

Bulk Variance Relief
Michael and Lisa Gange
829 North Drive
Block 941, Lot 128
Zone: R-5 (Single-Family Residential) Zone
Application No. BA-3195-2/20

**RESOLUTION OF APPROVAL
BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT
APPLICATION NO. BA-3195-2/20
JUNE 17, 2020**

WHEREAS, Michael and Lisa Gange (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 941, Lot 128 on the official Tax Map of the Township of Brick and more specifically known as 829 North Drive, Brick, NJ 08742 (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, 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 to legitimize an existing outdoor shower and pool equipment on the subject Property.

2. The subject Property contains 0.15 acres with 55.95 feet of frontage along the westerly side of North Drive within the R-5 (Single Family Residential) Zone. The subject Property is improved with a two-story framed residential dwelling and is bounded to the south and north by residential properties, and to the west by North Lagoon.

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

	<u>Required</u>	<u>Existing</u>
Southern Side Yard Setback (Pool Equipment)	5.0 feet	2.9 feet
Southern Side Yard Setback (Outdoor Shower)	5.0 feet	0.3 feet

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

5. The Applicant, Michael Gange, testified that the pool equipment was originally installed in 2004 along with the existing swimming pool. He explained that the original pool equipment was destroyed in Hurricane Sandy and that new pool equipment was installed thereafter. Mr. Gange further testified that the HVAC platform was installed when the existing residential home was raised subsequent to Hurricane Sandy. He then stated that he had obtained a permit for the installation of the HVAC platform but he did not obtain a permit for the outdoor shower and reinstalled pool equipment. Mr. Gange explained that the outdoor shower drains into the ground and contains a paver/stone base. He further testified that the outdoor shower has not caused any detriments or issues with his neighbors. Mr. Gange then stated that his adjacent neighbor to the south requested the installation of fencing along the side yard property line to screen the HVAC platform and pool equipment. Mr. Gange testified that he would install

compliant fencing in response to his neighbor's request. Christopher Romano, Township Zoning Officer, confirmed that the Applicants did not require bulk variance relief for the installation of the proposed fencing.

6. In response to questions from the Board, Mr. Gange confirmed that adequate space existed along the northern side yard for access by fire department personnel.

7. There were no members of the public who expressed an interest in this 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 in order to legitimize an existing outdoor kitchen and gazebo located in the northern side yard of the subject 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 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.

3. Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” or (c) variance relief. Finally, the 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 determines that the Applicants propose to legitimize an existing outdoor shower and pool equipment located in the southern side yard of the subject Property. The Board determines that the outdoor shower and pool equipment result in an aesthetic upgrade and create a desirable visual environment as well as a diversified housing stock. This benefits the entire neighborhood. The Board, therefore, finds the Applicants have promoted the goals of planning as enumerated in N.J.S.A. 40:55D-2. The Board concludes, therefore, that the Applicants have satisfied the “c(2)” affirmative criteria sufficiently to permit the granting of the bulk variances requested.

5. The Board also concludes that the negative criteria has been satisfied. The Board finds that the encroachment of the existing outdoor shower and pool equipment into the southern side yard setback will not have a substantial detrimental effect on neighboring properties. The improvements have actually benefitted surrounding properties through the improved aesthetics.

The Board notes that the Applicants have agreed to install compliant fencing to screen the pool equipment and HVAC platform. Further, the Board finds that the existing outdoor shower and pool equipment will not interfere with the provision of adequate light, air and open space between residential properties. Under such circumstances, the purposes underlying the Ordinance requirement for side yard setbacks will not be substantially detrimentally affected by the granting of the requested variance. The Board also determines that the existing outdoor shower and pool equipment are not out of character for the neighborhood and do not cause a substantial detriment to the zone plan or zoning ordinance. As such, the requested variances can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Zone Plan or the Zoning Ordinance. 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 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-3195-2/20 of Michael and Lisa Gange for bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2) 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. The Applicants shall install compliant fencing along the southern side yard property line to screen the existing pool equipment and HVAC platform.
4. 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.