Bulk Variance Relief

Christopher Loughran

772 South Drive

Block 944, Lot 72

Zone: R-5 (Single Family Residential) Zone

Application No. BA-3220-11/20

**RESOLUTION OF APPROVAL**

**BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT**

**APPLICATION NO. BA-3220-11/20**

**DECEMBER 16, 2020**

 **WHEREAS**, Christopher Loughran (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 944, Lot 72, on the official tax map of the Township of Brick and more specifically known as 772 South Drive, 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 December 2, 2020 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 permitting the construction of a backup home generator on a 7 foot by 4 foot raised platform on the Property.
2. The Property contains 9,837 s.f. with 173.58 feet of frontage along the easterly side of South Drive within the R-5 (Single-Family Residential) Zone, as are adjacent residential properties to the east. A lagoon is located to the north of the Property.
3. Based upon the Application and plans submitted, the following bulk variance relief is required:

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Required** | **Existing** | **Proposed** |
| Front Yard setback (generator) | 20 feet | N/A  | 11 feet, 5 inches |

4. The Applicant testified that variance relief was required in order to install the proposed backup generator on a 7 foot by 4 foot raised platform on the Property. The Applicant explained that the purpose of the backup generator was to maintain electricity in the home as a medical necessity for a family member. He stated that the generator with raised platform would not obstruct views from his driveway or the street. The Applicant added that the generator with raised platform would not result in any adverse impact on the properties in the neighborhood.

5. There were no 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. The application before the Board requests bulk variance relief from front yard setback requirements to permit the installation of a backup generator with raised platform on the Property. 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. 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.

2. 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.

3. The Board finds that the Applicant has satisfied the positive criteria. The Board considered the purposes for which front yard setbacks are required by Ordinance to ensure sufficient light, air and open spaces between adjacent properties. The Board concludes that the application advances the intent and purpose of the Municipal Land Use Law as set forth in N.J.S.A. 40:55D-2b because the improvement will secure safety from flood or other natural and manmade disasters. The Applicant has, therefore, satisfied the c(2) affirmative criteria sufficiently to permit the granting of the bulk variance requested.

4. Turning next to the negative criteria, the Board concludes that the encroachment of the generator into the front yard setback will not have a substantial detrimental effect on neighboring properties and that the improvement will actually benefit those parcels. The Board notes that the generator is a common accessory structure which will increase the safety of the existing residential home. Under such circumstances, the purposes underlying the Ordinance requirement for a front yard setback will not be substantially detrimental affected by the granting of the requested variance. The Board therefore concludes that the requested bulk variance can be granted without substantial detriment to the public good. Based on its analysis of the underlying purposes for the front yard setback requirement, as described above, the Board concludes, further, that granting the requested variance will not substantially impair the purpose and intent of the Zone Plan or Zoning Ordinance. The Board therefore concludes that the Applicant has satisfied the negative criteria. The Board also 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 therefore 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-3220-11/20 of Christopher Loughran 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.

1930459**\_1.Docx** BRICKZB-402E Christopher Loughran Resolution for Bulk Variance Relief (BA-3220-11/20) 12.16.20