Bulk Variance Relief

Thomas and Noreen Kelly

Block 44.17, Lot 4

307 Barkentine Lane

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

Application No. BA-3217-9/20

**RESOLUTION OF APPROVAL**

**BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT**

**APPLICATION NO. BA-3217-9/20**

**DECEMBER 16, 2020**

 **WHEREAS**, Thomas and Noreen Kelly (the “Applicants”) have 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 44.17, Lot 4, on the official tax map of the Township of Brick and more specifically known as 307 Barkentine Lane, Brick, NJ 08738 (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 December 2, 2020, via the virtual Zoom platform, at which time testimony and exhibits were presented on behalf of the Applicants 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 Applicants are seeking bulk variance relief permitting the installation of a
10 foot by 20 foot in-ground swimming pool with surrounding decking in the rear yard of the Property as well as to locate pool equipment in the side yard.

 2. The Property contains 0.129 acres with 70.00 feet of frontage on the southerly side of Barkentine Lane within the R-7.5 (Single-Family) Zone. The Property is also bounded by residential lots to the west and east, as well as a lagoon to the 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 |
| Rear setback from the waterward side of the bulkhead  | 15 feet | N/A | 8.9 feet |
| Rear yard setback | 5 feet | N/A | 0 feet |

 4. Counsel for the Applicants, Lynne A. Dunn, Esq., stated that the Property is located along the southerly side of Barkentine Lane and fronts a lagoon. She explained that the Applicants were proposing to construct an in-ground swimming pool in the rear yard of the Property.

 5. The Applicants’ Engineer and Planner, Matthew Wilder, P.E., P.P., testified that the Property is located on Barkentine Lane and is bounded by a lagoon to the south. He further stated that the Applicants were seeking variance relief permitting the construction of an
in-ground 10 ft. by 20 ft. swimming pool and surrounding decking with fencing in the rear yard of the Property. Mr. Wilder then testified that the Applicants had selected the proposed location because it is the widest section of the rear yard and the pool would be located farthest from the existing home on the Property. He then confirmed that the Applicants would comply with all CAFRA Permit By-Rule Regulations. Mr. Wilder stated that the Applicants required bulk variance relief for the rear setback from the waterward side of the bulkhead where 15 feet is required and 8.9 feet was proposed and for the rear yard setback where 5.0 feet is required and 0 feet was proposed.

 6. Mr. Wilder also testified that the proposed in-ground pool would not affect the adjacent neighbors’ view of the water. He stipulated that new compliant fencing would be installed to surround the pool. Mr. Wilder further stated that the proposed pool would enhance the aesthetics of the Property and would not be a substantial detriment to the zone plan or the neighborhood.

 7. The hearing was then opened to the public at which time Craig Schneider, 305 Barkentine Lane, testified that he had no issue with the instant application.

 8. There were no other 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 install a
10 foot by 20-foot in-ground swimming pool with surrounding decking. The Applicants also propose to install compliant fencing to surround the pool.

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 Applicants satisfy certain specific proofs which are enunciated in the Statute. Specifically, the Applicants 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 Applicants have satisfied the positive criteria. The Board specifically finds the bulk variances required for the installation of the swimming pool result in a diversified housing stock and are aesthetic improvements which promote the goals of planning as enumerated in N.J.S.A. 40:55D-2. The Board, therefore, concludes that the Applicants have satisfied the c(2) affirmative criteria.

 5. Turning next to the negative criteria, the Board concludes that a swimming pool with surrounding decking and fencing is a commonly permitted accessory structure to a single-family residential use such as those in the surrounding neighborhood. Further, the Board concludes that the Applicants’ proposal to install the swimming pool with decking and fencing on the Property will not create a substantial detriment to the public good because the nature of the encroachment into the rear yard setback is unlikely to detrimentally affect the light, air and open space on adjacent properties which, the Board concludes, is the purpose and intent of the Township Zoning Ordinance. 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 Applicants have satisfied the negative criteria. The Board 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 16th day of December 2020 that the action of the Board taken on
December 2, 2020 granting Application No. BA-3217-9/20 of Thomas and Noreen Kelly for bulk variance relief is hereby memorialized, subject to the following conditions:

1. The Applicants 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 Applicants shall comply with the recommendations contained in the reports of the Board’s professionals.

4. The Applicants shall comply with all NJDEP Permit-By-Rule Regulations.

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

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