Bulk Variance Relief

199-201 Summit Avenue LLC

541 Normandy Avenue

Block 20.01, Lot 5

Zone: R-5 (Single-Family Residential) Zone

Application No. BA-3200-4/2020

**RESOLUTION OF APPROVAL**

**BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT**

**APPLICATION NO. BA-3200-4/2020**

**AUGUST 19, 2020**

**WHEREAS**, 199-201 Summit Avenue 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 20.01, Lot 5 on the official Tax Map of the Township of Brick and more specifically known as 541 Normandy Avenue, 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 August 5, 2020, virtually via Zoom meeting, 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 Applicant is seeking bulk variance relief to legitimize an existing outdoor pizza oven with island on the subject Property.
2. The Property contains 0.23 acres with 167.50 feet of frontage along the easterly side of Normandy Drive within the R-5 (Single Family Residential) Zone. The Property is improved with a two-story framed residential dwelling and is bounded to the south and east by residential properties, and to the west and north by Barnegat Bay.
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** |
| Northern Side Yard Setback | 15.0 feet | 5.2 feet |

1. The Applicant was represented by Adam Steuerman, Esq.
2. The Applicant’s Managing Member, Peter Gargiulo, testified that the outdoor pizza oven and island were constructed in 2017. He stated that he chose to build the structure in the side yard to avoid blocking his neighbor’s view of the lagoon. Mr. Gargiulo further testified that he was unaware that a permit was required for the installation of the outdoor pizza oven and island.
3. Mr. Gargiulo then stated that the outdoor pizza oven with island is screened by his home and fronts Barnegat Bay and is therefore buffered from view by the neighbors. He then testified that the outdoor pizza oven and island were aesthetic upgrades to both the Property and the neighborhood and that he never received a complaint from anyone.
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 an outdoor pizza oven with island located in the northern side 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 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 an existing outdoor pizza and island located in the northern side yard of the subject Property. The Board determines that the outdoor pizza oven and island result in an aesthetic upgrade and create 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 variance requested.

5. The Board also concludes that the negative criteria has been satisfied. The Board finds that the encroachment of the existing outdoor pizza oven and island into the northern side yard setback will not have a substantial detrimental effect on neighboring properties. The improvement has actually benefitted surrounding properties through the improved aesthetics. Further, the Board finds that the existing outdoor pizza oven and island will not interfere with the provision of adequate light and air between residential properties because the northern side property line fronts a lagoon. 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 pizza oven with island is 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 variance 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 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 19th day of August 2020, that the action of the Board taken on August 6, 2020 granting Application No. BA-3200-4/2020 of 199-201 Summit Avenue 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.

1866164\_1 BRICKZB-382E 199-201 Summit Avenue LLC Resolution Granting Bulk Variance Relief (BA-3200-4/2020) 8.19.20