Bulk Variance Relief

Nicmar Holdings, LLC

385 Route 35 North

Block 40, Lot 2.05

Zone: R-7.5 (Single-Family Residential) Zone

Application No. BA-3196-2/2020

**RESOLUTION OF APPROVAL**

**BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT**

**APPLICATION NO. BA-3196-2/2020**

**August 5, 2020**

**WHEREAS**, Nicmar Holdings, LLC (the “Applicant”) has 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 40, Lot 2.05 on the official Tax Map of the Township of Brick and more specifically known as 385 Route 35 North, 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 July 15, 2020, via the Zoom platform, at which time testimony and exhibits were presented on behalf of the Applicant 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 Applicant is seeking bulk variance relief to legitimize existing fencing on the Property.
2. The Property is a through lot which contains 0.195 acres and has 84 feet of frontage along State Highway 35 northbound and southbound within the R-7.5 (Single Family Residential) Zone. The Property is bounded to the north and south by residential lots and is improved with a two-and-a-half story framed residential dwelling.
3. Based upon the application and plans submitted, any amendments or modifications thereto and the testimony of the Applicant’s experts, the following variance relief is required:

|  |  |  |
| --- | --- | --- |
|  | **Required** | **Existing** |
| Front Yard Setback  (Route 35 northbound) | 25 feet | 0 feet |
| Fence Height/Style | Maximum height  4 feet/open picket | 6 foot high stockade fencing |

1. The Applicant was represented by John J. Jackson, Esq.
2. The Applicant’s Managing Member, Deborah Moser, testified that the fencing contractor had inadvertently constructed the existing six (6) foot high stockade fencing in the northerly and southerly side yards and front yard along Route 35 northbound without having ever secured a permit.
3. Ms. Moser stated that the fencing was an aesthetic upgrade to the Property as well as the neighborhood as a whole and that she has never received a complaint from anyone. She further testified that the front yard fencing was located along the sidewalk on Route 35 northbound and did not inhibit the sight line of passing motor vehicles. Ms. Moser added that the fencing has added privacy and security to the Property. She stated that garbage was regularly dumped on the Property and persons often trespassed on the Property prior to the installation of the fencing.
4. 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 existing fencing located in the northern and southern side yards and front yard (along Route 35 northbound) 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 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 Applicant has satisfied the positive criteria. The Board determines that the Applicant proposes to legitimize the existing 6-foot high stockade fencing located in the northerly and southerly side yards and front yard (along Route 35 northbound) of the Property. The Board determines that the fencing results in an aesthetic upgrade to the Property and creates a desirable visual environment as well as a diversified housing stock. The Board, therefore, finds the Applicant has promoted the goals of planning as enumerated in N.J.S.A. 40:55D-2. The Board concludes, therefore, that the Applicant has 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 fencing into the front yard setback will not have a detrimental effect on neighboring properties and that the improvement has actually benefitted surrounding properties through the improved aesthetics. Under such circumstances, the purposes underlying the Ordinance requirement for front yard setbacks will not be detrimentally affected by the granting of the requested variances. The Board also determines that the existing fencing is not out of character for the neighborhood and does not cause a substantial detriment to the zone plan or zoning ordinance. Further, the Board finds that the existing fencing will not interfere with the provision of adequate light and air between residential properties. The Board finds that the fencing will not negatively impact stormwater and other factors in the neighborhood. 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 Applicant has satisfied the negative criteria.

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 5th day of August, 2020, that the action of the Board taken on July 15, 2020 granting Application No. BA-3196-2/2020 of Nicmar Holdings, LLC for bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2) 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.

**1854252\_1**  BRICKZB-375E Nicmar Holdings, LLC Resolution Granting Bulk Variance Relief (BA-3196-2/2020) 8.5.20