

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 25-1468

GILL-WADDINGHAM PROPERTY

EIGHTH ELECTION DISTRICT

DATE HEARD: JANUARY 8, 2026

ORDERED BY:

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

ENVIRONMENTAL PLANNER: ANDREW CHENEY, JR.

DATE SIGNED: February 12, 2026

The Variance Requested

Lorelee Gill and Douglas Waddingham (“Applicants”) seek a variance (VAAP # 25-1468) from St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 71.8.3 to disturb the 100’ Critical Area Buffer for a replacement house and driveway.

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. Required mailings to neighbors and physical posting of the property were completed by December 24, 2025. The agenda was also posted on the County’s website on December 31, 2025. Therefore, the Board finds and concludes 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 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 23678 Max Way, California, Maryland (“the Property”). The Property consists of 61.456 acres, more or less, is within the Residential Low-Density zoning district (“RL”), carries a Resource Conservation Area (“RCA”) Critical Area overlay, and can be found among the Tax Maps of St. Mary’s County at Tax Map 34, Grid 12, Parcel 21.

The 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).

Staff Testimony

Stacy Clements, an Environmental Planner for the St. Mary's County Department of Land Use and Growth Management ("LUGM"), presented a slideshow that summarized the variance request. A staff report prepared by Andrew Chaney, an Environmental Planner at LUGM, was also entered into the record. Testimony and evidence adduced by staff included, but was not limited to, the following items:

- The Property was subdivided and recorded with Land Records under Plat Book 82 Page 92 on April 11, 2025, after program adoption. It is a 61.456 acre lot located on Max Way in California and is adjacent to the tidal waters of the Patuxent River.
- The Property is impacted by the Buffer.
- The site plan proposes a replacement house and driveway in the 100-foot Critical Area Buffer. A total of 8,181 square feet of new lot coverage in the Buffer is proposed.
- Mitigation for the variance request is required at a ratio of 3:1 for the variance, per COMAR 27.01.09.01-2 Table H.
- The Critical Area Commission responded on December 16, 2025.
- The Department of Land Use and Growth Management has approved the site plan for zoning, floodplain, and stormwater requirements. Soil Conservation District and the Health Department approvals are still pending.
- 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: 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

The Applicants were represented before the Board by Steve Vaughn, of Little Silence's Rest, Inc. Mr. Vaughn is a licensed surveyor. Mr. Vaughn presented a slideshow that included maps, pictures of the property, and other information pertinent to the application. Mr. Waddingham also appeared to answer some questions posed by the Board. The testimony Mr. Vaughn offered included, but was not limited to, the following items:

- The Property is a large parcel surrounded by residential lots and the "new" development at Myrtle Point.
- The proposed replacement house is located roughly where the existing home is, on a point in the interior of the Property. The proposed driveway winds through woods to reach the site.
- Photographs show the existing improvements to be in states of relatively poor repair, and are unsuitable for continued use and habitation.
- All existing structures are proposed to be removed as part of the replacement.
- The existing septic system will be abandoned and a new one, inclusive of drain fields,

installed.

- The driveway will include a turnaround area.
- No part of the proposed house is closer to the water than existing improvements.
- In total, existing lot coverage is 44,016 square feet, the majority of which is the driveway. 46,975 square feet is proposed, an overall increase of 1.8% in lot coverage.
- Mr. Waddingham described the property as the Applicants' "dream home" and detailed the efforts they have gone through over the last three years to clean up the property, including enrolling the Property in a Forest Management Plan.

Public Testimony

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

Written comment was received from the following:

- *George Curtis, President, Managing Member, Myrtle Point Holdings, LLC*
 - Mr. Curtis stated that Myrtle Point Holdings LLC is the owner of an adjacent 10.2-acre lot. He wrote that the company has "been the record owner of the 10.2-acre lot for the past 15 years and has noted the location and condition of the existing house." He stated Myrtle Point Holdings has no objection to the requested variance and supports its approval.

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 an applicant 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 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), 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.

Here, the Applicants seek to replace an existing dwelling with a modern replacement. The replacement house will be of unexceptional size, scale, and character. Placing a dwelling, including replacement of a failing dwelling with a suitable modern alternative, is a foundational use of one's own property. Applicants wish to make use of existing footprints where possible, which precludes relocation further outside the Buffer.

Second, denying the variance would deprive the Applicants of rights commonly enjoyed by other similarly situated property owners. As stated above, the requested variance is for a house of unexceptional size, build, and character. Applicants propose nothing extraordinary with their intended use of the Property and have tailored a site plan that minimizes deleterious impacts to the environment.

Third, granting a variance will not confer a special privilege upon the Applicants. The right to ask for variances from the Critical Area program's strictures is required by law. Applicants' proposal has been subjected to a public hearing, held to the required standards, includes all required mitigation plantings, environmental considerations, 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. The Board cannot locate any definition of "special privilege" in statute or precedent to suggest that one has been conferred when an applicant, in compliance with the procedural requirements noted above, meets his or her demanding burden.

Fourth, the need for the variance does not arise from the actions of the Applicants or their predecessors in title. Applicants are constrained by the natural features of the site and of the location of existing site improvements. The original builders of the land could not have looked to the future and imagined the current regulatory regime, and the constraints it would place upon

future development of the Property.

Fifth, there is no suggestion in the record that the need for a variance arises from any nonconforming feature on either the Property or a neighboring property. The need for a variance arises solely from difficulties present on the Property itself.

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. 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. These plantings would not be required unless the variance is granted.

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 intrusion into the Buffer. That intrusion has been minimized to the greatest extent practicable, and Applicants have been as sensitive to Critical Area's programs goals as may be reasonably expected. As concerns the requested variance, we conclude the goals and spirit of the Critical Area receive the better part of the bargain.

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.

For the above reasons, we find the requested variance should be granted.

ORDER

PURSUANT to Applicants' request for a variance from Comprehensive Zoning Ordinance

§ 71.8.3 to disturb the 100' Critical Area Buffer for a replacement house and driveway; and,

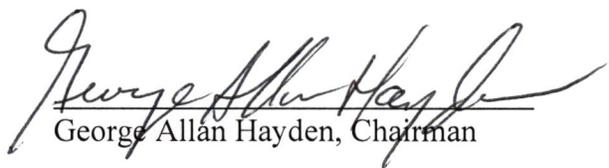
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

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

The foregoing variances are 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, she 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

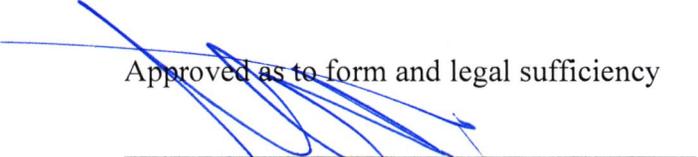

George Allan Hayden, Chairman

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 APPLICANTS

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.