Bulk Variance Relief

June Griffin

102 Bayview Drive

Block 270, Lot 108

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

 Application No. BA-3216-9/2020

**RESOLUTION OF APPROVAL**

**BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT**

**APPLICATION NO. BA-3216-9/2020**

**DECEMBER 16, 2020**

 **WHEREAS**, June Griffin (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 270, Lot 108 on the official Tax Map of the Township of Brick and more specifically known as 102 Bayview 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 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 outdoor gazebo on the subject Property.
2. The subject Property is a corner lot that contains 0.1412 acres with 61.50 feet of frontage along the easterly side of Bayview Drive and 100 feet of frontage along the southerly side of Drum Point Road within the R-5 (Single Family Residential) Zone. The subject Property is improved with a two (2) story framed residential dwelling and is bounded to the south by residential properties, and to the east by a lagoon.
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:

|  |  |  |
| --- | --- | --- |
|  | **Required** | **Existing** |
| Southern Side Yard Setback | 15.0 feet | 2 feet |
| Rear Yard Setback | 15.0 feet | 11 feet |

1. The Applicant testified that the outdoor gazebo was constructed in 2012. She explained that her contractor, who she is now unable to locate or contact, represented to her that a permit was obtained for the installation of the outdoor gazebo. She also stated that the outdoor gazebo is located approximately 14 feet from the bulkhead which led her to believe that the structure complied with rear side yard setback requirements. The Applicant further testified that she now understood that the rear and side yard setback requirements are more restrictive for properties fronting a body of water.
2. The Applicant then stated that the outdoor gazebo fronts an abandoned lot located south of the subject Property. Ms. Griffin then testified that the outdoor gazebo was an aesthetic upgrade to the subject Property and the neighborhood and that she never received a complaint from anyone.
3. There were no 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 outdoor gazebo located in the southern side yard of the subject 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 outdoor gazebo located in the southern side yard of the subject Property. The Board determines that the outdoor gazebo results in an aesthetic upgrade and creates a desirable visual environment as well as a diversified housing stock. 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 outdoor gazebo into the southern side yard setback and rear yard setback will not have a substantial detrimental effect on neighboring properties. The improvement has actually benefitted surrounding properties through the improved aesthetics. Further, the Board finds that the existing outdoor gazebo will not interfere with the provision of adequate light and air between residential properties because the southern side property line fronts a vacant property and the rear property line fronts a lagoon. Under such circumstances, the purposes underlying the Ordinance requirement for rear and side yard setbacks will not be substantially detrimentally affected by the granting of the requested variance. The Board also determines that the existing gazebo is not out of character for the neighborhood and do not cause a substantial detriment to the zone plan or zoning ordinance. As such, the requested variances 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 variances 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-3216-9/2020 of June Griffin 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.

1929474\_1 BRICKZB-398E June Griffin Resolution Granting Bulk Variance Relief (BA-3216-9/2020) 12.16.20