

Bulk Variance Relief
Brian and Eileen Mullen
Block 211.06, Lot 13
5 Obispo Drive
Zone: R-5 (Single-Family Residential) Zone
Application No. BA-3170-10/19

**RESOLUTION OF APPROVAL
BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT
APPLICATION NO. BA-3170-10/19
MAY 20, 2020**

WHEREAS, Brian and Eileen Mullen (the “Applicants”) have 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 211.06, Lot 13, on the official tax map of the Township of Brick and more specifically known as 5 Obispo Drive, 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 May 6, 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 Applicants are seeking bulk variance relief permitting the installation of an elevated screened-in porch and balcony and a new lower level deck surrounding an existing

swimming pool in the rear yard of the Property. The Applicants are also seeking bulk variance relief to legitimize the existing pool equipment located in the side yard of the Property.

2. The Property contains 5,000 s.f. with 50 feet of frontage on Obispo Drive within the R-5 (Single Family) Zone. All adjacent lots are also located within the R-5 Zone. The Property is also bounded by residential lots to the west and east and Obispo Lagoon to the south.

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

	Required	Existing	Proposed
Rear yard setback (elevated porch)	15 feet	N/A	13.0 feet
Combined Side yard (elevated porch)	5 feet/12 feet	N/A	5 feet/10 feet
Side yard setback (pool equipment)	5 feet	3 feet	3 feet

4. The Applicant, Brian Mullen, testified that the Property is located on Obispo Drive and that the application required bulk variance relief to permit construct a 321 s.f. elevated screened-in porch with a balcony and to also remove and replace the existing lower level wood decking surrounding an existing swimming pool in the rear yard of the Property. He explained that the railing of the balcony which would face the existing swimming pool would be located approximately 6 to 7 feet from the swimming pool. He further testified that bulk variance relief was also requested for the rear yard setback for the proposed elevated porch where a 15-foot rear yard setback is required and a 13-foot setback is proposed. Mr. Mullen further testified that bulk variance relief was required for combined side yard setback for the screened-in porch where a 5 foot/12 foot setback is required and a 5 foot/10 foot is proposed.

5. Mr. Mullen then stated that the installation of the proposed improvements would not have a detrimental effect on the adjacent properties.

6. Mr. Mullen then acknowledged that the existing pool equipment on the Property requires variance relief. He stated that a minimum 5-foot side yard setback is required and a 3-foot setback exists.

7. There were no members of the public expressing an interest in or objection to the 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 permitting the installation of a 321 s.f. elevated screened-in porch and balcony and the installation of a new lower level wood decking surrounding an existing swimming pool in the rear yard as well as to legitimize pool equipment in the side yard of the Property.

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 Applicants have satisfied the positive criteria. The Board specifically finds the bulk variances required for the installation of the elevated screened-in porch and existing pool equipment result 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 concludes that the Applicants have satisfied the c(2) affirmative criteria sufficiently to permit the granting of the bulk variances requested.

5. Turning next to the negative criteria, the Board concludes that a screened-in porch, wood decking and pool equipment are commonly permitted accessory structures to a single family residential use such as those in the surrounding neighborhood. Further, the Board concludes that

the Applicants' proposal to install the elevated screened-in porch and wood decking in the rear yard and legitimize the existing pool equipment will not create a substantial detriment to the public good. The Board also finds that the bulk variance relief sought for the rear yard setback will not affect the sight lines from the adjacent properties and drainage on the property will not be affected by the screened-in porch. This is because the nature of the encroachments into the rear and side yard setbacks are unlikely to detrimentally affect the adjacent properties which, the Board concludes, is the purpose and intent of the Township Zoning Ordinance that established the setbacks. The Board therefore 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 Applicants have satisfied the negative criteria. The Board concludes that the positive criteria substantially outweighs the negative criteria and bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2) may be granted.

NOW, THEREFORE, BE IT RESOLVED, by the Brick Township Zoning Board of Adjustment on this 20th day of May, 2020, that the action of the Board taken on May 6, 2020 granting Application No. BA-3170-10/19 of Brian and Eileen Mullen for bulk variance relief is hereby memorialized, subject to the following conditions:

1. Applicants 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 Applicants shall comply with the recommendations contained in the reports of the Board's professionals.
4. All grading on the site shall comply with all Township Ordinances and regulations and will be subject to the approval of the Township Engineer.