Bulk Variance Relief

Nicholas Forte

347 17th Avenue

Block 1297.53, Lot 4

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

Application No. BA-3214-9/2020

**RESOLUTION OF APPROVAL**

**BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT**

**APPLICATION NO. BA-3214-9/2020**

**DECEMBER 16, 2020**

**WHEREAS**, Nicholas Forte (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 1297.53, Lot 4 on the official Tax Map of the Township of Brick and more specifically known as 347 17th 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 of the Board have been properly invoked and exercised; and

**WHEREAS**, a public hearing was held on December 2, 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 legitimize an existing covered outdoor bar on the subject Property.
2. The subject Property contains 7,500 s.f. with 75.00 feet of frontage along the northerly side of 17th Avenue within the R-7.5 (Single Family Residential) Zone. The subject Property is improved with a one (1) story framed residential dwelling and is bounded to the north and east by residential properties.
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:

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| --- | --- | --- |
|  | **Required** | **Existing** |
| Rear Yard Setback | 15.0 feet | 3 feet |

1. The Applicant testified that he purchased the Property in 2019 and that the outdoor covered bar was constructed by the previous owner. He was unaware that the covered outdoor bar required a permit. The Applicant stated that the outdoor bar would be difficult to move because it was anchored into the ground and abutted an existing paver patio. The Board expressed concerns that runoff from the roof of the covered outdoor bar would drain onto the neighbor’s property to the rear of the Property.
2. The Applicant then stated that the he would install a gutter, drywell and stone trench which would permit water to drain from the roof of the outdoor bar away from neighboring properties.
3. The hearing was then opened to the public at which time Heather Carlotz of 344 18th Avenue stated that the roof of the outdoor bar drains onto her property. She supported the installation of the drywell but she objected to the location of the covered outdoor bar. She stated that noise from the Applicant and the television at the bar created a nuisance at night. Mr. Forte responded that he would reduce the noise that would emanate from the outdoor bar.
4. There were no other 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 existing covered outdoor bar located in the rear 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 covered outdoor bar located in the rear yard of the Property. The Board determines that the covered outdoor bar results in an aesthetic upgrade and creates a desirable visual environment as well as a diversified housing stock. This benefits the entire community. 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 variances requested.

5. The Board also concludes that the negative criteria has been satisfied. The Board finds that the encroachment of the existing covered outdoor bar into the rear yard setback will not have a substantial detrimental effect on neighboring properties. The Board finds it significant that the Applicant has agreed to install a gutter, drywell and stone trench to drain water away from adjacent properties. The Board further finds that the existing covered outdoor bar will not interfere with the provision of adequate light, air and open space between residential properties. The Applicant has further agreed to reduce the noise associated with the outside bar. Under such circumstances, the purposes underlying the Ordinance requirement for the rear side yard setback will not be substantially detrimentally affected by the granting of the requested variance. The Board also determines that the existing covered outdoor bar is not out of character for the neighborhood and does 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 variance 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 16th day of December, 2020, that the action of the Board taken on December 2, 2020 granting Application No. BA-3214-9/2020 of Nicholas Forte 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.

4. The Applicant shall install a gutter to the outdoor bar along with a drywell and stone trench to permit water to drain away from adjacent properties, subject to the approval of the Board Engineer.

5. The Applicant shall comply with the Township grading and drainage requirements.

6. The Applicant shall make his best efforts to reduce the nighttime noise associated with the outdoor bar. All Township noise ordinance requirements shall be complied with.

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