

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

**FILE NO: 811-21  
PREVIOUSLY DENIED: 803-20**

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IN THE MATTER OF THE APPLICATION OF:

DAVID SUGARMAN FOR VARIANCES RELATING  
TO BLOCK 84.05; LOT 1 ALSO KNOWN AS  
1 IRENE COURT, 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>
Pool in Front Yard (See, 175-9(B)(7))*	NO	NO	YES	NA

\*The Property fronts on 3 streets. The Borough has characterized this type of Application as a "pool in a Front Yard". The Board notes that the definition of "Lot, Corner" applies to a lot that abuts "two or more" streets and requires that the approving authority designate the front of the building and "then the yard opposite ...shall meet rear yard minimum requirements". See also, 175-19(B)(6).

**FINDINGS OF FACT**

Public hearing was held on June 15, 2021 by the "Zoom" digital meeting platform. The Application was presented by the Applicant through counsel, Matthew G. Capizzi, Esq.

The following documents were considered by the Zoning Board in review of this matter:

1. Application for Variances;
2. Exhibit A-1, Site Plan, prepared by Lantelme, Kurens & Associates, PC, dated July 10, 2020 revised through May 3, 2021;

3. Exhibit A-2, Survey, prepared by Lantelme, Kurens & Associates, PC, dated July 6, 2020;
4. Exhibit A-3, Board Resolution of Denial No: 803-20.

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

1. Sean McClellan, PE (hereinafter, "McClellan")

The subject property is located in the Residence BB Zone within the municipality. The address of the Property is 1 Irene Court and is also designated as Block 84.05; Lot 1 on the Borough's Tax Assessment Map of the Borough (hereinafter, "the Property").

The Applicants, through counsel, Matt Capizzi, Esq. ("Capizzi"), presented the matter and provided an overview and background of the Application. The Applicant introduced as Exhibit A-3 a prior Resolution of Denial with regard to the construction of a pool with significant accessory features, including a large deck and pergola, requiring numerous variances.

Capizzi advised the Board that the present Application was significantly reduced, required far less variances and eliminated the most intrusive features of the previous Application. Specifically, he noted that Lot Coverage and Building Coverage were conforming and that neither the pool nor patio were located in the front yard setback.

McClellan was sworn in and confirmed the aforesaid information. Thereafter, he testified that the Property was an undersized, rectangular, lot containing an existing home. The Lot – and the home thereon – has frontages on Pine Terrace; Lake Road and Irene Court. The front of the home faces Irene Court and that is the mailing address. The apparent rear of the home faces Pine Terrace and one side of the home faces Lake Road. Depending on the interpretation of the Ordinance, the Property has 3 Front Yards or a Front and a Rear Yard. Regardless of the classification, the Property faces 3 streets.

The result is a Lot that forms a peninsula, has streets on 3 sides, and has 3 apparent front yards. The northern Lot line adjoins Lot 2 in Block 84.05 and the home is located 27.5' from the northern lot line.

Based on the configuration of the home and lot, the apparent or "usable" back yard faces Pine Terrace. That yard presently contains a paver patio, grill, landings, and stairs. The existing paver patio is located in the setback and it is proposed to be scaled down to a smaller size.

The Applicant seeks a 16' x 36' swimming pool with spa and a reduced patio area. No variances are required except for the placement of a pool in a front yard.

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

The application before the Board is for the location of a pool in a Front Yard setback. Other than a designated Side Yard setback, the subject Property only has Front Yard setbacks facing three

sides of the house. 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 3 “Front Yards”. Additionally, the Board notes that the definition of “Lot, Corner” also applies to a lot that abuts “two or more” streets and requires that the approving authority designate the front of the building and “then the yard opposite ...shall meet rear yard minimum requirements”. See also, 175-19(B)(6). In the case at hand, it appears that these 2 ordinances are in conflict. The first, provides that the Pine Street setback is a Front Yard. The second provides that the Pine Street setback – being opposite a designated front yard – is a rear yard.

The Board makes no interpretation of the combined effects of these 2 Ordinances.

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 three front yards; and the peninsula configuration of the Property created a unique hardship and practical difficulty. The Property simply has no Rear Yard Setback as defined in the Ordinance.

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 \_\_\_\_\_, 2021.

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Marti Francis, Board Secretary