

Bulk Variance Relief  
John and Patty Van Decker  
Block 245.05, Lot 48  
209 Squan Beach Drive  
Zone: R-7.5 (Single-Family Residential) Zone  
Application No. BA-3193-2/20

**RESOLUTION OF APPROVAL  
BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT  
APPLICATION NO. BA-3193-2/20  
JUNE 17, 2020**

**WHEREAS**, John and Patty Van Decker (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 245.05, Lot 48, on the official tax map of the Township of Brick and more specifically known as 209 Squan Beach 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 June 3, 2020, virtually 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 permitting the installation of a 27-foot by 38-foot rear yard deck and a new paver patio surrounding an existing in-ground

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

2. The Property contains 13,694 s.f. and is situated in the R-7.5 (Single Family) Zone, as are all adjacent lots, and has 170 feet of frontage on Squan Beach Drive. The Property is also bounded by residential lots to the north, south and west with a lagoon to the east.

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:

	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>
Rear yard setback to waterward side of bulkhead (pool)	15 feet	14 feet, 2 inches	14 feet, 2 inches
Rear yard setback (elevated deck)	15 feet	10.4 feet	0 feet
Rear Yard Setback: Paver Patio surrounding pool	15 feet	1.8 feet	0 feet

4. The Applicants were represented by Jilian McLeer, Esq.

5. The Applicants' Engineer and Planner, Charles E. Lindstrom, P.E., P.P., stated that the Applicants required bulk variance relief to install a new elevated 27-foot by 38-foot rear yard deck that would connect to an existing in-ground swimming pool with a new proposed surrounding paver patio. Mr. Lindstrom stated the Applicants wished to remove an existing concrete patio surrounding the pool and replace same with a surrounding paver patio. Mr. Lindstrom further testified that the Applicants were seeking bulk variance relief to legitimize the existing in-ground swimming pool which has been in existence since the Applicants purchased the Property.

6. Mr. Lindstrom further testified that the Applicants were seeking bulk variance relief for the rear yard setback for the proposed elevated deck where a 15-foot setback is required and a

0-foot setback is proposed. He added that the Applicants were also seeking bulk variance relief for the installation of the new paver patio surrounding the existing in-ground swimming pool where a 15-foot rear yard setback is required and 0-foot setback is proposed. Mr. Lindstrom explained that the proposed paver patio would replace an existing concrete patio.

7. Mr. Lindstrom next stated that the new rear yard deck and surrounding paver patio for the existing swimming pool would improve the aesthetics of the subject Property and increase the safety of the pool area because the proposed paver patio would be larger than the existing concrete patio. He further testified that the improvements would increase light, air and open space and would not have any effect on adjacent properties because the subject Property is bordered by a lagoon to the east.

8. The Board notes that the existing in-ground swimming pool also requires variance relief. A minimum 15-foot rear yard setback to the waterward side of the bulkhead is required and a 14-foot, 2-inch setback exists.

9. 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 27-foot by 38-foot elevated deck in the rear yard, a paver patio surrounding the existing in-ground swimming pool, and to legitimize the existing in-ground swimming pool in the rear 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 rear yard deck, the paver patio surrounding the existing in-ground swimming pool as well as the location of the in-ground pool itself result in a diversified housing stock and are aesthetic improvements not only to the Property, but also benefit the entire neighborhood. The goals of planning as enumerated in N.J.S.A. 40:55D-2 have therefore been advanced. The Board concludes that the Applicant has 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 the in-ground swimming pool with surrounding paver patio and elevated rear yard deck 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 rear yard deck and paver patio surrounding the existing in-ground swimming pool in the rear yard and to legitimize the existing in-ground pool will not create a substantial detriment to the public good. This is because the nature of the encroachments into the rear yard setbacks are unlikely to detrimentally affect the views or light, air and open space on 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 17th day of June, 2020, that the action of the Board taken on June 3, 2020 granting Application No. BA-3193-2/20 of John and Patty Van Decker 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. All grading on the site shall comply with all Township Ordinances and regulations and will be subject to the approval of the Township Engineer.