

BOARD OF APPEALS CASE NO. 5069

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BEFORE THE

APPLICANT: Edward V. Giannasca, II

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ZONING HEARING EXAMINER

REQUEST: Variance to construct an in-ground swimming pool with accessory structures within the NRD District; 3201 Jourdan Court, Abingdon

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 8/2/00 & 8/9/00

HEARING DATE: September 6, 2000

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Record: 8/4/00 & 8/11/00

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ZONING HEARING EXAMINER'S DECISION

The Applicant is requesting a variance pursuant to Section 267-41D(5)(e) and (6) of the Harford County Code to allow an in-ground pool with accessory structures to encroach within the Natural Resource District (NRD) and a variance pursuant to Section 267-26C(6) of the Harford County Code to allow decking within a recorded easement in an R1/Urban Residential District.

The subject parcel is within the Woodland Run subdivision at 3201 Jourdan Court, Abingdon, Maryland 21009. The parcel consists of 0.251 acres, more or less, is zoned R1/COS R1 Urban Residential/Conventional w/ Open Space. NRD areas are present on the property. The parcel is entirely within the First Election District.

Mr. Edward Giannasca II appeared and testified that he was the Applicant and owner of the subject property. The witness began by stating that all of the facts stated in the Department of Planning and Zoning's (Department) Staff Report dated August 30, 2000 were accurate and he adopted those findings and recommendations as his own. The subject property is located at the termination of a cul-de-sac and has NRD areas on two sides of the property. A two-story frame and brick dwelling with 2-car garage, deck and patio improve the property. The parcel is nicely landscaped and a utility easement exists in the NRD area to the right side of the dwelling. A contractor cleared that area when the utilities were placed there.

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The lot is small, consisting of 0.251 acres. The area proposed for the pool is presently an area of lawn that is the only relatively flat area of the parcel. The lot slopes away from the house to the rear and side NRD areas and has a two-tiered effect. The drop in elevation is 5 feet over a 40-foot area. The area proposed for the pool is part of the area previously leveled and graded as part of the installation of the utility easement. The Applicant intends a kidney shaped pool surrounded by concrete decking to give a pool-like or lagoon-like appearance. The witness indicated that the size and grade of the lot limit the available locations for the pool and make the parcel unique. There are very similar pools in his neighborhood and without the variance approvals there are no other possible locations for the pool.

Mr. Anthony McClune appeared and testified on behalf of the Department of Planning and Zoning and indicated that the Department had thoroughly investigated this application and visited the site. The Department's evaluation made the following observations:

1. Because of the location of the utility easement and NRD areas, the subject parcel has a buildable envelope substantially smaller than its $\frac{1}{4}$ acre lot size. Additionally, the rear yard slopes away from the house to a flat area to the rear of the property. That flat area is an ideal location for something like a pool because of its grade. The Department concluded that the parcel is topographically unique and further, that the topographical features serve to constrain the lot and create practical difficulty for the property owner. Mr. McClune stated that there would be no adverse impact to adjoining properties and, because of the location of the property on the cul-de-sac, it is likely that adjoining property owners or passersby will not see the pool area.
2. The decking will not in any way have an adverse impact on the NRD area. The area has already been cleared and graded and can be continuously disturbed because of the presence of the utility easement within the NRD.
3. The Department of Public Works has indicated by letter that it has no objection to the pool construction in the location proposed.
4. The Harford Soil Conservation District, by letter, has indicated no objection to the pool construction at the location proposed provided sediment control measures are in place and construction is done in a manner that avoids pooling of standing water.
5. Lastly, the Homeowner's Association of Woodland Run, by letter, indicated it's approval of the pool construction.

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There were no persons who appeared in opposition to the request.

CONCLUSION:

The Applicant is seeking a variance pursuant to Section 267-41D(5)(e) to allow an in-ground pool with accessory structures to encroach within the NRD District and a variance pursuant to Section 267-26C(6) to allow decking within a recorded easement in an R1/Urban Residential District.

Section 267-41D(5)(e) provides:

“Nontidal wetlands shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in areas adjacent to wetlands.”

Section 267-41D(6) provides:

“Variances. The Board may grant a variance to Subsection D(3), (4) or (5) of the Natural Resources District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resources District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources.”

Section 267-26C(6) provides:

“No accessory use or structure, except fences, shall be located within any recorded easement area.”

The Harford County Code permit variance, pursuant to Section 267-11, which provides:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

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The Hearing Examiner concludes that the property is topographically unique. It is small and constrained by existing NRD areas as well as sloping. There is no other practical location on the property for a pool and the encroachment to the NRD buffer is minimal. Grading and clearing for utility easement have already disturbed the existing NRD buffer and the Applicant's proposal will not further disturb sensitive natural features. The decking, similarly, is really an aesthetic enhancement and should have no impact on the utility easement in place. The Applicant understood that there may come a time when the decking had to be removed in that area to allow access to the utilities located within the easement. Pools are allowed by the Code and disturbance to the NRD is similarly allowed by variance; therefore, the purposes of the Zoning Code will not be impaired by a grant of these variances, nor will such a grant imperil the public health, safety or welfare. It appears that the proposed pool location would, in fact, have the least impact of any other potential location.

For the reasons discussed herein, the Hearing Examiner recommends approval of the requested variances subject to the following conditions:

1. The Applicant shall submit a detailed landscaping plan for the area between the pool and the fence, in the rear and side yard areas, to the Department of Planning and Zoning.
2. The Applicant shall obtain all necessary permits and inspections.
3. During and after construction, the Applicant shall comply with the requirements imposed by the Soil Conservation District in their letter dated August 2, 2000 and included as evidence in this appeal.

Date **SEPTEMBER 20, 2000**

William F. Casey
Zoning Hearing Examiner