

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 25-0400

BEIDLEMAN PROPERTY

SECOND ELECTION DISTRICT

DATE HEARD: June 26, 2025

ORDERED BY:

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

ENVIRONMENTAL PLANNER: AMANDA YOWELL

DATE SIGNED: July 24, 2025

The Variance Requested

Megan O'Neil Beidleman ("Applicant") seeks a variance (VAAP # 25-0400) from St. Mary's County Comprehensive Zoning Ordinance ("CZO") § 71.8.3 to disturb the 100' Critical Area Buffer for a replacement house and porch.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary's County, on June 6, 2025 and June 13, 2025. Required mailings to neighbors and physical posting of the property was completed by June 11, 2025. The agenda was also posted on the County's website on or about June 20, 2025. Therefore, the Board finds and concludes there has been compliance with the notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on June 26, 2025 at the St. Mary's County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. 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 Applicant.

The Property

Applicant owns real property situate 44996 Lighthouse Road, Piney Point, MD ("the Property"). The Property consists of 1.71 acres, more or less, is within the Residential Low-Density zoning district ("RL"), carries an Intensely Developed Area ("IDA") Critical Area overlay, and can be found among the Tax Maps of St. Mary's County at Tax Map 65, Grid 16, Parcel 225.

The St. Mary's County Comprehensive Zoning Ordinance

CZO § 71.8.3 requires there be a minimum 100-foot buffer landward from the mean high-

water line of tidal waters, tributary streams, and tidal wetlands. No new impervious surfaces or development activities are permitted in the 100-foot buffer unless an applicant obtains a variance. CZO § 71.8.3(b)(1)(c).

Staff Testimony

Amanda Yowell, an Environmental Planner for the St. Mary's County Department of Land Use and Growth Management ("LUGM"), presented the following evidence:

- The Property is a grandfathered lot in the Critical Area of St. Mary's County, since it was recorded in the Land Records of St. Mary's County at Plat Book 8 Page 49 on October 26, 1970 (Attachment 2), in accordance with the Maryland Critical Area Program adopted December 1, 1985. The existing single-family dwelling was built in 1930 according to Real Property Data, Maryland Department of Assessments and Taxation.
- According to the site plan, this property is a 1.71-acre lot located on Lighthouse Road in Piney Point and is adjacent to the tidal waters of Potomac River and Piney Point Creek.
- The Critical Area Buffer (the "Buffer") is established a minimum of 100-feet landward from the mean high-water line of tidal waters and expanded for highly erodible soils (CZO 71.8.3). Therefore, the Property is constrained by the Buffer (Attachment 3).
- The Property, as it currently exists, has 6,264 square feet of lot coverage. The site plan (Attachment 4) proposes removing 6,151 square feet of lot coverage including the house, pathways, patio, garage, and driveway, while keeping a gazebo. The total lot coverage for the parcel with the new construction is 6,030 square feet, a 234 square foot reduction in lot coverage.
- Mitigation is required at a ratio of 2:1 new lot coverage in the expanded buffer plus 3:1 for permanent disturbance within the 100' Buffer and canopy clearing. The applicant will

receive credit for lot coverage removed from the 100' Buffer. The mitigation required is 10,898 square feet of plantings to meet these requirements. A planting agreement and plan will be required prior to the issuance of the building permit.

- The plan has received Stormwater and MetCom approval. The Health Department, Soil Conservation District, and Floodplain approvals are pending.
- The following Attachments to the Staff Report were introduced:
 - Attachment 1: Critical Area Standards Letter
 - Attachment 2: Plat book 8 Page 49
 - Attachment 3: Critical Area Map
 - Attachment 4: Site Plan
 - Attachment 5: Location Map
 - Attachment 6: Land Use Map
 - Attachment 7: Zoning Map
 - Attachment 8: Critical Area Commission Response

Applicant Testimony and Exhibits

Applicant was represented before the Board by Steve Vaughn, of Little Silence's Rest, Inc. Mr. Vaughn is a licensed surveyor. Mr. Vaughn presented a slideshow that included maps, pictures of the property, and other information pertinent to the application. The testimony Mr. Raymond offered included, but was not limited to, the following points:

- The existing house is "far back" from the front lot, and the project proposes bringing the replacement house closer to the road. This will bring it more "in-line" with other houses on the street, and bring the structure further out of the 100' Buffer.
- The new house will be elevated and will have storage and parking of vehicles underneath.

- The project will remove approximately 2,600 square feet of impervious surface in the 100' Buffer and replace it with 1,000 square feet in the 100' Buffer.
- The 100' Buffer, when expanded for hydric soils, encompasses the entire Buffer.
- The site plan is trying to remove as few trees as possible, and will only remove two trees from the Expanded Buffer.
- Stormwater management will be provided for the new impervious surfaces.
- Pulling the house much further to the road would require removal of more trees and would impact neighboring properties' views.

Public Testimony

No members of the public appeared to offer in-person testimony for or against the project. Written letters were received from Ron and Kathy Shaffer, adjacent property owners who wrote to say they support the proposed new home, and from the Critical Area Commission, which opposes the requested variance.

The Critical Area Commission's letter stated the request appears to fail "all" of the variance standards, and that the Applicant could redesign the proposal to better conform to the Critical Area program. It also claimed the Property is "already improved with a single-family dwelling and associated features including outdoor amenity space." The letter said the Applicant has "a feasible alternative to rebuild within the expanded portion of the Buffer," but otherwise gave no specific suggestions on ways the proposal could be improved. The letter stated the variance request is contrary to the spirit and intent of the Critical Area program, which purposefully protects ecologically sensitive areas such as the Critical Area Buffer.

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 Applicant to overcome the presumption that the variance request should be denied.

Findings - Critical Area Variance

Upon review of the facts and circumstances of this matter, the Board finds and concludes the Applicant is entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance.

First, the Board finds that denying the Applicant's request would constitute an unwarranted hardship. In *Assateague Coastal Trust, Inc. v. Roy T. Schwalbach*, 448 Md. 112 (2016), stated "unwarranted hardship" to mean the following:

[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, the Applicant seeks to replace an existing dwelling, constructed in 1930, with a modern replacement. The replacement house will be of unexceptional size, scale, and character. Placing a dwelling, including replacement of a failing dwelling with a suitable modern alternative, is a foundational use of one's own property and we conclude, as we have many times before, it is a use both "significant and reasonable." And we maintain respectful disagreement with the Critical Area Commission letter's assertion that an unwarranted hardship requires denial of "reasonable and significant use of the entire parcel," and the implication that denial of a significant and reasonable use fails to satisfy the test for an unwarranted hardship when *some other* significant and reasonable use can remain. This contention is directly opposite the Court of Appeals' holding in *Schwalbach*, quoted above, decided after the existing definition of "unwarranted hardship" was passed by the General Assembly – something discussed at great length, including a painstakingly thorough analysis of the legislative history of the phrase – in *Schwalbach* itself. *Id.*, 122-139.

Identification of a use "significant and reasonable" is only one half of the test for an unwarranted hardship. The second half is whether or not the significant and reasonable can be achieved by some other means that would not require the need for a variance at all. The Critical Area Commission's letter suggests that the project can be redesigned to locate the proposed house

further out of the 100' and into the Expanded Buffer. No specific alternative design is offered. COMAR 27.01.09.01.E(8), authorizes development without a variance in the expanded buffer only if certain requirements are meant. One such requirement is that the "the location of the development activity is in the expanded portion of the buffer" but not the base 100' Buffer. COMAR 27.01.09.01.E(8)(a). It is not immediately obvious from the record this is, in fact, possible, considering how far the 100' Buffer extends over the Property. And the Applicant's representative provided reasons why moving the proposed replacement house further out of the Buffer and stated, convincingly, it had been "pushed up" as far as practicable. We do not believe the record supports a notion that there is a practicable, reasonable alternative for the development of the replacement house, and that Applicant has done everything reasonably necessary to minimize the extent of their intrusion into the Buffer.

Second, denying the variance would deprive the Applicant of rights commonly enjoyed by other similarly situated property owners in the Rural Preservation District and Resource Conservation Area. As stated above, the requested variance is for a house of a size, build, and character similar to neighboring dwellings. Applicant proposes nothing extraordinary or exceptional with their intended use of the Property, and have tailored a site plan that minimizes deleterious impacts to the environment.

Third, granting a variance will not confer a special privilege upon the Applicant. The right to ask for variances from the Critical Area program's strictures is required by law. Applicant's proposal has been subjected to a public hearing, held to the required standards, includes all required mitigation plantings, environmental considerations, and conforms to the greatest extent it can to all applicable regulations. Applicant carries a high burden of proof to meet before a variance can be granted. The Board cannot locate any definition of "special privilege" in statute or precedent

to suggest that one has been conferred when an applicant, in compliance with the procedural requirements noted above, meets his or her demanding burden.

Fourth, the need for the variance does not arise from the actions of the Applicant or her predecessors in title. Applicant is constrained by the large portion of the Property encumbered by the Buffer and the small size of the lot she has to build upon. The original subdividers of the land could not have looked to the future and imagined the current regulatory regime, and the constraints it would place upon future development of the Property.

Fifth, there is no suggestion in the record that the need for a variance arises from any nonconforming feature on either the Property or a neighboring property. The need for a variance arises solely from difficulties present on the Property itself.

Sixth, granting the requested variance will not adversely affect the environment. The Applicant will be required to mitigate the proposed development with an approved planting plan. Per the staff report, 10,898 square feet of plantings will be required of this development project. The plantings are intended to offset any negative effects and provide improvements to water quality along with wildlife and plant habitat. The required plantings will improve plant diversity and habitat value for the site and will improve the runoff characteristics for the Property, all of which should contribute to improved infiltration and reduction of non-point source pollution leaving the site. These plantings would not be required unless the variance is granted.

Finally, the Board finds, overall, that granting the variance is in the spirit of the Critical Area program. Applicant has availed himself of his right to seek a variance and presented a site plan that identifies a reasonable and significant use that cannot be accomplished without intrusion into the Buffer. That intrusion has been minimized to the greatest extent practicable, and Applicant has been as sensitive to Critical Area's programs goals as may be reasonably expected. This

development, if allowed to proceed, will minimize overall lot coverage, greatly minimize lot coverage within the 100' Buffer, and obligate Applicant to cover what appears to be a yard barren of all but grass with nearly a quarter-acre of diverse, healthy plants. Denial, by comparison, would allow the legally nonconforming dwelling to remain in the exact state it is in today, with its heightened lot coverage within the Buffer and without the benefit of any mitigation plantings brought to the Property. As concerns the requested variance, we conclude the goals and spirit of the Critical Area receive the better part of the bargain.

By satisfying these standards the Applicant has also overcome the presumption in § 8-1808(d)(2)(ii) of the Natural Resources Article that the variance request should be denied.

For the above reasons, we find the requested variance should be granted.

ORDER

PURSUANT to Applicant's request for a variance from Comprehensive Zoning Ordinance § 71.8.3 to disturb the 100' Critical Area Buffer for a replacement house and porch; and,

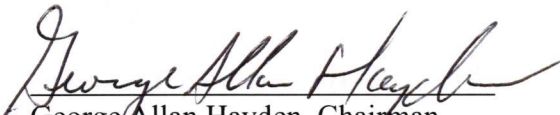
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

ORDERED, by the St. Mary's County Board of Appeals, pursuant to Comprehensive Zoning Ordinance § 24.3, that the Applicant is granted the requested variances.

The foregoing variances are subject to the condition that the 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 the Applicant to construct the structures permitted in this decision, she must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

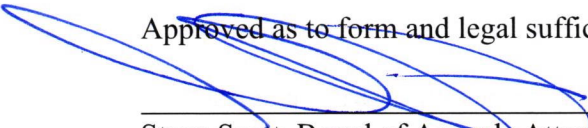
Date: July 24, 2025


George Allan Hayden, Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:


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 Petition for Judicial Review with the Circuit Court for St. Mary's County within thirty (30) days of the date this order is signed. 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 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.