

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 25-1239

DOTSON PROPERTY

SIXTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: JANUARY 8, 2026

ORDERED BY:

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

ENVIRONMENTAL PLANNER: ANDREW CHENEY

DATE SIGNED: February 13, 2026

The Variance Requested

David and Tina Dotson (“Applicants”) seek a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 41.7.4.a(5) to build a deck closer to the water than principal structures on adjacent properties.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on December 19 and December 26, 2025. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before December 24, 2025. The agenda was also posted on the County’s website on or before Wednesday, December 31, 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 January 8, 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 amendment requested by the Applicants.

The Property

The subject property is situate 18103 River Road, Tall Timbers, Maryland (“the Property”). The Property is 16,117 square feet, more or less, is zoned Rural Preservation District (“RPD”), has Limited Development Area (“LDA”) and Buffer Management Overlay (“BMO”) Critical Area overlays, and may be found among the Tax Maps of St. Mary’s County at Tax Map 61, Grid 20, Parcel 192.

Applicable Laws: St. Mary's County Comprehensive Zoning Ordinance

CZO § 41.7 establishes the Buffer Management Overlay District (“BMO”). A BMO is an area where “it has been demonstrated that the existing pattern of development in the Critical Area prevents the Buffer from fulfilling the functions for water quality and habitat protection” set by state law. Accordingly, shoreline development restrictions are less stringent in areas lying under a BMO relative to other properties within the Critical Area. CZO § 41.7.4 sets forth specific development standards where development activities may be approved in a BMO without a variance. CZO § 41.7.4.a(5), implicated in the pending matter, states “residential development and redevelopment shall not be closer to the water than principal structures on an adjacent property, or the standard rear yard setback for the underlying zone, or 25 feet, whichever is greater.”

Departmental Testimony and Exhibits

Stacy Clements, 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 is a grandfather parcel since it was recorded by deed prior to the adoption of the Maryland Critical Area Program on December 1, 1985. It is 16,117 square feet and located on River Road in Tall Timbers, and is adjacent to tidal waters of the Potomac River.
- The principal structure on the adjacent property is 71 feet from the water. The proposed deck will be 49 feet from the water. Therefore, the proposed deck will be closer to the water than the principal structure on the adjacent property.
- The site plan proposes a deck that will be closer to the water than the principal structure on an adjacent property.

- Mitigation is required at a ratio of 3:1 for the variance COMAR 27.01.09.01-2 Table H. Mitigation is required at a ratio of 2:1 for development inside the 100-foot buffer CZO 41.7.5.a.(1). A planting agreement and plan will be required prior to the issuance of the building permit.
- The Critical Area Commission responded on December 10, 2025. In its letter the Critical Area Commission did not state it opposes the variance request.
- The Department of Land Use and Growth Management has approved the site plan for zoning, floodplain, and stormwater requirements. Soil Conservation District has approved the site plan. Health Department has approved the site plan.
- Attachments to the Staff Report:
 - Attachment 1: Critical Area Standards Letter
 - Attachment 2: Deeds
 - Attachment 3: Critical Area Map
 - Attachment 4: Site Plan
 - Attachment 5: Location Map
 - Attachment 6: Land Use Map
 - Attachment 7: Zoning Map
 - Attachment 8: Existing Conditions Map
 - Attachment 9: Critical Area Commission Response

Applicants' Testimony and Exhibits

Both applicants appeared before the Board. Together, they explained the proposal, presented a slideshow, and answered questions posed by the Board. The following evidence and testimony were included in their presentation:

- Applicants shared pictures showing previous site conditions in 2016. Highlighted features include a brick patio and depictions of flooding on the property. Because of the flooding, Applicants elevated their home and removed all brick patio, sidewalks, and entrance steps.
- Elevating the house has deprived Applicants of their ability to make full use of an existing sunroom. The proposed deck will allow them to do so.

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 an 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. Their request is for a deck which would accentuate their enjoyment of an existing site feature. It would also, in and of itself, allow

Applicants to enjoy some outdoor recreational opportunities they do not have. The proposed improvements are modest additions to an existing residence. The location of the proposed deck is tied to the existing location of their home and cannot be repositioned. With Applicants having identified a significant and reasonable use and demonstrated the impracticability of establishing that use elsewhere on the Property, we conclude the Applicants adequately demonstrated that denial would constitute an unwarranted hardship.

Similarly, the Board finds literal interpretation of the local Critical Area program would deprive Applicants of a substantial use permitted to others. A single-family residence is a foundational use of one's real property and the proposed deck is a commonly enjoyed accessory feature of many homes. The proposed dwelling, inclusive of all additions, is of a character and nature that appear to be typical for the Property's immediate environs, and there is nothing about the pending proposal that removes it from the realm of projects reasonably accomplishable by similarly-situated property owners.

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. Provisions for requesting and granting a variance are a necessary element of any local Critical Area program. Natural Resources Article § 8-1808(c)(iii)(13). Applicants have exercised their right to petition for a variance, as any property owner has the right to do. There is no special privilege conferred on an Applicant who does so and is granted a variance in turn, provided Applicants carry their burden to meet the required standards.

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 pre-existing configuration and peculiar environmental features of the Property – namely, its propensity to flood.

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, 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.

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. BMOs are areas where, by definition, strict compliance with the Critical Area program is unlikely to achieve the intended goals of the Critical Area program. Accordingly, development standards are relaxed – though, obviously not so relaxed as to entirely obviate Applicants' need for a variance. Even so, Applicants have made a compelling case. Their requested development is reasonable: the development is impracticable, if not impossible, to pursue without the requested variance. Granting the requested variance will yield mitigation plantings that would otherwise not be placed on the property. Given the facts of this matter, the Board feels an appropriate balance between reasonable redevelopment and protecting the environmental quality of the Property's immediate environs and the greater Chesapeake Bay

area have been met, and the spirit of the Critical Area is preserved.

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

In light of all of the foregoing, we conclude the Applicants should be granted the requested relief.

ORDER

PURSUANT to the application of David and Tina Dotson, petitioning for a variance from CZO § 41.7.4.a(5) to build a deck closer to the water than a principal structure on adjacent property; and

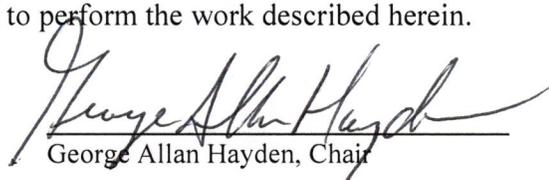
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

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: February 12, 2026

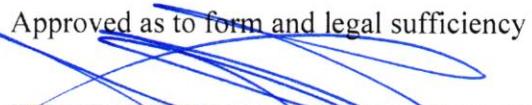

George Allan Hayden, Chair

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.