Bulk Variance Relief

Alex and Yolanda Shaw

Block 1125.01, Lot 1

218 Dwight Place

Zone: R-10 (Single-Family Residential) Zone

Application No. BA-3178-12/19

**RESOLUTION OF APPROVAL**

**BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT**

**APPLICATION NO. BA-3178-12/19**

**JULY 15, 2020**

 **WHEREAS**, Alex and Yolanda Shaw (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 1125.01, Lot 1, on the official tax map of the Township of Brick and more specifically known as 218 Dwight Place, Brick, NJ 08724 (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**, public hearings were held on May 6, 2020 and July 8, 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
16.5-foot by 35.5-foot in-ground swimming pool, pool equipment and fencing, in the front yard of the Property.
2. The Property is a corner lot which contains 11,123 s.f. and is situated in the R-10 (Single Family) Zone, as are all adjacent lots. The Property has 142.58 feet of frontage on Dwight Place, 47.15 feet of frontage on Foster Avenue, and 161.62 feet of frontage on Van Zile Road. The Property is also bounded by residential lots to the east and south.
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:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Required** | **Existing** | **Proposed** |
| Front Yard Setback-Van Zile Road(Swimming Pool) | 35 feet | N/A | 28.1 feet |
| Front Yard Setback – Foster Avenue(Swimming Pool) | 35 feet | N/A | 28.8 feet |
| Front Yard Setback-Foster Avenue(Pool Equipment) | 35 feet | N/A | 15.0 feet |
| Front Yard Setback- Van Zile Road(Fencing) | 17.5 feet | N/A | 15.0 feet |
| Front Yard Setback – Foster Avenue(Fencing) | 35 feet | N/A | 3.5 feet |

1. The Applicants were represented by Anthony M. Pagano, Esq.
2. The Applicants’ Engineer and Planner, Michael T. Cannon, P.E., P.P., stated that the Applicants required bulk variance relief to install a new 16.5 foot by 35.5 foot in-ground swimming pool with pool equipment and surrounding fencing. Mr. Cannon stated that the subject Property is constrained by a 15-foot wide conservation easement located along the Van Zile Road frontage, a 30-foot by 20-foot drainage easement also located along the Van Zile Road frontage, and a sight triangle easement located at the corner of Van Zile Road and Foster Avenue. Mr. Cannon stated that an existing rear yard paver patio would be removed to accommodate the proposed in-ground swimming pool. He further testified that the Applicant proposed a compliant paver patio off the westerly side of the existing residential home. Mr. Cannon further testified that an existing rear yard concrete patio would also be removed to accommodate the swimming pool. Mr. Cannon then explained that the proposed in-ground swimming pool with pool equipment and fencing would not be located within the conservation easement, drainage easement or sight triangle easement located on the subject Property.
3. Mr. Cannon further testified that the Applicants were seeking bulk variance relief from the 35-foot setback requirement from Van Zile Road where a 28.1-foot setback is proposed as well as the front yard setback from Foster Avenue where a 35-foot setback is required, and a 28.8-foot setback is proposed.
4. Mr. Cannon then explained that the Applicants were also seeking bulk variance relief for the front yard setback to Foster Avenue for the proposed pool equipment storage where a 35-foot setback is required, and a 15.0-foot setback is proposed. Mr. Cannon added that the Applicants were seeking bulk variance relief for the front yard setback on Van Zile Road for the fencing where a 17.5-foot setback was required, and a 15.0-foot setback is proposed. He then explained that the Applicants were seeking bulk variance relief for the front yard setback for the fencing from Foster Avenue where a 35-foot setback was required, and a 3.5-foot setback was proposed. Mr. Cannon stated the in-ground swimming pool, pool equipment and fencing would improve the aesthetics of the subject Property and increase the safety of the pool area. He further testified that the improvements would increase light, air and open space and would not affect adjacent properties because the subject Property is a corner lot bordered by three (3) streets.
5. 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 16.5-foot by 35.5-foot in-ground swimming pool, pool equipment and fencing in the front 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 in-ground swimming pool, pool equipment and fencing 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 finds that the in-ground swimming pool with pool equipment and surrounding fencing are commonly permitted accessory structures to a single-family residential use such as those in the surrounding neighborhood. Further, the Board finds that the Applicants’ proposal to install the existing in-ground swimming pool, pool equipment and fencing in the front yard of the corner subject lot will not create a substantial detriment to the public good. This is because the nature of the encroachments into the 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 15th day of July 2020, that the action of the Board taken on
July 8, 2020 granting Application No. BA-3178-12/19 of Alex and Yolanda Shaw 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”.

1. 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.

1. 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.
2. The Applicants shall remove the existing paver patio and concrete patio.
3. The Applicants shall not install any improvements with the conservation easement, the drainage easement and the sight triangle easement located on the subject Property.
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.

1847333\_**1** BRICKZB-359E Alex and Yolanda Shaw Resolution for Bulk Variance Relief (BA-3178-12/19) 7.15.20