

IN THE MATTER OF : BEFORE THE  
GALLOWAY POOL : HOWARD COUNTY  
SERVICES, INC. : BOARD OF APPEALS  
 : HEARING EXAMINER  
Petitioner : BA Case No. 22-032V

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**DECISION AND ORDER**

On March 28, 2023, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the Petition of Galloway Pools Services, Inc. (Petitioner) for a variance to reduce the minimum accessory structure and use side yard setback, on lots 3 acre or larger, from 30 feet to 16 feet, a variance of 14 feet, for an in-ground concrete swimming pool, in Council District 5, Election District 3, Tax Map 9, Grid 21, Parcel 328, Lot 4, also identified as 1735 Underwood Road, Sykesville, Maryland, in the RC-DEO (Rural Conservation) (Density Exchange Option) Zoning District, filed pursuant to § 130.0.B.2 of the Howard County Zoning Regulations (the HCZR) for a variance from § 104.0.E.4.a.(3)(c)(1).

The Petitioner certified to compliance with the notice and posting requirements of the Howard County Code. The Hearing Examiner viewed the property as required by the Hearing Examiner Rules of Procedure. Steven and Beth Galloway represented the Petitioner Galloway Pool Services, Inc. William Whiteman (Property owner) and Mike Semies (Petitioner) appeared in support of the Petition. No one appeared in opposition.

### **FINDINGS OF FACT**

Based upon the evidence of record, the Hearing Examiner finds as follows:

1. Property Identification and Description. The approximately 4.26-acre property is located south of Old Frederick Road, north of I-70, at the terminus of Underwood Road. The Property is approximately 1,188 feet from the intersection of Pipes Lane and Underwood Road. The subject property lies in Council District 5, in the 3rd Election District, is identified as Tax Map 9, Grid 21, Parcel 328, Lot 4, and is known as 1735 Underwood Road, Sykesville, Maryland (the Property). The Property is currently developed with a 2-story single-family detached dwelling with an attached garage.

The Property has an extremely irregular shape, an elongated triangle. The lot is encumbered by a .73-acre Forest Conservation Retention Easement, a Septic Retention Area, and a large area along the western boundary of the entire property which is located in the 100-year Floodplain.

2. Vicinal Properties. The surrounding properties are in the RC-DEO Zoning District and are developed with single-family homes.

2. Agency Comments. There are no agency or department comments in opposition to the proposed variance request. The Division of Land Development commented: (1) If any of the existing perimeter landscaping (F-18-065 Willow Brooke) is impacted by the pool, the trees shall be replaced in-kind along the perimeter. The existing wooded area along the northern property line of Lot 4 is required to remain for perimeter landscaping credit as shown on F-18-065. Any removal of the existing trees will require a redline revision to the F-18-065 landscaping plan, and (2) The swimming pool is proposed in the vicinity of an existing drywell (DW-7) as shown on Sheet 2 of the F-18-065 Final Supplemental Plan. Be sure that the pool, patio, etc. will not impact the existing drywell. Approval of a redline revision will be required to relocate any existing drywells.

4. The Requested Variance. Petitioner is requesting a variance to reduce the minimum accessory structure and use side yard setback, on lots 3 acres or greater, from 30 feet to 16 feet, a request for a 14-foot variance. This variance will allow an in-ground concrete swimming pool to be constructed.

### **CONCLUSIONS OF LAW**

The standards of variances are contained in HCZR § 130.0.B.2.a. Pursuant to this Section, the Hearing Examiner may grant a variance only if the Petitioner

demonstrates compliance with all four variance criteria. Based upon the foregoing Findings of Fact, and for the reasons stated below, the Hearing Examiner finds the requested variance complies with § 130.0.B.2.a.(1) through (4), and therefore may be granted.

**(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.**

Compliance with the first criterion is a two-part test. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

As shown on the hand amended Variance Exhibit, the Property is severely constrained by the irregular elongated triangular shape of the Property, the .73-acre Forest Conservation Retention Easement, the large area of 100-year floodplain, and the Septic Retention Area. All of these existing physical constraints limit the developable area of the Property primarily to that which has already been constructed, the single-family

house and attached garage. The Forest Conservation Retention Easement, the 100-year floodplain, the Septic Retention Area, and the irregular elongated triangular shaped lot are constraining environmental features which cause the Petitioner practical difficulty in complying with the current bulk area requirements for the minimum structure and use side yard setback, on lots greater than 3 acres, of 30 feet, in accordance with §130.0.B.2.a.(1).

**(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.**

The Property is an interior lot in a developed detached single-family dwelling subdivision. The Property has an existing hedge row and several trees which will block the visibility of the pool from adjoining properties. The revised Site Plan shows a relocated filter pad (the operational machinery for the pool) from its location between the proposed pool and adjoining residentially developed property to behind the existing attached garage, decreasing any adverse impact on adjoining residentially developed property. Petitioner has obtained a variance from the Howard County Environmental Health Department from the 20 foot Septic Retention Area setback for the pool to 16.8 feet, roughly splitting the variances needed between the Septic Retention Area setback and the side yard setback bulk requirements. The requested variance will not alter the essential character of the neighborhood and will not impact the appropriate use and development of adjacent properties as they have already been developed. The proposal

to construct an in-ground concrete swimming pool will not be detrimental to the public welfare as it will not produce excessive noise, odors, dust, fumes, vibrations, or other adverse effects that would negatively impact vicinal properties.

The variance, if granted, will therefore not alter the essential character of the neighborhood in which the lot is located nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with § 130.0.B.2.a.(2).

**(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.**

The practical difficulty and hardship in complying strictly with the bulk regulations requiring a 30-foot side yard structure and use setback, on lots greater than 3 acres in size, arises from the .73 acre Forest Conservation Retention Easement, the large area of 100-year floodplain, the location of the Septic Retention Area, and the extremely irregular elongated triangular shape of the lot, all of which limit the building envelope primarily to the existing house and attached garage. These existing physical constraints were not created by the Petitioner, in accordance with §130.0.B.2.a.(3).

**(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.**

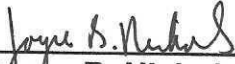
The variance sought, a reduction of 14 feet from the minimum structure and use side yard setback of 30 feet, on lots greater than 3 acres in size, is the minimum decrease necessary to permit the reasonable construction of an in-ground concrete swimming pool. The requested variance will allow for development of the proposed in-ground concrete swimming pool in an area that will not affect the existing environmental features while also not adversely affecting adjoining residentially developed properties. Within the intent and purpose of the regulations, this variance is the minimum necessary to afford relief, in accordance with §130.0.B.2.a.(4).

**ORDER**

Based upon the foregoing, it is this 28th day of March, 2023, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the Petition of Galloway Pool Services, Inc. (Petitioner) for a variance to decrease the minimum side yard structure and use setback, on lots greater than 3 acres in size, from 30 feet to 16 feet, a variance of 14 feet, in order to construct an in-ground concrete swimming pool, in Council District 5, Election District 3, Tax Map 9, Grid 21, Parcel 328, Lot 4, also identified as 1735 Underwood Road, Sykesville, Maryland, in the RC-DEO (Rural Conservation)(Density Exchange Option) Zoning District, be and is hereby **GRANTED**.

**HOWARD COUNTY BOARD OF APPEALS  
HEARING EXAMINER**

  
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**Joyce B. Nichols**

**Notice:** A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At



the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.