

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 25-1644

HAWKINS PROPERTY

FIRST ELECTION DISTRICT

VARIANCE REQUEST HEARD: AUGUST 13, 2026

ORDERED BY:

**Mr. Hayden, Mr. Brown, Mr. LaRocco
Mr. Payne, and Dr. Valcke**

ENVIRONMENTAL PLANNER: ANDREW CHENEY

DATE SIGNED: September 10, 2026

Pleadings

Michael and Jenny Hawkins (“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 a septic system.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on July 24 and July 31, 2026. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before July 29, 2026. The agenda was also posted on the County’s website on or before July 29, 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 August 13, 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 49682 Bay Forest Road, Lexington Park, Maryland (“the Property”). The Property is 59,242 square feet, more or less, is zoned Rural Preservation District (“RPD”) 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 64, Grid 2, Parcel 17.

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 deed found at Liber 29 Folio 277 (Attachment 1) on January 1, 1951, prior to the adoption of the Maryland 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 sits adjacent to the tidal waters of the Chesapeake Bay. Therefore, the Property is constrained by the Buffer.
- The site plan submitted with the permit application proposes a septic system in the Buffer. The CZO states in Section 71.8.3.b(1) that no development activity is permitted in the Buffer, unless the Applicant obtains a variance. The proposal results in a 4,157 square foot limit of disturbance to the 100' Critical Area Buffer and the removal of four trees.
- On August 8, 2025, the Permit was submitted to appropriate agencies for review. As of the preparation of the staff report, Stormwater Management and the Soil Conservation District had approved. Critical Area approval was on hold pending the outcome of the variance hearing.

- While the staff report indicated Health Department approval was on hold, Stacy Clements, Development Director for LUGM, offered testimony that the Health Department's approval had since been received.
- The Critical Area Commission responded by email on June 25, 2026. In its email, the CAC stated that a variance was not required under COMAR but acknowledged that the County's CZO prohibited development of a septic system in the Buffer absent a variance.
- If approved, mitigation will be required at a ratio of 3:1 for a variance granted for disturbance within the Buffer and 1:1 for reforestation. A total of 14,071 sf of mitigation will be required for the variance request. A planting plan and agreement will be required prior to the issuance of the building permit.
- Attachments to the Staff Report:
 - #1: Deed Liber 29, Folio 277
 - #2: Critical Area Map
 - #3: Site Plan
 - #4: Critical Area Commission Response
 - #5: Critical Area Standards Letter
 - #6: Location Map
 - #7: Existing Conditions Map
 - #8: Land Use Map
 - #9: Zoning Map

Applicants' Testimony and Exhibits

Applicant Michael Hawkins appeared before the Board, joined by David Warzyniak, a Landscape Architect at Kimmel Studio Architects in Annapolis. Mr. Hawkins and Mr. Warzyniak presented a slideshow containing site plans and a photograph of the site, and they answered questions from Board members. Their testimony included, but was not limited to, the following points:

- Mr. Hawkins testified that the Property has belonged to Mrs. Hawkins' family for an extended time and that its septic system is failing. He retained Kimmel Studio Architects, which advised him that there was no other place to locate the proposed replacement system.
- Mr. Warzyniak confirmed that there was no other viable location for the proposed system and that the only alternative would be a holding tank. A civil engineer designed the system, which is classified as an innovative system under COMAR's septic regulations.
- Mr. Warzyniak described the team's efforts to locate the septic system with as little intrusion into the Buffer as possible.

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 27.01.12.04¹ requires an Applicant to meet each of the following standards before

¹ That the septic system is exempt under the state's minimum standards, but not the Comprehensive Zoning Ordinance's Critical Area provisions, raises an academically interesting question of whether COMAR's variance standards or the CZO's older, preempted standards at § 24.4 should govern. Because the applicant was asked to address the COMAR standards, we retain those in our discussion. We note, as we have in the past, the substantial similarity of the CZO standards to COMAR's standards, and find that no difference in outcome would result if we applied the standards of § 24.4 instead.

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)(3)(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 significant and reasonable use of the Property. The septic system is vital to any meaningful use of the Property, and the only alternative Applicants identified is a holding tank. Which is to say, the Applicants identified no real alternative at all. Holding tanks are disfavored under COMAR and, if approved at all, would severely curtail future use of the Property. COMAR 26.04.02.02. The Applicants have amply demonstrated that the septic system must intrude at least somewhat into the Buffer. Accordingly, the Applicants have demonstrated the existence of 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. 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 septic system will not enable any extraordinary improvement or use beyond what already exists on the Property.

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 have exercised their right to seek a variance and have adhered as closely as reasonably possible to the Critical Area program's strictures. Provisions for requesting and granting a variance are a necessary element of any local Critical Area program, and, given the chance to justify their request to the Board of Appeals, Applicants 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 existing improvements.

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, 14,071 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. Replacing the failing septic system will also eliminate the risk that it will contaminate the Chesapeake Bay.

Lastly, because Applicants have satisfied 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 significant and reasonable. Required mitigation will offset unavoidable

impacts to the Buffer, and replacement of the failing septic system will eliminate a risk to the health of the Chesapeake Bay.

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

Accordingly, the Board concludes that Applicants should be granted the requested relief.

ORDER

PURSUANT to the application of Michael and Jenny Hawkins, petitioning for the above-described variance; and

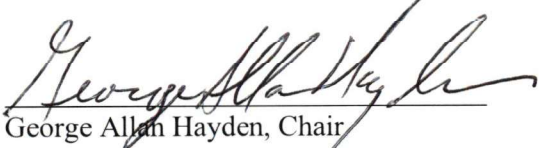
PURSUANT to the notice, posting of the Property, and public hearing, and in accordance with the provisions of law, it is,

ORDERED, by the St. Mary's County Board of Appeals, pursuant to CZO § 24.8, that Applicants are granted the requested variance to disturb the 100' Critical Area Buffer for installation of a new septic system;

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: September 10, 2026

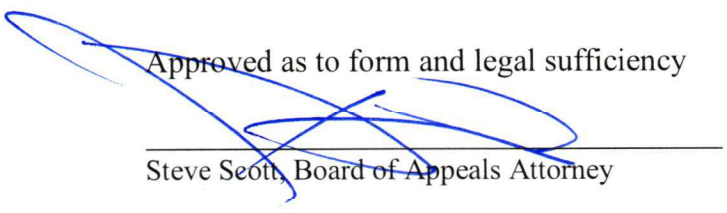

George Allan Hayden, Chair

Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Mr. LaRocco,
Mr. Payne, Dr. Valcke

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.