

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 23-1801

BOOTHE PROPERTY

SECOND ELECTION DISTRICT

DATE HEARD: November 19, 2025

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: January 8, 2026

The Variance Requested

Kevin and Pamela Boothe (“Applicants”) seek a variance (VAAP # 23-1978) from St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 71.8.3 to disturb the 100’ Critical Area Buffer for after-the-fact clearing.

Public Notification & Postponement of Original Hearing Date

Notice for the hearing in this matter scheduled for October 9, 2025 was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on September 19, 2025 and September 26, 2025. Required mailings to neighbors and physical posting of the property was completed by September 24, 2025. The agenda was posted on the County’s website on or before October 3, 2025. On October 9, a postponement to November 19, 2025 was announced on the record, and the agenda for that meeting was posted on the County’s website on or before November 14, 2025. Therefore, the Board finds and concludes there has been compliance with all requirements related to prehearing procedure and public notice.

Public Hearing

A public hearing was conducted at 6:30 p.m. on November 19, 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 Applicants.

The Property

Applicants own real property situate 18833 Hodges Lane, Leonardtown, MD (“the Property”), which may be found among the tax maps of St. Mary’s County at Tax Map 61, Grid 3, Parcel 250. The Property consists of 37,896 square feet, more or less, is zoned Rural

Preservation District (“RPD”) and carries a Limited Development Area (“LDA”) Critical Area overlay.

Applicable Law & Regulations

CZO § 71.8.3 establishes 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). “Development” activities are defined by the CZO to generally be “the construction or substantial alteration of [] lands ... including any man-made change to improved or unimproved real estate, including, but not limited to buildings and other structures, dredging, fill, grading, paving, clearing, excavation, dumping extraction, or storage of equipment or materials.” CZO Article 9, Definition of “Development.” With respect to Critical Area regulations, state law defines “development” to mean “a human activity that materially affects the condition or use of dry land, land under water, or a structure” and “disturbance” to mean “any alteration or change to the land,” including “any amount of cutting, clearing, grading, or construction activity.” COMAR 27.01.01.01.B(21), (21-2).

Staff Testimony

Stacy Clements

Stacy Clements, a Planner IV for the St. Mary’s County Department of Land Use and Growth Management (“LUGM”) entered a staff report¹ prepared by Andrew Cheney, an Environmental Planner with LUGM, into the record and presented a slideshow that included a summary of the staff report, zoning maps and satellite photography of the Property, and site plans.

¹ As discussed further within, there are two staff reports in this matter: one for the October 9, 2025 hearing and a revised staff report issued for the November 19 hearing, reflecting the substantial changes made to the Applicants’ proposal between the two hearing dates. All references to a staff report shall be to the revised staff report, unless clearly otherwise noted.

A non-exhaustive list of her testimony includes:

- The subject property (the “Property”) was recorded in the Land Records of St. Mary’s County per Plat Book 5 Page 36, prior to the adoption of the Maryland Critical Area Program on December 1, 1985.
- The property is a 37,897 square foot lot located on Hodges Lane in Leonardtown and is adjacent to the tidal waters of McKay Cove.
- The Property is constrained by the Buffer.
- The original site plan proposed clearing, parking, and a driveway in the buffer. The revised site plan proposes clearing in the buffer, which impacts the 100’ Critical Area Buffer. The CZO states in Section 71.8.3.b(1) that a development activity is not permitted in the Buffer unless the Applicant obtains a variance. The proposal results in 1,200 square feet of clearing in the Buffer.
- Mitigation is required at a ratio of 3:1 for the variance (COMAR 27.01.09.01-2 Table H) and 4:1 for after the fact clearing inside the Buffer (COMAR 27.01.09.01-1 Table C). Additional mitigation will be required for portions of this permit that do not need a variance. A planting agreement and plan will be required prior to the issuance of the building permit.
- The Critical Area Commission responded and commented on the original site plan with parking proposed in the buffer.
- The Critical Area Commission commented on the revised plan removing the parking from the buffer via an email dated October 28, 2025 and reiterated the need for a variance for the clearing in the buffer.
- The following Attachments to the Staff Report were introduced:

- Attachment 1: Critical Area Standards Letter
- Attachment 2: Plat
- Attachment 3: Critical Area Map
- Attachment 4: Site Plan
- Attachment 5: Revised Site Plan
- Attachment 6: Location Map
- Attachment 7: Land Use Map
- Attachment 8: Zoning Map
- Attachment 9: Existing Conditions Map
- Attachment 10: Critical Area Commission Response
- Attachment 11: Email Comment from Critical Area Commission

John Sterling Houser

John Sterling Houser is the Deputy County Attorney and, during Mr. Boothe's presentation, spoke to the Board when Mr. Brown asked staff if the homeowner was "being punished." Factual testimony offered by Mr. Houser included the following:

- A code enforcement case was initiated on this case that Mr. Houser, in his capacity as an attorney in the County Attorney's Office, prosecuted. Mr. Houser said the county's matter was initiated upon an inquiry from Justin Bereznak from the Maryland Department of the Environment as to whether clearing MDE observed on the property had been permitted or not.
- Mr. Houser said that upon investigation, the County determined clearing on the property had occurred between 2020-2023, based upon aerial photographs, a time after Applicants came into possession of the Property. These photographs were

displayed at the hearing.

- Mr. Houser said that Mr. Boothe responded quickly, cooperated, and that the County Attorney's Office was able to resolve "active" enforcement by means of entering the citation on a stet docket and allowing Mr. Boothe time to bring the property compliant through after-the-fact permits.

Applicants' Testimony and Exhibits

Kevin Boothe appeared before the Board to present his variance request. His presentation included a slideshow of pictures of the current state of the Property and satellite images of its prior state. Testimony Mr. Boothe offered included, but was not limited to, the following:

- Satellite photos shown by Mr. Boothe were taken from the County's GIS program and appeared to date from 2003. It showed the property to be largely, but not entirely, clear at that time.
- Mr. Boothe has performed significant mitigation on the Property already, as shown on pictures. He testified that plantings have cost him over \$15,000.00 to-date.
- Applicants have no intention to use the Property for any reason other than recreation. He said his mother fishes on the Property, as does his father-in-law. Perc tests on the Property failed and Mr. Boothe has no intent to build on it in the future.
- Originally, Mr. Boothe intended to place a portion of the gravel parking within the Buffer. The original site plan has been revised and that parking area is no longer proposed within the Buffer.
- Mr. Boothe proffered that he would be willing to plant "native grasses" in the open area of the Buffer, with the exception of the walkway leading to the pier on the Property.

Critical Area Commission Responses

The Critical Area Commission offered two comments. The first was a letter dated October 3, 2025. That letter responded to the Applicants' original site plan, which proposed greater improvements and disturbances within the Buffer. The second comment is an email thread between Michael Macon, the Critical Area Commission's reviewer for this matter, and Amanda Yowell, an Environmental Planner at LUGM. The email thread is in response to the Applicants' revised site plan, and CAC notes, "... if the Applicant wishes to maintain the clearing, they must justify the permanent removal of vegetation, and the Board of Appeals (BOA) must find that the variance standards are satisfied. Only then may the applicant maintain the cleared area, provided they also complete the additional 3:1 mitigation (total of 8:1)."

Public Testimony

No members of the public appeared to offer in-person testimony for or against the project and no written comments were received.

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 of this matter, the Board finds and concludes the Applicants, after significant revisions to their site plan, are entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance.

First, the Board finds that denying the Applicants' request would constitute an unwarranted hardship. Maryland's Court of Appeals, 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.

Mr. Boothe testified that his family intends to use the Property “recreationally,” with no intent to further develop the lot. According to his testimony, for want of site conditions appropriate for a private septic system the Property is effectively undevelopable. The ability to use the Property for recreational purposes – Mr. Boothe named fishing as a prime example – is one of the few conceivable ways a property owner could make any use of unbuildable property. The Applicants amended their site plan to locate proposed impervious surface coverage for their driveway and parking outside of the Buffer, obviating the need for any variance for those improvements. The variance now sought is for after-the-fact approval of clearing that Applicants. Having a more accessible shoreline will enhance the Applicants’ ability to achieve their recreational use of the Property – particularly the ability to fish somewhere other than their pier. Accordingly, we find the Applicants have demonstrated an unwarranted hardship following revision of the original site plan.

Second, denying the variance would deprive the Applicants of rights commonly enjoyed by other similarly situated property owners in the Rural Preservation District and Limited Development Area. The small size of the Property and its inability to perc greatly constrain the Applicants’ ability to make any viable use of their property. The more current satellite photographs shown during the hearing show both adjoining properties to be developed with homes and, for what it is worth, significantly open and cleared Buffers. Aside from the lack of a dwelling, the end result of the Property will not appear to be all that dissimilar from these properties.

Third, granting a variance will not confer a special privilege upon the Applicants. The right to ask for a variance to the Critical Area program’s strictures is required by law. Applicants’ proposed site plan has been subjected to a public hearing, held to the required standards, includes the required mitigation, and conforms to the greatest extent it can to all applicable regulations.

Applicants carry a high burden of proof to meet before a variance can be granted. We cannot find any definition of “special privilege” in statute or case law to suggest that one has been conferred when an applicant, in compliance with the procedural requirements noted above, meets that burden.

Fourth, the need for the variance does not arise from the actions of the Applicants or their predecessors in title. This is an after-the-fact variance; after-the-fact variances are permissible, provided an applicant mitigates for the violation. An applicant cannot plead cost or inconvenience of this mitigation, or of having to undo unpermitted development activities, as factors for the Board to consider. However, an applicant is entitled to have his or her variance request heard without prejudice for prior unpermitted work, provided the above-referenced mitigation is performed. The genuine self-created hardships in this matter – such as installing the driveway in the Buffer – were resolved by the Applicants in their revised site plan. Here, what remains of the Applicants’ original variance request consists of asking for additional access to their shoreline to further their family’s recreational enjoyment of the Property. The need for a variance for some amount of clearing to achieve that stems from the pre-existing features and characteristics of the site, not Applicants’ previous unpermitted development activities. Accordingly, we do not find this to be a self-created hardship and find this standard satisfied.

Fifth, the need for the variance does not arise from any nonconforming feature on either the Subject Property or a neighboring property.

Sixth, granting the requested variance will not adversely affect the environment. The Applicants will be required to mitigate the proposed development with an approved planting plan established on-site. The plantings are intended to offset any negative effects and provide improvements to water quality along with wildlife and plant habitat. A significant quantity will

be demanded of the Applicants and have already been performed. The plantings must meet the two-year survivability requirements set by law and, if they do not, the Applicants will be required to replant failed stock. If stock cannot survive in the locations identified in the Applicants' planting plan the Applicants will need to amend the planting plan. On the whole, more stock will be on the site as a result of this variance than would be without it. The concerns that certain portions of the Buffer will remain clear of wooded stock are mitigated, the Board feels, by the quantity of stock that will be planted elsewhere in the Buffer and by Mr. Boothe's proffer to plant native grasses in these open spaces, which the Board will accept and condition its grant of the requested variance upon.

Finally, the Board finds, overall, that granting the variance is in the spirit of the Critical Area program. Applicants have availed themselves of their right to seek a variance and presented a site plan that identifies a reasonable and significant use that cannot be accomplished without some level of clearing Buffer. The Applicants have worked, apparently without professional assistance, for an extended time to bring the Property into compliance. The Applicants significantly revised their site plan in response to the concerns noted by Critical Area Commission, and the revised site plan proposes significantly less permanently disturbed area within the Buffer but retains significant mitigation on the Property. Accordingly, the Board finds the spirit and intent of the Critical Area program are preserved.

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

ORDER

PURSUANT to Applicants' request for a variance from Comprehensive Zoning Ordinance § 71.8.3 for after-the-fact clearing; and,

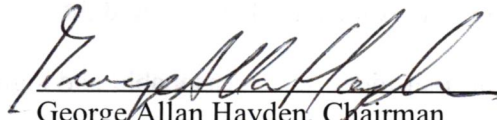
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

ORDERED, by the St. Mary's County Board of Appeals, pursuant to Comprehensive Zoning Ordinance § 24.3, that the Applicants are granted the requested variance.

The foregoing variance is subject to the condition that the 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 perform the work 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: 01-08, 2026


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.

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.