

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 19-1700

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 6:30 p.m. on October 21, 2019, on the application of **DALE and LISA MAXSON** (the “Applicants”). The Applicants are requesting three non-Critical Area variances for the purpose of remodeling and expanding an existing nonconforming residence via the following development activities: (1) constructing a 10-square-foot addition to be located 22 feet, 3 inches from the west lot line; (2) conversion of an existing non-conforming pergola to a 21’-2” by 16’ screen porch to located 7 feet from the west lot line; and (3) constructing a 48-square-foot impervious pad for HVAC condensing units to be located 10 feet from the east lot line. The subject property (the “Property”) is a 0.695-acre improved residential parcel owned by the Applicants and located at 27758 Wavery Road, Easton, Maryland. The Property is improved by a one-story, brick dwelling built around 1946. The Property is shown on tax map 34, grid 19 as parcel 104, and its zoning classification is Rural Residential (“RR”). It is bound to the north by the Tred Avon River and to the south, east and west by residential properties also in RR zone. None of the proposed variances requests are within the 100-foot Critical Area buffer (the “buffer”).

Applicants’ request is made in accordance with Chapter 190 Zoning, Article II, §190-9; Article IV, §190-49.1.C.; Article VII, §190-58 of the Talbot County Code (the “Code”). Pursuant to §190-9, Table II-8, a 50-foot front setback and 25-foot side setbacks are required for all structures on properties located within the RR zoning district.

Present at the hearing were Board of Appeals members Phillip Jones, Chairman, Frank Cavanaugh, Vice-Chairman, Louis Dorsey, Paul Shortall and alternate member Jeff Adelman. Architect Christian Chute of Atelier 11 Ltd., 1 East Dover Street Easton, Maryland 21601, appeared and testified on behalf of the Applicants. Elisa Deflaux, Environmental Planner, Maria Brophy, Zoning Coordinator and Miguel Salinas, Assistant Planning Officer attended the hearing on behalf of Talbot County. William C. Chapman was the attorney for the Board of Appeals (the "Board"). It was noted for the record that each member of the Board had individually visited the site.

The following exhibits were offered and admitted into evidence as Board's Exhibits as indicated:

1. Application for a Non-Critical Area Variance.
2. Tax Map of subject property.
3. Notice of Public Hearing for advertising in *The Star Democrat* newspaper.
4. Newspaper Confirmation.
5. Notice of Public Hearing and Adjacent Property Owner List.
6. Standards for Non-Critical Area Variance with Attached Justification Statement.
7. Staff Report prepared by Elisa Deflaux, Environmental Planner.
8. Sign Maintenance Agreement/Sign Affidavit.
9. Authorization Letter.
10. Disclosure and Acknowledgment Form.
11. Aerial Photos.
12. Photos from Site Visit.
13. Direction to the Property

14. Site Plan of the Property prepared by Atelier, Ltd.
15. Construction/Floor plans.
16. Lot coverage calculation worksheet.
17. Photo attachment H.
18. August 6, 2019 letter from Applicants to Health Department.

The following exhibits were offered and admitted into evidence as Applicants' Exhibits as indicated:

1. Site Plan of the Property marked to show location of septic lines.

Mr. Chute testified on behalf of the Applicants. He said the variance for the proposed addition to the master bedroom would not have been required prior to the November, 2018 revisions of Chapter 190 of the Code, which increased the side yard setback requirements in the RR Zone from 10 feet to 25 feet. Only 10 square feet of the 96 square feet that would be added, Mr. Chute said, would extend beyond the current 25-foot setback¹. Mr. Chute said Atelier, Ltd. conducted a feasibility study in 2017 to propose ideas for utilizing the screened-in pergola, which he described as a legally nonconforming structure now in a dilapidated condition. The solution proposed by Atelier, Ltd., Chute said, was to utilize the existing lot coverage consisting of the concrete slab upon which the pergola sits, and to create a screen-enclosed porch, connected to the dwelling, with pier decking. Mr. Chute said the Applicants currently employ five window air conditioning units to cool the dwelling, and have experienced mold issues that a modern HVAC system will help abate. The proposed concrete pad to accommodate a new HVAC system is potentially larger than the eventual system might require, Mr. Chute said. Overall, Mr. Chute said, the proposed renovations will still leave 270 feet of available lot

¹ Applicants' proposal would reduce the number of bedrooms in the dwelling from three to two in order to rectify violations by previous owners of the Property and conform to Health Department regulations.

coverage. Very little of the existing brick structure of the dwelling will be demolished, Mr. Chute said.

In response to a question from the Board, Mr. Chute said the screened-in porch will not be climate-controlled living space.

Mr. Chute said that prior to the November, 2018 changes to the Chapter 190 of the Code, the minimum lot width in the RR Zone was 100 feet – to which the Property barely conformed. Now, the minimum lot width is 200 feet, rendering the Property nonconforming. At its widest portion, abutting Wavery Road, the Property is 124.78 feet wide, tapering slightly toward the Tred Avon River. There is very little area to expand or to renovate the dwelling, Mr. Chute said, other than slight modifications to the existing lot coverage. The Applicants are further encumbered, Mr. Chute said, by the need to relocate any septic improvements from within the buffer, where the septic system is currently located, to the south side of the Property.

The November, 2018 Code changes created much of the hardship facing the Applicants, Chute said. The portion of the pergola closer than 10 feet to the Property line, he said, predates the enactment of the zoning regulations in Talbot County², judging by the brickwork and slab and information obtained via a Public Information Act request from the County.

In response to a question from the Board about room on either side of the dwelling for equipment to pass between the dwelling and the side Property lines, Mr. Chute said there is room on the east side where the HVAC slab will be located. In response to a question from the Board as to why the proposed screen-enclosed porch needs the additional three feet and cannot conform to the former building restriction line, Mr. Chute said the Applicants' proposal is the minimal functional size for such a porch to reasonably accommodate a table, chairs and space to move

² The dwelling was also built prior to Critical Area laws and regulations.

around them. He said the screened-in porch would occupy the same footprint as the existing pergola.

Mr. Chute reiterated that the request for the HVAC pad variance contemplates the maximum size that would be needed and that, depending on the system ultimately chosen by applicants, the pad required to accommodate such system could be smaller and impede less upon the side-yard setback than what is being requested.

Mr. Chute said he commended the Applicants' approach to modifying and improving their dwelling, describing it as sustainable and "working with what they have."

The Board then considered the application. Based on the testimony, application and exhibits, upon motion and seconded, the Board approved the requested variance, by a vote of five to zero.

The Board made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.
2. Unique physical characteristics exist, such as unusual size or shape of the property or extraordinary topographical conditions, such that the literal enforcement of the provisions of this chapter would result in a practical difficulty or unreasonable hardship in enabling the applicant to develop or use this property. The standards for a parcel this size in the RR Zone changed in November, 2018, increasing the front and side-yard setback requirements to 50 feet and 25 feet, respectively, making the existing dwelling non-conforming. The Property itself is nonconforming under the new RR lot width requirements, and it narrows toward the portion abutting the Tred Avon River, creating an even more confined building envelope. According to Applicants' site plan, the 25-yard side setback

appears to run slightly through a portion of the existing dwelling. Based on the new RR Zone requirements, it would be physically impossible to build the existing dwelling today without the granting of a variance.

3. The need for the variance is not based upon circumstances which are self-created or self-imposed. As stated in the Applicant's formal responses and confirmed by State Department of Assessments and Taxation records, the existing dwelling was built on the Property in 1946. Applicants purchased the Property in 2011 and had no participation in the subdivision of the Property, nor the construction, configuration or location of the dwelling on the Property. The change in the setback requirements in November, 2018 eliminated buildable area on both sides of the dwelling. Applicants' request for the variance related to modest expansion of the master bedroom would not have required a variance prior to the November, 2018 changes to the Code.
4. Greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance. The proposed additions and modifications for which Applicants are requesting variances deal mainly with updating an aging, existing residential dwelling built in the 1940s, including installation of a modern HVAC system, in part to alleviate moisture issues and resolve mold problems. Applicants seek to reconfigure the layout of the existing dwelling to comply with current building codes and to remedy violations created by previous owners of the Property. The proposed additions and modifications are modest in size, given the constraints on the Property due to its size and

location. Applicants are reducing the number of bedrooms in the dwelling from three to two.

5. The variance will not be contrary to the public interest and will not be a detriment to adjacent or neighboring properties. Based on Applicants' site plan, the closest point from the proposed additions and modifications to a neighboring residence is over 100 feet on the west side and 50 feet on the east side. No evidence was presented to indicate that granting the variances would be contrary to public interest or a detriment to neighboring properties.
6. The variance shall not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. Given the date of construction of the dwelling and the size constraints that exist on the Property, Applicants have developed a modest proposal that would allow for the update of an existing dwelling built in the 1940s and an overall reduction in the number of bedrooms. Applicants are utilizing existing lot coverage as much as possible in their proposal.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY
THE TALBOT COUNTY BOARD OF APPEALS,

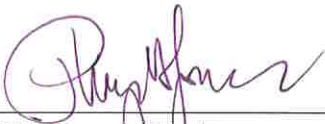
RESOLVED, that the Applicants, **DALE and LISA MAXSON** (Appeal No. 19-1700) are **GRANTED** the requested variances consistent with the evidence presented to the Board of Appeals, subject to the following conditions:

1. The Applicants shall make applications to the Office of Permits and Inspections, and follow all of the rules, procedures and construction timelines as outlined regarding new construction.

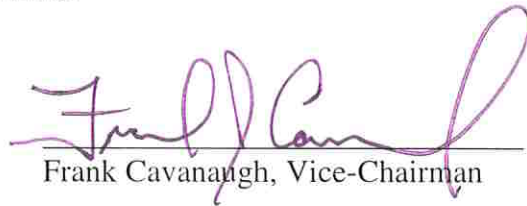
2. The Applicants shall commence construction on the proposed improvements within eighteen (18) months from the date of this Decision.
3. The Applicants shall submit a buffer management plan in conjunction with the building permit application.
4. The Applicants shall ensure that the screened-in porch replacement of the existing pergola is not a climate-controlled space.

GIVEN OVER OUR HANDS, this 20th day of November, 2019.

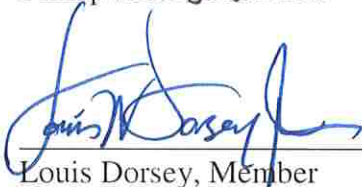
TALBOT COUNTY BOARD OF APPEALS



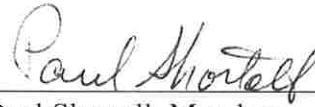
Phillip Jones, Chairman



Frank Cavanaugh, Vice-Chairman



Louis Dorsey, Member



Paul Shortall, Member

Unavailable for Signature

Jeff Adelman, Alternate Member