

Bulk Variance Relief  
Justin and Sacha Marcucci  
18 Edgewater Terrace  
Block 42.04, Lot 16  
Zone: R-7.5 (Single-Family Residential) Zone  
Application No. BA-3194-C-2/20

**RESOLUTION OF APPROVAL  
BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT  
APPLICATION NO. BA-3194-C-2/20  
JUNE 17, 2020**

**WHEREAS**, Justin and Sacha Marcucci (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 16 on the official Tax Map of the Township of Brick and more specifically known as 18 Edgewater Terrace, 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 June 3, 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 remove an existing residential dwelling from the Property and construct a seven (7) bedroom, four-story, single-family residential dwelling on a building footprint of 1,470 s.f. A covered porch, one (1) front and three

(3) rear balconies, a +/-400 s.f. rear deck, and an additional open landing/at-grade deck in the rear yard are also proposed. The ground level will be used as a recreation and storage area while the three-story upper levels will be used as living space.

2. The Property is an undersized lot containing 5,931 s.f. with a frontage of 47.50 ft. along the easterly side of Edgewater Terrace within the R-7.5 (Single-Family Residential) Zone. All adjacent properties, including those to the north and south and across Edgewater Terrace to the west are also located within the R-7.5 Zone. The adjacent property to the south contains the public parking lot for Brick Beach One. The Property currently contains a residential home which will be 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:

	<b><u>Required</u></b>	<b><u>Existing</u></b>	<b><u>Proposed</u></b>
Minimum Lot Area	7,500 s.f.	5,931 s.f. <sup>(1)</sup>	5,931 s.f. <sup>(1)</sup>
Minimum Lot Width	75 feet	47.50 feet <sup>(1)</sup>	47.50 feet <sup>(1)</sup>
Minimum Front Setback	25 feet	25.3 feet	17.3 feet
Minimum Side Setback (Each)	6 feet	4.4 feet	4.7 feet <sup>(2)</sup>
Maximum Side Setback (Combined)	15 feet	12.5 feet	12.5 feet
Maximum Building Eave Height	26 feet <sup>(3)</sup> OR Elev. 32 (NAVD 1988)	21.2 feet AND Elev. 35.10	28.4 feet <sup>(3)</sup> AND Elev. 42.3
Maximum Building Peak Height	38.5 feet <sup>(3)</sup> OR Elev. 45 (NAVD 1988)	31.08 feet AND Elev. 44.98	39.9 feet <sup>(3)</sup> AND Elev. 53.8

<sup>(1)</sup> Existing condition; no change proposed.

- (2) Proposed side setback to dwelling. The proposed side setbacks to the access staircases on the northerly and southerly sides of the dwelling are 4.1 feet and 1.6 feet, respectively. In addition, the proposed side setbacks to the open access landings on the northerly and southerly sides of the dwelling are 4.3 feet and +/-2 feet, respectively.
- (3) As measured from the average adjacent grade of  $13.9 = [(16.9+16.5+11.1+11.1) / 4]$

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

5. The Applicants' Engineer and Planner, Charles E. Lindstrom, P.E., P.P., testified that the Property is an undersized vacant lot which contains a dilapidated single-family home which will be removed. He stated that the Applicants were proposing to build a new single-family residence on the Property.

6. Mr. Lindstrom stated that the neighborhood is comprised of Edgewater Terrace and Bel Air Road. He further testified that the Property is undersized (5,931 s.f. where a minimum lot area of 7,500 s.f. is required). Mr. Lindstrom observed that all four lots on Edgewater Terrace are located in the R-7.5 Zone and encroach into the front yard setback.

7. Mr. Lindstrom stated that the requested bulk variance relief for a front yard setback was necessary because the proposed home could not be located any further east on the Property due to CAFRA restrictions. He then testified that the Applicants also required bulk variance relief for maximum peak building height where a 38.5 foot maximum is required and a 39.9 feet height is proposed and maximum building eave height where 26 feet is required and 28.4 feet is proposed. Mr. Lindstrom explained that the non-compliant building peak and eave heights would be mitigated by the 13.9 foot average grade which exists on the Property. He added that the proposed home would comply with the CAFRA Permit By-Rule Regulations as well as all flood hazard control requirements.

8. Mr. Lindstrom 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. Lindstrom testified that the lower level would be used exclusively for recreation and storage and would not be a livable area.

10. Mr. Lindstrom 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. Lindstrom stated that there would be no detriment to the public good because the new home will replace an existing dilapidated home in the neighborhood.

11. Mr. Lindstrom also testified that the Applicant required bulk variance relief for the front yard setback because the proposed home could not be moved any farther east on the subject Property due to CAFRA regulations. He stated that the elevation (NAVD 1988) for the subject home would be 53.8 feet. He stated that the existing home located adjacent to the Property has a 51.1 feet elevation and the home two doors from the Property has a 37.2 foot elevation. He stated that the northernmost home located on Edgewater Terrace has a 53.88 foot elevation. Mr. Lindstrom therefore concluded that the proposed height of the residential home fits with the neighborhood.

12. Mr. Lindstrom then testified that an existing paver patio on the Property encroaches on the adjacent Township owned parcel (Block 42.01, Lot 1) and will be removed. He added that an existing dune deck located at the southeast rear corner of the Property would also be removed.

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

14. Mr. Lindstrom then testified that the Applicants would comply with all Township Engineering and drainage requirements. He stated all drainage would be directed away from adjacent properties. He added that the elevation of the proposed home would exceed the requirements of the V-14 Flood Zone.

15. The Applicants' Architect, Jeffrey G. Schneider, AIA, testified that the exterior of the proposed home matched the design of the existing homes located on Edgewater Terrace. He stated that the Applicants also made every effort to regulate the height of the proposed home. Mr. Schneider stated that the floor-to-ceiling height for the lower level would be 7.6 feet, 8.6 feet for the main level, 8.1 feet for the first bedroom level and 8 feet for the higher bedroom level.

16. Ms. McLeer stated that the Applicants issued Buy/Sell Letters to adjacent property owners and did not receive any responses.

17. 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. 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” 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 and rear yard setback requirements in the R-7.5 Zone. The Board further finds that the existing sand dunes in the area mitigate the non-compliant height of the proposed home. The Board also notes that the Applicants will ensure that runoff drains to the front 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 17<sup>th</sup> day of June, 2020 that the action of the Board taken on June 3, 2020 granting Application No. BA-3189-C-2/20 of Justin and Sacha Marcucci 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 contain two (2) bedrooms, a space to be used for recreation and storage, and other improvements as set forth in the Applicant’s Architectural Plans dated December 30, 2019.
5. The Applicants shall comply with all CAFRA Permit-By-Rule Regulations.



6. The Applicants shall comply with all Township grading and drainage requirements.
7. The Applicants shall remove the existing paver patio which encroaches upon the adjacent Township owned property (Block 42.01, Lot 1) and an existing dune deck in the rear yard of the subject Property.