

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 25-1134

BURKS PROPERTY

EIGHTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: AUGUST 28, 2025

ORDERED BY:

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

ENVIRONMENTAL PLANNER: ANDREW CHENEY

DATE SIGNED: October 9, 2025

Pleadings

Michael and Sara Burks (“Applicants”) seek a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 71.8.3 disturb the Expanded Critical Area Buffer (“the Expanded Buffer”) for a pool and patio.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on August 8 and August 15, 2025. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before August 13, 2025. The agenda was also posted on the County’s website on or before Friday, August 22, 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 28, 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 Applicants.

The Property

The subject property is situate 23460 River Hill Court, Lexington Park, Maryland (“the Property”). The Property is 2.50 acres, more or less, is zoned Residential Neighborhood Conservation (“RNC”), has a Limited Development Area (“LDA”) Critical Area overlay, and may be found at Tax Map 35A, Grid 18, Parcel 32.

The Variance Requested

Applicants seek a variance from CZO § 71.8.3 to disturb the Expanded Buffer to construct

a swimming pool and patio.

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). Moreover, the 100-foot buffer may be expanded up to 300-feet in the presence of steep slopes, highly erodible soils, or hydric soils. CZO 71.8.3.a(1).

Departmental Testimony and Exhibits

Amanda Yowell, an Environmental Planner for the St. Mary's County Department of Land Use & Growth Management ("LUGM"), presented a staff report prepared by Andrew Cheney and a PowerPoint presentation that included the following testimony:

- The Property was recorded by deed in the Land Records of St. Mary's County at Book 242 Page 84 in 1975 (Attachment 2), prior to the adoption of the Critical Area Program on December 1, 1985. According to Real Property Data, Maryland Department of Assessments and Taxation, the existing home was built in 1975. The Property has been in its current configuration since December 6, 1988 according to Plat Book 30 Page 60 (Attachment 3).
- The property is a 2.50-acre lot located on River Hill Court in Lexington Park and is adjacent to the tidal waters of the Patuxent River.
- The Critical Area Buffer (the "Buffer") is established a minimum of 100-feet landward from the mean high-water line of tidal waters (CZO 71.8.3) and is expanded up to 300-feet for the presence of hydric and highly erodible soils (Attachment 4).

- The site plan (Attachment 5) requests a pool with a patio, which impacts the expanded 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 1,843 square feet of permanent disturbance impacting the Buffer.
- Mitigation is required at a ratio of 3:1 for the variance (COMAR 27.01.09.01-2 Table H). A planting agreement and planting plan must be approved prior to the issuance of a permit.
- The Critical Area Commission responded, and the response has been uploaded to BoardDocs (Attachment 9).
- The Department of Land Use and Growth Management has approved the site plan for zoning and floodplain requirements. The Health Department has approved the site plan. The site plan is exempt from Soil Conservation and stormwater management requirements as it disturbs 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)..
- Attachments to the Staff Report:
 - #1: Critical Area Standards Letter
 - #2: Deed
 - #3: Plat
 - #4: Critical Area Map
 - #5: Site Plan
 - #6: Location Map

- #7: Land Use Map
- #8: Zoning Map
- #9: Critical Area Commission Response

Applicants' Testimony and Exhibits

Both applicants appeared before the Board of Appeals to offer testimony. They presented a picture of their existing pool and patio and explained their proposal. The following evidence and testimony was included in their presentation:

- The current pool has been there “for a long time,” and the concrete deck around the existing pool is beginning to sink.
- Applicants wish to relocate the pool and patio further from the water’s edge to reduce maintenance costs and erosion.
- Leaving the pool in its current condition would negatively impact the applicants’ property value.
- Applicants stated that many of their neighbors have pools.
- Applicants visually demonstrated how much the erosion has grown since they owned the property, and that the erosion also impacts a 3-foot tall retaining wall at the edge of the property. The retaining wall would stay in place.
- The current pool is an oval-like shape and will be replaced with a rectangular pool, which will be slightly bigger.
- The new pool will be surrounded by pavers, not concrete.

Public Testimony

No members of the public appeared to offer testimony in this matter.

Decision

County 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 jurisdictions 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, the Board finds and concludes the Applicants are entitled to the requested relief.

The Board finds that denying the Applicants' request would constitute an unwarranted hardship. In *Assateague Coastal Trust, Inc. v. Roy T. Schwalbach*, 448 d. 112 (2016), the Court of Appeals established the statutory definition for "unwarranted hardship" as it pertains to prospective development in the Critical Area:

[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, Applicants have sufficiently demonstrated that, absent the variance, they would be denied a use of the Property both significant and reasonable. Applicants ask for the replacement of existing improvements – one is a swimming pool and the other is a patio adjacent to it. Both appear to contribute to the use and enjoyment of the property, and both appear to lie within the definition of a use "significant and reasonable." The Property is constrained by the Expanded Buffer and presents challenging topography, and no practicable means of relocating the proposed pool further out of the Expanded Buffer appears obvious to the Board. Accordingly, we find that Applicants have demonstrated an unwarranted hardship.

Similarly, the Board finds literal interpretation of the local Critical Area program would deprive Applicants of a substantial use of land or a structure permitted to others. Applicants'

testimony was that many of their neighbors possess similar improvements. On the whole, the Applicants' proposal seems to be of a character and nature as one might expect in the Limited Development Area.

To the third factor, 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. Applicants avail themselves of their right to seek a variance and are hewing as close to the Critical Area program's strictures as may be reasonably expected. Their proposal will not be granted unless accompanied by required mitigation, which shall be significant for what are, in essence, in-kind replacement of existing improvements. Provisions for requesting and granting a variance are a necessary element of any local Critical Area program. Applicants have exercised their right to petition for a variance and, given the chance to justify the request to the Board of Appeals, have appeared to meet their burden, as any property owner has the right to do.

Fourth, the variance request is not based upon conditions or circumstances that are the result of actions by the Applicants. Rather, Applicants are constrained by the physical characteristics of their lot and its existing configuration.

Fifth, the variance request does not arise from any conforming or nonconforming condition on any neighboring property.

Sixth, the granting of the variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdictions local Critical Area. When development is permitted in the Critical Area Buffer it must be heavily mitigated. As noted by staff, 1,843 square feet of mitigation plantings will be required. These plantings will mitigate the adverse effects of development and will improve floral and fauna habitat in the Critical Area Buffer. These plantings would not be required unless the Property is redeveloped. The proposal

will also move improvements further from the water's edge than exist at present, and Applicants testified this will decrease erosion on the Property.

Lastly, by satisfying the above criteria the Board finds that granting of the variance will 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. In total, the Applicants have demonstrated that a variance is necessary to achieve the proposed use, which the Board finds to be significant and reasonable in nature. The impacts to the Buffer and Expanded Buffer of redevelopment will be offset by the mitigation and other site improvements that will be made, and the proposed improvements will be further from the water and less impactful than those improvements which currently exist on-site.

Finally, in satisfying each of the necessary criteria the Applicants have overcome the statutory presumption against granting a variance.

Accordingly, we conclude the Applicants should be granted the requested relief.

ORDER

PURSUANT to the application of Michael and Sara Burks, petitioning for a variance from CZO § 71.8.3 to disturb the Expanded Critical Area Buffer for a pool and patio; and

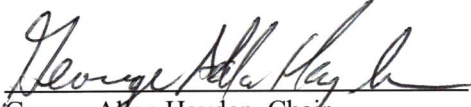
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

ORDERED, by the St. Mary's County Board of Appeals, pursuant to CZO § 24.8, that the Applicants are granted the requested variance;

UPON CONDITION THAT, 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.

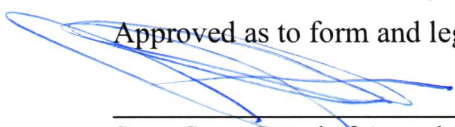
Date: October 9, 2025


George Allan Hayden, Chair

Those voting to grant the variance:

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

Those voting to deny the variance:


Approved as to form and legal sufficiency

Steve Scott, Board of Appeals Attorney

NOTICE TO APPLICANTS

Within thirty (30) days from the date of this Order, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Petition for Judicial Review in the St. Mary's County Circuit Court. 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.