

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 25-1100

HINES PROPERTY

SIXTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: August 14, 2025

ORDERED BY:

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

PLANNER: NICK COLVIN

DATE SIGNED: September 11, 2025

Pleadings

Kevin and Lashawn Hines (“Applicants”) seek variances from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Sections 51.2.4.c and 51.3.122.a(2) to reduce the required setback between principal and accessory structures to 5’ and to reduce the required rear property line setback to 6’ in order to construct an inground pool.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on July 25, 2025 and August 1, 2025. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before July 30, 2025. The agenda was also posted on the County’s website on August 6, 2025. Therefore, the Board of Appeals (“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 August 14, 2025 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 amendment requested by the Applicant.

The Property

The subject property (hereinafter “the Property”) is located at 24367 Broad Creek Drive Hollywood, MD 20636. It consists of 7,577 square feet, more or less, and can be found at Tax Map 26, Grid 24, Parcel 478. It is Lot 9 of the Broad Creek subdivision. The Property is zoned Residential, Low Density (“RL”).

The Variances Requested

Applicant seeks variances from CZO §§ 51.2.4.c and 51.3.122.a(2) to reduce the required setback between principal and accessory structures to 5' and to reduce the required rear property line setback to 6' in order to construct an inground pool.

St. Mary's County Comprehensive Zoning Ordinance

CZO § 51.2.4.c requires a 10' setback between a principal structure and any accessory structure. CZO § 51.3.122.a(2) requires any proposed private, non-commercial swimming pool to be set back at least ten (10) feet from any property line.

Departmental Testimony and Exhibits

Nick Colvin, a Planner for the St. Mary's County Department of Land Use & Growth Management ("LUGM"), presented the following evidence:

- The Property contains a single-family dwelling (principal structure) with a patio. According to the Department of Assessments and Taxation, the house was constructed in 2009.
- The Applicant is proposing a 14 foot by 28 foot in-ground 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. They are additionally proposing a 4' by 4' landing with steps, with no impact to the setbacks.
- Pursuant to Schedule 51.3.122.a (2) of the Ordinance, a 10-foot setback is required from all property lines for private, non-commercial swimming pool. The Applicant is requesting a 4' reduction from the rear property line setback from 10' to 6' to construct a pool. Pursuant to Section 51.2.4.c, a 10' setback is required between a principal structure and an accessory structure. A 5' reduction from the existing deck

to the proposed pool edge from 10' to 5'.

- The proposal is exempt from Stormwater Management and Soil Conservation standards as it proposes less than 5,000 sf of soil disturbance. Land Use and Growth Management requires the setback variance to approve the permit.
- 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 Section 24.8.1.
- Attachments to the Staff Report:
 - #1: Standards Letter
 - #2: Site Plan
 - #3: Ordinance 2019-32 SMC Comprehensive Zoning
 - #4: Location Map
 - #5: Land use Map
 - #6: Zoning Map

Applicants' Testimony and Exhibits

Applicants appeared before the Board. Together, they presented a well-crafted slideshow that summarized the postings and notices they performed, showed the Property its location within its neighborhood, described the proposed pool, and displayed the site plan. Testimony and evidence adduced by the Applicants included, but by no means was limited to, the following:

- The pool will be a rectangular 14' x 28' pool in the Applicants' backyard.
- Applicants described their lot as "exceptionally narrow" compared to other similar properties in the neighborhood due to a two-tier deck designed by the previous owners. Removing the bottom tier of the deck is not feasible without removing the top tier as well.

- Aside from the setbacks at issue in this matter, the pool will entirely conform to the County Code.

- Strictly hewing to the required setbacks would leave a pool with a width of 6'.

Several pool contractors recommended Applicants not construct a pool any narrower than 14 feet.

Several board members commended the Applicants for the clarity and thoroughness of their presentation.

Public Testimony

No members of the public appeared to offer testimony related to this matter, and no written comments were received.

Decision

County Requirements for Granting Variances

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 – Standard Variance Requirements

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 defined 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.

Denial of this variance would impose a practical difficulty upon Applicants. Applicants ably demonstrated the Property is relatively small and that the buildable envelope for a backyard pool is limited. The Board perceives no practical alternatives to relocate the pool such that it would not intrude into the required setbacks. As Applicants, intrusion into the rear-yard setback is unlikely to negatively affect other property and the Board perceives no-one who will be done injustice by its construction.

To the second standard, the conditions creating the difficulty are not generally applicable to other similarly situated properties. The relatively small size of the Property drives the variance request.

To the third standard, the purpose of seeking the variances is not “based exclusively upon reasons of convenience, profit or caprice.” Applicants have demonstrated a practical difficulty meeting this requirement of the Comprehensive Zoning Ordinance. They seek to build an inground pool, a relatively modest improvement that is typical for a backyard. The constrained buildable area of the lot and other difficulties of the lot discernible from the record support a finding that the siting of the pool within the rear-yard setback is a decision born from necessity, and not a product of whim or caprice on the part of Applicants.

Fourth, the need for the variance does not arise from actions of the Applicants. As noted

previously, Applicants' need for a variance stem from the particular physical characteristics of the Property and its constraints. The deck described by the Applicants is a reasonable improvement by itself, and requiring removal of one amenity of reasonable size, nature and character to make way for another amenity of reasonable size, nature and character should not be required when the standards for a variance can be satisfied to allow both.

Fifth, the variance will neither detrimentally affect the public welfare, substantially injure other properties or improvements, nor change the character of the district. The neighboring property owners were notified of the variance request and given an opportunity to speak on the matter. None voiced an objection. As stated prior, the Board finds no reason to conclude the proposed pool will be injurious to any neighboring property owners. Existing pools in other backyards that appear to be of substantially similar character as the one proposed by Applicants appear to be visible in the photographs of the neighborhood presented as evidence.

Sixth, the proposed development will not increase the residential use of the property. The proposed pool will be to the benefit of the existing home only.

Finally, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan. The Applicants ask for a modest improvement that would be permitted-as-of-right on most other parcels, and would be permitted-as-of-right on his parcel if it had only a few additional feet in the rear yard. The neighborhood is not in objection to the request, and the Board can divine no reason they would be. Allowing this encroachment into the required setbacks does not unduly alter or disrupt the general spirit, intent, and purpose of the Comprehensive Plan, or disrupt the character of the neighborhood or adjoining properties.

ORDER

PURSUANT to the application of Kevin and Lashawn Hines, petitioning for a variance from Comprehensive Zoning Ordinance Sections 51.2.4.c and 51.3.122.a(2) to reduce the required setback between principal and accessory structures to 5' and to reduce required rear property line setback to 6' in order to construct an inground pool; 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 § 21.1.3.a and CZO § 24.8, that the Applicant is granted a variance from Section 51.2.4.c to reduce the required setback between the principal and accessory structures to 5'; and it is further,

ORDERED, by the St. Mary's County Board of Appeals, pursuant to CZO § 21.1.3.a and CZO § 24.8, that the Applicant is granted a variance from Section 51.3.122.a(2) to reduce the the required rear property line setback to 6' in order to construct an inground pool;

UPON FURTHER CONDITION THAT, Applicant 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 Applicant 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.

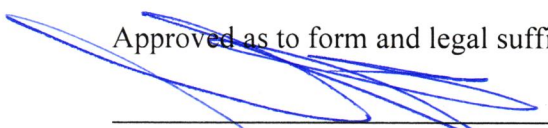
Date: September 11, 2025


George Allen Hayden, Chair

Those voting to grant the amendment:

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

Those voting to deny the amendment:


Approved as to form and legal sufficiency

Steve Scott, Board of Appeals Attorney

NOTICE TO APPLICANT

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 St. Mary's County Circuit Court.

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.