

DECISION
TALBOT COUNTY BOARD OF APPEALS
Appeal No. 19-1698

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals at the Bradley Meeting Room, Talbot County Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 6:30 p.m., July 22, 2019, on the application of **MARTIN L. HEMBREE and ROBIN K. HEMBREE** (Applicants). The Applicants are requesting two variances. The first is for a variance of the fifty-foot side yard setback to twenty-seven feet to construct an 18' x 36' in-ground pool allowing for the reasonable accommodations of a disabled person. The second is for a variance of the 150-foot setback from a state highway to 102.3 feet for an existing pergola. The property is located at 11800 Old Skipton Road, Cordova, Maryland 21625 in the Agricultural Conservation (AC) zone. The Applicants own and reside on the property. The request is made in accordance with Chapter 190 Zoning, Article II, §190-8 and §190-12.2 B.1 plus Article VII, §190-57 and §190-58 of the *Talbot County Code (Code)*.

Present at the hearing were Board of Appeals members Phillip Jones, Chairman; Frank Cavanaugh, Vice Chairman; John Sewell; Louis Dorsey, Jr.; and Paul Shortall, Jr. The Applicant, Martin L. Hembree, appeared and testified at the hearing. Glenn D. Klakring served as attorney for the Board of Appeals.

It was noted for the record that each of the members of the Board had visited the site individually.

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

1. Application for a Reasonable Accommodations for the Needs of Disabled Citizens and Non-Critical Area Variance with Attachment A.
2. Copy of a portion of the Talbot County tax map with the property highlighted.
3. Appeals Notice of Public Hearing.
4. Certificate of publication of the Notice of Public Hearing from the *Star-Democrat*.
5. Notice of hearing with a list of nearby property owners attached.

6. Copy of Standards for Reasonable Accommodations for the Needs of Disabled Citizens from the *Code* with the Applicants' response to each applicable requirement.
7. Copy of variance requirements from the *Code* with the Applicants' response to each applicable requirement.
8. Revised Staff Report dated July 9, 2019.
9. Sign maintenance agreement and affidavit.
10. Letter from the Maryland Department of Transportation, State Highway Administration, dated June 27, 2019, indicating that the agency does not object to County approval.
11. Independent Procedures Disclosure and Acknowledgement Form.
12. Site Plan.
13. Plat of subject property prepared by Andrew Land Surveying showing locations of existing and proposed structures.
14. Letter from Marc F. Brassard, MD, dated April 9, 2019, advising of certain disabling conditions of Mr. Hembree and stating that he will benefit from a pool/swimming to help with his strength and range of motion.
15. Letter from the Department of Veterans Affairs, dated May 18, 2018, certifying to Mr. Hembree's service-connected disabilities.
16. Letter dated April 2, 2019 signed by various nearby property owners supporting the instant application.
17. Letter from Applicants dated May 20, 2019 authorizing Sparkle Pools and Christine Ward to act as agent for the Applicants in connection with the instant application.
18. Aerial photograph.

Mr. Hembree testified in support to his application. He and his wife have owned the property since 2004. It is their residence.

Mr. Hembree retired from active duty military service in the U.S. Marine Corps in 2011 after his fourth combat deployment. Since his retirement at the age of 42 he has suffered from serious service-connected disabilities. The Department of Veterans Affairs has determined that he is currently 90% disabled as a result of his military service. His doctor said that he would benefit from therapeutic use of a pool so would like to install an inground pool on his property next to his home. Having the pool near his house would allow him easy access.

The Applicants' property is a two-acre lot. It is unusual as it is sandwiched between a major state highway (Route 50) and another state road (Old Skipton Road). Residential lots are on the other two sides. The setbacks, the sewage reserve area, and the existing house and driveway leave little, if any, possible alternative sites for a pool. Its proposed location is immediately behind their home with a portion of the pool extending into the 50-foot side yard setback 33 feet. The pool will be in-ground with surrounding, ground level decking. A line of trees and other vegetation screens most of the border between the Applicants' property and the impacted neighboring property on the northeast side.

Their Applicants' existing pergola is in the 150-foot setback from Route 50. However, that side of the lot is well screened from Route 50 by a wood fence and a dense stand of trees along the border.

Raymond Glaeser, Sparkle Pools, 6238 Tilghman Island Road, Sherwood, Maryland 21665, the proposed pool contractor, appeared at the hearing and supported the application.

No one appeared in opposition to the application.

There being no further evidence the Board considered the application.

After some discussion and upon motion duly made and seconded, the Board made the following findings of fact and law:

1. All legal requirements pertaining to a public meeting were met.

2. The proposed alterations will benefit persons with a disability within the meaning of the Americans with Disabilities Act. The Applicant provided sufficient documentation of his disability and how the proposed pool will benefit him in dealing with that disability.
3. Literal enforcement of the requirements of (the *Code*) will result in discrimination by virtue of such disability or deprive a disabled resident or user of the reasonable use and enjoyment of the property. The Applicant documented his need for therapeutic use of an in-ground pool at his home and absent a variance he would be deprived of that use.
4. A reasonable accommodation would reduce or eliminate the discriminatory effect of the requirements or restore the disabled resident's or user's reasonable use or enjoyment of the property. The accommodation proposed by the Applicants is reasonable, given the distance from and the existing screening between the proposed side yard intrusion and the neighboring residence.
5. The accommodation requested will not substantially impair the purpose, intent, or effect the requirements of (the *Code*) as applied to the property. Side yard setbacks provide for appropriate separation of structures on adjoining properties consistent with the character of the area. The Applicants' property is part of a small strip of residential properties in an agricultural zone that has larger side yard setback standards than a typical residential area. Although the proposed pool will be in-ground it is still a structure under the *Code*. However, given the factors mentioned above their proposed pool will have little, if any, impact on the adjoining residential property or the nearby agricultural areas.
6. Unique physical characteristics exist, such as unusual size or shape of the property or extraordinary topographical conditions, such that a literal enforcement of the provisions of (the *Code*) would result in practical difficulty or unreasonable hardship in enabling the Applicant to develop the property. The 150-foot setback from Route 50 provides for

separation between that major highway and residential or other uses. The pergola is a small structure and, by its nature, used only periodically by the residents. The Applicants' lot has an existing fence and a dense stand of trees both providing sufficient separation from the highway and the pergola. The State highway authorities do not object to the pergola as located.

7. The need for a variance is not based upon circumstances which are self-created or self-imposed. The lot's severely limited building area and the extensive screening suggest the Applicants are intitled to a variance for the pergola.
8. Greater profitability or lack of knowledge of the restrictions (were) not considered as sufficient cause for a variance.
9. The variance will not be contrary to the public interest and will not be a detriment to adjacent or neighboring properties. The pergola is sufficiently screened and separated from Route 50 and other neighboring properties, so it is not a detriment.
10. The variance does not exceed the minimum adjustment necessary to relieve the practical difficulty or unreasonable hardship. The pergola is a small structure and is completely screened from Route 50 and the adjustment necessary is minimal.

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

RESOLVED that the Applicants, **MARTIN L. HEMBREE and ROBIN K. HEMBREE** (Appeal No. 19-1698) are **GRANTED** the requested variances consistent with the evidence provided the Board of Appeals and subject to the following conditions:

1. The Applicants shall make application to the Office of Permits and Inspections, and follow all the rules, procedures, and construction timelines as outlined regarding new pool construction.
2. The Applicant must obtain an after-the-fact building permit for the pergola.

3. The Applicants shall commence construction on the proposed improvements within eighteen (18) months from the date of this Decision.


The vote of the Board was five to zero to grant the variances.

GIVEN OVER OUR HANDS, this 31st day of July, 2019.

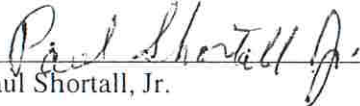
TALBOT COUNTY BOARD OF APPEALS



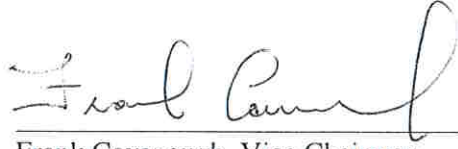
Phillip Jones, Chairman




John Sewell



Paul Shortall, Jr.



Frank Cavanaugh, Vice Chairman



Louis Dorsey, Jr.