

**IN THE ST. MARY'S COUNTY BOARD OF APPEALS**

**VAAP NUMBER 24-2243**

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**BYERS & NEVILLE PROPERTY**

**SIXTH ELECTION DISTRICT**

**DATE HEARD: August 14, 2025**

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**ORDERED BY:**

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

**ENVIRONMENTAL PLANNER: AMANDA YOWELL**

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**DATE SIGNED: September 11, 2025**

### **Pleadings**

Diane Byers and John Neville (“Applicants”) seek a variances (VAAP # 24-2243) from St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Section 41.5.3.i(1) to exceed lot coverage limits to construct a porch.

### **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. The hearing notice was posted on the property by July 30, 2025. The file contains the certification of mailing to all adjoining landowners, even those located across a street. Each person designated in the application as owning land that is located within two hundred feet of the subject property was notified by mail, sent to the address furnished with the application. The agenda was also posted on the County’s website by Friday, August 8, 2025. Therefore, the 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 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 24548 Half Pone Point Road, Hollywood, Maryland (“the Property”). The Property is in the Rural Preservation District zoning district (“RPD”), lies within a Limited Development Area (“LDA”) Critical Area overlay, and is identified at Tax Map 27, Grid 12, Parcel 949.

### **The Variance Requested**

Applicants seek a variance from CZO § 41.5.3.i(1) to exceed lot coverage limits to construct a porch.

### **The St. Mary's County Comprehensive Zoning Ordinance**

CZO § 41.5.3.i(1) establishes lot coverage limits of no more than 15% of the lot area for lots and parcels larger than 0.5 acres in size.

### **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:

- In 1975, a subdivision plat for Ru Lai subdivision was recorded among the Land Records of St. Mary's County at Plat Book 12, Page 31, thus creating Lot 1 (see Attachment 2). According to SDAT, the existing home was built in 1982, prior to the adoption of the Maryland Critical Area Program on December 1, 1985.
- According to the site plan (Attachment 4), this property is a 1.02-acre lot located on Half Pone Point Road in Hollywood and is adjacent to the tidal waters of the Cuckhold Creek.
- The Property, as it currently exists, has 9,540 square feet of lot coverage that existed before the adoption of the Critical Area Program on December 1, 1985. The site plan proposes adding a 150-square-foot porch, while removing a 50-square-foot shed. The total proposed lot coverage for the parcel with the new construction is 9,640 square feet.
- The Property, as determined by CZO 41.5.3, limits lot coverage to 6,665 square feet, or no more than 15% of the lot. Although 9,540 square feet of lot coverage is legally existing on the parcel, the applicant is proposing to add an additional 100 square feet of lot coverage to the parcel.

- Mitigation is required at a ratio of 3:1 for the variance (COMAR 27.01.09.01-2). The applicant will receive credit for lot coverage removed from the buffer in the amount of 50 square feet. The total mitigation required for this proposal is 450 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 Critical Area Commission responded on July 3, 2025 and is opposed to this variance request (Attachment 8).
- The Department of Land Use and Growth Management has approved the site plan for zoning requirements. The Health Department has approved the site plan. The site plan is exempt from stormwater management as it proposes to disturb less than 5,000 square feet of soil.
- If a variance is granted but a building permit is not issued, the variance shall lapse one year from the date of grant (CZO Section 24.8.1).
- The following Attachments to the Staff Report were introduced:
  - #1: Critical Area Standards Letter;
  - #2: Plat Book 12 Page 31
  - #3: Critical Area Map
  - #4: Site Plan;
  - #5: Location Map;
  - #6: Land Use Map;
  - #7: Zoning Map; and,
  - #8: Critical Area Commission Response

### **Applicant Testimony and Exhibits**

Applicant John Neville appeared before the Board of Appeals to testify and present evidence in support of his request. Mr. Neville presented a slideshow that included the Applicants' site plan, pictures of the property, and other information pertinent to the application. The Applicants' slideshow also contained narratives supplementing the Applicants' earlier standards letter. The evidence offered by Applicants included, but was not limited to, the following:

- Mr. Neville and Ms. Byers recently purchased the property and have begun interior renovation work. He stated they want to extend the covered portion of the deck, the subject of the variance request, to provide shade and increased recreational spot.
- The proposal will also facilitate access to the house by Ms. Byers' 92-year old mother, who is wheelchair bound. Specifically, Mr. Neville said, "the design was purposely laid out to incorporate the inside of the house to go to the outside... it allows for her ease of access and others' ease of access."
- Mr. Neville presented renderings that demonstrated the proposed porch, the gable extension that will overhang it, and how they will slightly protrude beyond the existing concrete patio.
- None of the proposed improvements are within the Buffer, although some of the required mitigation will be placed in the Buffer.
- The covered portion of the deck will extend only "~5' beyond the existing footprint."
- Applicants propose removing some of the existing lot coverage by removing a small shed approximately 50 s.f. in size, currently used for housing lawn equipment.
- In response to a question posed by Ms. Weaver, Mr. Neville elaborated that they explored additional design possibilities but considered extending the roof a necessity to achieve full

use of the proposed deck and to enable access to it by Ms. Byers' mother.

### **Public Testimony**

No members of the public appeared to offer in-person testimony for or against the project.

### **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

Upon review of the facts and circumstances of this matter, the Board finds and concludes the Applicants 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. In *Assateague Coastal Trust, Inc. v. Roy T. Schwalbach*, 448 Md. 112 (2016), the Court of Appeals stated "unwarranted hardship," as used in the Natural Resources Article, has the following meaning:

[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 Board concludes the Applicant has satisfied the standard of an unwarranted hardship. The Applicants seek approval to construct a porch that will add approximately 100 square feet of lot coverage. The porch constitutes "a" significant and reasonable use, particularly in light of Mr. Neville's descriptions of how it would enhance his family's ability to use and enjoy the existing dwelling and the Property in general. An attached porch, as a gathering space for family and guests to enjoy the outdoors with shelter from the elements, seems to the Board to be an improvement within the scope one might reasonably expect a dwelling to incorporate. And, given the lot coverage limit applies to the entirety of the Property, there is no place to locate it without requiring the variance. Mr. Neville explained that a redesign of the proposal to remove additional lot coverage would carry high cost implications to him, and that he is unable to remove more existing lot coverage than what has been proffered for removal. Requiring more does not strike the Board as commensurate to the modest increase in lot coverage proposed.

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 proposed improvement is a staple improvement to a residential dwelling. It appears to be of no greater size, character, or nature than what may commonly be found on other properties or seen in other successful variance requests. He has followed the same steps that would be asked of any similarly situated property owner: to “tighten up” the proposal as much as may be reasonably requested, and to ask the Board to sanction the slight increase in lot coverage through grant of a variance.

Third, granting a variance will not confer a special privilege upon the Applicant. 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 and held to the required standards, including all required mitigation plantings. Applicants carry the burden of proof to demonstrate their proposal satisfies the standards for granting a variance. 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 Applicant or their predecessors in title. The vested lot coverage and existing dwelling were constructed before the advent of the Critical Area program. Applicants’ predecessors in title could not have predicted the implications it would have for the Property’s future under the Critical Area program. There is nothing in the record to suggest that the need for the variance arises, in any way, from how Applicants or their predecessors have chosen to make use of the existing property and its existing, grandfathered improvements.

Fifth, the need for the variance does not arise from any nonconforming feature on a



neighboring property.

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 that will be performed on-site (per COMAR 27.01.09.01). 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. Some of those plantings will be placed in the Buffer. Additionally, the lot coverage that will be removed is closer to the water's edge than the proposed porch.

Finally, the Board finds, overall, that granting the variance is in the spirit of the Critical Area program. Applicants have a vested right to maintain their existing 9,540 square feet of lot coverage; this variance will only authorize them to add approximately 100 square feet, on balance, to that number. That net increase will, per Mr. Neville's testimony, enhance the Applicants' ability to make use and enjoyment of the property. No lot coverage will be added in the Buffer, and vegetation in the Buffer will be increased by the performance of mitigation. On the whole, it appears the requested variance, with its required plantings, strikes a proper balance between respecting property owners' rights and goals to make the fullest reasonable use of the Property as possible on the one hand and protecting the environmental quality of the Property's immediate environs and the greater Chesapeake Bay on the other.

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 CZO § 41.5.3.i(1) to exceed lot coverage limits to construct a porch; and,

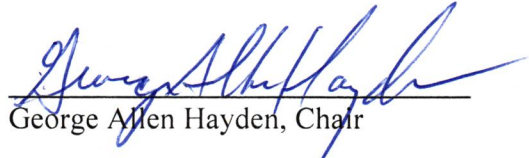
**PURSUANT** to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

**ORDERED**, by the St. Mary's County Board of Appeals, pursuant to Comprehensive Zoning Ordinance § 24.3, that the Applicants are granted a variance from Section 41.5.3.i(1) to exceed lot coverage limits to construct a porch.

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 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: \_\_\_\_\_, 2025

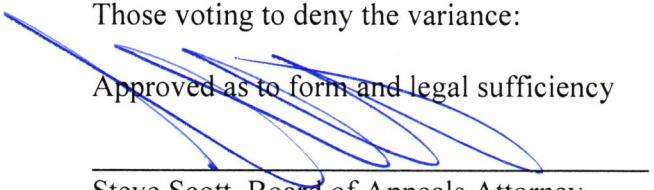
  
George Allen Hayden, Chair

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

  
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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.