Bulk Variance Relief

James and Melissa Sullivan

Block 245.07, Lot 19

225 Curtis Point Road

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

Application No. BA-3199-4/2020

**RESOLUTION OF APPROVAL**

**BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT**

**APPLICATION NO. BA-3199-4/2020**

**AUGUST 5, 2020**

**WHEREAS**, James and Melissa Sullivan (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 245.07, Lot 19, on the official tax map of the Township of Brick and more specifically known as 225 Curtis Point Road, 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 for the Board have been properly invoked and exercised; and

**WHEREAS**, a public hearing was held on July 15, 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   
   22-foot by 12-foot infinity-style above-ground swimming pool with a 7-foot by 7-foot raised spa and an open-slated elevated deck in the rear and side yards of the Property.
2. The Property contains 0.21 acres and is situated in the R-7.5 (Single Family) Zone, as are all adjacent lots, and has 75 feet of frontage on Curtis Point Drive. The Property is also bounded by residential lots to the west, south and east with a lagoon to the north.
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** |
| Rear yard setback to rear property line (pool) | 15 feet | N/A | 13.16 feet |
| Rear yard setback (elevated deck) | 15 feet | N/A | 0 feet |
| Side Yard Setback (elevated deck) | 5 feet | N/A | 0 feet |

1. The Applicants were represented by John J. Jackson, Esq.
2. The Applicants’ Engineer and Planner, Ray Carpenter, P.E., P.P., stated that the Applicants required bulk variance relief to install a new 22-foot by 12-foot infinity-style above-ground swimming pool that would connect to a 7-foot by 7-foot raised spa with a new proposed elevated rear and side yard deck.
3. Mr. Carpenter further testified that the Applicants were seeking bulk variance relief for the rear yard setback for the proposed above ground pool where a 15-foot setback is required, and a 13.16-foot setback is proposed. He added that the Applicants were also seeking bulk variance relief for the installation of the new rear and side yard elevated deck where a 15-foot rear yard setback is required, and a 0-foot setback is proposed and where a 5-foot side yard setback is required, and a 0-foot setback is proposed.
4. Mr. Carpenter next stated that the new infinity-style above-ground swimming pool with raised spa and elevated deck would improve the aesthetics of the Property and increase the safety of the pool area. This is because the proposed elevated deck would be located between the swimming pool and the bulkhead. He further testified that the improvements would increase light, air and open space and would not have any effect on adjacent properties because the Property is bordered by a lagoon to the north.
5. Mr. Carpenter then opined that the proposed improvements were not subject to CAFRA Permit-By-Rule Regulations. He then testified the Applicants would comply with those Regulations, if applicable.
6. 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 22-foot by 12-foot above-ground swimming pool with a 7-foot by 7-foot raised spa and elevated deck in the rear and side yards 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 above-ground swimming pool, raised spa and elevated rear yard deck 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 Applicants have 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 above-ground swimming pool with raised spa and elevated rear yard deck are commonly permitted accessory structures to a single-family residential use such as those in the surrounding neighborhood. The Board also finds that the Applicants’ proposal to install the above-ground swimming pool, raised spa and elevated deck in the rear and side yards will not create a substantial detriment to the public good. This is because the nature of the encroachments into the rear and side 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. 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 5th day of August 2020, that the action of the Board taken on   
July 15, 2020 granting Application No. BA-3199-4/2020 of James and Melissa Sullivan 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 Applicants shall comply with all CAFRA Permit-By-Rule requirements, if applicable.

5. All grading on the site shall comply with all Township Ordinances and regulations and will be subject to the approval of the Township Engineer.

1852268\_1 BRICKZB-379E James and Melissa Sullivan Resolution for Bulk Variance Relief (BA-3199-4/2020) 8.5.20