

Bulk Variance Relief
Robert and Maryrose Grimbilas
7 Cuttyhunk Road
Block 42.04, Lot 7
Zone: R-7.5 (Single-Family Residential) Zone
Application No. BA-3184-C-12/19

**RESOLUTION OF APPROVAL
BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT
APPLICATION NO. BA-3184-C-12/19
MAY 20, 2020**

WHEREAS, Robert and Maryrose Grimbilas (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 42.04, Lot 7 on the official Tax Map of the Township of Brick and more specifically known as 7 Cuttyhunk Road, 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 Applicants 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 to construct a three (3) bedroom, two-story, elevated single-family residential dwelling with a building footprint of 1,664.55 s.f. A

+/-100 s.f. elevated and covered front porch with an associated exterior access staircase and a +/- 175 s.f. upper level rear deck contained within the building footprint are also proposed. The ground level will be used as parking while the two-story upper level will be used as living space.

2. The subject Property is an undersized lot containing 4,170 s.f. with a frontage of 50.00 ft. along the northerly side of Cuttyhunk Road within the R-7.5 (Single Family Residential) Zone. All adjacent properties, including those to the west and east and across Cuttyhunk Road to the south are also located within the R-7.5 Zone. The adjacent property to the north contains the public parking lot for Brick Beach One. The subject Property is currently vacant but previously contained a residential home which has been removed.

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 also required:

	<u>Permitted</u>	<u>Existing</u>	<u>Proposed</u>
Minimum Lot Area	7,500 s.f.	4,170 s.f. ⁽¹⁾	4,170 s.f. ⁽¹⁾
Minimum Lot Width	75 feet	50.00 feet ⁽¹⁾	50.00 feet ⁽¹⁾
Minimum Lot Depth	90 feet	83.50 feet ⁽¹⁾	83.50 feet ⁽¹⁾
Minimum Front Setback	25 feet	N/A	18.44 feet
Minimum Rear Setback	15 feet	N/A	9.60 feet
Maximum Lot Coverage by Building	30%	N/A	39.91%
Maximum Access Staircase Encroachment into Front Yard Setback	10 feet	N/A	15.32 feet

⁽¹⁾ Existing condition; no change proposed.

4. The Applicants were represented by John J. Jackson, Esq.

5. The Applicants' Engineer and Planner, William Stevens, P.E., P.P., testified that the Property is an undersized vacant lot which previously contained a single-family home which had been removed. He stated that the Applicants were proposing to build a new single-family residence on the Property.

6. Mr. Stevens stated that the neighborhood is comprised of Cuttyhunk Road and Ocean Terrace. He further testified that the subject Property is undersized (4,170 s.f. where a minimum lot area of 7,500 s.f. exists). Mr. Stevens observed that all the lots in the neighborhood are located in the R-7.5 Zone and are undersized.

7. Mr. Stevens stated that the requested bulk variance relief for rear yard setback was necessary because the proposed home could not be located any further south on the Property without further exacerbating the front yard setback requirements. Mr. Stevens then testified that the deviation from the front yard setback was caused by the interlocking design of the proposed front access stairway. He added that the proposed home would comply with the CAFRA Permit By-Rule Regulations as well as all flood hazard control requirements. He explained that the height of the proposed home is compliant with the Township Code.

8. Mr. Stevens then opined that the bulk variance relief sought by the Applicants 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.

9. Mr. Stevens testified that the lower level would be used exclusively for parking and storage and would not be a livable area. He stated the lower level would accommodate two (2) vehicles.

10. Mr. Stevens 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 promote the general welfare of the neighborhood. He further stated that the proposed home would also promote 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. Stevens stated that there would be no detriment to the public good because the new home will eliminate a vacant lot in the neighborhood.

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

12. Mr. Stevens then testified that the Applicants would comply with all Township Engineering and drainage requirements. He stated that the grading would be inches higher than required and that all drainage would run to the rear yard of the proposed home and away from adjacent properties. He added that the elevation would exceed the requirements of the AO flood zone.

13. Mr. Jackson stated that the Applicants issued Buy/Sell Letters to adjacent property owners and did not receive any responses.

14. The hearing was then opened to the public at which time Dan Remler, 5 Cuttyhunk Road, stated that the 4-foot high fence located near the westerly property line of the subject Property was actually located on his property. He also asserted that other property owners in the area were required to comply with all setback requirements to construct their

homes. Mr. Remler expressed also concern about drainage both on the subject Property and in the general area. He stated that drainage in the area has always been a problem. Mr. Stevens responded that the Applicants would install downspouts to drain water to the rear yard of the subject Property.

15. 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 Applicants require 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 Applicants satisfy certain specific proofs which are enunciated in the Statute. Specifically, the Applicants may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. Applicants may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the Applicants 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 Applicants have 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, Applicants 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 Applicants have 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 Applicants to establish these criteria.

3. The Applicants 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 Applicants have satisfied the positive criteria with regard to a “flexible” c variance. 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. 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 Applicants have 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 Applicants' 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-7.5 Zone. The Board also notes that the Applicants will ensure that runoff drains to the rear of the subject Property and not to adjacent properties. The Board concludes, therefore, that the Applicants have 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-3184-C-12/19 of Robert and Maryrose Grimbilas 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. 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 Applicants shall comply with all CAFRA Permit-By-Rule Regulations.
6. The Applicants shall comply with all Township grading and drainage requirements.