

Bulk Variance Relief
Christopher Koeck
Block 1124.02, Lot 3
283 White Oak Court
Zone: R-10 (Single-Family Residential) Zone
Application No. BA-3239-2/21

**RESOLUTION OF APPROVAL
BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT
APPLICATION NO. BA-3239-2/21
JUNE 2, 2021**

WHEREAS, Christopher Koeck (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 1124.02, Lot 3, on the official tax map of the Township of Brick and more commonly known as 283 White Oak Court, 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 a 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 16 foot by 32 foot in-ground swimming pool within a surrounding concrete deck in the front yard of the Property, as well as to locate pool equipment in the front yard.

2. The Property contains 14,982 s.f. with 207.39 feet of frontage on White Oak Court within the R-10 (Single-Family) Zone. The Property is also bounded by residential lots to the north, west and east.

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:

	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>
Front Yard Setback (In-Ground Swimming Pool)	30 feet	N/A	14 feet
Front Yard (In-Ground Swimming Pool)	Not Permitted	N/A	Permitted

4. The Applicant stated that the Property is an irregularly-shaped lot located on a cul-de-sac on White Oak Court. The Applicant was proposing to construct an in-ground swimming pool in the front yard of the Property.

5. The Applicant testified that the Property contains a 30 foot wide conservation easement along the rear property line and a 20 foot wide drainage easement in the northeast corner of the property. The Applicant further stated that he was seeking bulk variance relief permitting the construction of an inground swimming pool with pool equipment in the front yard of the property, where a 30 foot front yard setback is required and a 14 foot setback is proposed.

6. The Applicant then explained that the proposed improvements in the front yard would be screened by existing fencing and would result in little or no visual impact on adjacent properties. He further explained that he chose a kidney-shaped pool because a rectangular-shaped pool would likely encroach into the conservation easement. The Applicant then stated that the Property was located on the cul-de-sac and the improvements would not obstruct the

views of adjacent neighbors. The Applicant further testified that the rear yard contained a wood deck which, combined with the conservation and drainage easements, would not permit the installation of the improvements in the rear yard. He stated that the Property would continue to contain compliant off-street parking.

7. The Applicant then stated that the proposed improvements would enhance the aesthetics of the Property and would not be a substantial detriment to the zone plan or the neighborhood.

8. 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:

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

1. The Applicant has requested bulk variance relief pursuant to N.J.S.A. 40:55D-70c(1) and (2) permitting the installation of a 16 foot by 32 foot in-ground swimming pool with a surrounding pool equipment and elevated deck 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 Applicant Has Satisfied The Positive Criteria Under c(1) Hardship Criteria to Permit the Pool and Associated Improvements.

4. The Applicant has requested “hardship” variance relief pursuant to N.J.S.A. 40:55D-70c(1). The Board finds that the Applicant has satisfied the positive criteria. The Board recognizes that the Applicant purchased the Property in 2014. It is undisputed that the Property contained the existing residential dwelling when the Applicant 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 acknowledges that the Property contains a 30-foot wide conservation easement along the rear property line and a 20-foot wide drainage easement in the northeast corner of the Property. The Board concludes that because of the exceptional narrowness size and shape of the Property and the location of the existing home, the conservation easement and the drainage easement on the Property, the strict enforcement of the regulations of the zone relating to swimming pools would severely limit and preclude the installation of any reasonably sized in-ground swimming pool 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 testified that the proposed pool was similar in size to other pools in the neighborhood. The Board also finds that the existing residential home complies with all setback requirements. The Applicant provided testimony asserting that the pool could not be located in the rear yard or moved any closer to the existing residential dwelling in the front yard. The rear yard of the property is also partially obstructed from view from the adjacent Property from the house itself and existing fencing. The view of the Applicant's 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 Applicant provided testimony that the proposed pool could be viewed partially from the street. The enhanced aesthetics therefore benefit the entire community, not just the Applicant. The Applicant 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 Applicant 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 irregular shape of and the conservation and drainage easements on the Property. Compliance with the front yard setback would preclude the installation of any improvements in the front 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 Applicant Has Satisfied the Negative Criteria for Hardship Variance To Permit The Pool and Associated Improvements.

11. The Board finds the Applicant has satisfied the negative criteria. The Board specifically finds the bulk variances required for the installation of the in-ground swimming pool result 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 are 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 Applicant has satisfied the negative criteria sufficiently to permit the granting of the bulk variances requested.

II. The Applicant Has Met The Burden of Proof for “Flexible” Bulk Variance Relief.

A. The Applicant Has 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 Applicant has 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, elevated rear yard deck result in aesthetic improvements not only to the Property, but also benefit the entire neighborhood.

13. The Board also specifically finds that the 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 would be limited from neighboring properties. The

view of the neighbors to the north would be limited due to the existing fencing in the front and rear yards of the Property. A portion of the improvements, however, will be visible. The Board finds that the view to neighbors will therefore 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 Applicant has satisfied the c(2) affirmative criteria sufficiently to permit the granting of the bulk variances requested.

B. The Applicant Has 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 on page 10 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 detrimental to the public good. The Board concludes, therefore, that the Applicant 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-3239-2/21 of Christopher Koeck 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 Applicant shall comply with all NJDEP Regulations.
5. All grading and drainage on the site shall comply with all Township Ordinances and regulations and will be subject to the approval of the Board and Township Engineer.