

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 19-1873

RICHARD & LORRAINE TREMPER, JR

FIRST ELECTION DISTRICT

DATE HEARD: February 13, 2020

ORDERED BY:

**Mr. Hayden, Mr. Brown, Ms. Delahay,
Mr. Miedzinski, and Mr. Richardson**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: May 7, 2020

Pleadings

Richard & Loraine Tremper, Jr., (“the Applicants”) seek a variance (VAAP # 19-1873) to reduce the 10-foot setback to a 5-foot setback, measured from the edge of the water of their existing inground pool to their proposed new deck and proposed replacement of their existing deck.

Public Notification

The hearing notice was advertised in *The Enterprise*, a newspaper of general circulation in St. Mary’s County, January 29, 2020 and February 5, 2020. The hearing notice was also posted on the Property. The agenda was also posted on the County’s website on February 7, 2020. The file contains the certification of mailing to all adjoining landowners, including those located across a street. Each person designated in the application as owning land that is located within two hundred feet of the subject property was notified by mail, sent to the address furnished with the application. Therefore, the Board finds and concludes that there has been compliance with the notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on February 13, 2020 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland 20650. All persons desiring to be heard were heard after being duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed variance requested by the Applicants.

The Property

The Applicants own the subject property located at 48184 Mulberry Lane, St. Inigoes, Maryland (the “Property”). It is in the Rural Preservation District (RPD) and is identified on Tax Map 63, Grid 21, Parcel 222. This lot is designated in the Chesapeake Bay Critical Area as Limited

Development Area (LDA) Overlay.

The Variance Requested

The Applicants request a variance from the prohibition of § 51.2.4.c of the St. Mary's Comprehensive Zoning Ordinance ("CZO") against the prohibition of detached accessory structures from being located "no closer than 10 feet to any other accessory or principal structure" so they may construct a new deck and replace an existing deck as shown on the site plan, which was admitted into evidence at the hearing as Attachment 2 of Exhibit 2.

The St. Mary's County Comprehensive Zoning Ordinance

CZO § 51.2.4.c requires that "detached accessory structures shall be located no closer than 10 feet to any other accessory or principal structure."

The Evidence Submitted at the Hearing by LUGM

Stacy Clements, an Environmental Planner for the St. Mary's County Department of Land Use and Growth Management, presented the following evidence:

- The Property contains a single-family dwelling—the principal structure—with an adjacent in-ground pool—the accessory structure. According to the Tax Assessor, the house was constructed in 1920, prior to the adoption of zoning and subdivision regulations in St. Mary's County.
- The Applicant is proposing to replace an existing deck, which is less than 10 feet from the pool, and construct a new deck which will also be less than 10 feet from the pool. The subgrade wall of the pool confines the pool water and defines the "edge of pool water" for the purpose of measuring the zoning setbacks of an in-ground pool.
- Pursuant to CZO § 51.2.4.c, "Detached accessory structures shall be located no closer than 10 feet to any other accessory or principal structure."

- The St. Mary's Health Department approved the site plan on November 25, 2019. The Department of Land Use and Growth Management granted Critical Area approval on October 21, 2019.
- If the variance is granted, it shall lapse one year from the date of the grant of the variance, if the Applicant has not obtained the building permit, per CZO § 24.8.1.
- The following Attachments to the Staff Report were introduced:
 - #1: Standards Letter of November 15, 2019 from Richard Tremper;
 - #2: Site Plan;
 - #3: Location Map; and
 - #4: Zoning Map.

Applicants Testimony and Exhibits

The Applicants appeared in person before the Board. The following evidence was presented:

- The existing deck was built in 1991, which predates the current ten-foot setback requirement, and the existing deck is not entirely safe due to aging;
- The Applicants seek to increase the size of the existing deck, construct a new deck, and install a railing around the new deck;
- The new deck will add 180 square feet to the deck across the back of the Applicants' home, but the total square feet of lot coverage will not run afoul of the Critical Area lot coverage requirements;
- The distance from coping of the pool to the deck is five feet.