

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

**FILE NO: 813.21**

---

IN THE MATTER OF THE APPLICATION OF:

ANDREW GLASER FOR VARIANCES RELATING  
TO BLOCK 84.06; LOT 5 COMMONLY KNOWN  
AS 10 CAROL COURT, DEMAREST, NEW JERSEY

---

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>
Front Yard Setback (Pool)	50'	NA	25'	50%
Fence*	4'/50% open	NA	5'/not open	25%
Pool in Front Yard**	NO	NA	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, 2020 by the "Zoom" digital meeting platform. The Application was presented by the Applicant through counsel, Matthew G. Capizzi, Esq. The Board considered the following in their review of the matter:

- a) Aerial Photograph of Property Area;
- b) Site Plan consisting of one (1) sheet, titled "Pool Plan", prepared and signed by Hubschman Engineering, PA, revised through October 5, 2021;
- c) Variance Application for 10 Carol Court with attachments.

Michael Hubschman, PE (hereinafter, "Hubschman") appeared and offered sworn testimony on behalf of the Applicants.

The subject property is located in the Residence B Zone within the municipality. The address of the Property is 10 Carol Court and is also designated as Block 84.06; Lot 5 on the Borough's Tax Assessment Map of the Borough (hereinafter, "the Property").

The Applicants, through counsel, Capizzi, presented the matter and provided an overview and background of the Application and marked all relevant Exhibits into evidence. The Property contains a single family residence. The Applicant seeks the addition of an 18' x 38' pool and 280 additional square feet of patio area. Various redesigns of the proposed pool and patio have assured that the Improved Lot Coverage at the Property is conforming.

Hubschman testified as to the existing and proposed conditions at the Property. He testified the Property fronts on Carol Court and Pine Terrace and is approximately 14% undersized. He testified that, pursuant to Ordinance, there are technically two "Front Yards" on the Property, in all other regards the "front" of the home faces Carol Court. He testified that the Property is fully developed with a single family home and further testified as to the proposed pool and patio improvements as designated upon the Pool Plan. He testified that no additional variances were required except for those set forth herein. An in-ground pool is permitted as an accessory structure.

Hubschman 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.

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

The application before the Board is for the location of a pool in a Front Yard setback. The Property has two Front Yard setbacks, though the apparent and usable "backyard" is on the Pine Terrace frontage. The requested pool and patio are permitted accessory uses in the zone and common appurtenances to a single family home. The "through street" is an uncommon condition 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 two "Front Yards" and two "Side Yards". A literal reading of the Ordinance would mean that the Property has no location for any traditional "backyard" uses.

The Board finds that the Applicant seeks the variance for a pool in a front yard and front yard

setback requirements 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 unique configuration of the Property created a unique hardship and practical difficulty. The Property simply has no Rear Yard Setback as defined in the Ordinance and without a variance the Applicant could not use any of the permitted and customary uses of a back yard.

The Board also finds that the Applicant's variance for "fence height" should be granted. It appears that the Borough's fence height ordinance contradicts State Code requirements for a "pool fence". Finally, the request for a fence that is not 50% open has been withdrawn and the Applicant shall comply with the 50% open requirement of the Fence Ordinance.

The Board finds that the following condition on approval is required:

1. The Applicant's pool fence shall, to the greatest extent possible, "match" the adjoining fence located on a neighbor's property.

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

---

Marti Francis, Board Secretary