

Bulk Variance Relief
Lee Childers
519 Sunset Boulevard
Block 27, Lot 62
Zone: R-5 (Single-Family Residential) Zone
Application No. BA-3175-C-11/19

**RESOLUTION OF APPROVAL
BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT
APPLICATION NO. BA-3175-C-11/19
MAY 20, 2020**

WHEREAS, Lee Childers (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 27, Lot 62 on the official Tax Map of the Township of Brick and more specifically known as 519 Sunset Boulevard, Mantoloking, NJ 08738 (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 of the Board have been properly invoked and exercised; and

WHEREAS, a public hearing was held on May 6, 2020, via the Zoom platform, 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 to construct a four (4) bedroom, 2.5 story, elevated single-family residential dwelling with a two-story covered deck off both the front and rear of

the proposed home. Two (2) front balconies are also proposed. The ground level will be used as parking while the 1.5 story upper level will be used as living space.

2. The Property is a corner lot containing 4,331 s.f. with frontages of 100.00 ft. along Jeanette Drive and 45.00 ft. along Sunset Boulevard within the R-5 (Single Family Residential) Zone. All adjacent properties, including those across Jeanette Drive to the north and Sunset Boulevard to the east are also located within the R-5 Zone. The Property is currently vacant but previously contained a residential home which was destroyed during Coastal Storm Sandy.

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 also required:

	<u>Permitted</u>	<u>Existing</u>	<u>Proposed</u>
Minimum Lot Area	6,000 s.f.	4,331 s.f. ⁽¹⁾	4,331 s.f. ⁽¹⁾
Minimum Lot Width	50 feet	43.31 feet ⁽¹⁾	43.31 feet ⁽¹⁾
Minimum Front Setback	20 feet	N/A	8.31 feet ⁽²⁾
Maximum Lot Coverage by Building	35%	N/A	39.69%
Maximum Building Eave Height	26 feet ⁽³⁾ OR Elev. 32 (NAVD-88)	N/A	26.33 feet ⁽³⁾ AND Elev. 36.5
Parking Area Setback from Street Right-of-Way Lane	20 feet	N/A	+/- 9.5 feet

⁽¹⁾ Existing condition; no change proposed.

⁽²⁾ As measured from Jeanette Drive, the proposed front setback from Sunset Boulevard is 23.98 feet.

⁽³⁾ As measured from the established average adjacent grade plane (8.0).

4. The Applicant was represented by Edward Murachanian, Esq.

5. The Applicant's Engineer and Planner, Joseph Kociuba, P.E., P.P. testified that the Property is an undersized vacant corner lot which previously contained a single-family home which was demolished as a result of Coastal Storm Sandy. He stated that the Applicant was proposing to build a single-family residence on the Property.

6. Mr. Kociuba stated that the requested bulk variance relief (except for the building mean height) was necessary because the proposed home could not be located any further west or east on the Property due to CAFRA regulations. He added that the proposed home would comply with the CAFRA Permit By-Rule Regulations as well as all flood hazard control requirements. Mr. Kociuba then testified that the slight deviation from the maximum eave height was caused by the pitch of the proposed roofing. He explained that the height of the proposed is compliant with the Township Code.

7. Mr. Kociuba opined that the bulk variance relief sought by the Applicant is not out of character with the neighborhood and was also caused by the undersized lot, and therefore, the positive c(1) criteria was satisfied.

8. Mr. Kociuba testified that the lower level would be used for parking and storage only and would not be a livable area in the proposed residential home.

9. Mr. Kociuba next stated that the proposed home would advance the purposes of the Municipal Land Use Law enumerated at N.J.S.A. 40:55D-2(a) because it would be constructed to meet all current building codes and FEMA requirements. Mr. Kociuba further stated that the proposed home promotes the purpose of the Municipal Land Use Law stated at N.J.S.A. 40:55D-2(b) because the home would provide safety from flooding and N.J.S.A. 40:55D-2(i) because it would have a visually attractive

design. Mr. Kociuba stated that there would be no detriment to the public good because the new home will eliminate a vacant lot in the neighborhood.

10. Mr. Kociuba also testified that the benefits of the application outweighed the detriments because the Property would have additional parking, the home will be more resistant to flooding and that there would be no detriment to the zone plan.

11. Mr. Murachanian stated that the Applicant issued Buy/Sell Letters to adjacent property owners and did not receive any responses.

12. The hearing was then opened to the public at which time Liz Lenza, 521 Sunset Boulevard, stated that the Applicant proposed “a lot of home on a skinny lot.” She stated that she owns the lot next door to the Property. Ms. Lenza did, however, recognize, that the proposed home had a professional design. She expressed concern that construction vehicles would block traffic in the area. She further explained that contractors who had constructed homes in the area in the past few years stored their building materials on her property. Mr. Childers responded by stating that he would ensure that the construction vehicles park on Jeannette Drive and not the smaller Sunset Boulevard. He further stated that he would make sure that debris and storage materials would not be stored upon, nor enter Ms. Lenza’s property. Mr. Childers further agreed to coordinate parking and traffic with the Township Police Bureau of Traffic Safety to assist with parking of vehicles and traffic flow in the area during construction. Ms. Lenza then wished the Applicant the best of luck during the construction.

13. There were no other 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. The Applicant requires bulk variance relief. 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 exist 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.

2. 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.

3. The Applicant did not provide testimony concerning how the Property became undersized. The Board, therefore, cannot determine if any hardship was self-created.

4. The Board does however, find that the Applicant has satisfied the positive criteria. The goals of planning as enumerated in N.J.S.A. 40:55D-2a, e and i have been advanced. Specifically, the proposed residential dwelling will advance the purpose of N.J.S.A. 40:55D2a because it will be constructed in compliance with FEMA and CAFRA regulations. In accordance with N.J.S.A. 40:55D2e, the Board concludes that the residential dwelling will contribute to the well-being of the neighboring community because the residence will replace a previously existing home which was damaged by Coastal Storm Sandy. The Board also concludes that the design of the residential dwelling will advance the purposes of the Municipal Land Use Law set forth in N.J.S.A. 40:55D-2i because the dwelling will create a more desirable visual environment. The Applicant has therefore satisfied the positive criteria pursuant to N.J.S.A. 40:55D-70c(2).

5. Turning next to the negative criteria, the Board finds that the Applicant's proposal to construct a new residential dwelling which is more resistant to flooding and other man-made and natural disasters, help to mitigate any negative effect of the deviation from the front yard setback, maximum lot coverage and parking area setback requirements in the R-5 Zone. The Board also notes that the Applicant will ensure that construction vehicles park on Jeannette Drive and not Sunset Boulevard and that building materials are stored on and debris does not enter adjacent properties. The Board concludes,

therefore, that the Applicant has satisfied the negative criteria sufficiently to permit the granting of the bulk variances requested. The Board finds that the positive criteria substantially outweighs the negative criteria and that bulk variance relief may be granted pursuant to N.J.S.A. 40:55D-70c(2).

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-3175-C-11/19 of Lee Childers 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 lower level shall be used exclusively for parking and storage. Conversion of this space to livable area is expressly prohibited. This restriction shall be the subject of a recorded Deed restriction subject to the review and approval of the Board Attorney.
5. The Applicant shall comply with all CAFRA Permit-By-Rule Regulations.

6. The Applicant shall ensure that all construction vehicles are parked on Jeannette Drive and that building materials are not stored on and debris does not enter adjacent properties.
7. The Applicant shall coordinate construction vehicle parking with the Township Police Bureau of Traffic Safety.