

APPLICANTS:
Nicholas and Elizabeth Liberatore

REQUEST: A variance to permit an above-ground swimming pool within the required 10 foot setback from the property line

HEARING DATE: June 2, 2004

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5420

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Nicholas and Elizabeth Liberatore

LOCATION: 3714 Mainship Way, Waterview at Long Bar Harbor, Abingdon
Tax Map: 62 / Grid: 3D / Parcel: 834 / Lot: 10
First Election District

ZONING: R3 / Urban Residential

REQUEST: A variance pursuant to Section 267-26C(3) of the Harford County Code, to construct an above-ground pool within the required 10 foot setback from the property line (5 foot setback proposed).

TESTIMONY AND EVIDENCE OF RECORD:

Nicholas Liberatore testified in support of his application for a variance to construct an above-ground, 24 foot by 15 foot swimming pool, which would impact into the required 10 foot side yard setback by 5 feet.

Mr. Liberatore believes his property is unusual in that it is pie shaped, with the backyard side lot lines narrowing in such a way so as to constrict the useable area of his back yard. The topography of the property also falls sharply to the back, which further limits its usability. The topography is so limiting that Mr. Liberatore constructed a concrete block retaining wall in order to help create more useable space.

Mr. Liberatore indicated the only possible spot for the pool, because of the topography and shape of the backyard and the existing retaining wall, is the proposed location, shown on the Site Plan attached to the Department of Planning and Zoning Staff Report as Attachment 2.

Mr. Liberatore has spoken to his neighbors, and no neighbor expressed any objection to the use. He does not believe the pool would cause an adverse impact to the neighborhood. In fact, there are other existing above-ground and in-ground pools within the neighborhood.

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Mr. Liberatore also indicated that he was on the Architectural Review Commission of his subdivision. Spas and pools are allowed within the subdivision.

Next for the Department of Planning and Zoning testified Nancy Lipski.

Ms. Lipski expanded upon the Department’s Staff Report, indicating that the lot is a divided corner lot, which is an unusual configuration for the subdivision in which it is located. She further described the retaining wall in the backyard, constructed in order to help increase the amount of useable backyard space. The construction and placement of this wall also reduces the available area, which forces the pool to be located as proposed by the Applicant.

Ms. Lipski feels there will be no adverse impact to the neighborhood.

No opponents appeared or presented testimony in opposition.

APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 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 Part 1 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 Part 1 or the public interest.

B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.

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- C. *If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

Section 267-26D(3) of the Harford County Code states:

- “(3) *Recreation facilities, such as swimming pools and tennis courts, if the facilities are used by the occupants or guest of the principal use and no admission or membership fees are charged, provided that the edge of the facility, not including security fences, shall be located not less than ten (10) feet from any side or rear lot line. For community pools and tennis courts, the edge of the facility shall be located not less than fifty (50) feet from any residential unit or side and rear lot line.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The application and testimony submitted by the Applicants support a finding that the subject property is unusually shaped in that it is pie shaped, with narrowing side lot lines, which together with the existence of a concrete retaining wall operate in such a way so as to constrict the available backyard of the subject property. The property is different from others in the neighborhood in that it exhibits these limited characteristics.

As a result the Applicants suffer the hardship of being unable to construct a pool similar to others in the neighborhood, and to others throughout the subdivision. The variance requested, being an encroachment of 5 feet into each of the required side yard setbacks, is the minimum necessary to grant the relief requested. There would be no adverse impact to the neighbors or neighborhood.

CONCLUSION:

Accordingly, for the above reasons it is recommended the requested side yard variances be granted.

Date: June 28, 2004

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner