

**RESOLUTION  
ZONING BOARD OF ADJUSTMENT  
BOROUGH OF DEMAREST**

**FILE NO: 820.21**

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IN THE MATTER OF THE APPLICATION OF:

JASON AND RACHEL LIBERMAN FOR VARIANCES  
RELATING TO BLOCK 76; LOTS 4.02 AND 4.03  
COMMONLY KNOWN AS 605 PIERMONT ROAD,  
DEMAREST, NEW JERSEY

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BE IT RESOLVED, by the Zoning Board of Adjustment of the Borough of Demarest that the following Procedural History, Findings of Fact, Conclusions of Law and Conclusion/Determination be and are hereby adopted:

**PROCEDURAL HISTORY**

The within application was commenced by the filing of an application for variances, as follows:

<b>Variance</b>	<b>Permitted</b>	<b>Existing</b>	<b>Sought</b>	<b>Deviation</b>
Building Coverage	15% (3,424.5)	14.3%	16.1% (3,680)	1.1% 255.5sf
Front Yard (Pool)	50'	NA	21'	29'
Front Yard (Retaining Wall)	50'	NA	10'	40'
Fence*	4'/50% open	NA	5'/not open	1'
Pool in Front Yard**	NO	NO	YES	NA

\*A conforming fence would not be "pool-compliant" under applicable law and construction codes.

\*\*§175-19(B)(6) "An accessory use, building or structure in any residence district on a lot between two (2) parallel streets shall comply with the locational regulations or restrictions for an accessory building or improvement as applicable to each abutting street, including all front, rear and side yard requirements for each street, notwithstanding upon which street the principal building fronts". §175-19(B.7) states "No swimming pools shall be located within any front yard".

## **FINDINGS OF FACT**

Public hearing was held on October 19, 2021 by the “Zoom” digital meeting platform. The Application was presented by the Applicant through counsel, Allyson M. Kasetta, Esq., of the Law Firm of Prime & Tuvel (“Kasetta”). The following documents were considered by the Zoning Board in review of this matter:

- a) Aerial Photograph of Property Area;
- b) Site Plan consisting of one (1) sheet, titled “Site Plan for Liberman Residence”, prepared and signed by Christopher Lantelme, P.E., of Lantelme, Kurens & Associates, P.C. dated June 30, 2021;
- c) Architectural Plans consisting of fourteen (14) sheets, titled “Liberman Residence”, prepared and signed by Mary Fitzpatrick Scro, R.A., of Z+ Architects, LLC, dated August 20, 2021;
- d) Variance Application for 605 Piermont Road and attachments.

The following witnesses appeared and offered sworn testimony on behalf of the Applicants:

1. Sean McClellan, PE (hereinafter, “McClellan”);
2. Michael Scro, AIA (hereinafter, “Scro”).

The subject property is located in the Residence B Zone within the municipality. The address of the Property is 605 Piermont Road and is also designated as Block 76; Lots 4.02 & 4.03 on the Borough’s Tax Assessment Map of the Borough (hereinafter, “the Property”).

The Applicants, through counsel, Kasetta, presented the matter and provided an overview and background of the Application and marked all relevant Exhibits into evidence.

The Applicant seeks a 2-story addition to the existing home as well as the addition of a pool and patio.

McClellan testified as to the existing and proposed conditions at the Property. He testified that the Property is a “through lot” and fronts on both Piermont Road and an unimproved section of Margaret Court. The dwelling front faces Piermont Road and that is the “visible” or “apparent” “front” of the Property. However, for zoning purposes both the Piermont Road and Margaret Road frontages constitute “front-yards”. He testified that the Property presently has a two (2) story, single-family frame dwelling with detached garage, macadam driveway, brick walkways, and timber deck and that the Applicant sought to construct an in-ground pool and patio in the rear of the dwelling (fronting Margaret Court) and a 1,375sf two (2) story addition to the side of the existing dwelling. The Applicant also seeks to expand a portion of the driveway and remove the garage and gravel drive in the yard fronting on Margaret Court thereby removing existing Building Coverage and Lot Coverage. An in-ground pool is permitted as an accessory structure.

McClellan confirmed the requirement for the variances set forth above. He advised that the Applicant could provide for a 5' fence that was 50% open and thereby be in compliance with State pool code requirements; however, the height of the fence requires a variance because it is located in a "front-yard". He testified that the retaining wall in the Margaret Court yard setback was required and that the pool and patio were of an appropriate size. He testified that the improved portion of Margaret Court was 38' from the nearest corner of the lot. He noted that all of the Margaret Court frontage of the Property fronts on a "paper street".

Scro testified as the Project Architect. He testified as to the dimensions of the addition to the home and the layout of the addition. He testified that the addition would provide 2 additional bedrooms to the existing residence.

### **CONCLUSIONS OF LAW; RESOLUTION**

The application before the Board is for the location of a pool in a Front Yard setback. The Property has 2 Front Yard setbacks, though the apparent and usable "backyard" is on the Margaret Court frontage. This condition is uncommon and presents a unique hardship for the Property owner in acquiring a traditional, usable, "backyard". Pursuant to Borough Ordinance 175-19(B)(7) a pool is not permitted in a Front Yard and this Property clearly has 2 "Front Yards".

The Board finds that the Applicant seeks the variance for a pool in a front yard pursuant to NJSA 40:55D-70(c)(1). The Board finds in its review that the variance was justified and should be granted for the reasons set forth herein. The Board found that the variance could be granted without any detrimental impact to the adjoining property owners or the zone plan and that the grant would not compromise the intent and purpose of the zoning ordinance. The Board found that the shape and configuration of the Property; the lack of a rear yard; the presence of two front yards; and the configuration of the Property created a unique hardship and practical difficulty. The Property simply has no Rear Yard Setback as defined in the Ordinance.

The Board finds that the following conditions on approval are required:

1. The Applicant shall demolish the existing garage and driveway in accordance with the plans presented prior to the issuance of a Certificate of Occupancy.
2. Applicant shall provide generous landscaping in front of the retaining wall that faces Margaret Court. The amount and type of this landscaping shall be in the discretion of the Board Engineer.
3. There shall be no fence placed at the top of the retaining wall. Fencing on the Margaret Court frontage shall be placed on the front Property Line. Such fencing shall be pool compliant and run between the 2 property corners on the western side of the Property.
4. Replacement trees – as specified by the Board Engineer or the Shade Tree Commission (if applicable) shall be planted to replace all trees proposed for removal.

Motion was made by:  
Motion was seconded by:

Roll Call to Approve:

Accordingly, a majority of the Board voted to approve the application as presented.

I hereby certify that the foregoing is a true copy of the Resolution adopted by the Zoning Board of Adjustment at its meeting held on

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Marti Francis, Board Secretary