, P.P., A.I.C.P. and Timothy Jossen, A.I.C.P. of T&M Associates, 400 Broadacres Drive, Suite 250, Bloomfield, New Jersey 07003 and dated May 14, 2024 and submitted subsequent to T&M Associates' review of the Applicant's April 23, 2024 Application for Development; and

**APPLICANT'S EXHIBITS**

**WHEREAS**, the Planning Board also reviewed and marked and accepted the following exhibits during the Applicant's May 16, July 11, September 19, 2024 and February 20, 2025

Amended Resolution  
436 Old Hook Rd, Block 1101, Lot 5,04  
Family Promise  
April 17, 2025

Amended per presiding  
Land Use Attorney

presentations;

Affidavits of Service and Publication of the Law Office of Mark D. Madaio dated May 2, 2024 and November 27, 2024, establishing that notice has been provided in accordance with the MLUL and pursuant to the requirements of N.J.S.A. 40:55D-12 and Borough ordinances vesting the Board with jurisdiction to hear this matter, which was not given an exhibit number.

A-1 Colorized Preliminary and Final Site Plan, prepared by Michael E. Dipple, P.E. of L2A Land Design, LLC, consisting of six (6) pages, dated April 5, 2024;

A-2 Firetruck Turning Radius Exhibit, prepared by Michael E. Dipple, P.E. of L2A Land Design, LLC and dated November 21, 2024;

A-3 Garbage Truck Hauler Turning Radius Exhibit, prepared by Michael E. Dipple, P.E. of L2A Land Design, LLC and dated November 21, 2024

A-4 Traffic Report Exhibit, prepared by Elizabeth Dolan, P.E. of Dolan & Dean Consulting Engineers, LLC dated November 4, 2024;

A-5 Architectural Drawings, prepared by Robert E. Zampolin, A.I.A. of Zampolin & Associates Architects, consisting of three (3) pages depicting floor plans, front and right side elevations, rear and left side elevations, dated April 5, 2024;

A-6 Aerial Photographs of the Property, prepared by Steve Lydon, P.P., A.I.C.P. of Burgis Associates, Inc. dated February 20, 2025;

A-7 A video, displayed using audiovisual equipment, detailing the program, policies and procedures of Family Promise of Bergen County, prepared by Paul Raymond Shackford, President of the Board of Trustees of family promise of Bergen County

BOARD ENGINEER

**WHEREAS**, the Board Engineer, David R. Atkinson, P.E., P.P., C.M.E. of Neglia Engineering testified as to his understanding of site specification standards and provided his remarks and recommendations as expressed in the May 10, 2024 report of Neglia Engineering and as supplemented by said report's Revisions respectively dated June 14, July 5, December 6, 2024 and January 6, 2025; and

BOARD PLANNER

**WHEREAS**, the Board Planner, Caroline Z. Reiter, P.P., A.I.C.P. of T&M Associates testified as to her understanding of site specification standards and provided her remarks and recommendations as expressed in the May 14, 2024 report of T&M Associates; and

**WHEREAS**, public comments were solicited and said solicitation garnered the comments of Susanne Smith, who is a long-standing resident of the community and who voiced protestations as to the Applicant's proposed plan to convert the commercial building and its exterior premises for residential housing. Ms. Smith also advanced concerns which echoed the comments of the Emerson Police Department's belief that the Project would create a dangerous traffic condition within the neighborhood. Ms. Smith also raised her concerns as to a believed negative impact upon the Borough of Emerson's public school system as well as the municipality's Fire Department's ability to respond to fire emergencies; and **WHEREAS**, public comments were solicited and said solicitation garnered the comments of Andrew Baratta, who is a long-standing resident of the community familiar with the management of apartment complexes and who also voiced protestations as to the Applicant's proposed plan to convert the commercial building and its exterior premises for residential use. Mr. Baratta also advanced concerns which echoed the comments of

the Emerson Police Department's belief that the Project would create a dangerous traffic condition within the neighborhood. Mr. Baratta also raised his concerns as to a believed negative impact upon the Borough of Emerson Fire Department's ability to respond to fire emergencies should the Applicant's sought after use variance be granted; and

**WHEREAS**, public comments were solicited and said solicitation garnered the comments of Kate Stutzel, who is a long-standing resident of the community and who voiced support as to the Applicant's proposed plan to convert the commercial building and its exterior premises for residential use. Ms. Stutzel raised questions regarding the goal and purpose of the Family Promise of Bergen County and said questions were answered to her satisfaction by Kate Duggan, the Applicant's Executive Director; and

**WHEREAS**, public comments were solicited and said solicitation garnered the comments of Germaine Ortiz, a Bergen County Commissioner who resides in the Borough of Emerson. Commissioner Ortiz voiced support as to the Applicant's proposed plan to convert the commercial building and its exterior premises for residential use; and

**WHEREAS**, public comments were solicited and said solicitation garnered the comments of Keith Smith, who is a long-standing resident of the community and the husband of Susanne Smith who also voiced protestations as to the Applicant's proposed plan to convert the commercial building and its exterior premises for residential housing. Mr. Smith also advanced concerns about children being left alone upon the premises should it be converted to residential use. In so doing, Mr. Smith further echoed the comments of the Emerson Police Department's belief that the Project would create a dangerous traffic condition within the neighborhood which would negatively impact overall public safety. Mr. Smith also raised his belief that the Property was a poorly chosen site for residential housing, regardless of the nature

or conditions of any proposed tenancies or a person's participation in the operation of Family Promise of Bergen County; and

**WHEREAS**, public comments were solicited and said solicitation garnered the comments of Molly Abrahamsen, who is a long-standing resident of the community and who also voiced protestations as to the Applicant's proposed plan to convert the commercial building and its exterior premises for residential housing. Ms. Abrahamsen's comments were directed to her concern regarding the community being the recipient of individuals who would be living as transient residents and Family Promise of Bergen County being exempt from the levy of local property taxes due the municipality in this Master Plan Economic Zone. Ms. Abrahamsen echoed Mr. Kevin Smith's remarks that the Project would create a dangerous traffic condition within the neighborhood which would negatively impact overall public safety; and

**WHEREAS**, public comments were solicited and said solicitation garnered the comments of Holly Digraza, who is a long-standing resident of the community and who also voiced protestations as to the Applicant's proposed plan to convert the commercial building and its exterior premises for residential housing. Ms. Digraza also advanced particular concerns about children being left alone upon the premises should it be converted to residential use. Ms. Digraza's remarks were particularized with regard to children who may, on occasion, be required to stay home from school because of illness; and

**WHEREAS**, public comments were solicited and said solicitation garnered the comments of Maria Suarez, who is a resident of the neighboring community of Oradell, New Jersey and who is also associated with the operations and activities of Family Promise of Bergen County. Ms. Suarez voiced support for the Applicant citing its purpose and record of achieving said purpose. Ms. Suarez made pointed comments as to her belief that the Applicant should be accepted more

wholeheartedly by the public during the public comment solicitation conducted during the Board's February 20, 2025 public meeting; and

**NOW, THEREFORE, BE IT RESOLVED** by the 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 436 Old Hook Road, Emerson, New Jersey, and is comprised of Block 1101, Lot 5.04 as per the Borough of Emerson Tax Map and the said property parcel is located within the Retail Commercial Zone, as per the Borough of Emerson Zoning Map.

2. The Applicant has a contract to purchase the subject Property that is conditional upon the Applicant receiving the required zoning use variances and other requisite municipal approvals and 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 has proposed to convert an existing structure and commercial property to one having a residential and accompanying office structure and be repurposed to be a residential apartments property parcel for appropriate housing and offices.

5. The Use Variance Application also results in a non-conforming lot requiring "c" bulk variance relief in various forms: The following "c" bulk variances were previously granted by Resolutions of Approval in 2002 and 2005 to address the existing non-conformities that have been identified for Block 58, Lots 11 and 13:

- A. "Rear Yard Setback (RC Zone)" Variance pursuant to N.J.S.A. 40:55-D-70(c) and further specified by the conditions of Ordinance §290-23, Applicant proposes to retain the existing setback of seventeen (17) feet, whereas thirty (30) feet is

required.

- B. “Minimum Access to Rear Yard (RC Zone)” Variance pursuant to N.J.S.A. 40:55-D-70(c) and further specified by the conditions of Ordinance §290-23, Applicant proposes to retain the existing minimum access to rear yard (RC Zone) of 10.7 feet, whereas fifteen (15) feet is required. “Freestanding Sign Minimum Access to Property Line (RC Zone)” Variance pursuant to N.J.S.A. 40:55-D-70(c) and further specified by the conditions of Ordinance §290-24.2, Applicant proposes access of ten (10) feet, with 10.7 feet existing, whereas six (6) feet is required.
- C. “Minimum Parking Space Dimension” Variance pursuant to N.J.S.A. 40:55-D-70(c) and further specified by the conditions of Ordinance §290-30.B.1(1), Applicant proposes parking spaces measuring a surface dimension of nine (9) feet by eighteen (18) feet, whereas 9 feet by 18.2 feet is required and existing.
- D. “Two-Way Traffic Minimum Driveway Width” Variance pursuant to N.J.S.A. 40:55-D-70(c) and further specified by §290-30.B.(2)(d), Applicant proposes a driveway width of 21.4 feet, whereas twenty-five (25) feet is required and 16.2 feet is existing.
- E. “Required Parking Spaces” Variance pursuant to N.J.S.A. 40:55-D-70(c) and further specified by §290-30.E and Residential Site Improvement Standards, Applicant proposes twenty-two (22) parking spaces, whereas forty-four (44) parking spaces are required and twenty-eight (28) spaces are existing.
- F. “Maximum Illumination at Property Line (to be conformed once the lighting design is finalized)” Variance pursuant to N.J.S.A. 40:55-D-70(c) and further specified by §290-54.C, Applicant proposes greater than 1.0 FC, whereas 1.0 FC is required and

less than 1.0 FC is existing.

G. "Permitted uses in Retail Commercial (RC) Zone" Variance pursuant to N.J.S.A. 40:55-D-70(d) and further specified by the conditions of Ordinance §290-20, Applicant proposes housing and support services whereas medical offices are existing; and

6. The Applicant called its witnesses over the course of the four (4) separate appearances before the Board occurring May 16, July 11 and September 19, 2024 and February 20, 2025 and wherein the order specified in the language below is a generalized description of how said witnesses were caused to appear before the Board with each witness' testimony becoming intermingled with those of other witnesses as the Applicant's complete presentation was effectuated; and As noted prior, the Applicant called its engineer, Michael E. Dipple, P.E., of L2A Land Design, LLC as its first witness. Michael Dipple began his testimony by indicating his prior personal participation in multiple projects such as the one presently under scrutiny. Michael Dipple continued his testimony by explaining the present condition of the Property based upon the Applicant's Topographic Survey of 436 Old Hook Road (Exhibit A-1) and the anticipated condition of the Property as depicted by the Applicant's Use Variance with Preliminary and Final Site Plan and bulk variances. Mr. Dipple also detailed the configuration of the existing parking spaces and the present use of the existing building located on the Property with said discussion aided by the Applicant's Fire Truck Turning Radius (Exhibit A-2), and Garbage Truck Hauler Turning Radius Exhibit (Exhibit A-3). In so doing, Mr. Dipple also indicated that the Property's number of parking spaces and layout would be maintained despite its proposed conversion to residential housing.

Michael Dipple then elaborated with further testimony to explain the size, footprint and dimensions that characterize the bulk requirements of the proposed Project as well as the building

specifications, which would be unaltered from that of the existing structure. Additional testimony from Mr. Dipple explained that the building would not require any additional signage, addressed the anticipated lighting of the exterior premises.

7. The Applicant then called Kate Duggan, Executive Director of Family Promise of Bergen County, as its second witness. Ms. Duggan testified as was needed to answer questions as to the purpose, operation, practices and procedures of Family Promise of Bergen County. Ms. Duggan's remarks were at various times either generalized or specific as a means to answer questions posed by the Board. In so doing, Kate Duggan detailed aspects related to the overall anticipated operation of Family Promise of Bergen County upon the subject property's premises. Ms. Duggan's responses were also appropriately focused upon issues as to the use of the Property related to circumstances such as the parent had to be working while enrolled in the Family Promise Program, school attendance of the children of such parents, the circumstances of an earlier developed such project in Ridgewood, New Jersey, the fact that the premises were not being purposed as a day care center and the fact that the children of such working parents would not be able to gain access to the interior of the building, nor be on-site of the property premises, during times when their respective parents were working. Ms. Duggan elaborated further as to how such generalized practices of the Applicant's organization would be specifically implemented upon the premises of the Property if the proposed Project was approved by the Board; and

8. Ms. Duggan's testimony and related remarks were supplemented by those of Paul Raymond Shackford, President of the Board of Trustees of Family Promise of Bergen County. Mr. Shackford also provided a variety of generalized and specific remarks as to the overall operation of the Applicant, not entirely focused upon the anticipated activity on the subject property if the Project were to be approved by the Board. For the purposes of organizing this Resolution, Mr.

Shackford is considered as the Applicant's third witness.

9. The Applicant called its architect, Robert E. Zampolin, A.I.A. of Zampolin and Associates Architects, as its fourth witness. Robert Zampolin began his testimony by indicating his prior personal participation in multiple other projects. Robert Zampolin continued his testimony to detail the architecture of the Project as illustratively described within the Applicant's Architectural Plans (Exhibit A-5) depicting the space utilization for proposed building if repurposed and accordingly renovated. In furtherance of such remarks, Mr. Zampolin commented upon his believed steps to achieve the alterations required to convert the commercial building for a proposed new use as residential housing. In so doing, Mr. Zampolin's testimony authenticated that said units, as depicted upon the Applicant's Architectural Plans would be configured as six (6) two-bedroom units and two (2) one-bedroom units. Mr. Zampolin further testified that no recreation area would exist upon the Property if the project was approved; and

10. The Applicant called its professional planner, Steve Lydon, P.P., A.I.C.P. of Burgis Associates Inc., as its fifth witness. Steve Lydon began his testimony detailing anticipated land use of the Property and highlighting his belief that the proposed Project of the Applicant would advance several purposes of the MLUL, including Purposes A, G, I and M. Mr. Lydon, a Professional Planner, discounted the testimony and remarks of Sgt. Daniel Kalyoussef of the Emerson Police Department and said report prepared of behalf of the Emerson Police Department, dated May 14, 2024. Mr. Lydon provided no report of his own to refute or rebuff the conclusions set forth and articulated by Sgt. Kalyoussef or the May 14, 2024 report, instead orally purporting remarks, at the February 20, 2025 public meeting, that effectively attempted to advance a "net opinion" which did not make references to the specific facts of the relevant situation to support its conclusion(s). Mr. Lydon also demonstratively appeared to fail to appreciate the Emerson Police Department's

concerns regarding the busier parking situation and busier traffic situation created by the proposed residential use of the Property's premises. Nor did Mr. Lydon appear to give much concern to earlier traffic accident information provided by the Emerson Police Department or have a fact-based and focused response to members of the community, who at the time the meeting was opened to the public, voiced their concerns that the subject property was positioned in a commercial district typically experiencing a high volume of traffic all the while expected by the Applicant to be a place where both children and adolescents would be expected to reside; and

11.

12. The Applicant called its traffic expert, Elizabeth Dolan, P.E. of Dolan & Dean Consulting Engineers, LLC, as its sixth witness. Elizabeth Dolan began her testimony by indicating her prior personal participation in multiple prior projects requiring the study of existing and anticipated motor vehicle traffic patterns. Elizabeth Dolan continued her testimony detailing her understanding of the existing traffic about the subject property. Elizabeth Dolan further testified and described her believed opinions as to the existing traffic flow about the Property and the expected traffic flow once the anticipated Project was achieved. Ms. Dolan did not address the Use variance concerns of the Board.; and

**BE IT FURTHER RESOLVED** by the Land Use Board of the Borough of Emerson that based upon the above findings of fact, that the following conclusions were 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 use variances in accordance with N.J.S.A. 40:55D-70(d). In order for the Board to grant variances, however, the applicant must demonstrate the Medici Case Law Standard. 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”) and further the purpose of the Municipal Land Use Law and /Borough Master Plan (“positive 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 further considered the Application and the Applicant’s request for approval of its Site Plan pursuant to N.J.S.A. 40:55D-7(c) (2) and the testimony presented. The Board finds from the testimony presented, subject to the conditions agreed upon by the Applicant and those imposed by the Board, that the Applicant has not satisfied the positive and negative criteria requirements such that N.J.S.A. 40:55D-70(d)). The Board finds from the testimony presented, that the proposed residential use cannot be granted without detriment to the Master Plan, and the Emerson Zoning Ordinance, and, creates detriment to the surrounding area.

3. The Board has considered the Use Variance Application, the testimony presented and the Applicant’s request for variance approval pursuant to N.J.S.A. 40:55D-70(d)(1), and has concluded that, sitting as a Zoning Board, has the power to grant a variance to allow the use variation in a district restricted against such use only if at least five (5) members of the Board are convinced that the proofs have been met.

4. The Board has considered the Application, with its Use Variance with Preliminary and Final Site Plan, the testimony presented and the Applicant’s request for additional bulk variances- and in so doing concludes the relief requested can only be granted upon a showing that such variance or other relief can be granted “without substantial detriment to the public good and will not substantially impair the intent and purpose of the zoning plan and zoning ordinance.” As the use for which a variance is sought is not one that inherently serves the public good, Plaintiff must prove, and the Zoning Board must specifically find, that the use promotes the general welfare

because the proposed site is particularly suitable for the proposed use. Medici v. BPR Co., 107 N.J. 1, 3 (1987). The Board concludes that the Applicant has failed to meet this criterion.

5. The Board has considered the Application and the Applicant's request for Use variance with its site plan relief and the testimony presented and has found that the Project, as proposed, is not an "inherently beneficial use" as that term is defined in N.J.S.A. 40:55D-4.

6. The Board has considered the Application and the Applicant's request for Use variance with approval of its Site Plan and the testimony presented and has concluded that with regard to "particular suitability," an applicant must provide "substantial credible evidence ... that the property was particularly suitable" Bowie-McCready v. Morristown Zoning Bd. Of Adjustment, N.J. Super. Ct. App. Div., 9 (Sept. 12, 2008). The Board concludes the Applicant has failed to meet this criterion.

7. The Board has considered the Application and the Applicant's request for approval and the testimony presented and has concluded a site does not have to be uniquely suited for the use or be the only site in a municipality suited for the use. Rather, and in accordance with the 2013 ruling of the New Jersey Supreme Court, the Board has concluded that the test is whether the subject property is "especially well-suited for the use, in spite of the fact that it is not permitted in the zone." Price v. Himeji, LLC and the Union City Zoning Board of Adjustment

8. The Board has considered the Application and the Applicant's request for approval of its Site Plan and the testimony presented and has concluded the ingress and egress proposed by the Applicant creates an unsafe and inefficient vehicle circulation. In making this determination and considering the existing physical conditions of the area about the subject property, and

pursuant to Lionel Appliance Center, Inc. v. Citta, 156 N.J. Super. 257, 268-269 (Law. Div. 1978), the Board has concluded that the re-purposing of the subject property, as proposed by the Applicant, is not “well suited for the use.” Price v. Himeji, LLC and the Union City Zoning Board of Adjustment

9. The Board has considered the Application and the Applicant’s request for Use variance with site plan approval as testimony presented and has concluded the ingress & egress with site layout proposed by the Applicant not only creates an unsafe and inefficient vehicle circulation, but said unsafe condition is compounded by the inherent circumstance that the Applicant proposes residential housing that would be purposed to accommodate children who would routinely be denied access to the interior of the proposed building if and whenever said children’s respective parent is not also upon the premises. In making the determination that and considering this particular circumstance in the context of the existing physical condition(s) of the area about the subject property, and once again pursuant to Lionel Appliance Center, Inc. v. Citta, 156 N.J. Super. 257, 268-269 (Law. Div. 1978), the Board has concluded that the re-purposing of the subject property, as proposed by the Applicant, is not “well suited for the use.” Price v. Himeji, LLC and the Union City Zoning Board of Adjustment

10. The Board finds from the testimony presented, that the Use Variance with Preliminary & Final Site Plan, with additional bulk variances, is not in substantial compliance with N.J.S.A. 40:55D-38, 39, 41 and 50, and the applicable Borough Ordinances, and does not advance sound land use principals.

11. The Board finds that the proposed use is incompatible with the character of the area in which the Property is located, and the approval of the Site Plan will change the character of the neighborhood, which has been zoned as the Retail Commercial Zone District, where residential

housing has not been a permitted use. Children should not be residing and recreating in this Retail Commercial zone.

12. The Board finds that the proposed Project does not meet the objectives of the Borough of Emerson Master Plan because the Project does not improve the overall use and operation of the site and creates an unsafe children play area.

13. The Board further finds that the Applicant has not met its burden of demonstrating that the overall site plan can be granted without detriment to the public good while not impairing the intent and purpose of the zoning plan and zoning ordinance.

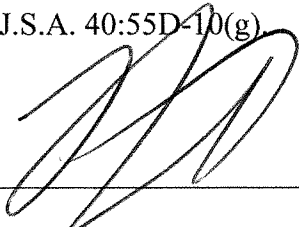
**NOW, THEREFORE, BE IT RESOLVED** that the Borough of Emerson Land Use Board, on this 3rd day of April 2025, for the foregoing reasons as well as those stated on the record by the Board members, which are incorporated herein by reference, hereby denies the within application for Use variance with the Preliminary & Final Site Plan with additional bulk variances and in so doing, denies the proposed construction of the Project upon the Property located at 436 Old Hook Road, Emerson, and also identified in its entirety on the Borough of Emerson Tax Map as Block 1101, Lots 5.04 and further:

1. The Applicant shall be bound by the content and testimony as if the testimony was incorporated herein.
2. This Board shall retain jurisdiction as to any interpretation of the approved resolution. The Board shall maintain jurisdiction of the application as to any of the conditions above in which Applicant seeks clarification or amendment.
3. Applicant was given the opportunity to review this Resolution prior to the Board's passage.

The undersigned, Secretary of the Borough of Emerson Land Use Board, hereby certifies that the above is a true copy of a Resolution duly memorialized by said Board on April 3, 2025 and that the within Resolution was adopted by the Board and memorialized pursuant to N.J.S.A. 40:55D-10(g).

**BE IT FURTHER RESOLVED** that the Board Secretary is hereby authorized and directed to cause a notice of this decision to be published in the official newspaper at the Applicant's expense and to send a certified copy of this Resolution to the Applicant and to the Borough Clerk, Engineer, Attorney and Tax Assessor, and shall make same available to all interested parties.

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 April \_\_ 2025 and that the within Resolution was adopted by the Board and memorialized pursuant to N.J.S.A. 40:55D-10(g)

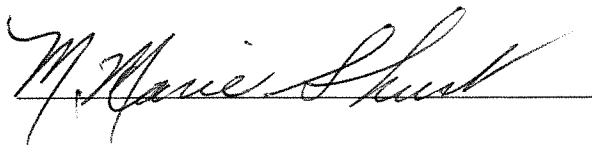


---

Rich Taub, Chairman

Borough of Emerson ]

Land Use Board



---

Marie Shust, Secretary

Borough of Emerson

Amended Resolution  
436 Old Hook Rd, Block 1101, Lot 5,04  
Family Promise  
April 17, 2025

Amended per presiding  
Land Use Attorney

Municipal Land Use Board

Approval Motioned February 20, 2025 by:

Offered by: Mr. Khiami

Seconded by: Mr. Ciavaglia

Ayes:   6  

Nays:   1  

Abstentions:   0  

Resolution Denying Approval Motioned April 3, 2025 by:

Offered by: Mr. Cimino

Seconded by: Mr. Hulburt

Ayes:   4  

Nays:   0  

Abstentions:   3  

Amended Resolution Denying Approval Motioned May 1, 2025 by:

Offered by Mr. Khiami

Seconded by Mr. Worthington

Ayes:   5  

Nays:   2  

Abstentions:   1