

**RESOLUTION
TOWNSHIP OF MANALAPAN
ZONING BOARD OF ADJUSTMENT
RESOLUTION OF MEMORIALIZATION
MONMOUTH COUNTY, NEW JERSEY
BULK VARIANCE RELIEF**

**Approved: May 21, 2020
Memorialized: June 4, 2020**

**MATTER OF KEMAR R. PHILLIPS AND PALOMA FELICIANO PHILLIPS
APPLICATION NO. ZBE2009**

WHEREAS, an application for bulk variance relief has been made to the Manalapan Township Zoning Board of Adjustment (hereinafter referred to as the "Board") by Kemar R. Phillips and Paloma Feliciano Phillips (hereinafter referred to as the "Applicants") on lands known and designated as Block 8001, Lot 1, as depicted on the Tax Map of the Township of Manalapan (hereinafter "Township"), and more specifically located at 20 Fountayne Lane in the R-R (Rural Residential) Zone District; and

WHEREAS, a virtual public hearing was held before the Board on May 21, 2020 with regard to this application; and

WHEREAS, the Board has heard testimony and comments from the Applicants, and consultants, and with the public having had an opportunity to be heard; and

WHEREAS, a complete application has been filed, the fees as required by Township Ordinance have been paid, and it otherwise appears that the jurisdiction and powers of the Board have been properly invoked and exercised; and

NOW, THEREFORE, does the Manalapan Township Zoning Board of Adjustment make the following findings of fact and conclusions of law with regard to this application:

1. The subject Property contains 2.038 acres and is a corner lot with 200 feet of frontage along the south side of Fountayne Lane and 361.10 feet of frontage along the west side of Gravel Hill Road within the R-R (Rural Residential) Zone District.

2. The subject Property is improved with a two-story single-family dwelling and has access along Fountayne Lane via a paved driveway.

3. The Applicants propose to install 6-foot high vinyl privacy fencing along the front, rear and side yards of the subject Property.

4. The lots surrounding the subject Property are similarly zoned R-R and contain a mix of single-family residential uses.

5. The Applicant, Kemar R. Phillips, testified that he was seeking to install a 6-foot high vinyl privacy fencing to enclose both the front and side yards of the subject Property. He explained that the fencing would extend to the easterly corner of the residential home to a point 25 feet from the eastern side property line to the rear property line. Mr. Phillips further testified that the fencing would then extend approximately 200 feet to the northwest corner of the subject Property south to surround the rear of the existing turn-around driveway. He then stated that the fencing would connect with the existing paver patio and walkway. Mr. Phillips further testified that bulk variance relief was required to permit the 6-foot high fencing to be located in the front yard (along Gravel Hill Road) where a 25-foot setback was proposed and a 90-foot setback is required. He added that bulk variance relief was also required for the 6-foot high fencing located in the front yard where a maximum 3-foot fence height is permitted.

6. The Applicant testified that the fencing along Gravel Hill Road would be located inside the existing tree line. He added that the proposed fencing would provide additional safety and security on the subject Property.

7. There were no members of the public expressing an interest in this application.

8. The Board has received, reviewed and considered various exhibits and reports with regard to this application, and all exhibits and reports have been incorporated herein on their entirety.

WHEREAS, the Manalapan Township Zoning Board of Adjustment, having reviewed the proposed application and having considered the impact of the proposed application on the Township and its residents to determine whether it is in furtherance of the Municipal Land Use Law; and having considered whether the proposal is conducive to the orderly development of the site and the general area in which it is located pursuant to the land use and zoning ordinances of the Township of Manalapan; and upon the imposition of specific conditions to be fulfilled, hereby determines that the Applicants may be granted bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2).

The Board finds the subject Property is currently developed with a permitted use. Bulk variance relief, however, is required. 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 satisfies 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 Applicants may show that exceptional topographic conditions or physical features exist

which uniquely affect a specific piece of property. Further, the Applicants 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 Applicants 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.

Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain "bulk" or (c) variance relief. Finally, Applicants 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 Applicants to establish these criteria.

The Board finds that the positive criteria has been satisfied. The Board determines that the improvement results in an aesthetic upgrade to the subject Property and also creates a desirable visual environment as well as a diversified housing stock. The Board, therefore, finds the Applicants have promoted the goals of planning as enumerated in N.J.S.A. 40:55D-2. The positive criteria is therefore satisfied.

The Board also finds that the negative criteria has been satisfied. The Board finds that the proposed variance relief will not have a substantial detrimental impact on neighboring properties and that the improvement will actually benefit surrounding properties through the improved aesthetics. Under such circumstances, the purposes underlying the Ordinance requirement for front yard and rear yard setbacks will not be substantially detrimentally affected by the granting of the requested variances. The Board also determines that the proposed improvement is not out of character with the prevailing neighborhood scheme and does not cause a substantial detriment to the zone plan or zoning ordinance. Further, the Board finds that the improvements will not interfere with the provision of adequate light and air between residential properties and will promote safety and security on the subject Property. The Board, therefore, finds that the negative criteria has also been satisfied. The Board further finds that the positive criteria substantially outweighs the negative criteria. The Board determines that variance relief pursuant to N.J.S.A. 40:55D-70c(2) is therefore appropriate.

WHEREAS, the Manalapan Township Zoning Board of Adjustment having reviewed the proposed application and having considered the impact of the proposed application on the Township and its residents to determine whether it is in furtherance of the Municipal Land Use Law; and having considered whether the proposal is conducive to the orderly development of the site and the general area in which it is located pursuant to land use and zoning ordinances of the Township of Manalapan; and upon the imposition of specific conditions to be fulfilled, hereby concludes that good cause has been shown to approve the application of Kemar R. Phillips and Paloma Feliciano Phillips for bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2).

NOW, THEREFORE, BE IT RESOLVED, by the Zoning Board of Adjustment of the Township of Manalapan on this 4th day of June, 2020, that the action of the Board taken on May 21, 2020, granting Application No. ZBE2009 of Kemar R. Phillips and Paloma Feliciano Phillips bulk variance relief pursuant to N.J.S.A. 40:55D-70c(2) is hereby memorialized as follows:

The application is granted subject to the following conditions:

1. The development of this site shall take place in strict conformance with the testimony, plans and drawings which have been submitted to the Board.
2. The Applicants shall comply with all recommendations contained in the reports of the Board's consultants except as modified herein.
3. The Applicants shall provide a certificate that taxes are paid to date of approval.
4. Payment of all fees, costs, escrows due or to become due. Any monies are to be paid within twenty (20) days of said request by the Board Secretary.
5. Subject to all other applicable rules, regulations, ordinances and statutes of the Township of Manalapan, County of Monmouth, State of New Jersey, or any other jurisdiction.

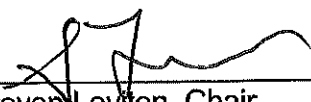
BE IT FURTHER RESOLVED that the Applicants are hereby authorized and directed to cause a notice of this decision to be published in the official newspaper at the Applicants' expense. The Board Secretary is hereby authorized to send a certified copy of this Resolution to the Applicants and to the Township Clerk, Engineer, Attorney and Tax Assessor, and shall make same available to all other interested parties.

APPROVED this 21st day of May, 2020

ROLL CALL VOTE	YES	NO	ABSTAIN	ABSENT	NOT ELIGIBLE
MS. KAMEN	✓				
MR. ROSENTHAL	✓				
MR. WEISS	✓				
MR. COOPER					✓
MR. GREGOWICZ	✓				
MR. LILIEN				✓	
MR. SCHERTZ (Alt 1)	✓				
MR. DITOTA (Alt 2)	✓				
MR. MANTAGAS (Alt 3)	✓				
MR. LEVITON	✓				

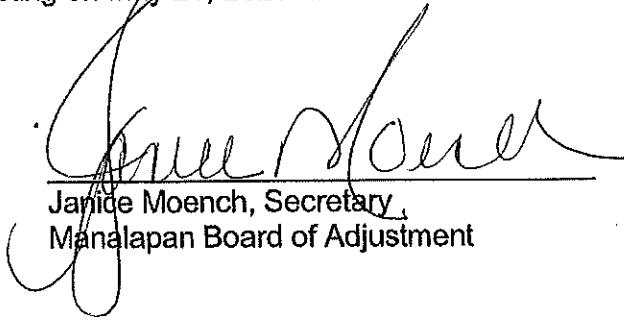
This Resolution is hereby adopted and memorialized by the following vote:

ROLL CALL VOTE	YES	NO	ABSTAIN	ABSENT	NOT ELIGIBLE
MS. KAMEN	✓				
MR. ROSENTHAL	✓				
MR. WEISS				✓	✓
MR. COOPER					✓
MR. GREGOWICZ	✓				✓
MR. LILIEN					✓
MR. SCHERTZ (Alt 1)	✓				
MR. DITOTA (Alt 2)	✓				
MR. MANTAGAS (Alt 3)	✓				
MR. LEVITON	✓				


 Steven Leviton, Chair
 Manalapan Board of Adjustment

CERTIFICATION

I, Janice Moench, Secretary of the Zoning Board of Adjustment of the Township of Manalapan, County of Monmouth, State of New Jersey, do hereby certify the attached is a this to be a true copy of the Resolution for Application No. ZBE2009 approved by the Board of Adjustment at its regular meeting on May 21, 2020 and memorialized on June 4, 2020.



Janice Moench, Secretary,
Manalapan Board of Adjustment

1821783_1 MANZB-090E Kemar R. Phillips and Paloma Feliciano Phillips Resolution Granting Bulk Variance Approval (ZBE2009) 6.4.20