

Bulk Variance Relief
Joseph Del Giudice
Block 324.38, Lot 27
119 Jib Circle
Zone: R-5 (Single-Family Residential) Zone
Application No. BA-3188-1/20

**RESOLUTION OF APPROVAL
BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT
APPLICATION NO. BA-3188-1/20
APRIL 15, 2020**

WHEREAS, Joseph Del Giudice (the “Applicant”) has applied to the Brick Township Zoning Board of Adjustment (the “Board”) for bulk variance relief, pursuant to N.J.S.A. 40:55D-70c, for lands known and designated as Block 324.38, Lot 27, on the official tax map of the Township of Brick and more specifically known as 119 Jib Circle, Brick, NJ 08723 (the “Property”); and

WHEREAS, a complete application has been filed, the fees as required by Township ordinance have been paid, proof of service and publication of notice as required by law has been furnished and determined to be in proper order, and it otherwise appears that the jurisdiction and powers for the Board have been properly invoked and exercised; and

WHEREAS, a public hearing was held on March 4, 2020, in the municipal building, at which time testimony and exhibits were presented on behalf of the Applicant and all interested parties having an opportunity to be heard.

NOW, THEREFORE, the Board makes the following findings of fact based on evidence presented at its public hearing at which a record was made:

1. The Applicant is seeking bulk variance relief permitting the installation of a 12 foot by 26 foot in-ground swimming pool with surrounding concrete patio in the rear yard of the Property, as well as to locate pool equipment in the side yard of the property.

2. The Property contains 8,300.2 s.f. with 81.51 feet of frontage on Broad Avenue within the R-5 (Single-Family) Zone. The Property is also bounded by residential lots to the west and east, as well as the Jib Lagoon to the north.

3. Based upon the application and plans submitted, any amendments or modifications thereto, and the testimony of the Applicant's experts, the following bulk variance relief is required:

	Required	Existing	Proposed
Rear setback from the waterward side of the bulkhead	15 feet	N/A	6 feet

4. The Applicant was represented by John J. Jackson, III, Esq., who stated that the Property is located along the northerly side of Jib Circle and fronts Jib Lagoon. Mr. Jackson explained that the Applicant was proposing to construct an in-ground swimming pool in the rear yard of the Property.

5. The Applicant's Engineer and Planner, Michael Cannon, P.E., P.P., testified that the Property is located on Jib Circle and is bounded by a lagoon to the north. He further testified that the Applicant was seeking variance relief permitting the construction of an in-ground fiberglass swimming pool and 3-foot wide surrounding concrete patio with fencing in the rear yard of the Property. He stated that the Applicant recently reconstructed the bulkhead and that helical anchors were installed. Mr. Cannon further testified that the Applicant chose the proposed location because it is the widest section of the rear yard. He then confirmed further

testified that the Applicant would comply with all CAFRA Permit By-Rule Regulations. He stated that the Applicant was requesting bulk variance relief for the rear setback from the waterward side of the bulkhead where 15 feet is required and 6.0 feet was proposed. Mr. Cannon also testified that the proposed pool would be 4.5 feet in depth.

6. Mr. Cannon also testified that the pool would not affect the adjacent neighbor's view of the water. He stipulated that compliant fencing would be installed to surround the pool. Mr. Cannon further stated that the proposed pool would enhance the aesthetics of the Property and would not be a substantial detriment to the zone plan or the neighborhood.

7. There were no members of the public expressing an interest in this application.

NOW, THEREFORE, the Board makes the following conclusions of law based upon the foregoing findings of fact:

1. This application before the Board requires bulk variance relief to install a 12 foot by 26-foot in-ground swimming pool with surrounding concrete patio. The Applicant also proposes to install compliant fencing to surround the pool.

2. The Municipal Land Use Law, at N.J.S.A. 40:55D-70c provides Boards with the power to grant variances from strict bulk and other non-use related issues when the Applicant satisfies certain specific proofs which are enunciated in the Statute. Specifically, the Applicant may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. An Applicant may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the Applicant may also supply evidence that exceptional or extraordinary circumstances exists which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any

regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Additionally, under the c(2) criteria, the Applicant has the option of showing that in a particular instance relating to a specific piece of property, the purpose of the act would be advanced by allowing a deviation from the Zoning Ordinance requirements and the benefits of any deviation will substantially outweigh any detriment. In those instances, a variance may be granted to allow departure from regulations adopted, pursuant to the Zoning Ordinance.

3. Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” or (c) variance relief. Finally, an Applicant must also show that the proposed variance relief sought will not have a substantial detriment to the public good and, further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. It is only in those instances when the Applicant has satisfied both these tests, that a Board, acting pursuant to the Statute and case law, can grant relief. The burden of proof is upon the Applicant to establish these criteria.

4. The Board finds that the Applicant has satisfied the positive criteria. The Board specifically finds the bulk variance required for the installation of the swimming pool results in a diversified housing stock and are aesthetic improvements which promote the goals of planning as enumerated in N.J.S.A. 40:55D-2. The Board, therefore, concludes that the Applicant has satisfied the c(2) affirmative criteria sufficiently to permit the granting of the bulk variance requested.

5. Turning next to the negative criteria, the Board concludes that a swimming pool with concrete patio and fencing is a commonly permitted accessory structure to a single-family residential use such as those in the surrounding neighborhood. Further, the Board concludes that

the Applicant's proposal to install the swimming pool with concrete patio and fencing on the Property will not create a substantial detriment to the public good because the nature of the encroachment into the rear yard setback is unlikely to detrimentally affect the adjacent properties which, the Board concludes, is the purpose and intent of the Township Zoning Ordinance. Consequently, the Board concludes that granting the requested bulk variances will not substantially impair the purpose and intent of the Zoning Ordinance or Zone Plan. The Board concludes, therefore, that the Applicant has satisfied the negative criteria. The positive criteria substantially outweighs the negative criteria and bulk variance relief may be granted pursuant to N.J.S.A. 40:55D-70c(2).

NOW, THEREFORE, BE RESOLVED, by the Brick Township Zoning Board of Adjustment on this 15th day of April, 2020 that the action of the Board taken on March 4, 2020 granting Application No. BA-3188-1/20 of Joseph Del Giudice for bulk variance relief is hereby memorialized, subject to the following conditions:

1. Applicant shall comply with standard Zoning Board of Adjustment conditions as set forth in attached Schedule "A".
2. The development of this site shall take place in strict conformance with the testimony, plans and drawings which have been submitted to the Board with this application, as revised by the terms hereof.
3. Except where specifically modified by the terms of this Resolution, the Applicant shall comply with the recommendations contained in the reports of the Board's professionals.
4. The Applicant shall comply with all NJDEP Permit-By-Rule Regulations.

5. All grading on the site shall comply with all Township Ordinances and regulations and will be subject to the approval of the Township Engineer.

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