Bulk Variance Relief

 Kerrianne Berneck

Block 92.06, Lot 14

6 Mary Ann Drive

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

Application No. BA-3204-5/2020

**RESOLUTION OF APPROVAL**

**BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT**

**APPLICATION NO. BA-3204-5/2020**

**SEPTEMBER 2, 2020**

 **WHEREAS**, Kerrianne Berneck (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 92.06, Lot 14, on the official tax map of the Township of Brick and more specifically known as 6 Mary Ann 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 for the Board have been properly invoked and exercised; and

 **WHEREAS**, a public hearing was held on August 19, 2020, virtually 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 permitting the installation of a
16-foot by 34-foot in-ground swimming pool and to legitimize an existing shed in the front yard (along Brower Drive) of the Property.
2. The Property is a through lot that contains 9,121 square feet with 75 feet of frontage on both Brower Drive and Mary Ann Drive within the R-7.5 (Single Family) Zone. The Property is also bounded by residential lots to the north and south.
3. Based upon the application and plans submitted, any amendments or modifications thereto, and the testimony of the Applicant’s experts, the following bulk variance relief is required:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Required** | **Existing** | **Proposed** |
| Front yard setback (in-ground swimming pool) | 25 feet | N/A | 10.1 feet |
| Front yard setback (shed) | 25 feet | 3 feet |  3 feet |

1. The Applicant explained that she was proposing to construct an in-ground swimming pool in the front yard (along Brower Drive) of the Property.
2. The Applicant testified that the Property is located between Brower Drive and Mary Ann Drive. She explained that the Property currently contains an above-ground swimming pool located in the front yard (along Brower Drive). The Applicant further testified that she proposed to remove the existing above-ground swimming pool and replace it with an in-ground swimming pool. She explained that her mother lives with her and that the proposed in-ground swimming pool would be easier to access for her and other family members. The Applicant further stated she was requesting bulk variance relief for the front yard setback (along Brower Drive) where 25 feet is required, and 10.1 feet is proposed. The Applicant then testified that bulk variance relief was also required to legitimize an existing front yard (along Brower Drive) shed where a 25-foot setback is required, and a 3-foot setback exists. The Applicant stated that the shed was located in the front yard when she purchased the Property.
3. The Applicant further testified that numerous homes in the neighborhood are improved with similar front yard in-ground swimming pools. She stated that the proposed in-ground pool would enhance the aesthetics of the Property and would not be a substantial detriment to the zone plan or the neighborhood.
4. 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. This application before the Board requires bulk variance relief to permit the installation of a 16-foot by 34-foot in-ground swimming pool and to also legitimize an existing shed in the front yard (along Brower Drive) 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 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.

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 Applicant has satisfied the positive criteria. The Board recognizes that the Property is a through lot as two front yards. This makes development challenging. The Board specifically finds the bulk variances required for the installation of the in-ground swimming pool and to legitimize the existing shed result in a diversified housing stock and aesthetic improvements which promotes the goals of planning as enumerated in N.J.S.A. 40:55D-2. The Board, therefore, 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 concludes that a swimming pool and shed are commonly permitted accessory structures to a single-family residential use such as those in the surrounding neighborhood. The Board finds that the Applicant’s request to install the in-ground swimming pool and to legitimize the existing shed will not create a substantial detriment to the public good because the proposed pool and existing shed are similar to other accessory structures in the neighborhood. The proposed in-ground pool and existing shed also result in aesthetic improvements which benefit the entire neighborhood. The Board concludes that the in-ground swimming pool and existing shed will therefore not create a substantial detriment to the public good. Consequently, the Board 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 Applicant has satisfied the negative criteria. The Board also concludes that the positive criteria substantially outweighs the negative criteria and bulk variance relief may be granted pursuant to N.J.S.A. 40:55D-70c(2).

 **NOW, THEREFORE, BE RESOLVED**, by the Brick Township Zoning Board of Adjustment on this 2nd day of September, 2020, that the action of the Board taken on
August 19, 2020 granting Application No. BA-3204-5/2020 of Kerrianne Berneck 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”.

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.

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.

1874310\_1 BRICKZB-385E Kerrianne Berneck Resolution for Bulk Variance Relief (BA-3204-5/2020) 9.2.20