

DECISION

TALBOT COUNTY BOARD OF APPEALS

Appeal No. 21-1730

Pursuant to due notice, a public hearing was held by the Talbot County Board of Appeals (the Board) at the Bradley Meeting Room, Court House, South Wing, 11 North Washington Street, Easton, Maryland, beginning at 6:30 p.m. on December 6, 2021 on the Application of **Kevin and Tracy Kiley**, collectively, ( the Applicant).

The Applicant is requesting a variance of the required fifty foot (50') rear yard setback to thirty-four feet (34') to permit the construction of a sixteen foot (16') by thirty-six foot (36') in-ground pool. The request is made in accordance with Chapter 190, Article II § 190-8.3C and Article VII § 190-58 of the *Talbot County Code* (the *Code*). The property is located at 27969 Oxford Road, Oxford, MD 21654 in the Western Rural Conservation (WRC) Zone. The property owners are Kevin and Tracy Kiley. The property is shown on Tax Map 48 Grid 19 Parcel 71.

Board of Appeals members Phillip Jones, Chairman, Frank Cavanaugh, Vice Chairman; Paul Shortall, Louis Dorsey, Jr. and Zakary A. Krebeck were present for the hearing. Anne C. Ogletree, acted as attorney for the Board of Appeals. Staff members present were Elisa Deflaux, Planner II, and Christine Corkell, Board Secretary. The Applicant was present. One other member of the public attended.

The Chairman inquired if all Board members had visited the site individually. He received affirmative responses from each member. Mr. Jones then requested that those planning to give testimony be identified and sworn. Mr. and Mrs. Kiley were sworn. The following Board exhibits were then offered and admitted into evidence as indicated:

- Exhibit 1. Application for a Non Critical Area Variance;
- Exhibit 2. Tax Map with subject property highlighted;
- Exhibit 3. Notice of Public Hearing for Star Democrat;
- Exhibit 4. Newspaper Confirmation;
- Exhibit 5. Notice of Public Hearing with list of adjacent Property Owners attached
- Exhibit 6. Non Critical Area Variance Standards;
- Exhibit 7. Staff Report prepared by Elisa Deflaux, Planner II;
- Exhibit 8. Sign Maintenance Agreement/ Sign Affidavit;

Exhibit 9. Independent Procedures Disclosure and Acknowledgement Form;

Exhibit 10. Aerial Photo;

Exhibit 11. WRC Lot Coverage Computation Worksheet;

Exhibit 12. Site Plan.

The Chairman then suggested that Mr. Kiley explain the request to the Board. Kevin Kiley, an Applicant, introduced himself and his wife, Tracy. He explained that the Applicants were requesting a variance from the setback at the rear of the property to construct a family pool for the use of his family, including children and grandchildren. Right now the family lives nearby and he hoped that the pool would help to keep everyone in the area.

Mr. Kiley stated that his property has an unusual "T" shape, (see shaded area, Exhibit 10) and with the setbacks, including that required from the state highway, he did not see any way to fit the pool in without varying the rear setback. Mr. Jones agreed, referring to the site plan, Exhibit 12, that showed most of the front setback reserved for sewage disposal, existing drain fields and existing driveway. He noted that Mr. Kiley had answered each of the warrant questions in writing and asked if the Applicant wished to supplement those answers verbally. Mr. Kiley responded that he had nothing additional to add, he simply felt the variance could be justified because of the property's unusual configuration. Mr. Jones asked if any of the members had questions.

Mr. Krebeck asked if the plan was to clear only that part of the property needed for the pool. Mr. Kiley clarified that they did not plan to clear anything. The pool would be constructed within the grassy area the members had observed on their site visit.

Mr. Jones asked if the members had questions. Mr. Dorsey had no questions of the Applicant. Mr. Shortall observed that the request was straight forward and he felt this was one of the more unusual property configurations the Board has seen. The Applicant can't put the pool in any of the areas he is currently using. The proposed site would seem to be the only place to put it.

Mr. Kiley added that they had reduced the size of the pool so as to create as little impact as possible. The Applicant would really have preferred a twenty foot (20') by forty foot (40') pool, but wanted to be reasonable. Mr. Shortall agreed. He felt the request was reasonable.

Mr. Cavanaugh stated he also felt that this was the correct location. He noted that he assumed the Applicant had investigated the south side of the residence, but pointed out that there was a buried fuel tank and septic tanks on that side. Mr. Kiley explained that there was also an underground water line and fuel lines as well as holding tanks which limit the use of that side of

the property. Mr. Cavanaugh felt that the Applicant explained the circumstances that prevented him from using that side of the property. Given those extenuating factors, it makes much more sense to place the pool behind the residence as shown on Exhibit 12.

Mr. Jones concurred with his colleagues. He felt the property was unique due to its configuration and the existing site improvements. He thought the Applicants had met the required criteria and would approve the variance.

Mr. Jones saw that a member of the public had come in and asked if that person had anything to add. The gentleman stated he did not, he was the next door neighbor, and supported the request.

There being no other discussion, the Board made the following findings of fact and conclusions of law based on the Applicant's written responses, the testimony and the evidence presented:

1. The Applicant has submitted written applications for a variance to reduce the rear setback from fifty feet (50') to thirty-four feet (34'). Exhibit 1.
2. The public hearing was properly advertised, the property was posted, and the adjacent land owners were properly notified. Exhibits 3, 4, 5, and 8.
3. The property has a unique configuration as shown on Exhibits 10 and 12. The front yard is almost entirely dedicated to sewage disposal. The existing drain fields and the reserve sewage disposal area take up almost all of the property that is not driveway. The south side of the property has a buried fuel tank, holding tanks, water and fuel lines making it difficult to place a pool in that location.
4. The Applicant has reduced the size of the pool request to impact as little of the setback as possible.
5. The Applicants purchased the property in its current configuration, so the circumstances requiring a variance are not self-created.
6. The Applicants are requesting the variance to improve their property for their own use and that of their family. Their expressed reason for wishing

a pool is to have their family remain close and enjoy the property. Profitability is not their goal.

7. The pool will not detract from the enjoyment of neighboring properties, It is screened from other properties by woodland. One of the neighbors attended the hearing and expressed support for the project. The Board concludes the project will not be contrary to the public interest.
8. The Applicant has scaled back the size of the pool requested asking for what the Applicants believe to be the minimum size necessary to provide adequate recreation.

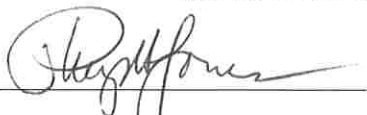
For the reasons set out in the Board's findings, Mr. Dorsey made a motion that the variance No. 21-1730 permitting a reduction in the rear yard setback to thirty-four feet (34') be **Granted**, subject to the conditions recommended by Staff. Mr. Krebeck then seconded the motion. There being no further discussion, the Chairman called for a vote. The motion passed five in favor, zero opposed.

HAVING MADE THE FOREGOING FINDINGS OF FACT AND LAW, IT IS, BY THE TALBOT COUNTY BOARD OF APPEALS, ORDERED THAT THE REQUESTED VARIANCE BE GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

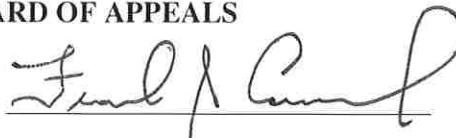
1. The Applicant shall make an application in the Office of Permits and Inspections, and will follow the rules, procedures, and construction timelines as directed for new construction.
2. The Applicant shall commence construction of the proposed improvements within eighteen (18) months of the date of the Board of Appeals approvals.

GIVEN OVER OUR HANDS, this 12TH day of JANUARY, 2022.

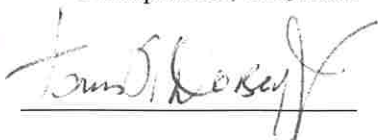
**TALBOT COUNTY BOARD OF APPEALS**



Phillip Jones, Chairman



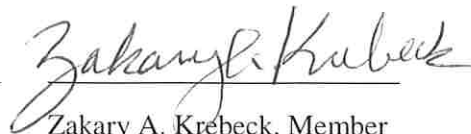
Frank Cavanaugh, Vice-Chairman



Louis Dorsey, Jr., Member



Paul Shortall, Member



Zakary A. Krebeck, Member