

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 23-2702

ATKINSON AND LAYMAN PROPERTY

FIRST ELECTION DISTRICT

DATE HEARD: JUNE 27, 2024

ORDERED BY:

**George Allan Hayden, Sr., Chair
Guy Bradley, Vice Chair
Ronald Payne, Sr., Member
Rich Richardson, Member
Connor Loughran, Alternate Member**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: July 11, 2024

Pleadings

Scott W. Atkinson and Kerri L. Layman (hereinafter “Applicants”) seek a variance from the St. Mary’s Comprehensive Zoning Ordinance (hereinafter “CZO”), specifically § 41.5.3.i(1), to exceed lot coverage limits to construct a pool.

Public Notification

The hearing notice was advertised in the *Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, Maryland, on May 24, 2024 and May 31, 2024. A physical posting was made on the property and all property owners within 200-feet were notified by certified mail on or before May 29, 2024. Additionally, the Agenda was posted on the St. Mary’s County Government’s website on June 5, 2024. Therefore, the Board of Appeals (hereinafter “the Board”) finds and concludes there is compliance with all notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on June 27, 2024, at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland 20650. All persons desiring to be heard were duly sworn, the proceedings were electronically recorded, and the following was presented about the proposed variance requested by the Applicants.

The Property

The subject property is located at 47157 South Snow Hill Manor Road, Lexington Park, St. Mary’s County, Maryland (hereinafter “the Property”). Per the State Department of Assessments and Taxation (hereinafter “SDAT”), the Property is 60,819 square-feet. It is zoned ‘Rural Preservation District’ (“RPD”) with a Limited Development Area (“LDA”) Critical Area overlay, and can be found at Tax Map 58, Grid 24, Parcel 13, in the First Election District.

The Variance Requested

Applicants seek a variance from the St. Mary's County Comprehensive Zoning Ordinance, Section 41.5.3.i(1), to exceed lot coverage limits for the purposes of constructing a pool.

The St. Mary's County Comprehensive Zoning Ordinance

Lot coverage means the percentage of a total lot or parcel that is occupied by a structure, accessory structure, parking area, driveway, walkway, or roadway. Natural Resources Article § 8-1802(17)(i). CZO § 41.5.3.i(1) requires that "impervious surfaces shall be limited to 15 percent of the lot area for lots and parcels larger than ½ acre."

Staff Testimony

Stacy Clements, the Environmental Planner for the St. Mary's County Government's Department of Land Use and Growth Management (hereinafter "LUGM"), presented the following evidence:

- The subject property (the "Property") is a grandfathered lot in the Critical Area of St. Mary's County because it was recorded in the Land Records of St. Mary's County prior to the adoption of the Maryland Critical Area Program on December 1, 1985. The existing single-family dwelling was built in 1955, according to Real Property Data, Maryland Department of Assessments and Taxation;
- According to the site plan, the Property is a 60,819 square foot parcel located on South Snow Hill Manor Road in Lexington Park and is adjacent to the tidal waters of the St. Mary's River;
- The Critical Area Buffer (hereinafter "Buffer") is established a minimum of 100-foot landward from the mean high-waterline of tidal waters (CZO 71.8.3). Therefore, the Property is constrained by the Buffer (Attachment 2);

- The Property, as it currently exists, has 10,895 square feet of lot coverage. The site plan (Attachment 3) proposes constructing an 800 square foot pool and a 938 square foot pool patio, while removing 2,279 square feet of driveway. Total lot coverage for the parcel if the proposed construction is approved will be 10,354 square feet;
- The Property, as determined by CZO 41.5.3, limits lot coverage to 15 percent of the lot area for lots and parcels that are larger than ½ acre. Accordingly, the lot coverage limit for this property is 9,123 square feet. The proposed lot coverage would create an excess of 1,222 square feet of lot coverage;
- Mitigation is required at a ratio of 3:1 for the variance and 1:1 for canopy removal (COMAR 27.01.09.01-2). The total mitigation required for this proposal is 7,483 square feet of plantings. A planting agreement and plan will be required prior to the issuance of the building permit;
- The Critical Area Commission responded to the variance request on June 4, 2024. The Commission states that the applicant has the burden to prove each and every Critical Area variance standard, including the standard of unwarranted hardship. In its letter (Attachment 6) the Critical Area Commission did not state it opposes the variance request;
- The Department of Land Use and Growth Management approved the site plan for zoning and floodplain requirements. The Health Department approved the site plan. The project does not require site plan approval from the St. Mary's County Soil Conservation District or Stormwater Management as the proposal calls for less than 5,000 square feet of soil disturbance;
- If a variance is granted but a building permit is not issued, the variance shall lapse one year from the date of grant (CZO Section 24.8.1); and

- Attachments to the Staff Report:
 - #1: Critical Area Standards Letter;
 - #2: Critical Area Map;
 - #3: Site Plan;
 - #4: Location Map;
 - #5: Zoning Map;
 - #6: Critical Area Commission Response.

Applicant Testimony and Exhibits

Applicants were represented before the Board by Steve Vaughan, a Maryland Professional Land Surveyor and Vice President of Little Silence's Rest, Inc. He presented a slideshow and answered questions from the Board. The following evidence and testimony were included in Applicants' presentation:

- Mr. Vaughan displayed photographs of the Property from various angles, including the Applicants' residence from the roadside, the water-facing side of their home, close-ups of the house reflecting where the proposed pool and patio are to be built, the portion of the circle driveway to be removed to offset lot coverage, as well as an aerial view;
- The construction of the pool and patio would be outside of the Critical Area Buffer and would not cause any Buffer disturbance;
- Mr. Vaughan testified that the existing lot coverage on the Property predates the adoption of the Critical Area Regulations. He stated that the proposed trading of impervious surfaces, including removing a section of the circle driveway in exchange for a pool and patio, would result in a net reduction of lot coverage. The proposed pool and patio will be

approximately 1,738 square feet. The existing section of the driveway that will be removed is 2,279 s.f.; and

- Mr. Vaughan confirmed that sediment erosion control measures would be provided in accordance with the St. Mary's County Soil Conservation District. Mr. Vaughan described to the Board that the portion of the driveway, which is proposed to be removed, would be immediately stabilized with topsoil seed and straw.

Public Testimony

No members of the public appeared to offer testimony in support of, or against, this request.

Decision

Requirements for Critical Area Variances

COMAR 27.01.12.04 requires an applicant to meet each of the following standards before a Critical Area variance may be granted:

- (1) Due to special features of the site or special conditions or circumstances peculiar to the applicant's land or structure, a literal enforcement of the local Critical Area program would result in an unwarranted hardship to the applicant;
- (2) A literal interpretation of the local Critical Area program would deprive the applicant of a use of land or a structure permitted to others in accordance with the provisions of the local Critical Area program;
- (3) The granting of the variance would not confer upon the applicant any special privilege that would be denied by the local Critical Area program to other lands or structures in accordance with the provisions of the local Critical Area program;
- (4) The variance request is not based upon conditions or circumstances that are the result of actions by the applicant;
- (5) The variance request does not arise from any conforming or nonconforming condition on any neighboring property;
- (6) The granting of the variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's local Critical Area; and,

- (7) The granting of the variance would be in harmony with the general spirit and intent of the Critical Area law, the regulations in this subtitle, and the local Critical Area program.

Additionally, the Maryland Code Annotated, Natural Resources Article, §8-1808(d)(2)(ii) requires the Applicants to overcome the presumption that the variance request should be denied.

Findings - Critical Area Variance

Upon review of the facts and circumstances, the Board finds and concludes the Applicants are entitled to the relief requested.

The Board finds that denying the Applicants' request would constitute an unwarranted hardship. In *Assateague Coastal Trust, Inc. v. Roy T. Schwalbach*, 448 Md. 112 (2016), the Maryland Supreme Court (formerly the Maryland Court of Appeals) established the statutory definition for an "unwarranted hardship" as it pertains to prospective development in the Critical Area:

[I]n order to establish an unwarranted hardship, the applicant has the burden of demonstrating that, without a variance, the applicant would be denied a use of the property that is both significant and reasonable. In addition, the applicant has the burden of showing that such a use cannot be accomplished elsewhere on the property without a variance.

Id. at 139.

Here, Applicants have sufficiently demonstrated that, absent the variance, they would be denied a use of the Property both significant and reasonable. The Applicants seek to add a pool and patio to their Property, which are common recreational amenities enjoyed by many property owners across St. Mary's County and enhances the use of the Property. There appears to be no other locations to place the proposed pool further away from the Buffer, and there is no obvious amount of additional legally nonconforming lot coverage that Applicants could be asked to remove

without compromising the use and enjoyment of their existing home. Accordingly, denying the Applicants' request to exceed lot coverage and construct a pool would deprive the Applicants of a use on the Property that would be "both significant and reasonable," and we perceive no less impactful way the Applicants could achieve this use other than what is proposed.

Similarly, the Board finds that literal interpretation of the local Critical Area program would deprive the Applicants of a substantial use of land, or a structure, permitted to others. As noted previously, improvements such as those proposed are common recreational amenities.

To the third factor, the granting of the variance would not confer upon the applicant any special privilege that would be denied by the local Critical Area program to other lands or structures in accordance with the provisions of the local Critical Area program. Applicants have availed themselves of the same right to seek a variance as any other property owner. In the present case, Applicants are proposed to abandon their right to some legally nonconforming lot coverage as part of the variance request. The lot, with an existing single-family dwelling and detached garage, was constructed and recorded in St. Mary's County's Land Records in 1955, three decades prior to St. Mary's County's adoption of the Maryland Critical Area Program on December 1, 1985. The existing lot coverage is legally nonconforming and Applicants are entitled to maintain it if this variance is not approved; rather than maintain all of it, Applicants propose to surrender some of it in return for approval. In doing so the Applicants will emerge with a property that has less overall lot coverage and a proper that is closer to the 15% coverage requirement than exists today.

Fourth, the variance request is not based upon conditions or circumstances that are the result of actions by the Applicants. The Applicants are constrained by the physical characteristics of their lot and the amount of legally conforming impervious surface constructed on the Property

by prior owners.

Fifth, the variance request does not arise from any conforming or nonconforming condition on neighboring properties.

Sixth, the granting of the variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's local Critical Area. The Board recognizes the proposed placement of the pool and patio emphasize the Applicants' efforts to minimize disturbance to the Critical Area Buffer much as possible. Nearly the entirety of the Applicants' backyard is located within the 100-foot Critical Area Buffer and the Applicants have gone through lengths to locate the proposed pool in their side yard outside the Buffer. Additionally, permitted construction in the Critical Area requires extensive mitigation, at a 3:1 ratio for the area disturbed. In this case, the result would be 7,483 square feet of plantings, which would otherwise not be required unless the variance is granted. The Board also recognizes that the Applicants have acquired a standard sediment and erosion control plan, including a smart fence to be installed along the downhill slopes of the pool.

Lastly, by satisfying the above criteria, the Board finds that granting the variance will be in harmony with the general spirit and intent of the Critical Area's laws and regulation and the local Critical Area program. The Critical Area Program prescribes that, in this case, up to 15% lot coverage is allowed. As it exists now, the Property's lot coverage extends to 17.9%. The Applicants' proposal to remove a portion of their circle driveway, which is part of their existing legally nonconforming lot coverage, in exchange for the lot coverage proposed in the construction of the pool and patio would result in an overall reduction in the total lot coverage by approximately 541 square feet, which the Applicants would otherwise be entitled to keep. This reduction would decrease the percentage of impervious surface lot coverage to 17%. The impacts of exceeding lot

coverage beyond the legal limit will be partially offset by mitigation and other site improvements the Applicants shall make, and on the whole the property will be left with overall less lot coverage than if the variance is not approved.

Finally, in satisfying each of the necessary criteria, the Applicants have overcome the statutory presumption against granting the variance.

ORDER

PURSUANT to the application of Scott W. Atkinson and Kerri L. Layman, petitioning for a variance from § 41.5.3.i.(1) of the St. Mary’s County Subdivision Ordinance (hereinafter “CZO”) to exceed lot coverage limits to construct a pool; and,

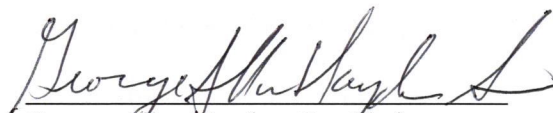
PURSUANT to the notice requirements, posting of the property, and public hearing, and in accordance with the provisions of law, it is,

ORDERED, by the St. Mary’s County Board of Appeals, pursuant to CZO § 24.8, the Applicants are granted a variance from CZO § 41.5.3.i.(1) to exceed their lot coverage for the purposes of constructing a pool and a patio;

UPON CONDITION THAT, 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: July 11, 2024

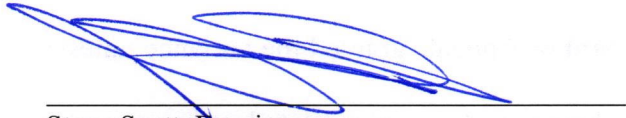

George Allan Hayden, Sr., Chairperson

Those voting to grant the variance:

Mr. Hayden, Mr. Bradley, Mr. Payne, Mr. Richardson, and Mr. Loughran

Those voting to deny the variance:

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

A handwritten signature in blue ink, consisting of several overlapping loops and strokes, positioned above a horizontal line.

Steve Scott, Esquire,
Board of Appeals Attorney

NOTICE TO APPLICANTS

Within thirty (30) 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 St. Mary's County Circuit Court. St. Mary's County may not issue a permit for the requested activity until the 30-day appeal period has elapsed.

Further, St. Mary's County Comprehensive Zoning Ordinance § 24.8 provides that a variance shall lapse one (1) 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 sixty (60) days of the date of this Order; otherwise, they will be discarded.