Bulk Variance Relief

 Walter and Cristine Dotto

101 Bay View Drive

 Block 269, Lot 17

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

 Application No. BA-3203-C-5/2020

**RESOLUTION OF APPROVAL**

**BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT**

**APPLICATION NO. BA-3203-C-5/2020**

**AUGUST 19, 2020**

**WHEREAS**, Walter and Cristine Dotto (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 269, Lot 17 on the official Tax Map of the Township of Brick and more specifically known as 101 Bay View Drive, Brick, NJ 08723 (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, 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 remove an existing residential garage from the Property and construct a four (4) bedroom, two-story, single-family residential dwelling on a building footprint of 1,370 s.f. The grade level of the dwelling is proposed to

contain a one-car garage, an entry foyer, a mud room and a partially enclosed storage area, while the two (2) upper levels are proposed as living space to include four (4) bedrooms, four (4) bathrooms, a kitchen/dining area/living room within an open floor plan and a den. Front and rear balconies, both contained within the building footprint, are proposed on the upper living level, and a small balcony is proposed on the easterly side of the lower living level. A 336 square foot grade level patio is proposed in the westerly yard area, and a 16-foot wide paver driveway is proposed to extend from Bay View Drive to the grade level garage. The ground level will be used as a recreation and storage area while the two-story upper levels will be used as living space.

1. The Property is an undersized corner lot containing 4,000 s.f. with frontages of 40.00 ft. along the easterly side of Bay View Drive and 100.00 ft. along the southerly side of Holly Acres Drive within the R-5 (Single-Family Residential) Zone. All adjacent properties, including those to the north, south and east across Bay View Drive to the west are also located within the R-5 Zone. The Property currently contains a residential garage which will be removed.
2. 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** |
| Minimum Lot Area | 6,000 s.f. | 4,000 s.f. (1)  | 4,000 s.f. (1) |
| Minimum Lot Width | 50 feet | 40 feet(1)  | 40 feet (1)  |
| Minimum Front Setback  | 20 feet | N/A  | 10.92 feet |

1. Existing condition; no change proposed.
2. The Applicants were represented by John J. Jackson, Esq.
3. The Applicants’ Architect, Marc Nemerget, AIA, testified that the Property is an undersized lot which contains a dilapidated garage which will be removed. He stated that the Applicants were proposing to build a new single-family residence on the Property.
4. Mr. Nemerget stated that the Property was previously improved with a single-family home that was destroyed by Hurricane Sandy. He further testified that the Property is undersized (4,000 s.f. where a minimum lot area of 6,000 s.f. is required). Mr. Nemerget stated the proposed home would be 24 feet wide and would comply with all side and rear yard setback and building coverage requirements.
5. Mr. Nemerget then stated that the requested bulk variance relief for a front yard setback was necessary because the proposed home could not be located any further north without encroaching the side yard setback. He added that the proposed home would comply with the CAFRA Permit By-Rule Regulations as well as all flood hazard control requirements.
6. Mr. Nemerget then opined that the bulk variance relief sought by the Applicants is not out of character with the neighborhood and was also caused by the undersized corner lot, and therefore, the positive c(1) criteria was satisfied.
7. Mr. Nemerget testified that the lower level would be used exclusively for recreation and storage and would not be a livable area.
8. Mr. Nemerget next stated that the proposed home would advance the purposes of the Municipal Land Use Law enumerated at N.J.S.A. 40:55D-2(a) because it would promote the general welfare of the neighborhood. He further stated that the proposed home would also promote the purpose of the Municipal Land Use Law stated at N.J.S.A. 40:55D-2(b) because the home would provide safety from flooding and N.J.S.A. 40:55D-2(i) because it would have a visually attractive design. Mr. Nemerget stated that there would be no detriment to the public good because the new home will replace an existing dilapidated garage on a vacant lot in the neighborhood.
9. Mr. Nemerget then testified that the driveway would be widened 20 feet (to a 36 foot width) to comply with Residential Site Improvement Standards (RSIS) parking requirements. He added that three (3) parking spaces (one in the garage and two in the extended driveway) would be provided.
10. Mr. Nemerget also testified that the benefits of the application outweighed the detriments because the Property would have additional parking, the home would be more resistant to flooding and that there would be no detriment to the zone plan.
11. Mr. Nemerget then testified that the Applicants would comply with all Township Engineering and drainage requirements. He also explained that all drainage would be directed away from adjacent properties. Mr. Nemerget added that the elevation of the proposed home would exceed the requirements of the AE-7 Special Flood Hazard Area.
12. Mr. Jackson stated that the Applicants issued Buy/Sell Letters to adjacent property owners and did not receive any responses.
13. There were no members of the public expressing an interest in this application.

**NOW, THEREFORE**, the Board makes the following conclusions of law based upon the foregoing findings of fact:

1. The Applicants propose a permitted use but also require bulk variance relief. 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 Applicants satisfy certain specific proofs which are enunciated in the Statute. Specifically, the Applicants may be entitled to relief if the specific parcel is limited by exceptional narrowness, shallowness or shape. Applicants may show that exceptional topographic conditions or physical features exist which uniquely affect a specific piece of property. Further, the Applicants 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 Applicants have 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.
2. Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” or (c) variance relief. Finally, Applicants 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 Applicants have 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 Applicants to establish these criteria.
3. The Applicants did not provide testimony concerning how the Property became undersized. The Board, therefore, cannot determine if any hardship was self-created.
4. The Board does however, find that the Applicants have satisfied the positive criteria with regard to a “flexible” c variance. The goals of planning as enumerated in N.J.S.A. 40:55D-2a, e and i have been advanced. Specifically, the proposed residential dwelling will advance the purpose of N.J.S.A. 40:55D2a because it will be constructed in compliance with FEMA and CAFRA regulations. In accordance with N.J.S.A. 40:55D2e, the Board concludes that the residential dwelling will contribute to the well-being of the neighboring community because the residence will replace a previously existing home. The Board also concludes that the design of the residential dwelling will advance the purposes of the Municipal Land Use Law set forth in N.J.S.A. 40:55D-2i because the dwelling will create a more desirable visual environment. The Applicants have therefore satisfied the positive criteria pursuant to N.J.S.A. 40:55D-70c(2).
5. Turning next to the negative criteria, the Board finds that the Applicants’ proposal results in the construction of a new residential dwelling which is more resistant to flooding as well as other man-made and natural disasters. This will assist to mitigate any negative effect of the deviation from the front yard setback requirements in the R-5 Zone. The Board also finds it significant that the Applicants will ensure that runoff drains to the front of the Property and not to adjacent properties. The Board concludes, therefore, that the Applicants have satisfied the negative criteria. The Board finds that the positive criteria substantially outweighs the negative criteria and that bulk variance relief may be granted pursuant to N.J.S.A. 40:55D-70c(2).

 **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 5, 2020 granting Application No. BA-3203-C-5/2020 of Walter and Cristine Dotto 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 widen the driveway by twenty (20) feet to create a 36 foot wide driveway.

5. The lower level shall be used exclusively for parking and storage. Conversion of this space to livable area is expressly prohibited. This restriction shall be the subject of a recorded Deed restriction subject to the review and approval by the Board Attorney.

6. The Applicants shall comply with all CAFRA Permit-By-Rule Regulations.

7. The Applicants shall comply with all Township grading and drainage requirements.

1866405\_1 BRICKZB-383E Walter and Cristine Dotto Resolution Granting Bulk Variance Relief (BA-3203-C-5/2020) 8/19/20