

Bulk Variance Relief
DRM Construction, LLP
861 Glenwood Place
Block 590, Lot 6
Zone: Village Zone
Application No.: BA-3226-C-11/20
Resolution No.: R-20-2021

**RESOLUTION OF APPROVAL
BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT
APPLICATION NO.: BA-3226-C-11/20
APRIL 21, 2021**

WHEREAS, DRM Construction, LLP, (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 590, Lot 6 on the official Tax Map of the Township of Brick and more specifically known as 861 Glenwood Place, 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 of the Board have been properly invoked and exercised; and

WHEREAS, a public hearing was held on April 7, 2021 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 to construct an elevated two-story, four-bedroom single family residential dwelling with a grade level garage including a storage area beneath the structure. A 120 square foot covered front porch is also proposed. The proposed home, including the front covered porch, will have a footprint area of approximately 1,075 square feet. An 18-foot-

file
APP.
Jackson
Wilder
CME
Werner
4/22/21

wide by 20-foot-long asphalt driveway is further proposed to provide access to the grade level garage as well as the storage area below the dwelling. Grading modifications are also proposed.

2. The Property contains 3,601 square feet and is an undersized vacant lot which is located on the southerly side of the intersection of Glenwood Road. The Property has 40.04 feet of frontage along Glenwood Place. The Property is situated within the Village Zone, as are adjacent properties, to the south, east and west and across Glenwood Road to the north. All adjacent properties contain residential uses. Based upon the FEMA Preliminary Flood Insurance Rate Map, the Property is located within an AE-9 flood hazard area and also the LiMWA (Limit of Moderate Wave Action) Zone. The Property is also located within a CAFRA Zone.

3. The Applicant is seeking bulk variance relief as set forth in the table below:

	<u>Required</u>	<u>Existing</u>	<u>Proposed</u>
Minimum Lot Area	7,500 s.f.	3,601 s.f. ⁽¹⁾	3,601 s.f. ⁽¹⁾
Minimum Lot Width	50 feet	40.04 feet ⁽¹⁾	40.04 feet ⁽¹⁾
Minimum Side Yard Setback	10 feet	N/A	5.9 feet
Minimum Parking Space Width	10 feet	N/A	9.0 feet

⁽¹⁾ Existing condition.

4. Counsel for the Applicant, John J. Jackson, III, Esq. stated that the Applicant was seeking to construct a new single family residential structure on a vacant lot. He further explained that the Applicant required variance relief for a combination of existing and proposed conditions.

5. The Applicant's Engineer and Planner, Matthew Wilder, P.E., P.P., testified that the Property is currently vacant and is an undersized lot located in the Village Zone. He stated that the Applicant attempted to purchase adjacent properties in order to increase the area of the Property, but that there were not any property owners interested in either selling a portion of their property or purchasing the Property.

6. Mr. Wilder further testified that the Applicant was seeking bulk variance relief to permit a minimum side yard setback of 5.9 feet where 10 feet is required. He also stated that the Applicant was seeking bulk variance relief to permit the existing 3,601 s.f. lot area to remain where 7,500 s.f. is required and to permit the existing 40.04 foot lot width where 50 feet is required. He stated that the Applicant would comply with the Residential Site Improvement Standards (RSIS) regarding parking (3 parking spaces proposed) and that new utility laterals would be installed. Mr. Wilder further testified that the Applicant would comply with all Township grading and drainage requirements. He then explained that the Applicant would comply with all coastal AE-9 flood zone and LiMWA zone requirements. Mr. Wilder also stated that the proposed design of the home would fit the character of the neighborhood.

7. Mr. Wilder next testified that the Applicant would comply with all CAFRA permit requirements. He further stated that the Applicant would be eligible for CAFRA Permit-By-Rule #7. He added that fencing was not being proposed. Mr. Wilder confirmed that the Applicant would comply with all Township grading and drainage requirements for the Property. He specifically testified that all roof leaders would drain to splashblocks at grade that would direct runoff to the street and away from adjacent properties. He further testified that a 6-9 inch berm would be constructed on the east side of the Property to improve drainage.

8. Mr. Jackson confirmed that the Applicant sent Dallmeyer letters to adjacent property owners in March, 2021 and did not receive any responses.

9. Mr. Wilder then testified that the proposed home would advance the purpose of the Municipal Land Use Law enumerated at N.J.S.A. 40:55D-2(e) because it would promote the establishment of appropriate population densities and concentrations that would contribute to the well-being of the neighborhood. He further testified that the proposed home advanced the purpose of the

Municipal Land Use Law pursuant to N.J.S.A. 40:55D-2(g) because the home would provide sufficient space in a residential zone for a permitted single-family home use. He added that the proposed home advanced the purpose of the Municipal Land Use Law enumerated at N.J.S.A. 40:55D-2(i) because it would utilize a visually attractive design. Mr. Wilder then stated that there would be no detriment to the public good because the proposed size of the home complies with the ordinance and is similar to the size of other homes in the neighborhood.

10. Mr. Wilder also testified that the benefits of the application outweighed any detriments because the Property would have compliant off-street parking, the home would eliminate a vacant lot and that there would be no detriment to the zone plan.

11. The hearing was then opened to the public at which time Joe Paino, 854 Mantoloking Road, stated his property has flooding issues and that the proposed development would increase flooding for the area. Mr. Wilder stated that the Applicant would construct a berm on the east side of the Property that would direct drainage to a swale to ensure runoff would drain away from adjacent properties. Mr. Paino then described the proposed home as a “mansion” that did not fit with the neighborhood. Mr. Jackson stated the Applicant proposed to construct a two-story 1,700 s.f. home on the Property.

12. Mohammad Shikh, 863 Glenwood Place, was concerned about water run-off from the Property. Mr. Wilder explained that all runoff from the proposed home would drain away from adjacent properties.

13. There were no other members of the public expressing an interest in the application.

NOW, THEREFORE, the Board makes the following conclusions of law based upon the foregoing findings of fact:

1. The Applicant seeks to construct a permitted use but requires bulk variance relief. 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. The 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.

2. Those categories specifically enumerated above constitute the affirmative proofs necessary in order to obtain “bulk” or (c) variance relief. Finally, 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 undersized lot uniquely affects the Applicant's property so that the strict application of the ordinance requirements regarding the bulk variances would result in exceptional practicable difficulties and impose undue hardship in developing the Property for its permitted use. This is particularly true because neighboring property owners were not interested in either selling or purchasing land. The Applicant would specifically have difficulty complying with FEMA and CAFRA regulations concerning the drainage and buffering on the Property. The Board therefore concludes that the Applicant has satisfied the c(1) affirmative criteria sufficiently to permit the granting of the bulk variances requested.

4. The Board also concludes that the application promotes the goals of planning in the Municipal Land Use Law as set forth in N.J.S.A. 40:55D-2e, because the residential dwelling will contribute to the well-being of the neighboring community. This is because it will be constructed on an underutilized, visually unaesthetic vacant lot. The Board also concludes that the design of the residential dwelling will advance the purposes of the Municipal Land Use Law set forth in N.J.S.A. 40:55D-2i because the proposed dwelling will create a more desirable visual environment. The Applicant has therefore satisfied the c(2) positive criteria.

5. Turning next to the negative criteria, the Board concludes the Applicant's proposal to construct a new residential dwelling which is highly resistant to flooding and other man-made and natural disasters, helps to mitigate any negative effect of the deviations from the bulk variance requirements in the Village Zone. The proposed home also improves the aesthetics and promotes the visual environment of the entire area.

6. The neighbors expressed concern that the proposed home would increase flooding in the neighborhood. The Board finds the uncontroverted testimony of the Applicant's Engineer persuasive. The Applicant will install a 6-9 inch berm to direct drainage away from adjacent properties

and the Applicant will also comply with all Township grading and drainage requirements. One of the neighbors also stated that the proposed home would be too large for the neighborhood. That neighbor, however, failed to provide the sizes of any homes in the area to support his argument. Further, the Board accepts the testimony and statements of the Applicant's professionals that the proposed two-story (height compliant) home would contain approximately 1,700 s.f., which is not oversized for the lot and is also similar to the size of other homes in the neighborhood. The Board finds that there is no substantial detriment to the public good, zone plan and zoning ordinance. The Board concludes, therefore, that the Applicant has satisfied the negative criteria.

7. The Board concludes that the positive criteria substantially outweighs the negative criteria and that variance relief may be granted pursuant to N.J.S.A. 40:55D-70c (1) and (2).

NOW, THEREFORE, BE IT RESOLVED, by the Brick Township Zoning Board of Adjustment on this 21st day of April, 2021, that the action of the Board taken on April 7, 2021 granting Application No. BA-3226-C-11/20 of DRM Construction, LLP 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 Township drainage and grading requirements.
5. The Applicant shall install a 6-9 inch high berm on the east side of the Property.
6. The Applicant shall obtain approval for soil erosion control from the Ocean County Soil Conservation District, if required.

7. The Applicant shall file a plot plan.
8. All roof leaders shall drain to splashblocks at grade.

BA-3226-C 11/2020
DRM CONSTRUCTION , LLC

April 21, 2021

VOTE ON MEMORIALIZATION

MOVED BY: Mr. Jamnik

SECONDED BY: Ms. Strassheim

VOTING IN THE AFFIRMATIVE: Ms. Strassheim, Mr. Jamnik,
Mr. Sorrentino, Mr. Chadwick

VOTING IN THE NEGATIVE:

INELIGIBLE: , Mr. Caffery, Mr. Formica

IN-CONFLICT:

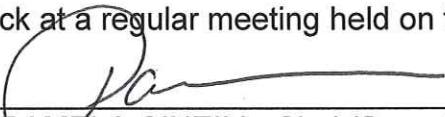
ABSTAINING:

ABSENT: Ms. White, Ms. Della Volle

PRESENT BUT NOT VOTING:

CERTIFICATION

I, PAMELA O'NEILL, Clerk/Secretary to the Board of Adjustment of the Township of Brick, County of Ocean, State of New Jersey, do hereby certify that I am duly authorized to certify Resolutions. I certify that the foregoing Resolution was adopted by the Board of Adjustment of the Township of Brick at a regular meeting held on the 21st of April


PAMELA O'NEILL, Clerk/Secretary
Planning Board/Zoning Board



BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT SCHEDULE "A"

1. Applicant shall provide the Board with documentation that all real property taxes have been paid through the calendar quarter of the date of the resolution of approval.
2. Applicant shall obtain signed documentation from the Code Enforcement Officer, Construction Official and Township Engineer certifying compliance with all terms and conditions of this resolution.
3. Applicant shall apply for and obtain all necessary permits and approvals from the Township Building Department prior to commencing and construction or renovation work.
4. No construction permit shall be issued by the Township until all application, escrow and Professional fees {required fees} have been paid to the Board, and confirmation has been obtained from the Board Secretary that the required fees have been paid. In the event a construction permit is issued when any fees remain due to the Board, the permit shall be automatically suspended, and all work shall cease and terminate until the required fees have been paid.
5. Applicant shall post, file or pay all required performance bonds, maintenance guaranties, engineering fees and inspection fees.
6. Applicant shall apply for and obtain approvals from all other municipal, county, state and federal agencies having regulatory jurisdiction over this application,
7. If applicant has asserted that the improvements referred to in this resolution are the subject of a Permit by Rule or waiver of the Department of Environmental Protection of the State of New Jersey (NJDEP), then applicant shall provide the Board with documentation demonstrating compliance with NJDEP rules and regulations.
8. In the event there is an existing violation of any municipal rule, regulation or ordinance, applicant shall have 30 days from the date of the resolution of approval to correct the violation. Failure to correct the violation within this time period shall constitute reasonable cause for the issuance of a summons and complaint to the applicant or other responsible parties.
9. All testimony, stipulations of the applicant, stipulations of the applicant's representatives, exhibits marked into evidence and deliberations of the Board are incorporated in this resolution by reference, and to the extent that the foregoing impose additional or more detailed conditions of approval than those contained elsewhere in this resolution, such conditions of approval are adopted as if set forth at length herein and are incorporated in this resolution by reference.
10. This development approval shall be null and void unless applicants obtain a construction permit from the municipality and commence work under the permit within two years from the date of this resolution.
11. Applicant shall comply with all ordinances, rules, regulations, statutes and other provisions concerning the provision of Affordable Housing Units in the Municipality and/ or the payment of fees imposed by the Township or the state of New Jersey.
12. Applicant shall provide proof of application for Title NJSA 39:5 A-1 to the Zoning Board of Adjustment.