

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 24-2120

PURCELL PROPERTY

SIXTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: DECEMBER 12, 2024

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: January 9, 2025

Pleadings

Matthew and Kimberly Purcell (“Applicants”) seek a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Section 51.3.122.a(2) to reduce the 10-foot setback from the rear property line 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 November 22, 2024 and November 29, 2024. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before November 27, 2024. The agenda was also posted on the County’s website on December 6, 2024. 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 December 12, 2024 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 24649 Broad Creek Drive Hollywood, MD 20636. It consists of 8,056 square feet, more or less, and can be found at Tax Map 26, Grid 24, Parcel 478. It is Lot 150 of the Broad Creek subdivision. The Property is zoned Residential, Low Density (“RL”).

The Variance Requested

Applicant seeks a variance from Comprehensive Zoning Ordinance (“CZO”) Section

51.3.122.a(2) to reduce the 10-foot setback from the rear property line to construct an inground pool.

St. Mary’s County Comprehensive Zoning Ordinance

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

Stacy Clements, an Environmental 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, which is considered a principal structure, improved by a patio. Per the State Department of Assessments and Taxation the house was constructed in 2012.
- Applicants propose a 16’-by-28’ 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.
- Applicants are requesting a reduction of the rear yard setback to 5’8”, a 4’4” reduction in the rear yard setback.
- The site plan is approved by MetCom. It 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.
- 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

Applicant's Testimony and Exhibits

Applicant Matthew Purcell appeared before the Board. He presented a slideshow that presented substantially similar information as contained in the Applicants' standards letter. The following testimony was among that presented:

- Applicant presented a timeline showing his compliance with all procedural requirements of the variance.
- The local HOA has approved the proposed pool.
- The proposed pool will extend into the 10-foot setback from the rear property line at its narrowest point and 3'6" into the setback at its widest point.
- All other walls of the pool will fully preserve required setbacks.

Public Testimony

The following members of the public appeared to offer testimony related to this request:

- *Adam Beal, 24682 Broad Creek Drive*
 - Mr. Beal lives approximately four houses away from Applicants. He is on the local HOA Board and reiterated that it has been approved by the HOA Board. He does not think it will negatively affect the neighborhood or any stormwater management in the neighborhood. He believes the neighborhood writ large would support the request.

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 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.

Denial of this variance would impose a practical difficulty upon Applicant. Applicant 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 Applicant and Mr. Beal testified, intrusion into the rear-

yard setback is unlikely to negatively affect other property owners – considering the back lot is unimproved open space, and shall remain so – and no-one 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, compared to others, drives the variance request.

To the third standard, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” Applicant has demonstrated a practical difficulty meeting this requirement of the Comprehensive Zoning Ordinance. He seeks to build an inground pool, a relatively modest improvement that is typical for a backyard. Given the constrained buildable area of the lot, 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.

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, and an officer of the local homeowners’ association testified that he supported the proposal – and believed the rest of the neighborhood did as well.

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 Applicant asks 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 between 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 rear-yard setback does not unduly alter or disrupt the general spirit, intent, and purpose of the Comprehensive Plan.

ORDER

PURSUANT to the application of Matthew and Kimberly Purcell, petitioning for a variance from Comprehensive Zoning Ordinance Section 51.3.122.a(2) to reduce the 10-foot setback from the rear property line 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 51.3.122.a(2) to reduce the 10-foot (10') setback to 5-feet 8-inches (5'8") from the rear property line 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: 01/09/, 2024⁵



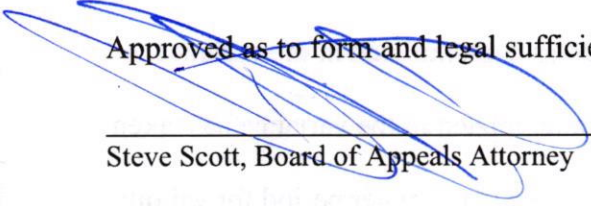
Guy Bradley, Vice Chair

Those voting to grant the amendment:

Mr. Bradley, Mr. Loughran, Mr. Payne, Mr. Richardson

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.