

Bulk Variance Relief
Bert & Tara Dreossi
Block 252.18, Lot 61
56 Long Point Drive
Zone: R-5 (Single-Family Residential) Zone
Application No. BA-3240-2/21

**RESOLUTION OF APPROVAL
BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT
APPLICATION NO. BA-3240-2/21
JUNE 2, 2021**

WHEREAS, Bert & Tara Dreossi (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 252.18, Lot 61, on the official tax map of the Township of Brick and more commonly known as 56 Long Point 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 May 19, 2021, via the Zoom 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 installation of a 10 foot by 25 foot in-ground swimming pool with pool equipment and new rear yard paver patio on the Property.

2. The Property contains 7,500 s.f. with 75.00 feet of frontage on Long Point Drive within the R-5 (Single-Family) Zone. The Property is also bounded by residential lots to the south and north and a lagoon to the west.

3. Based upon the application and plans submitted, any amendments or modifications thereto, and the testimony of the Applicants' experts, the following bulk variance relief is required:

	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>
Maximum Impervious Coverage	65%	71.3%	71.3%
Rear Setback from the Waterward Side of the Bulkhead (In-Ground Swimming Pool)	15 feet	N/A	8.0 feet

4. Counsel for the Applicant, Greg Hock, Esq., stated that the Property is located on Long Point Drive and fronts a lagoon. Mr. Hock explained that the Applicant was proposing to construct an in-ground swimming pool with pool equipment in the rear yard of the Property and remove and replace a rear yard paver patio on the Property.

5. The Applicant's Engineer and Planner, Carol Feigin, P.E., P.P., testified that the Property contains 7,500 s.f. and fronts a lagoon. She further stated that the Applicant was seeking bulk variance relief permitting the construction of an inground swimming pool with pool equipment and a new rear yard paver patio which would replace an existing paver patio.

6. Ms. Feigin next stated that the Applicant required bulk variance relief to permit the proposed inground swimming pool where a 15-foot rear yard setback from the waterward

side of the bulkhead is required and an 8.0-foot setback is proposed. She further testified that the Applicant further required bulk variance relief to permit a 73.1% impervious coverage where a 65% maximum is permitted.

7. Ms. Feigin then explained that the required variance relief was caused by the shallowness of the rear yard of the Property. She stated that the proposed improvements were common for the area and would enhance the aesthetics on the Property as well as the entire neighborhood. She further testified that the proposed swimming pool would conform with side yard setback requirements. Ms. Feigin then testified that the proposed swimming pool would be located six (6) feet from the existing rear yard deck which would provide a safe distance from the deck and existing home. Ms. Feigin next explained that the proposed paver patio would replace an existing paver patio which was dilapidated. She added that the Applicant would comply with all CAFRA permit-by-rule requirements.

8. Ms. Feigin also testified that the proposed improvements would enhance the aesthetics of the Property and would not cause a substantial detriment to the zone plan or the neighborhood.

9. The hearing was opened to the public and Michael Knee, 58 Long Point Drive, stated he was concerned about safety and privacy regarding the installation of the new in-ground swimming pool. Ms. Feigin stated that the in-ground swimming pool would be enclosed by four-foot high compliant fencing with a self-closing/latching gate. The Applicant, Bert Dreossi, testified that the Applicants had yet to make a final decision on the type of fencing, but stated that it would be a 4-foot high open style with an attractive decorative design.

10. Judy Knee, 58 Long Point Drive, asked if the existing fencing located in the northerly side yard property line would be removed. Mr. Dreossi confirmed that said fencing would be removed and replaced with the new compliant decorative fencing.

11. 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:

I. The Applicants Can Be Granted Bulk Variance Relief Pursuant to N.J.S.A. 40:55D-70c(1).

1. The Applicants have requested bulk variance relief pursuant to N.J.S.A. 40:55D-70c(1) and (2) permitting the installation of a 10 foot by 25 foot in-ground swimming pool with pool equipment and new rear yard paver patio on 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, under the c(1) criteria, 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.

A. The Applicants Have Satisfied The Positive Criteria Under c(1) Hardship Criteria to Permit the Pool and Associated Improvements.

4. The Applicants have requested “hardship” variance relief pursuant to N.J.S.A. 40:55D-70c(1). The Board finds that the Applicants have satisfied the positive criteria. The Board recognizes that the Applicants purchased the Property in 2018. It is undisputed that the Property contained the existing residential dwelling when the Applicants purchased the Property. The Board further finds that the front, side and rear yard setbacks of the existing home are compliant with the Ordinance. The Board concludes that because of the exceptional shallowness of the Property and the location of the existing home on the Property, the strict enforcement of the regulations of the zone relating to swimming pools and the elevated deck would severely limit and preclude the installation of any reasonably sized in-ground swimming pool or elevated

deck in the rear yard of the Property. The existing conditions of the Property result in the strict enforcement of the Ordinance creating exceptional and undue hardship.

5. The New Jersey Supreme Court has held: “personal hardship is irrelevant to the statutory standard [for c(1) variance relief] and that the correct focus must be on whether the strict enforcement of the ordinance would cause undue hardship because of the unique or exceptional conditions of the specific property.” Lang v. Zoning Bd. of Adjustment of Borough of North Caldwell, 160 N.J. 41, 53 (1999). In Lang, the Applicant sought bulk variance relief to remove an existing above ground pool and replace it with a in ground swimming pool. The applicant sought bulk variance for relief for the rear yard setback where 20 feet was required and 15 feet was proposed. The plaintiff also required bulk variance relief for the size of the pool where a maximum pool size of 10% of the area of the rear yard was permitted and the pool would occupy 14.17% of the area of the rear yard.

6. The property also contained six (6) foot high fencing along the rear property line (which abutted Plaintiff’s property) and shrubbery along the southerly side property line. The applicant testified that moving the pool closer to the residential dwelling would create a safety hazard for residents of the dwelling, which was located 38 feet from the rear property line. The Supreme Court affirmed the variance relief granted by the Board and concurred with the Board’s conclusion that the proposed size of the pool was “reasonable in scale and fairly typical for such installations . . .” Id. at 59. The Supreme Court recognized that the short depth of the rear yard had been influenced by the narrowness of the property. The Supreme Court determined that the Board’s conclusion that the property’s unusual narrowness and shape combined with the existing structures on the property justified the grant of c(1) bulk variance relief. Id. at 60-61.

7. The Supreme Court also held that c(2) bulk variance relief was appropriate. The Supreme Court agreed with the Board's finding that the applicant satisfied the positive criteria because the proposed pool promoted a desirable visual environment and advanced the safety and visual purposes of zoning. Id. at 60. The Supreme Court then held that the applicant satisfied the negative criteria because no dwellings were close enough the southerly side property line or rear property line to be adversely affected by the grant of the variances. Id. at 60-61.

8. The facts in the instant matter are substantially similar to the facts in the Lang case. The Applicant's Planner testified that the proposed pool would be similar in size to other pools in the neighborhood. The Board also finds that the existing residential home complies with all setback requirements. The Board further determines that the location of the proposed pool complies with all side and rear yard setback requirements. The Applicants provided expert testimony asserting that the pool could not be moved any closer to the existing residential dwelling. The rear yard of the Property is also partially obstructed from view from the adjacent Property because fencing fronts the portion of the Property that would contain the proposed pool. The view of the Applicants' rear yard is blocked by that fencing.

9. The Board also finds the instant application is distinguishable from the facts in Wilson v. Brick Township Zoning Board of Adjustment, 405 N.J. Super. 189 (App. Div. 2009). The Wilson Court found that the applicant sought variance relief after the improvements were constructed and failed to show why some or all of the ordinance could not have been complied with. Id. at 199-200. The Court also noted that the applicant testified that the improvements could not be seen from the street or the bay. The Court specifically held that the applicant's

survey raised a number of questions as to whether a conforming deck and pool could have been installed on the subject Property. Id. at 202-203.

10. In the instant matter, the Applicants' Planner provided testimony that the proposed pool could be viewed partially from the street. The enhanced aesthetics therefore benefit the entire community, not just the Applicants. The Applicants' Planner also explained why the pool could not be moved closer to the home. The Board therefore finds the facts of the Wilson case are distinguishable from the instant matter. The Board concurs with the Applicants' Planner that the size of the proposed pool is not unusual for the neighborhood. The Board further finds that the primary reason the proposed structure does not conform to the Ordinance is the shallowness of the Property. Compliance with the rear yard setback to the waterward side of the bulkhead would preclude the installation of any improvements in the rear yard of Property. The Board concludes that the Applicant has satisfied the c(1) affirmative criteria sufficiently to permit the granting of the bulk variances requested.

B. The Applicants Have Satisfied the Negative Criteria for Hardship Variance To Permit The Pool and Associated Improvements.

11. The Board finds the Applicants have satisfied the negative criteria. The Board specifically finds the bulk variances required for the installation of the in-ground swimming pool results in a diversified housing stock and are aesthetic improvements not only to the Property, but also benefit the entire neighborhood. The Board further finds that the in-ground swimming pool is aesthetically preferable and more visually desirable to the community. The proposed pool will not create any more noise than a pool which satisfies all ordinance requirements and also will not generate additional traffic. The Board concludes that the Applicants have satisfied the negative criteria sufficiently to permit the granting of the bulk variances requested.

C. The Applicants Have Satisfied The Positive Criteria of “Flexible” Bulk Variance Criteria Pursuant To N.J.S.A. 40:55D-70c(2) to Permit the Pool and Associated Improvements.

12. The Board finds that the Applicants have also satisfied the positive criteria to permit flexible bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2). The Board specifically finds the bulk variance relief required for the installation of the in-ground swimming pool results in aesthetic improvements not only to the Property, but also benefit the entire neighborhood.

13. The Board specifically finds that the removal of the existing aged paver patio and its replacement with a new paver patio and in-ground swimming pool is aesthetically preferable and more visually desirable to the community. The Board also finds that the view of the proposed swimming pool and elevated deck would be limited from neighboring properties. The view of the neighbors to the north would be limited due to the existing fencing in the northerly side yard of the Property. A portion of the improvements, however, will be visible. The Board notes that the Applicants propose to remove the existing fencing and install decorative, compliant fencing. The Board, therefore, finds that the view to the neighbors will be aesthetically pleasing. The Board also finds that the neighbors’ views from their existing homes would not be blocked. The goals of planning as enumerated in N.J.S.A. 40:55D-2 have therefore been advanced. The Board concludes that the Applicants have satisfied the c(2) affirmative criteria sufficiently to permit the granting of the bulk variances requested.

D. The Applicants Have Satisfied The Negative Criteria Permitting the “Flexible” or c(2) Variance Relief for Pool and Associated Improvements.

14. Turning to the negative criteria, the Board restates its analysis of the negative criteria set forth in Section B, paragraph 11 of this Resolution. The Board therefore again concludes that granting the requested bulk variances will not substantially impair the purpose

and intent of the Zoning Ordinance or Zone Plan or substantially detriment to the public good.

The Board concludes, therefore, that the Applicants have satisfied the negative criteria.

15. 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 RESOLVED, by the Brick Township Zoning Board of Adjustment on this 2nd day of June, 2021 that the action of the Board taken on May 19, 2021 granting Application No. BA-3240-2/21 of Bert and Tara Dreossi 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. The Applicants shall provide a revised plot plan.
5. The Applicants shall comply with all CAFRA Permit-By-Rule requirements.
6. All grading, drainage and landscaping on the site shall comply with all Township Ordinances and regulations and will be subject to the approval of the Board and Township Engineer.