

Bulk Variances and Design Waiver
David Vos
1685 Tilford Boulevard
Block 838, Lot 22.01
Zone: R-7.5 (Single-Family Residential) Zone
Application No. BA-2981-3/16

RESOLUTION OF APPROVAL
BRICK TOWNSHIP ZONING BOARD OF ADJUSTMENT
APPLICATION NO. BA-2981-3/16
July 20, 2016

File 2
App
BA-2981-3/16
Zoning
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WHEREAS, David Vos (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, and design waiver relief, pursuant to N.J.S.A. 40:55D-51, for lands known and designated as Block 838, Lot 22.01 on the official Tax Map of the Township of Brick and more specifically known as 1685 Tilford Boulevard, Brick, NJ 08723 (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 July 6, 2016, in the municipal building, 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, David Vos, is seeking variance relief to construct fencing along the southerly and westerly property lines of the Property and parallel to the southerly property

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line, which will connect with the southeast corner of the existing residential home on the property.

2. The Property is a corner lot which has approximately 26 feet of frontage along the westerly side of Tilford Boulevard and 150.00 feet of frontage along the northerly side of Laurelton Street and is situated in the R-7.5 (Single Family Residential) Zone. The Property is bounded to the west and north by residential properties. The Property contains a two-story framed dwelling with a wood deck and a garage.

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

- a. A bulk variance is required for the six-foot dog-ear pinewood fence proposed parallel to the southerly and westerly property line and parallel to the southerly property line connecting to the southeast corner of the home, where a four (4) foot high open fence is permitted pursuant to §245-33i of the Township Land Use Ordinance, and
- b. A setback of 0 (zero) feet from the southerly property line where a minimum setback of 12.5 feet is required.

4. The following design waiver relief is requested:

- a. The proposed fence along the southerly property line is located within the sight triangle, which is not permitted pursuant to §245-36H of the Township Land Use Ordinance.

5. The Board heard testimony from the Applicant, David Wos. Mr. Wos stated he wished to "box in" his side and back yards so that his children could play safely on the Property.

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Mr. Wos added that no trees will be removed from the Property and the proposed fencing will promote a desirable visual environment.

6. Brian Boccanfuso, P.E., Board Engineer, stated that the Applicant requires waiver relief because the proposed fencing encroaches upon the sight triangle located at the corner of Tilford Boulevard and Laurelton Street.

7. There were no members of the public who expressed any interest in the application.

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

1. This application before the Board requires bulk variance and design waiver relief in order to construct fencing along the southerly and westerly property lines of the subject property connecting with the southeast corner of the existing residential home 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, 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 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

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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.

4. The Board concludes that the irregularly shaped lot creates an extraordinary and exceptional condition and physical features that uniquely affect this property so that the strict application of the ordinance requirements regarding maximum fencing height would result in undue hardship with regard to the proposed fencing improvements. The Board concludes that the Applicant’s purpose for the construction of the proposed fencing is to provide buffering, privacy and safety for the subject residential Property. Consequently, the Board concludes that the Applicant has satisfied the “c(1)” affirmative criteria sufficiently to permit the granting of the bulk variances requested. The Board also concludes that the construction of the fencing along the

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southerly and westerly property line will advance the purposes of the Municipal Land Use Law set forth in N.J.S.A. 40:55D-2a, e and i. The Board concludes that the fencing along the westerly side line will promote safety in accordance with N.J.S.A. 40:55D-2a. In accordance with N.J.S.A. 40:55D-2e, the Board also concludes that the fencing will contribute to the well-being of the neighboring community by preserving privacy. The Board also concludes that the design of the fencing will advance the purposes of the Municipal Land Use Law set forth in N.J.S.A. 40:55D-2i as it represents an attractive design. Finally, the Board concludes the benefits of granting the requested bulk variances will substantially outweigh any detriment. The Board concludes, therefore, that the Applicant has satisfied the “c(2)” affirmative criteria sufficiently to permit the granting of the bulk variances requested.

5. Turning next to the negative criteria, the Board concludes the Applicant’s proposal to construct fencing along the southerly and westerly property lines will help to enhance public safety and general welfare by providing a buffer from Tilford Boulevard and Laurelton Street and will not create a substantial detriment to but, rather, will advance the purposes of the Township Zoning Ordinance for this single-family residential zoning district and the Township Master Plan. As such, the requested variances can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the Zone Plan or the Zoning Ordinance. The Board concludes, therefore that the Applicant has satisfied the negative criteria sufficiently to permit the granting of the bulk variances requested.

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6. The Board concludes that the design waiver relief pursuant to N.J.S.A. 40:55D-51 is appropriate in order for the Applicant to enhance safety of his children on the Property, and, thus, strict compliance with the requirements of the Zone Plan would cause undue hardship.

NOW, THEREFORE, BE IT RESOLVED, by the Brick Township Zoning Board of Adjustment on this 20th day of July, 2016, that the action of the Board taken on July 6, 2016 granting Application No. BA-2981-3/16 of David Vos for bulk variance relief pursuant to N.J.S.A. 40:55D-70c and design waiver relief pursuant to N.J.S.A. 40:55D-51 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. There shall be no tree removal associated with this approval.

BA-2981-3/16
David Wos

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VOTE ON MEMORIALIZATION

MOVED BY: D. White

SECONDED BY: L. Sorrentino

VOTING IN THE AFFIRMATIVE: L. Sorrentino, S. Leitner, C. Anderson,
J. Schneider, D. White, H. Langer

INELIGIBLE: D. Raftery, E. Della Volle

IN-CONFLICT:

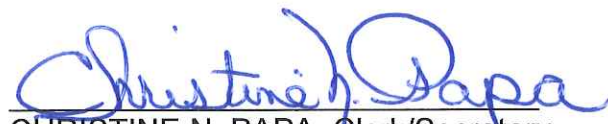
Absent: F. Mizer

ABSTAINING:

PRESENT BUT NOT VOTING :

CERTIFICATION

I, CHRISTINE N. PAPA, 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 20th day of July, 2016.


CHRISTINE N. PAPA, Clerk/Secretary
Planning Board/Board of Adjustment

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 applicant's 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.
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