Bulk Variance Relief

Michael Vlacancich

19 Homewood Drive

Block 378.21, Lot 21

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

Application No. BA-3208-6/2020

**RESOLUTION OF APPROVAL**

**BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT**

**APPLICATION NO. BA-3208-6/2020**

**SEPTEMBER 2, 2020**

 **WHEREAS**, Michael Vlacancich (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 378.21, Lot 21 on the official tax map of the Township of Brick and more specifically known as 19 Homewood 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 meeting 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 remove and replace fencing in the side yard of the subject Property.

2. The Property contains 0.206 acres and is a corner lot with 90.0 feet of frontage along Homewood Drive and 100.00 feet of frontage on Queen Ann Road within the R-7.5 (Single Family Residential) Zone. All adjoining properties are also zoned R-7.5. The Property is bounded by residential lots to the south and west and a lagoon to the east. The Property is improved with a two-story residential dwelling and driveway extending from Homewood Drive.

3. The Applicant has requested the following bulk variance relief:

|  |  |  |  |
| --- | --- | --- | --- |
|  | Required  | Existing | Proposed |
| Minimum Side Setback to R.O.W. | 10 feet | 6 feet | 6 feet |
| Minimum Side Setback (Fence) | 12.5 feet | 1 foot  | 1 foot |
| Maximum Fencing Height |  4 feet  |  4 feet  | 6 feet |

 4. The Applicant testified that he was seeking bulk variance relief in order to install 6-foot high vinyl fencing in the northerly side yard and a gate in the southerly side yard of the Property. He explained that the proposed fencing (except for the gate) would be in the exact same location as the existing 4-foot high chain link fencing, which would be removed. The Applicant explained that the Ordinance requires a 12.5-foot side yard setback for the fence where a 1-foot side yard setback is proposed and a 10-foot side setback to Queen Ann Road where a
6-foot setback is proposed. The Applicant then testified that the purpose of the fencing was to provide additional privacy and security on the Property. The Applicant stated that the proposed fencing would not block the adjacent neighbor’s view of the lagoon.

5. The Applicant then testified that the bulk variances sought would not result in a substantial detriment to the zone plan because the location would be consistent with other properties in the neighborhood.

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. The Applicant requires bulk variance relief to remove and replace the existing
4-foot high chain link fencing with 6-foot high stockade fencing in the northerly side yard and a gate in the southerly side yard on 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 specifically finds the bulk variance relief required to install the fencing results in a diversified housing stock and is an aesthetic improvement which promotes the goals of planning as enumerated in N.J.S.A. 40:55D-2. Consequently, the Board 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 finds that the proposed fencing is a commonly permitted improvement to a single-family residential use and is frequently found on lots in the surrounding neighborhood. The Board further finds the deviation will not create a substantial detriment to the public good because the nature of the encroachment into the side yard setback is unlikely to detrimentally affect the adjacent property owners due to the limited height. Likewise, the Board finds that the encroachment of the proposed fencing into the side yard setback will not have a substantial detrimental effect on neighboring properties and that the improvements will actually benefit surrounding properties through the improved aesthetics. The Board finds that the purpose and intent of the Township Zoning Ordinance that established the side setback is to avoid any substantial detriment to the residential character of the neighborhood. Based upon the foregoing, there is no substantial detriment to this purpose. The negative criteria have, therefore, been satisfied.

 The Board concludes that the positive criteria substantially outweighs the negative criteria and that the 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 2nd day of September, 2020, that the action of the Board taken on August 19, 2020 granting Application No. BA-3208-6/2020 of Michael Vlacancich 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.

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