

RESOLUTION 2019 -08

**RED BANK ZONING BOARD OF ADJUSTMENT
SHAMSKY MONKEY TRUST
20 ALSTON COURT
RED BANK, NEW JERSEY
BLOCK 13, LOT 29
APPLICATION NO.: Z12996**

INTRODUCTION

WHEREAS, representatives of the Shamsky Monkey Trust have made Application to the Red Bank Zoning Board of Adjustment for the property designated as Block 13, Lot 29, commonly known as 20 Alston Court, Red Bank, New Jersey, within the Borough's RA Zone, for the following approval: potential Use Variance Approval and Bulk Variance Approval associated with a request to effectuate a number of improvements associated with an existing single-family home:

PUBLIC HEARING

WHEREAS, the Board held a Public Hearing on January 17, 2019, Applicant having filed proper proof of service and publication in accordance with Statutory and Ordinance requirements; and

EVIDENCE / EXHIBITS

WHEREAS, at the said Hearing, the Board reviewed, considered, and analyzed the following:

- *Review Memorandum from Glen Carter, P.P., dated November 7, 2018, introduced into Evidence as A-1;*
- *Zoning Application Package, introduced into Evidence as A-2;*
- *Two pictures of the subject property, taken by the Applicant's representatives collectively introduced into Evidence as A-3;*

- *Application for Development (Zoning Permit), introduced into Evidence as A-4;*
- *Disclosure of Ownership, dated October 25, 2018, introduced into Evidence as A-5;*
- *Intent to Proceed, introduced into Evidence at A-6;*
- *Correspondence from the Applicant's Architect, to the Board Secretary, dated October 21, 2018, introduced into Evidence as A-7;*
- *Proposed Site Plan, prepared by Edgewater Pools, dated September 10, 2018, introduced into Evidence as A-8;*
- *Denial of Development Permit, introduced into Evidence as A-9;*
- *Cafra Plan, prepared by Thomas P. Santry, P.A., dated November 15, 2018, introduced into Evidence as A-10;*
- *Survey, prepared by Thomas P. Santry, P.A., dated March 1, 2018, introduced into Evidence as A-11;*
- *Resolution of the Red Bank Zoning Board of Adjustment, regarding the subject property, dated October 4, 2001, introduced into Evidence as A-12;*
- *Artist rendering of the proposed improvements, prepared by William A. Cohen, AIA, introduced into Evidence as A-13;*
- *Affidavit of Service; and*
- *Affidavit of Publication.*

WITNESSES

WHEREAS, sworn testimony in support of the application was presented by the following:

- William A. Cohen, Architect
- Rick Brodsky, Esq., appearing

WHEREAS, Glenn Carter, P.P., the Borough's Director of Planning and Zoning, was also sworn with regard to any testimony / information he would provide in connection with the Application.

TESTIMONY / EVIDENCE PRESENTED

WHEREAS, testimony and other evidence presented on behalf of the Applicant revealed the following:

- The Applicant herein is the Shamsky Monkey Trust, a Trust of the State of New Jersey.
- The Applicant is the owner of the subject property.
- The Applicant has owned the subject property for a number of years.
- Per the terms and conditions of a prior Approval from the Red Bank Zoning Board of Adjustment, there is an existing single-family home at the site, with a pool, and a cabana.
- The Trustees of the Trust currently live at the site.
- The Applicant's representatives propose to effectuate the following:
 - The expansion of the existing pool cabana by 302 sq. ft.;
 - Replacement of the existing pool with a similar sized pool;
 - Construction/installation of a fire pit and spa;
 - Enlargement of the patio surrounding the pool; and
 - Alteration of the previously approved driveway.
- Details pertaining the proposed improvements include the following:

Proposed Cabana Size:	482 sq. ft.
Cabana Location:	Northeast of the existing pool (per Plans)
Expanded Cabana Details:	The expanded cabana will include a gas fireplace, a rooftop deck, a water slide, and a semi-circular stair access.
Habitability:	The cabana will <u>not</u> be utilized as a dwelling unit.
Proposed replacement pool size:	Same general size as existing pool (per Plans)

Location of proposed replacement pool:	Same location as existing pool (per Plans)
Approximate size of firepit / spa:	Per Plans
Location of pool patio:	Surrounding pool (per Plans)
Materials of the proposed pool patio:	Per Plans
Driveway location details:	Per Plans

- The Applicant's representatives propose to complete the improvements in the near future, and as the weather allows.
- The Applicant's representatives will be utilizing licensed Contractors in connection with the renovation process.

VARIANCES

POTENTIAL USE VARIANCE: The property was the subject of a prior Use / "d" Variance Approval in or about 2001 (A-12). The said Resolution authorized the construction of a second principal structure (cabana) on the property. As there exists a Use Variance on the property, any technical expansion of the structure (cabana) (as proposed herein) requires a Use / "d" Variance for the expansion of a non-conforming use.

DRIVEWAY SETBACK: Minimum 3 ft required, whereas 0 ft. provided at the western property boundary;

ACCESSORY STRUCTURE HEIGHT: Maximum 16 ft. permitted; whereas 17 ft. proposed;

POOL EQUIPMENT SETBACK: 10 ft. required; whereas 8 ft. proposed;

PUBLIC COMMENTS

WHEREAS, there were no comments, statements, questions, and / or objections presented by any members of the public

FINDINGS OF FACT

NOW, THEREFORE, BE IT RESOLVED, by the Zoning Board of Adjustment of the Borough of Red Bank, after having considered the aforementioned Application, plans, evidence, and testimony, that the Zoning Application is hereby **granted / approved with conditions**.

In support of its decision, the Board of Adjustment makes the following Findings of Fact and Conclusions of Law:

1. The Red Bank Zoning Board of Adjustment has proper jurisdiction to hear the within matter.
2. The subject property is located at 20 Alston Court, Red Bank, New Jersey within the Borough's RA Zone.
3. The subject property contains an existing single-family residence, which is a permitted use in the subject zone.
4. The development site is surrounded by other residential uses.
5. The Applicant's representatives propose the following:
 - The expansion of the existing pool cabana by 302 sq. ft.;
 - Replacement of the existing pool with a similar sized pool;
 - Construction / installation of a fire pit and spa;
 - Enlargement of the patio surrounding the pool; and
 - Alteration of the previously approved driveway.
6. Such a proposal requires potential Use Variance Relief and Bulk Variance Relief.
7. The Red Bank Zoning Board of Adjustment is statutorily authorized to grant the requested relief and therefore, the matter is properly before the said entity.
8. With regard to the application, and the requested relief, the Board notes the following:

- Approval of the within Application will not compromise the spirit or intent of the Board's prior 2001 Approval of the Application.
- The Board is aware that approval of the within Application will not create a new use at the site.
- Subject to the conditions contained herein, the improvements authorized herein will satisfy all Prevailing Building / Construction Code Requirements.
- The majority of the improvements authorized herein will not be readily visible from the public street.
- The majority of the improvements authorized herein are sufficiently shielded by a long row of existing evergreen trees (which are approximately 20 ft. tall.)
- The very significant shielding/landscaping which exists at the site (including existing fencing) help shield the improvements from the neighboring property owners.
- Per the professional testimony presented, the expanded cabana has been designed so as to visually maintain the continuity of the existing structure.
- The Board is aware that the existing pool already exists – and approval of the within Application will merely allow a similarly sized replacement pool to be installed at the site.
- The Board is aware that, generally speaking, pool use is a permitted Accessory Use in the RA Zone.
- The Application as presented requires a Variance for the Setback for the pool equipment. Specifically, a 10 ft. Pool Equipment Setback is required; whereas, in the within situation, the Applicant's representatives are proposing a non-conforming 8 ft. Pool Equipment Setback.
- The presumed intent of the Pool Equipment Setback is to ensure that pool equipment is not located so close to a neighboring property line so that the same will cause a nuisance for the affected neighbor.
- The Board is aware that in the within situation, even though the pool equipment will be setback a non-conforming 8 ft., the pool equipment will, nonetheless, be located entirely within the to-be-expanded cabana.

- Having pool equipment located entirely within the accessory structure certainly satisfies the spirit and intent of the Pool Equipment Setback Regulations.
- The totally enclosed nature of the pool equipment (which will be located inside of the to-be-expanded cabana) will certainly help minimize any potential visual / aesthetic / noise impact (associated with the within Application) on any adjacent property owner.
- Though the cabana (which will enclose the pool equipment) is setback only 8 ft. from the property line, the enclosed / shielded nature of the pool equipment will certainly minimize any potentially adverse impact on any neighbors.
- Any potentially adverse impact associated with the non-conforming Pool Equipment Setback is also mitigated by the presence of the extensive landscaping and shielding which already exists at the site (and which will, per a condition of the within approval, be perpetually maintained).
- The Application as presented requires a Variance for the Driveway Setback. Specifically, a 3 ft. Driveway Setback is required; whereas 0 ft. is provided on one property line. Towards that end, and per the testimony and evidence presented, the Board notes that the most impacted property is also owned by the Applicant, the Applicant's Trustees, or Agents thereof.
- The Board also recognizes that the existing Driveway Setback is, essentially, an existing situation, which is not materially being exacerbated as a result of the within approval.
- The replacement pool has been appropriately placed and landscaped so as to not unduly interfere with neighboring property owners.
- The replacement pool has been appropriately placed and landscaped so as to be visually inconspicuous from the adjoining roadway and / or from adjoining homes.
- Per prior testimony, relocation of the pool (to a different location) could potentially detrimentally interfere with the views of other surrounding property owners.
- The Application as presented requires a Variance for the height of the Accessory Structure. Specifically, 16 ft. is permitted; whereas 16.6 ft. is proposed. Under the circumstances, the Board finds that the said height deviation is de minimis in nature.

- Per the testimony and evidence presented, part of the justification for the Height Variance is so that the railings can comply with prevailing Building/Construction Code Regulations. The Board accepts and incorporates such an argument.
- Approval of the within Application will result in the expansion of the cabana by approximately 302 SF. Under the circumstances, and based upon the testimony and evidence presented, the Board finds that the said request is reasonable.
- The property was the subject of a Use / "d" Variance Application in or about 2001 (A-12). The said approval, among other things, authorized the construction of the cabana at the site. Any further expansion of the cabana requires Use / "d" Variance relief for the expansion of a non-conforming Use. Notwithstanding the need for a technical Use / "d" Variance for the expansion, the Board notes that the expanded cabana will not materially affect / impact the property, or any adjacent property owners.
- Subject to the conditions contained herein, the expanded cabana will not adversely impact any neighboring properties / owners / occupants.
- The Board is aware that the replacement pool approved herein will have the same general setbacks as the currently existing pool.
- Allowing the Applicant's representatives to replace the existing pool at the site (in the same general location, etc.) will not compromise the integrity of the overall zoning scheme.
- The Applicant's proposed improvements will not materially change the overall intensity of the site.
- The Applicant's proposed improvements will not materially change the overall single-family nature of the site.
- The Applicant's proposed improvements will not materially change the overall density at the site.
- The Applicant's proposed improvements will not materially change the parking demands for the site.
- The Applicant's proposed improvements will not materially change the amount of garbage generated at the site.
- The Applicant's proposed improvements will not materially change the ingress / egress route at the site.

- The Applicant's proposed improvements will not materially change the lighting situation at the site.
- The Applicant's proposed improvements will not materially change the level of noise generated at the site.
- The Applicant's proposed improvements will not materially affect the number of residential occupants at the site.
- The Applicant's proposed improvements will not materially affect the size, location, orientation of the existing dwelling unit at the site.
- The Applicant's proposed improvements will not change the size of the existing principal structure.
- The Applicant's proposed improvements will not change the height of the principal structure.
- The Applicant's proposed improvements will not change the location of the principal structure.
- The Applicant's proposed improvements will not change the orientation of the proposed structure.
- Subject to the conditions contained herein, approval of the within Application will not compromise the interests of the Borough of Red Bank.
- Subject to the conditions contained herein, approval of the within Application will not compromise the spirit / intent of the Board's initial 2001 Approval (A-12).
- Subject to the conditions contained herein, once the authorized improvements are constructed / installed, the site will not operate much differently than the site has historically operated over the last several decades.
- Subject to the conditions contained herein, approval of the within Application will not impair the character of the existing area.
- Subject to the conditions contained herein, the benefits associated with approval of the within Application outweigh any detriments associated therewith.
- Approval of the within Application will have no known detrimental impact on adjoining property owners and thus, the Application can

be granted without causing substantial detriment to the public good.

- The improvements authorized herein will not be entirely inconsistent with other improvements located within the Borough.
- Approval of the within Application will promote various purposes of the Municipal Land Use Law; specifically, the same will provide a desirable visual environment through creative development techniques.
- There were no known public objections associated with the within Application.
- Subject to the conditions contained herein, the benefits associated with approving the within Application outweigh any detriments associated therewith.
- The Application as presented, and in conjunction with the conditions noted herein, satisfy the statutory requirements of NJSA 40:55D-70(c) (Bulk Variances) and (d) (Use Variance.)

Based upon the above and for the other reasons set forth herein and during the Public Hearing Process, the Board is of the unanimous opinion that the requested relief can be granted without causing substantial detriment to the public good.

CONDITIONS

During the course of the Hearing, the Board has requested, and the Applicant has agreed, to comply with the following conditions:

- a. The Applicant's representatives shall comply with all promises, commitments, and representations made at or during the Public Hearing process.
- b. Unless specifically obviated herein, the Applicant shall comply with the terms and conditions of 2001 Approval (A-12).
- c. The Applicant shall be required to comply with all Prevailing Building / Construction Code Requirements.
- d. The expanded cabana shall not be utilized as a dwelling unit.
- e. The Applicant shall comply with the terms and conditions of the Review Memorandum issued from the Borough's Director of Planning and Zoning.

- f. The Applicant shall obtain any and all necessary permits as the Borough of Red Bank (and/or any other Agency having jurisdiction over the matter) may require.
- g. The landscaping / trees / shielding for the proposed improvements shall be perpetually maintained / re-planted as necessary (unless otherwise waived).
- h. The construction / installation shall be strictly limited to the plans which are referenced herein, and which are incorporated herein at length. Additionally, the construction / installation shall comply with prevailing Provisions of the Uniform Construction Code.
- i. The Applicant shall be subject to the review and approval of the Borough Engineer for grading, drainage and utilities.
- j. The applicant shall obtain any and all approvals (or Letters of No Interest) from applicable outside agencies – including, but not limited to, the Department of Environmental Protection, the Monmouth County Planning Board, and the Freehold Soil Conservation District.
- k. The Applicant shall, in conjunction with appropriate Borough Ordinances, pay all appropriate / required fees and taxes.
- l. This approval shall expire within two years unless Construction permits are obtained within this time frame.

BE IT FURTHER RESOLVED, that all representations made under oath by the Applicant's representatives and / or Agents thereof shall be deemed conditions of the approval granted herein, and any mis-representations or actions by the Applicant contrary to the representations made before the Board shall be deemed a violation of the within approval.

BE IT FURTHER RESOLVED, that the Application is granted only in conjunction with the conditions noted above - and but for the existence of the same, the within Application would not be approved.

BE IT FURTHER RESOLVED, that the granting of the within Application is expressly made subject to and dependent upon the Applicant's compliance with all other appropriate rules, regulations, and / or ordinances of the Borough of Red Bank, County of Monmouth, and State of New Jersey.

BE IT FURTHER RESOLVED, that the action of the Board in approving the within Application shall not relieve the Applicant of responsibility for any damage caused by the subject project, nor does the Board of Adjustment of the Borough of Red Bank, the Borough of Red Bank, or their agents / representatives accept any responsibility for the structural design of the proposed improvement or for any damage which may be caused by the development / construction / use / installation.

FOR THE APPLICATION: Lauren Nicosia, Eileen Hogan, Christine Irwin, Richard Angowski, Sean Murphy, Anne Torre and Stephanie Albanese.

AGAINST THE APPLICATION: None

ABSTENTIONS: None

FOR THE RESOLUTION: Lauren Nicosia, Eileen Hogan, Christine Irwin, Richard Angowski, Sean Murphy, Anne Torre and Stephanie Albanese.

AGAINST THE RESOLUTION: None

I hereby certify that the foregoing is a true copy of a Resolution adopted by the Red Bank Zoning Board of Adjustment on this 17th day of January, 2019.



Dina Anastasio, Zoning Board Secretary

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