

BOARD OF APPEALS AGENDA

June 28, 2022 - 7pm

Call to order: Pledge of Allegiance

7:00 PM Acceptance of March 30, 2022, meeting minutes

Public Hearing:

7:10 PM Case MT-B-22-2 - Franklin

An appeal has been received for a variance of approximately 10' from the 18' right side yard setback, for the placement of an inground pool, to the rear of the existing principal dwelling located at 301 Ingalls Drive.

Staff Update

If you would like to attend the meeting virtually, please follow the link below:

Meeting link

<https://call.lifesizecloud.com/12429575>

Extension

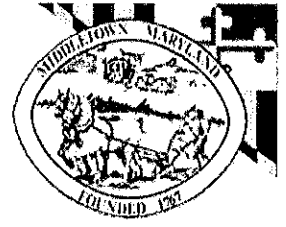
12429575

Passcode

21769

John D. Miller
Burgess
Commissioners
Jennifer J. Falcinelli
Richard L. Dietrick
Christopher I. Goodman
Jean B. LaPadula
Kevin E. Stottlemyer

Middletown
Founded in
1767



June 21, 2022

To: Middletown Board of Appeals Members

RE: **MIDDLETOWN BOARD OF APPEALS**
CASE MT-B-22-2

Dear Member:

Enclosed are copies of materials for your review that will be discussed at the Middletown Board of Appeals (BoA) meeting scheduled for June 28, 2022 at 7:00 PM, held in person and virtually at the Middletown Municipal Center, at 31 West Main Street:

1. Copy of staff report that addresses applicant's request
2. Copy of variance appeal submitted by the applicant
3. Copy of Notice to adjacent property owners
4. Copy of Notice of Public Hearing
5. Copy of all applicable Sections of the Code
6. Copy of all other pertinent Case materials
7. Copy of previous hearing minutes for approval

If you have any questions, please contact me at your earliest convenience via phone, 301-371-6171, and/or email me at: zoning@ci.middletown.md.us.

Sincerely,

Robert Wilkes
Zoning Administrator

Enclosures

John D. Miller
Burgess
Commissioners
Jennifer J. Falcinelli
Richard L. Dietrick
Christopher I. Goodman
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MIDDLETOWN BOARD OF APPEALS

ZONING ADMINISTRATOR STAFF REPORT

Case #: MT-B-22-2

Applicant: Michael Franklin
301 Ingalls Drive
Middletown, MD 21769

Location: 301 Ingalls Drive
Middletown, MD 21769

Request: Variance of approximately 10' from the 18' right yard setback to construct a swimming pool

Zoning: R-3 Residential

Section(s) of the Code that Apply:

17.32.130 – Swimming pools (see enclosure)

17.44.050 – Variances (see enclosure)

17.44.070 - Public Hearings (see enclosure)

Staff Findings and Recommendation:

The applicant is filing for a variance of approximately 10' from the 18' right yard setback for the placement of an inground pool to the rear of the existing principal dwelling located at 301 Ingalls Drive. The lot is in the Middletown Glen subdivision. The property in question is .152 acres and the proposed pool is 27.5'x10.9'.

Based on the application, the applicant states that the variance would allow for a slightly larger pool, which is needed for health reasons. There would be no potential for flooding of adjacent lots or properties. The property in question is in fact shallow, at approximately 109', it is only 61' wide as well. There are no neighbors to the rear of the property and there is a storm water basin to the rear of the property. Staff believes a variance of 10' from the 18' right yard setback is acceptable based on the narrow lot and the applicant has made an effort, design wise, to properly fit the pool within the space provided if a variance was granted.

Variances are granted based on Section 17.44.050 found in Town Code and copied here.

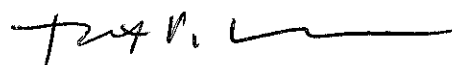
17.44.050 - Variances.

- A. Filing of Variance. An application may be made to the board of appeals for a variance where it is alleged that the provisions of the zoning ordinance inflict unnecessary hardship upon the applicant. The application must be on a form provided for that purpose by the town. The applicant must provide all the information requested on the form, together with any other information and data that may be required to advise the board on the variance, whether such information is called for by the official form or not.
- B. Standards for Variances. Where there is unnecessary hardship, the board may grant a variance in the application of the provisions of this title provided that the following findings are made where relevant in a given case:
1. That there are unique physical circumstances or conditions including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located;
 2. That because of such physical circumstances or conditions, the property cannot be developed in strict conformity with the provisions of the zoning ordinance without unnecessary hardship and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
 3. That such unnecessary hardship has not been created by the applicant;
 4. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare;
 5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
- C. No grant of a variance shall be authorized unless the board specifically finds that the condition or situation of the specific piece of property or intended use of such property, for which the variance is sought, is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation.
- D. Conditions. In granting any variance, the board may attach such reasonable conditions and safeguards as it considers necessary to implement purposes of this zoning ordinance.

(Ord. No. 15-12-02, § I, 12-14-2015; Ord. 182 § 10.4, 1976)

Staff recommends that the application for variance be ***APPROVED based on Section 17.44.050 B1-5*** found in Town Code.

If the variance applied for and requested is granted, staff notes that it will not alter the essential character of the neighborhood or district in which the property is located, nor substantially impair the appropriate use or development of adjacent property and/or confronting properties, nor be detrimental to the public welfare.



Robert Wilkes
Zoning Administrator
zoning@ci.middleton.md.us

Enclosures

APPEAL FOR VARIANCE UNDER ZONING ORDINANCE

Appeal is hereby made for a variance from a requirement of the Zoning Ordinance, as follows:

Subdivision: _____ Coblentz property _____ Lot: 54 Block: _____

Location: 301 Ingalls drX

N S E W side of road; distance N S E W from nearest intersecting road

Appellant's present legal interest in above property: (Check one)

Owner/Joint Owner _____ Lessee _____ Contract to lease or rent _____
 Contract to purchase _____ Other: (Please Describe) _____

Ordinance section, and subsection if any, containing a requirement(s) from which variance is desired:

17.32.130SwimmingPools

Specify the particular requirement(s) from which a variant is desired, in that section or subsection:

18 ft setback or 30 ft to the adjacent structure

Describe the nature and extent of the desired variance from such Ordinance requirement(s):

10 feet MUF

We are asking for 3 feet on the south end and 11 on the north end (or towards the schools) This is not a big pool.

Check reason(s) why the Ordinance requirement(s) in question would result in peculiar & unusual practical difficulties to/or exceptional or undue hardship upon the owner of the property due to exceptional:

Narrowness _____
 Shallowness _____ of the property, existing now and on the date of enactment
 Shape _____ of the requirement(s) in question
 Extraordinary situation of the property. Describe briefly (or attach documentation):

Setback creates small pool for exercise needed

If exceptional narrowness, shallowness or shape of the property is claimed, give the date of recording of plot of present subdivision if any: 3/18/2018; or if property is unsubdivided, give the date on which a deed conveying the identically-bounded tract was first recorded: ?

Briefly describe the difficulty or hardship upon the owner by reason of the above narrowness, shallowness, shape, condition or situation of the property, if the requested varaince is not granted (or attach documentation):

Setback creates asmall pool for the exercise needed.

Has any previous petition or appeal involving this property been made to the Board: If so, give Case Number(s):

No

I hereby affirm that all of the statements and information contained in or filed with this appeal are true and correct.

[Signature]
Signature of Appellant(s)

301 Ingalls Drive
Address of Appellants

Sworn to and subscribed before me this 24TH Day of MAY 2022

My Commission expires 3/6/24

Phone# _____
[Signature]
Notary Public

Thank you for considering this variance. The reason we are applying is to make a slightly larger pool that could be used to swim in for the purpose of exercise. My wife and I are 50 and I am in need of a hip replacement. We are hoping to get a variance to use this pool as our low impact exercise on our joints allowing us to still get a cardiovascular workout without the pain or harm. This is still a small pool but would allow us to at least get more than 3-4 strokes in before having to turn. We have fantastic neighbors who we love and wouldn't even dream of being a disruption. Thank You for your consideration.

Sincerely,
Mike Franklin

John D. Miller
Burgess

Commissioners
Richard L. Dietrick
Jennifer J. Falcinelli
Christopher I. Goodman
Jean B. LaPadula
Kevin E. Stottlemeyer

Middletown

Founded in 1767



*mailed
6-16-22*

June 16, 2022

NOTICE TO ADJACENT PROPERTY OWNERS

Board of Appeals Case Number

MT-B-22-2

An appeal has been received from an applicant located at 301 Ingalls Drive Middletown, MD. The applicant has requested a variance of approximately 10' from the 18' right side yard setback to construct a swimming pool. The setback requirements may be found in section 17.32.130 of the Town Code. The applicant was referred to the Middletown Board of Appeals (BoA) because only the BoA may grant variances to the Middletown Municipal Code. The public meeting to hear this variance request will be held on June 28, 2022, at 7:00p.m. The meeting will be held in person and virtually, directions can be found here.

Please follow the attached link to join virtually.

Meeting link

<https://call.lifesizecloud.com/12429575>

Extension

12429575

Passcode

21769

Citizens are welcome to attend the public meeting at which time those wishing to be heard will be recognized by the BoA chairperson to present their comments. The public meeting is not limited to only those citizens receiving copies of this notice. If you are aware of property owners who, for any reason failed to receive a copy of this notice, and who you believe have an interest in this public meeting, it is requested that you inform them of this public meeting.

For further information, contact the Middletown Town Office at your earliest convenience. Individuals requiring special accommodations are requested to contact Andrew Bowen, Town Administrator at (301) 371-6171, so that proper accommodations can be made.

Robert Wilkes
Zoning Administrator
Town of Middletown

Town of
MIDDLETOWN, MARYLAND

LIST OF ADJOINING AND CONFRONTING PROPERTY OWNERS

Case Number _____

Appellant _____

Proceedings under the Zoning Ordinance require that notice of public hearing be given.

It is the responsibility of the appellants and petitioners to supply ACCURATE names and CORRECT addresses (must have house numbers or P.O. Box numbers) of all adjacent and confronting property owners on this form, as shown in current County Land Records.

Court decisions indicate that compliance with notice requirements is essential to jurisdiction of the approving body and therefore to the validity of its decision.

<u>NAME</u> <i>Laurel Sousa</i>	<u>ADDRESS</u> <i>303 Ingalls Drive</i>
<i>Laurel</i>	<i>Middletown MD 21765</i>

Town of
MIDDLETOWN, MARYLAND

LIST OF ADJOINING AND CONFRONTING PROPERTY OWNERS

Case Number _____

Appellant _____

Proceedings under the Zoning Ordinance require that notice of public hearing be given.

It is the responsibility of the appellants and petitioners to supply ACCURATE names and CORRECT addresses (must have house numbers or P.O. Box numbers) of all adjacent and confronting property owners on this form, as shown in current County Land Records.

Court decisions indicate that compliance with notice requirements is essential to jurisdiction of the approving body and therefore to the validity of its decision.

NAME

ADDRESS

Patricia + Patrick Byrne

213 Thysalls Dr

Middletown MD

21769

Patrick D. Byrne

Patrick Byrne

6/15/22

NOTICE OF PUBLIC HEARING
TOWN OF MIDDLETOWN

Notice is hereby given that the Board of Appeals of Middletown will hold a Public Hearing on Tuesday June 28, 2022, beginning at the hour of 7:00 PM.

An application for variance appeal has been received from an applicant for a property located at 301 Ingalls Drive, Middletown, MD. The request for variance is to allow a setback of 10' 0" for a swimming pool as found in section 17.32.130 of the Town Code which states "Setbacks. All private swimming pools shall be located no closer than thirty (30) feet from the nearest interior living space of a neighboring property (garages not included), nor closer than eighteen (18) feet to any property line (measured from the edge of the pool)."

Please follow the attached link to join virtually.

Meeting link

<https://call.lifesizecloud.com/12429575>

Extension

12429575

Passcode

21769

Copies of the proposed Appeal for Variance are available at the Middletown Municipal Center for any citizens wishing to receive a copy of the proposed appeal materials for review.

All citizens wishing to be heard will be recognized at this hearing. Any person desiring a stenographic transcript shall be responsible for supplying a competent stenographer.

Individuals requiring special accommodations are requested to contact Andrew Bowen, Town Administrator at (301)371-6171 at least 48 hours prior to the Public Hearing.

17.32.130 - Swimming pools.

- A. Setbacks. All private swimming pools shall be located no closer than thirty (30) feet from the nearest interior living space of a neighboring property (garages not included), nor closer than eighteen (18) feet to any property line (measured from the edge of the pool).
- B. Lighting. All lighting for pool and deck areas must be directed so as not to shine on adjacent and neighboring properties.
- C. Fencing. All fencing and screening shall be in compliance with town Ordinance 163, concerning the same, codified in Chapter 15.16 of this code.

(Ord. 182 § 8.3, 1976)

17.44.050 - Variances.

- A. Filing of Variance. An application may be made to the board of appeals for a variance where it is alleged that the provisions of the zoning ordinance inflict unnecessary hardship upon the applicant. The application must be on a form provided for that purpose by the town. The applicant must provide all the information requested on the form, together with any other information and data that may be required to advise the board on the variance, whether such information is called for by the official form or not.
- B. Standards for Variances. Where there is unnecessary hardship, the board may grant a variance in the application of the provisions of this title provided that the following findings are made where relevant in a given case:
 - 1. That there are unique physical circumstances or conditions including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning ordinance in the neighborhood or district in which the property is located;
 - 2. That because of such physical circumstances or conditions, the property cannot be developed in strict conformity with the provisions of the zoning ordinance without unnecessary hardship and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
 - 3. That such unnecessary hardship has not been created by the applicant;
 - 4. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare;

5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.
- C. No grant of a variance shall be authorized unless the board specifically finds that the condition or situation of the specific piece of property or intended use of such property, for which the variance is sought, is not of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situation.
- D. Conditions. In granting any variance, the board may attach such reasonable conditions and safeguards as it considers necessary to implement purposes of this zoning ordinance.

(Ord. No. 15-12-02, § I, 12-14-2015; Ord. 182 § 10.4, 1976)

17.44.070 - Public hearings.

All appeals and applications for variance and special exceptions shall be heard and considered in a public hearing. The board shall schedule the hearing at a reasonable time and shall give not less than ten (10) days' public notice thereof by the posting in a conspicuous place on or near the property of at least one sign of at least three square feet in area stating the date, time, location and purpose of the hearing. The zoning administrator or agents may require additional posting in a place of common use or entrance to the community if in the judgment of the zoning administrator such posting is needed to adequately notify interested parties. All public hearings to be held by the board of appeals shall be advertised in a weekly or daily newspaper of general circulation in the town. Due notice shall also be given to the parties in interest including all adjoining and adjacent property owners. The board shall render its decision within thirty (30) days of the public hearing. It shall be the responsibility of the applicant to provide the names and addresses of all adjacent and adjoining property owners.

At the hearing, any party may appear in person, by agent or by attorney. The concurring vote of two members of the board shall be necessary to render any decision on the issues raised in the appeal or application.

(Ord. No. 15-12-02, § I, 12-14-2015; Ord. 182 § 10.6, 1976)

LEGEND

- A/C - AIR CONDITIONER
- BRL - BUILDING RESTRICTION LINE
- C.A. - CONCRETE AREAWAY
- D&U - DRAINAGE & UTILITY EASEMENT
- D/W - ASPHALT DRIVEWAY
- F.D. - FRAME DECK
- P. - PACE
- P.B. - PLAT BOOK
- PE - POOL EQUIPMENT (AT GRADE)
- R/W - RIGHT OF WAY
- S.F. - SQUARE FEET
- SW - SIDEWALK

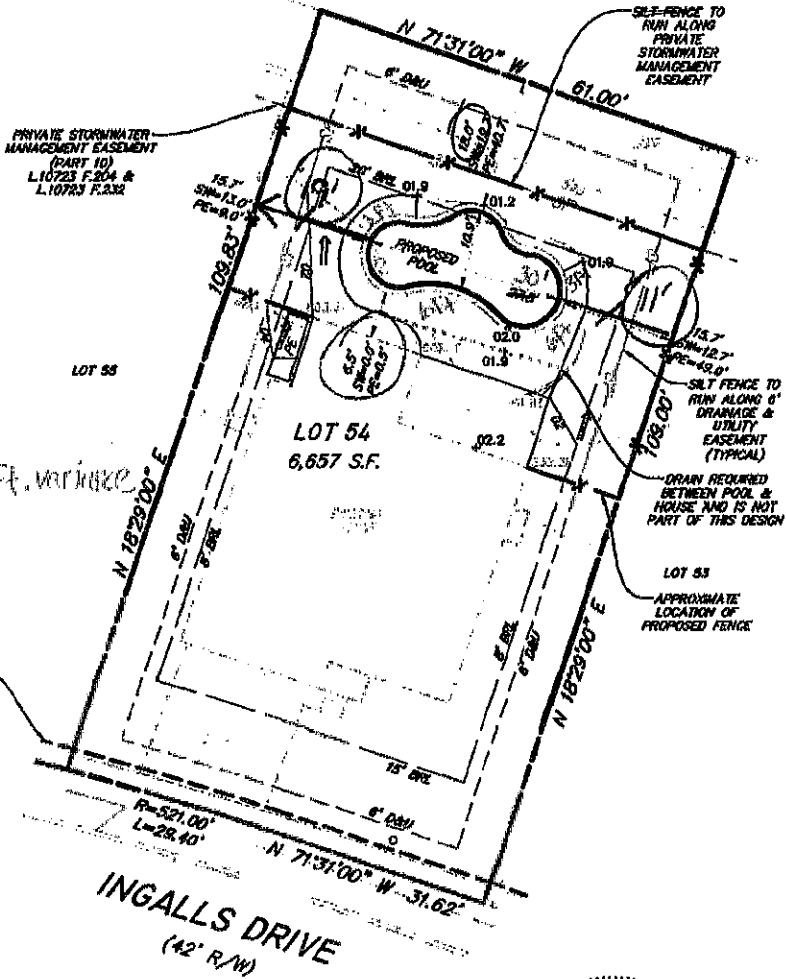
POOL DETAILS

POOL AREA - 244 S.F.
 COPING AREA - 72 S.F.
 SIDEWALK AREA - 484 S.F.

OWNERS

MICHAEL & KRISTIE FRANKLIN
 301 INGALLS DRIVE
 MIDDLETOWN, MD 21789

SETBACKS
 FRONT 6-6
 LEFT 19-0
 RIGHT 100-8ft. variance
 REAR 19-0



Designed by:
Dustin M. Lavelle
 6FFA71567C214D6...
 Reg. No. 21701, Exp. 6/11/2023

NOTES:

1. A LICENSEE EITHER PERSONALLY PREPARED THIS POOL SITE PLAN OR WAS IN RESPONSIBLE CHARGE OVER ITS PREPARATION AND THE SURVEYING WORK REFLECTED IN IT, ALL IN COMPLIANCE WITH REQUIREMENTS SET FORTH IN REGULATION 08.13.06.12 OF THE CODE OF MARYLAND REGULATIONS (COMAR).
2. EXISTING TOPOGRAPHY AND EXISTING IMPROVEMENTS ARE SHOWN PER A SURVEY CONDUCTED BY LAVELLE & ASSOC. INC. ON 6/16/2020.
3. ALL DISTANCES TO APPARENT PROPERTY LINES, IF SHOWN, HAVE AN ACCURACY OF ONE FOOT PLUS OR MINUS (1%).
4. SOURCE OF THE BEARINGS: P.B. 89, P. 92
5. PROPOSED POOL IS FREE-FORM IN SHAPE AND IS SHOWN APPROXIMATE.
6. NO DISTURBANCE IS PROPOSED IN THE 6' DRAINAGE & UTILITY EASEMENT.
7. NO TITLE REPORT FURNISHED. EASEMENTS, RESTRICTIONS, AND/OR RIGHT-OF-WAYS MAY EXIST THAT ARE NOT SHOWN.

REVISED: 5/7/2022
 FIELD DATE: 6/16/2020
 DRAWING DATE: 10/4/2020
 PROJ. NO. 20-139
 FILE: 1510 Coblenz Property Lot 54 (shaded)
 DRAWN: DM
 SCALE: 1" = 20'

**POOL SITE PLAN
 LOT 54
 COBLENTZ PROPERTY**

SITUATED AT 301 INGALLS DRIVE
 MIDDLETOWN ELECTION DISTRICT No. 3
 FREDERICK COUNTY, MARYLAND

**LAVELLE & ASSOCIATES
 INCORPORATED**
 PLANNERS • LAND SURVEYORS

P.O. Box 372
 Frederick, Maryland 21705
 Tel: (301) 695-8722
 Fax: (301) 695-8766
 www.lavelleandassociates.com

AFFIDAVIT IN COMPLIANCE WITH TOWN OF MIDDLETOWN
ZONING ORDINANCE – SECTION 10.6

TOWN OF MIDDLETOWN
Frederick County, Maryland, TO WIT:

CASE NO. MT-B-22-2

On this 16th day of June, 2022, before me the subscriber, a
Notary Public of the State of Maryland and Frederick County, personally appeared
MICHAEL FRANKLIN and made oath in due form of law as
follows:

That I posted at least ten (10) days prior to the hearing scheduled for
June 28, 2022 on the above captioned case, those sign(s) received from the
(Hearing Date)
Town of Middletown (Planning and Zoning Office), and that said sign(s) were erected on the
subject property in accordance with the required distances and positioning as identified in the
above referenced Ordinance.



Subscribed and sworn to before me the day and year identified above.

SEAL



NOTARY PUBLIC

My Commission expires: 3/6/24



MIDDLETOWN BOARD OF APPEALS
Middletown, Maryland 21769
Meeting Minutes for March 30, 2022
Case # MT-B-22-1

The Middletown Board of Appeals (BoA) met on Wednesday, March 30, 2022 at 7:00 p.m. Present were BoA members Daphne Gabb (Chairwoman), Alex Kundrick, Jonathan Minchoff, Mark Hinkle (Zoning Administrator) and Patty Guyton (recording secretary).

Others present: David Zumbrunn (703 Glenbrook Drive)

Minutes – Chairwoman Gabb asked if there were any corrections to the August 31, 2021 BoA meeting minutes as submitted. Hearing no comments, the minutes were approved.

Case MT-B-22-1 - The applicant is filing for a variance of approximately 12' from the 18' rear and side yard setback for the placement of an inground pool to the rear of the existing principal dwelling located at 703 Glenbrook Drive. The lot is in the Glenbrook subdivision. The property in question is small, measuring .23 acres and the proposed pool is 18'x41'.

Based on the application, the applicant states that the yard size does not allow for a reasonable size swimming pool with current setbacks. There would be no potential for flooding of adjacent lots or properties. The property in question is in fact shallow, at approximately 39', it is about 76' wide as well. The shallowness of the lot was exacerbated with the addition of a deck built by the previous owner and permitted under Frederick County permit number 64313, the deck was approved 5/13/2008. Staff believes a variance of 12' from the 18' rear and side yard setback is acceptable based on the shallowness of the lot and the applicant has made efforts, design wise, to properly fit within the space provided with a variance granted.

Discussions: Board members asked applicant about the retaining walls and why they off set the pool to the left side instead of centering in the yard. David Zumbrunn stated that the retaining walls will only be 1 to 1 ½ feet high due to a slight slope in the yard. He also stated the contractors placed the pool to the left because there are big trees in the right side of yard that they would like to keep for shade and privacy. Mr. Zumbrunn plans to plant bushes around the pool equipment area to hide the pump and to reduce noise for the walking path to the right of his property.

Action: Motion by Board member Minchoff to approve the variance of approximately 12' from the 18' rear and side yard setback. Seconded by Board member Kundrick. Motion carried (3-0).

The meeting adjourned at 7:13p.m.

Respectfully submitted,

Patty Guyton
Town Receptionist