Bulk Variance Relief

Anthony O’Donnell

Block 917, Lot 22

511 Princeton Avenue

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

Application No. BA-3209-C-6/20

**RESOLUTION OF APPROVAL**

**BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT**

**APPLICATION NO. BA-3209-C-6/20**

**SEPTEMBER 2, 2020**

 **WHEREAS**, Anthony O’Donnell (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 917, Lot 22, on the official tax map of the Township of Brick and more specifically known as 511 Princeton Avenue, Brick, NJ 08724 (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, in the municipal building, 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 permit the construction of a decorative masonry entrance wall with masonry columns and two (2) double swing metal picket driveway entrance gates near the frontage of the Property. The proposed wall will be three (3) feet high and topped with 1.5-foot high iron pickets for a total height of 4.5 feet above grade. A total of six (6) decorative columns are also proposed, each with a height of approximately six (6) feet above grade. The proposed aluminum open entrance gates will have a maximum height of five (5) feet eight (8) inches. Landscaping improvements are also proposed along the proposed wall which would be located +/-6 feet from the front property line and +/-14 feet from the Princeton Avenue cart way. No other site improvements are proposed.
2. The Property contains 0.443 acres with seventy-five (75) feet of frontage along the southerly side of Princeton Avenue approximately 150 feet west of and opposite its intersection with Parker Avenue within the R-5 (Single Family Residential) Zone District. The adjacent properties to the east, west and across Princeton Avenue to the north are also located in the R-5 Zone District, and all adjacent properties appear to contain residential uses. The Property has frontage to the south on the Metedeconk River. The Property is improved with a single-family residential dwelling and ancillary improvements including, but not limited to, a U-shaped/dual- access driveway, a rear deck, a rear patio and a swimming pool. The FEMA Preliminary Flood Insurance Rate Map (P- FIRM) depicts the southerly portion of the Property within a delineated AE-9 flood hazard area and the LiMWA Zone. The Applicant, however, is not proposing any disturbance within these regulated flood hazard areas. The proposed improvements will disturb a shaded X flood hazard area, which is not regulated. The Property is also located within the CAFRA Zone.
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:

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|  | **Required** | **Existing** | **Proposed** |
| Minimum Front Setback for Solid Fence (Wall) in R-5 Zone District | 20 feet | N/A | +/-6 feet |
| Fencing in Front Yard Setback Required to be of Open Design and Maximum of 4 Feet High | 4 feet high with open design  | N/A | 6 feet high and closed design  |

1. The Applicant was represented by Mark G. Kitrick, Esq.
2. The Applicant testified that he purchased the Property in 2007 and built a new house thereon in 2017. He explained that the proposed gates and wall were needed for additional security and privacy because anyone can currently drive onto the circular driveway on the Property. He further stated that the proposed gates and wall were consistent with other homes on Princeton Avenue. The Applicant then testified that the decorative stone to be installed on the proposed wall would complement the stone exterior of the existing home. He further stated that lighting and landscaping would be provided to accent the wall. The Applicant then testified that Catmint, Meidiland Rose, Little Lime Hydrangea and Nellie Stevens Holly would be planted along the front of the proposed wall. He stipulated that he would work with the Township Engineer as to the specific types of plantings to be installed.
3. The Applicant’s Engineer and Planner, Joseph Kociuba, P.E., P.P., testified that the proposed wall would consist of masonry with aluminum open gates. He stated that bulk variance relief was required for the front yard setback for the proposed wall where a 20-foot front yard setback is required and a 6-foot setback is proposed. Mr. Kociuba further testified that bulk variance relief was required for the closed design of the wall where a maximum 4-foot high open structure is required. He explained that the wall would consist of masonry and the gates would be aluminum with an open design. Mr. Kociuba then stated that the wall would contain 6-foot high pillars that would be topped with low-intensity incandescent light lanterns on each pillar. He explained that the masonry wall to be located between the four (4) interior pillars would have a total height (with fencing) of 4½ feet. Mr. Kociuba then testified that residential homes located at 97, 123, 697 and 115 Princeton Avenue contain masonry walls and fencing located within the front setback. He stated that the masonry stone for the proposed wall and pillars would complement the architecture of the existing residential home.
4. Mr. Kociuba further explained that the grass island located between the two (2) driveways contains a large tree which would be retained on the Property. He stated that the portion of the proposed wall which runs through the grass island would extend around the tree and therefore would encroach into the front yard setback. Mr. Kociuba then testified that the Applicant will comply with all Township grading and drainage requirements.
5. 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 decorative masonry wall with pillars and open aluminum driveway gates in the front 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 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 Applicant have satisfied the positive criteria. The Board specifically finds the bulk variances required for the installation of the masonry entrance wall with pillars and open aluminum driveway gates result in a diversified housing stock, aesthetic improvements as well as improved safety which all promote the goals of planning as enumerated in N.J.S.A. 40:55D-2. The Board concludes that the Applicant 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 a masonry entrance wall with pillars and open aluminum driveway gates are commonly permitted accessory structures to a single-family residential use such as those in the surrounding neighborhood. Further, the Board concludes that the Applicant’s proposal to install the masonry entrance wall with pillars and open aluminum driveway gates will not create a substantial detriment to the public good. The Board also finds that the bulk variance relief sought for the front yard setback will not affect the sight lines from the adjacent properties and that drainage on the Property will not be affected by the improvements. The nature of the encroachment into the front yard setback is unlikely to detrimentally affect the light, air or open space currently enjoyed by the adjacent properties which, the Board concludes, is the purpose and intent of the Township Zoning Ordinance that established the setbacks. 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 Applicant has 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 2nd day of September 2020, that the action of the Board taken on
August 19, 2020 granting Application No. BA-3209-C-6/20 of Anthony O’Donnell 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.

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

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