

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 23-2702

ATKINSON & LAYMAN

SIXTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: JUNE 11, 2026

ORDERED BY:

**Mr. Hayden, Mr. Brown, Mr. LaRocco
Mr. Payne, and Ms. Weaver**

ENVIRONMENTAL PLANNER: DULA WERETI

DATE SIGNED: August 13, 2026

Pleadings

Scott Atkinson and Kerri Layman (“Applicants”) seek a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 41.5.3.i to exceed lot coverage limits for a hot tub and concrete pad.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on May 22 and May 29, 2026. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before May 27, 2026. The agenda was also posted on the County’s website on or before May 29, 2026. Therefore, the Board of Appeals (“Board”) finds compliance with all notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on June 11, 2026, at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed variance requested by the Applicants.

The Property

The subject property is situate 47157 South Snow Hill Manor Road (“the Property”). The Property is 60,819 square feet, more or less. It is zoned Rural Preservation District (“RPD”) and subject to a Limited Development Area (“LDA”) Critical Area overlay. It may be found among the Tax Maps of St. Mary’s County at Tax Map 58, Grid 24, Parcel 13.

St. Mary’s County Comprehensive Zoning Ordinance

The Comprehensive Zoning Ordinance, at § 41.5.3.i, limits how much of a parcel within the Critical Area may be covered in impervious surfaces. No more than 15% of parcels greater

than a half-acre in size may be covered by impervious surface. Impervious surface is defined by the CZO as, “All buildings, road[s], parking and driveways, paving, patios, decks, sidewalks, stoops, porches, steps, walkways, piers, swimming pools constructed on a lot which reduce the infiltration capacity of the land or result in increased stormwater runoff. Wooden decks and walkways (or portions thereof) elevated above finished grade by a minimum of the width of the deck and having shrub or ground cover plantings beneath are considered pervious.”

Departmental Testimony and Exhibits

Stacy Clements, an Environmental Planner for the St. Mary’s County Department of Land Use & Growth Management (“LUGM”), presented a staff report prepared by Dula Wereti, a fellow Environmental Planner at LUGM. Ms. Clements also shared a PowerPoint presentation that summarized the application. Staff testimony included:

- The Property, a grandfathered lot in the Critical Area of St. Mary’s County, 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.
- As shown on the site plan, this 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 Property is constrained by the Buffer.
- The lot coverage limit for this property is 9,123 square feet.
- The Applicant requested a variance on June 13, 2024, proposing 10,345 square feet of lot coverage for a pool and patio: an excess of 1,222 square feet of lot coverage.

The applicant was granted a variance on June 27, 2024, to exceed the 15% lot coverage limit. With the prior approved variance, the total allowed lot coverage is 10,345 square feet.

- The applicant is requesting an additional after-the-fact variance of 543 square feet of lot coverage for a hot tub and concrete pad, bringing the total lot coverage to 10,897 square feet. If approved, the new total lot coverage would exceed the limits by 1,774 square feet.
- The Critical Area Commission responded to the variance request in a letter dated May 13, 2026. It opposes the requested variance, as more fully set forth in its letter.
- Mitigation required for the after-the-fact variance is at a ratio of 4:1 for the violation, which must be mitigated prior to the hearing date, and 3:1 for the variance request. The total mitigation required for this after-the-fact proposal is 3,801 square feet of plantings to meet these mitigation requirements. A planting agreement and plan will be required prior to the issuance of the building permit.
- The Applicant has been provided a Notice of Violation letter and mitigation penalties have been assessed for work performed outside the scope of the prior permit.
- All approving departments and agencies have indicated the site plan is approvable, provided the variance is granted.
- Attachments to the Staff Report:
 - #1: Critical Area Standards Letter
 - #2: Site Plan
 - #3: Critical Area Map

- #4: Location Map
- #5: Zoning Map
- #6: Prior BoA Order
- #7: Critical Area Commission Response
- #8: COMAR 27.01.12.06 After-the-Fact Variance Procedures
- #9: Existing Condition Map
- #10: Notice of Violation Letter

Applicants' Testimony and Exhibits

Steve Vaughn, a licensed surveyor with Little Silence's Rest, Inc., appeared before the Board to present the variance request. He was joined by Mr. Atkinson, who appeared and answered questions posed by the Board. Mr. Vaughn presented a slideshow that contained the site plan and pictures of the Property in its current state with the improvements that have been constructed. The following were included in the Applicants' presentation and answers to questions:

- Mr. Vaughn testified that poor coordination resulted in construction being undertaken outside the footprint approved in the Board's prior order. As a result, the footprint and overall amount of lot coverage now differ from the prior approved site plan.
- The additional lot coverage, as depicted on the site plan, consists of patio linking the patio around the proposed pool with walkways and the parking area near the garage. A hot tub immediately adjacent to the pool has been installed.
- The violation was realized when County inspectors came to perform planting inspections. Inspectors noted a portion of the existing driveway had not been removed.

- Staff stated that removal of the driveway had not been required by that time, but that the driveway would eventually need to be removed. Mr. Atkinson acknowledged this and pictures shared with the Board confirmed the driveway has since been removed.
- Even with additional lot coverage relative to the 2024 variance request, the revised variance request proposes less lot coverage (10,610 s.f.) than existed on the parcel prior to the new redevelopment (10,895 s.f.). No new lot coverage is proposed in the Buffer.

Critical Area Commission Comments

The Critical Area Commission shared its comments in a letter dated May 13, 2026. It stated its opposition to the variance request and said the Applicant has failed to satisfy “each and every” variance standard applicable to the project.

In particular, the Critical Area Commission observed that reasonable alternatives existed to locate the hot tub in areas where it would be eligible for impervious surface trading, and that the need for the variance constitutes a self-created hardship.

Public Testimony

No members of the public appeared to offer testimony in this matter. One written comment was received:

- *Tracy Lettiere, Lexington Park*
 - Ms. Lettiere identified herself as a next-door neighbor to the Applicants. She shared her opinion that the hot tub and concrete pad do not negatively impact the character of the neighborhood, create no adverse impacts upon neighboring properties, and appear to be well-maintained and compatible with surrounding residential uses. She requested the Board of Appeals grant the requested variance.

Decision

County 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 Applicant 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 not entitled to the requested relief.

Each and every applicable standard must be satisfied before the Board may grant the requested variance, and failure to satisfy even one necessitates denial of the request. Accordingly, the Board focuses its analysis on the following point: that a hardship has not been compellingly demonstrated, and that Applicants' present need appears self-created.

The Applicants appeared before this Board in 2024 and received approval to reduce lot coverage to 10,345 square feet. That amount was greater than the lot coverage limit for the Property but less than the amount of existing legally nonconforming lot coverage then present on the Property. Accepting that the Applicants' desired pool and patio were significant and reasonable uses of the Property, the Board approved the variance request and authorized 10,345 square feet of lot coverage to accomplish those uses.

At some point during construction, however, work performed deviated from the work approved. The footprint of the proposed pool shifted westward, the patio space grew, and a hot tub was installed adjacent to the pool. Mr. Vaughn ascribed this to miscommunication between the surveyor, builder, and homeowner. One member of the Board observed that staking the site would have prevented any miscommunication. The Critical Area Commission's letter used the words "intentional choice." Whatever the truth of why, when, and wherefore, the result is that, as-built, lot coverage exceeds the approved variance by just a hair less than 550 square feet.

The Applicants' standards letter states only that, "The Applicants did not create the difficulty. The environmental conditions are part of the Property through no fault of the Applicants." We are not convinced from Applicants' materials or presentation that the hardship

complained of is a *bona fide* inability to utilize other portions of the Property, rather than a preference to avoid the cost of relocating or removing work already performed. It is always the Applicants' duty to carry their burdens of production and persuasion, and that burden is high. Here, the Board remains unconvinced.

Accordingly, the Board denies Applicants' pending request. It is not entirely clear whether, procedurally, this request is more properly thought of as an entirely new variance request or only a request to modify the prior variance approval. In either event, the result remains the same: the Property remains subject to the prior variance approval, and no more than the 10,345 square feet of lot coverage may be allowed on the Property.

To be clear, the judgment of this Board is limited to the points discussed above, those being sufficient to dispose of this case. The Board makes no findings as to whether the additional lot coverage is necessary to sustain a reasonable and significant use, whether a "special privilege" would be conferred by approval of a variance, or any other standard Applicants must have met. Applicants inadequately demonstrated that all the prongs of an unwarranted hardship were present and that their need, such as it was, was not self-created; that is all the Board needs to find to decide the outcome of this variance.

ORDER

PURSUANT to the application of Scott Atkinson and Kerri Layman, petitioning for the above-described variance; and

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

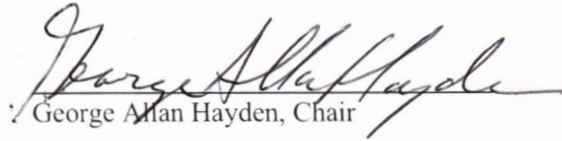
ORDERED, by the St. Mary's County Board of Appeals, pursuant to CZO § 24.8, that the

Applicants' request to further exceed lot coverage limits is **DENIED**; and, it is further,

ORDERED, that, consistent with the Board's order signed July 11, 2024, the Applicants shall not exceed a lot coverage limit of 10,345 square feet without a further variance.

This Order does not constitute a building permit. 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: August 13, 2026


George Allan Hayden, Chair

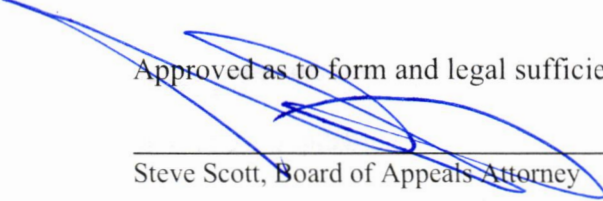
Those voting to grant the variance:

Mr. Brown

Those voting to deny the variance:

Mr. Hayden, Mr. LaRocco, Mr. Payne,
Ms. Weaver

Approved as to form and legal sufficiency


Steve Scott, Board of Appeals Attorney

NOTICE TO APPLICANTS

Within thirty (30) days from the date of this Order, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Petition for Judicial Review in the St. Mary's County Circuit Court.

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