

<b>BOARD OF APPEALS CASE NO.</b>	*	<b>BEFORE THE</b>
<b>APPLICANTS:</b>	*	<b>ZONING HEARING EXAMINER</b>
<b>REQUEST: Variance to construct an in-ground swimming pool, retaining wall and shed within the front yard setback;</b>	*	<b>OF COUNTY</b>
	*	
	*	<b>Hearing Advertised</b>
	*	<b>10/16/02 &amp; 10/23/02</b>
<b>HEARING DATE: November 18, 2002</b>	*	<b>10/18/02 &amp; 10/25/02</b>
	*	

\* \* \* \* \*

## **ZONING HEARING EXAMINER'S DECISION**

The Applicants are requesting a variance, pursuant to Section 267-26C(4) of the County Code, to allow an in-ground pool, retaining wall and shed within the required front yard setback in an R2 District (40 feet required, 20 feet proposed).

The subject parcel is located at within the subdivision and is more particularly identified on Tax Map 49, Grid 2D, Parcel 285. The parcel consists of 0.25 acres, is zoned R2/Urban Residential and is entirely within the Third Election District.

The applicant appeared and testified that he and his wife propose to add an in-ground pool with shed in the rear yard of their home. A retaining wall needs to be constructed because of the existing slope of the property. The pool will be 19½ feet by 34 feet in dimension and the shed proposed is about 75 square feet. The property, according to the applicant is unique because it is subject to two front yards and consequently, two front yard setbacks. The house fronts on the Court but backs up to another Road. The rear property line is forested by evergreen trees planted in double rows about 16 feet in width with an average height of 25 feet. These trees provide complete screening to the rear of the property. The Applicant testified that other homes in his neighborhood only have one front yard setback and many of them have pools similar in size and shape as the one he proposes. The witness did not believe any adverse impact would result if the requested variance were granted.

**Mr. Anthony McClune appeared on behalf of the Department of Planning and Zoning. Mr. McClune agreed that the subject property was unique due to the occurrence of two front yard setbacks that impact this property. Mr. McClune indicated that more recent developments, recognizing the constraints that would result from two front yards, have provided 10-15 foot buffer strips that are generally owned in common by the community. In those instances where a community owned buffer strip exists, the parcels are only subject to the rear yard setback. If the community here had the foresight to provide that buffer strip, this Applicant would have no need for a variance. Based on that finding the Department concluded that the proposal was consistent with the intent and purposes of the Code and would have no adverse impacts.**

**There were no persons that appeared in opposition to the request.**

**CONCLUSION:**

**The Applicants are requesting a variance pursuant to Section 267-26C(4) of the County Code, to allow an in-ground pool, retaining wall and shed within the required front yard setback in an R2 District (40 feet required, 20 feet proposed).**

**County Code Section 267-26C(4) provides:**

**“No accessory use or structure shall be established within the required front yard, except agriculture, signs, fences, walls or parking area and projections or garages as specified in § 267-23C, Exceptions and modifications to minimum yard requirements.”**

**County Code, Section 267-11 permits variances and provides:**

**“Variances from the provisions or requirements of this Code 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 Code 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 Code or the public interest.”**

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In the opinion of the Hearing Examiner, the parcel is unique. It is subject to two front yards that is quite an unusual happenstance in County. Most developers have provided buffer strips that eliminate such constraints. Unfortunately the developer of the neighborhood did not provide this buffer which results in the need for the requested variance. Under the circumstances the hearing Examiner agrees with the Department of Planning and Zoning and the Applicant that no adverse impact would result from an approval of the requested variance nor would the purposes of the Code be impaired.

For the foregoing reasons, the Hearing Examiner recommends approval subject to the following conditions:

1. The Applicant obtain any and all necessary permits and inspections.
2. The Applicant submit to the Department of Planning and Zoning, for its review and approval, a landscaping plan.

Date DECEMBER 13, 2002

William F. Casey  
Zoning Hearing Examiner