

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.

Decision

County Requirements for Granting a Variance

The St. Mary's County Comprehensive Zoning Ordinance § 24.3 sets forth seven separate requirements that must be met for a variance to be issued:

- (1) Because of particular physical surroundings such as exceptional narrowness, shallowness, size, shape, or topographical conditions of the property involved, strict enforcement of this Ordinance will result in practical difficulty;
- (2) The conditions creating the difficulty are not applicable, generally, to other properties within the same zoning classification;
- (3) The purpose of the variance is not based exclusively upon reasons of convenience, profit, or caprice. It is understood that any development necessarily increases property value, and that alone shall not constitute an exclusive finding;
- (4) The alleged difficulty has not been created by the property owner or the owner's predecessors in title;
- (5) The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood and the character of the district will not be changed by the variance;
- (6) The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood; and
- (7) The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.

Id.

Findings

Upon review of the facts and circumstances, the Board finds and concludes that the Applicants are entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance. Several factors support this decision.

First, the Board finds that strictly interpreting the CZO would result in “practical difficulty” due to the particular physical surroundings of the property. § 24.3(1). In *McLean v. Soley*, 270 Md. 208 (1973), the Maryland Court of Appeals established the standard by which a zoning board is to review “practical difficulty” when determining whether to grant a variance:

- (1) Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
- (2) Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
- (3) Whether relief can be granted in such fashion that the spirit of the ordinance will be observed, and public safety and welfare secured.

Id. at 214–15.

Here, the Applicants have demonstrated that, should the Board of Appeals strictly interpret the CZO, the particular physical surroundings of the property would result in practical difficulty for the Applicants. Specifically, the Applicants seek a variance to replace an existing deck and construct a new deck around an existing inground pool. The existing deck was constructed in 1991, predating the current ten-foot setback requirement, and the deck must be replaced due to safety concerns. The location of the house and existing deck relative to the pool constitute particular physical surroundings, and strict enforcement of the Ordinance would preclude the Applicants from adding to the deck abating the safety concerns of the deteriorating condition of their existing deck.

Second, the above-mentioned specific physical conditions creating the practical difficulty are not generally found on other properties in the RPD. As such, granting a variance would

alleviate the practical difficulty inherent in the specific physical conditions.

Third, the Applicants' purpose of replacing the existing deck and constructing a new deck are bona fide. The existing deck, which has a non-conforming setback, is aged and in need of replacement. The Applicants are also requesting an additional deck with a similar setback.

Fourth, the need for the variance does not arise from actions of the Applicants. Rather, the existing deck was built prior to the ten-foot setback requirements, and the Applicants did not construct the existing home, deck, or pool.

Fifth, the variance will neither detrimentally affect the public welfare, injure other properties or improvements, nor change the character of the district.

Sixth, the proposed decks will not increase the residential use of the property so as to increase congestion or the risk of fire, endanger public safety, or substantially diminish or impair property values in the neighborhood.

Finally, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan. Specifically, the subject Property is in a rural preservation area that has already been developed for residential use. Chapter 3, "A Growth Management Strategy," of the Comprehensive Plan establishes a vision for community design, which encourages owners of existing structures to maintain and retrofit the buildings and grounds to improve aesthetics and energy efficiency. The Applicants accomplish this objective, as they seek to modernize and expand their existing deck.

ORDER

PURSUANT to the application of Richard & Loraine Tremper, Jr., petitioning for a variance from the St. Mary's County Comprehensive Zoning Ordinance Accessory Use Regulations to allow them construct a new deck and replace an existing deck; and

PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is

ORDERED, by the St. Mary's County Board of Appeals, that the Applicants are granted a variance from the prohibition in St. Mary's County Comprehensive Zoning Ordinance § 51.2.4.c 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 replacement of their existing deck as shown in the site plan.

The foregoing variance is subject to the condition that the Applicants shall comply with any instructions and necessary approvals from the Office of Land Use and Growth Management, the Health Department, and the Critical Area Commission.

This Order does not constitute a building permit. In order for the Applicants to construct the structures permitted in this decision, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Date: May 7, 2020



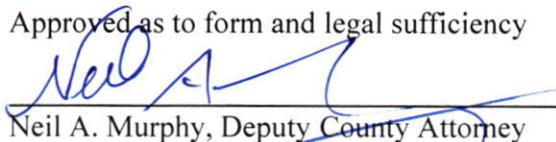
George A. Hayden, Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:

Approved as to form and legal sufficiency



Neil A. Murphy, Deputy County Attorney

NOTICE TO APPLICANTS

Within thirty days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the Circuit Court for St. Mary's County.

Further, St. Mary's County Comprehensive Zoning Ordinance § 24.8 provides that a variance shall lapse one year from the date the Board of Appeals granted the variance unless: (1) A zoning or building permit is in effect, the land is being used as contemplated in the variance, or regular progress toward completion of the use or structure contemplated in the variance has taken place in accordance with plans for which the variance was granted; (2) a longer period for validity is established by the Board of Appeals; or (3) the variance is for future installation or replacement of utilities at the time such installation becomes necessary.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order; otherwise, they will be discarded.