

**ZONING BOARD OF ADJUSTMENT
BOROUGH OF DEMAREST**

FILE NO. 772-17

IN THE MATTER OF THE APPLICATION OF:

LAVIE MANAGEMENT CO., LLC FOR VARIANCES RELATING
TO BLOCK 116; LOT 127.02 ALSO KNOWN AS
354 HARDENBURGH AVENUE, 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:

Variance	Permitted	Existing	Sought	Deviation
Side Yard To Pool	25'	22.5'	22.5'	10%
Rear Yard (Pool Equipment)	10'	NA	2'	80%
Pool in Side Yard	No	Yes	Yes	
Wall Height (Setback)	2'	N/A	4'	100%

FINDINGS OF FACT

Public hearing was held on October 17, 2017 and November 21, 2017 in the Council Chambers of the Demarest Municipal Building. The Application was presented by Stuart Liebman, Esq., of the Law Firm of Wells, Jaworski, Liebman, LLP ("Liebman").

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

1. Application for Variances, dated August 24, 2017;
2. Exhibit A-1, Site Plan, prepared by Hubschman Engineering, dated August 15, 2017;
3. Exhibit A-2, Aerial Photograph;

4. Exhibit A-3, Color Site Plan;
5. Exhibit A-4, Existing Condition Plan;
6. Exhibit A-5, Landscape Plan;
7. Exhibit A-6, Revised Site Plan;
8. Exhibit A-7, Property Photographs.

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

1. Michael Hubschman, PE, PP ("Hubschman");
2. Richard Zimmer, LA (Zimmer)

The subject property is located in the Residence Zone A within the municipality. The address of the Property is 354 Hardenburgh Avenue and it is also designated as Block 116; Lot 127.02 on the Borough's Tax Assessment Map of the Borough (hereinafter, "the Property").

Liebman provided some background with regard to the Property and the construction thereon. He advised the Board that a prior owner of the Property "MB Construction" (hereinafter, "MB") had constructed additions to the existing home on the Property and provided numerous other improvements – including the construction of the pool. The pool was not constructed in the location and orientation designed on the approved plans and there is some question as to whether the pool complied with the ordinance on the plans presented. Subsequently, it is alleged that MB deviated from the approved plans. Notwithstanding this, it is believed that MB undertook improvements with permits and obtained a Certificate of Occupancy for the purposes of Transfer to the Applicant and current owner. There is some question if a Certificate of Occupancy for the pool was obtained. During the initial public hearing, no documents regarding these issues were presented. However, such documents were circulated between the first and second hearings. While they offer information, none are dispositive.

Subsequent to that construction, the Property was transferred to the Applicant and it was discovered that:

1. The Pool had been located in the side yard;
2. The Pool had been located 22.5' from the side lot line, where 25' is permitted.

In addition to the above variances, the Applicant sought additional variances. However, subsequent to the withdrawal of several of these variances, the only "new variance" sought by the Applicant was for retaining walls of 4'.

Hubschman testified that the Applicant sought variances for the pool to be in its present location. However, he also noted that the location of the pool at 22.5' from the Side Property Line – rather than 25' – was shown on the original plans and was included in the original Building Permit. There appears to be no question that the distance from the Side Yard Setback line has been previously permitted.

Hubschman further testified that this variance was minimal, permitted by the Borough, and that the

Applicant had acted in reliance on that permit. He also testified that there was significant hardship to require the relocation of the pool at this time.

During the course of pool construction, it appears that the Builder "reoriented the pool" and as a result it was constructed partially in the side yard. This construction is not permitted. There is some question as to how far the pool was into the side yard and this amount varies between a few feet and 15', depending on how the rear line of the house is determined. The pool is not permitted in the side yard. However, at the time of transfer, the Applicant received a Certificate of Occupancy and there was no other "flagging" of the pool as being non-conforming or located in the side yard.

Hubschman testified that there was no detriment to the public good or the zoning ordinance if the pool is permitted to remain in its present location. He also testified that the construction of the requested retaining walls would create a benefit and help screen the pool from neighbors. Zimmer testified at length on the screening of the pool from the side yard, but more particularly, on the screening of the pool from the street and other properties.

Pool equipment is located 2' from the Rear Property Line, where 10' is required. Hubschman testified that 2' is sufficient in that it is against a wide "gore" that runs behind the house and assures that there is a buffer between the property and the homes behind. The Board notes that the lots behind the home are nearly 400' deep.

CONCLUSIONS OF LAW; RESOLUTION

The application before the Board is for 2 variances related to the location of the existing pool, a variance as to wall height, and a variance for the location of the pool equipment.

The Applicant seeks bulk variances pursuant to NJSA 40:55d-70(c)(2) and indicates that the benefits of the requested variances outweigh any detriments and that there is no detriment to the purposes and intents of the zoning ordinance.

As a result, the requested bulk variances are granted.

The foregoing approvals are subject to the following conditions:

1. Pool Equipment, originally proposed near the side yard property line, shall be relocated approximately 2' off the rear property line.
2. Applicant shall install such seepage pits and drainage improvements as are designated on final plans or as may be recommended by the Board Engineer. The Applicant's Engineer shall supply all such calculations requested by the Board Engineer. Both the Applicant and Board Engineer shall be present during examination of "test pits".
3. Fences shall be conforming to Borough Ordinance. The within Resolution grants no variances as to fences.
4. There shall be sufficient planting and screenings between the pool area and Hardenburgh Avenue so as to fully and thoroughly buffer the pool from being visible from Hardenburgh Avenue. At a minimum, this shall be undertaken by the plantings shown on the Landscape

Plan which may be supplemented as the request of the Board Engineer.

5. Applicant shall assure that the swale on the property to the West of the subject Property shall be raked and graded, by hand, to assure proper functioning. Inlets on the west side of the Property, presently specified at 12' x 12' shall be increased to 18' x 18'.
6. Pool, Patio and Property lighting shall be of low height and intensity and shall be approved by the Board Engineer. There shall be no "floodlights" on the home utilized to illuminate the pool area.

Motion was made by: S. Park
Motion was seconded by: R. Corrado

Roll Call to Approve:

	YES	NO	ABSTAIN
Ms. Hayden, Chair	X		
Mr. Woods, Vice-Chair			Absent
Mr. Barber			Absent
Mr. Press	X		
Mr. Corrado	X		
Mr. Park	X		
Mr. Morrison			Absent

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 December 19, 2017.


Diane Frohlich, Board Secretary