

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 26-0633

COLE & LE PROPERTY

SIXTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: JULY 9, 2026

ORDERED BY:

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

ENVIRONMENTAL PLANNER: ANDREW CHENEY

DATE SIGNED: August 13, 2026

Pleadings

Timothy Cole and Minh Le (“Applicants”) seek a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 71.8.3 to disturb the 100’ Critical Area Buffer for the repair/expansion of a sunroom, deck, and porch attached to an existing dwelling.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on June 19 and June 26, 2026. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before June 24, 2026. The agenda was also posted on the County’s website on or before June 24, 2026. Therefore, the Board of Appeals (“Board”) finds compliance with all notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on July 9, 2026, 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 variance requested by the Applicants.

The Property

The subject property is situate 26174 Skyview Drive, Hollywood, Maryland (“the Property”). The Property is 36,590 square feet, more or less, is zoned Residential, Neighborhood Conservation (“RNC”) and subject to a Limited Development Area (“LDA”) Critical Area overlay. It may be found among the Tax Maps of St. Mary’s County at Tax Map 20B, Grid 0, Parcel 0, Lot 500-27, in the Hollywood Shores subdivision.

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). The 100-foot Buffer may be expanded if impacted by certain site features, such as the presence of steep slopes or hydric soils.

Departmental Testimony and Exhibits

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

- The Property was recorded in the Land Records of St. Mary's County per Plat Liber 2, Folio 100 as Lots 26, 27, and 28, prior to the adoption of the Maryland Critical Area Program on December 1, 1985. In 2010, a Boundary Line Adjustment Plat was recorded in the Land Records per Plat Liber 68, Folio 63, consolidating the lots into Lot 500-27. According to Real Property Data, Maryland Department of Assessments and Taxation, the existing home was built in 1962.
- The Property sits adjacent to the tidal waters of Cole Creek. The Buffer is measured at a minimum of 100 feet landward from the mean high-water line of tidal waters and expanded to include slopes greater than 15 percent. Therefore, the Property is constrained by the Buffer and Expanded Buffer.
- The site plan submitted with the permit application proposes to demolish an existing sunroom, carport with a bedroom above, attached deck, and stoop. The sunroom will be replaced with a new sunroom with a 2-foot expansion, and the

existing carport will be replaced by a kitchen. The existing deck will be replaced with a 16-foot by 25.9-foot deck and the existing 4-foot by 6-foot front stoop will be replaced with a 5-foot by 10-foot front porch. The proposal results in 1,054 square feet of impacts to the 100' Critical Area Buffer.

- Aside from the requested variance, all approving departments and agencies have indicated the site plan can be approved.
- The Critical Area Commission submitted comments via a letter dated June 17, 2026. The Critical Area Commission did not state it opposes the variance.
- Mitigation is required at a ratio of 3:1 for a variance granted for disturbance within the Buffer. Therefore, a total of 3,162 sf of mitigation will be required for the variance request. A planting plan and agreement will be required.
- Attachments to the Staff Report:
 - #1: Plat Liber 2, Folio 100
 - #2: Plat Liber 68, Folio 63
 - #3: Critical Area Map
 - #4: Site Plan
 - #5: Critical Area Commission Response
 - #6: Critical Area Standards Letter
 - #7: Location Map
 - #8: Existing Conditions Map
 - #9: Land Use Map
 - #10: Zoning Map

Applicants' Testimony and Exhibits

Mr. Minh Le appeared before the Board to present the variance request. He explained the proposal and offered a slideshow which showed the Applicants' site plan, pictures depicting the current state of the improvements on the Property, the proposed floor plan of the house after the completion of proposed work, and drawings of the plantings intended to satisfy mitigation requirements. The following evidence and testimony were included in his presentation:

- The intended work is demolition and replacement of structurally deficient portions of the existing residence, and demolition of structurally deficient sheds.
- The original structure pre-dates enactment of the Critical Area program and was built in 1962. Past work at the house was permitted under Permit #04-00000194 and Permit # 15-00002024.
- Individual slides on the presentation detailed numerous structural deficiencies with the existing house, including significant deflection of certain floor joists, misalignment of load-bearing walls, and corroded joist hangers.
- The proposed mitigation plantings will be a mix of native species, as required by the planting agreement.

Public Testimony

No members of the public appeared to offer testimony in this matter, and no written comments were submitted.

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 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, 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 Md. 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. The property is improved by a single-family dwelling, the existing structural deficiencies of which Applicants explained at length. Replacement of the structurally deficient portions of the home with modern, structurally sound substitutes is both significant and reasonable. The proposed work will not be excessively large nor out-of-character with the neighborhood or other similarly situated properties subject to the Critical Area program.

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. As related above, the requested use amounts to, in effect, a request only to continue the use of an existing single-family dwelling, a foundational use of one's property. The proposed dwelling is reasonable in scope and not at all unlike other dwellings which have received variances from this Board.

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. 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, appear to have met their burden.

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 the footprint of the existing house, which Applicants intend to utilize to its fullest.

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 jurisdiction's local Critical Area. When development is permitted in the Critical Area Buffer, it must be heavily mitigated. As noted by staff, 3,162 square feet of mitigation plantings will be required. These plantings will mitigate the adverse effects of development and will improve flora and fauna habitat in the Critical Area Buffer. These plantings would not be required unless the variance is granted.

Lastly, by satisfying the above criteria the Board finds that granting the variance will be in harmony with the general spirit and intent of the Critical Area law, the regulations in the Natural Resources Article, and the St. Mary's County Critical Area program. In total, Applicants have demonstrated that a variance is necessary to achieve their proposed use, which the Board finds to be significant and reasonable in nature. It makes effective use of existing site features and improvements to reduce overall impacts to the surrounding environment. Unavoidable impacts to the Buffer will be offset by required mitigation. Overall, this proposal strikes the necessary

balance between allowing property owners reasonable use and enjoyment of their property while simultaneously husbanding the County's and the State's natural environments.

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 Timothy Cole and Minh Le, petitioning for the above-described variance; 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 to disturb the 100' Critical Area Buffer for the repair/expansion of a sunroom, deck, and porch attached to an existing dwelling;

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. 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: August 13, 2026

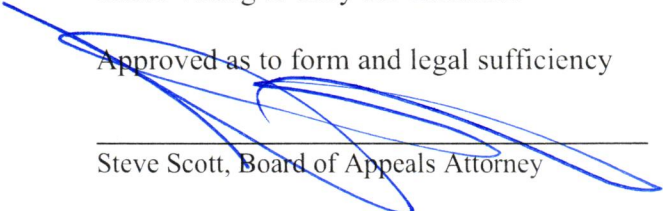

George Allan Hayden, Chair

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.