

**IN THE ST. MARY'S COUNTY BOARD OF APPEALS**

**VAAP NUMBER 25-1939**

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**HEWITT & HILL PROPERTY**

**SECOND ELECTION DISTRICT**

**DATE HEARD: MAY 14, 2026**

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**ORDERED BY:**

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

**PLANNER: NICK COLVIN**

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**DATE SIGNED: June 11, 2026**

### **The Variance Requested**

Thomas Hewitt and Mary Hill (“Applicants”) seek a variance (VAAP # 25-1939) from St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Schedule 32.1 to allow a replacement house within the required 15’ side yard setback.

### **Public Notification**

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on April 24 and May 1, 2026. Required mailings to neighbors and physical posting of the property were completed by April 23, 2026. The agenda was also posted on the County’s website on or before April 29, 2026. 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 May 14, 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 18325 River Road, Tall Timbers, Maryland (“the Property”). The Property consists of 10,000 square feet, more or less, is within the Rural Preservation District zoning district (“RPD”), and can be found among the Tax Maps of St. Mary’s County at Tax Map 61, Grid 12, Parcel 248.

### **The St. Mary’s County Comprehensive Zoning Ordinance**

Schedule 32.1 establishes a 15’ setback from side property boundaries for principal structures located on properties in the Rural Preservation District.

### Staff Testimony

Nick Colvin, a 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 Mr. Colvin was also entered into the record. Testimony and evidence adduced by staff included, but was not limited to, the following items:

- The Property contains an existing dwelling. According to the Department of Assessments and Taxation, the structure was constructed in 1933.
- The Applicant is proposing a new 3,718 square foot replacement dwelling.
- According to Schedule 32.1 of the Comprehensive Zoning Ordinance, a 15' side setback is required for structures in the RPD zoning. The Applicant is requesting a variance from the 15-foot side setback requirement to allow a new replacement dwelling to be constructed. The proposed dwelling is 8 feet from the Northern property line and requests a reduction of 7 feet. The proposed dwelling is also 12 feet from the southern property line and is requesting a reduction of 3 feet.
- The proposal is exempt from Stormwater Management and Soil Conservation standards as it proposes less than 5,000 sf of soil disturbance. Land Use and Growth Management requires the setback variance to approve the permit.
- The following Attachments to the Staff Report were introduced:
  - Attachment 1: Standards Letter
  - Attachment 2: Site Plan
  - Attachment 3: Ordinance 2019-32, Schedule 32.1
  - Attachment 4: Location Map
  - Attachment 5: Land Use Map

- Attachment 5: Zoning Map

### **Applicants' Testimony and Exhibits**

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. The testimony Mr. Vaughn offered included, but was not limited to, the following items:

- The Property is very narrow and small in size, and that there is only a 20' wide buildable area when accounting for the required side yard setbacks.

### **Public Testimony**

No members of the public offered in-person testimony. One written comment was received:

- *Karen Gruber, Tall Timbers*
  - Ms. Gruber wrote in support of the variance request, in a letter structured to address the seven required findings for a Critical Area variance.<sup>1</sup> She urged the Board to consider that the owners had already removed site improvements that protruded further into the required side yard than the proposed replacement house. She urged the Board to grant the requested variance and did not identify any potential negative impact from doing so.

### **Decision**

#### **County Requirements for Standard Variances**

The St. Mary's County Comprehensive Zoning Ordinance § 24.3 sets forth seven separate

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<sup>1</sup> As set forth more particularly in the Board's discussion below, the standards for granting a standard variance apply to this matter, not the standards for granting a variance from the Critical Area program. Although the Property is within the Critical Area Schedule 32.1 is a regulation of general applicability and not a component of the Critical Area program.

requirements that must be met for a variance to be issued:

- (1) Because of particular physical surroundings such as exceptional narrowness, shallowness, size, shape, or topographical conditions of the property involved, strict enforcement of this Ordinance will result in practical difficulty;
- (2) The conditions creating the difficulty are not applicable, generally, to other properties within the same zoning classification;
- (3) The purpose of the variance is not based exclusively upon reasons of convenience, profit, or caprice. It is understood that any development necessarily increases property value, and that alone shall not constitute an exclusive finding;
- (4) The alleged difficulty has not been created by the property owner or the owner's predecessors in title;
- (5) The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood and the character of the district will not be changed by the variance;
- (6) The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood; and
- (7) The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.

*Id.*

#### Findings – Standard Variance Requirements

Upon review of the facts and circumstances, the Board finds and concludes that the Applicant is entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance's

front yard setback provision. Several factors support this decision.

First, the Board finds that strictly interpreting the CZO would result in a practical difficulty to the Applicant. § 24.3(1). In *McLean v. Soley*, 270 Md. 208 (1973), the Maryland Court of Appeals established the standard by which a zoning board is to review “practical difficulty” when determining whether to grant a variance:

1. Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
2. Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
3. Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.

*Id.* at 214–15.

Denial of this variance would impose a practical difficulty upon Applicant. Applicant demonstrated the lot is exceptionally narrow, and leaves a constrained building envelope if the side yard setbacks were applied without relaxation. Accordingly, we find the standards laid down by *Sorley* satisfied and conclude Applicant has carried its burden to show a practical difficulty.

To the second standard, the conditions creating the difficulty are not generally applicable to other similarly situated properties. An atypically narrow building site, as elaborated above, drives the variance request.

To the third standard, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” Applicants have demonstrated a practical difficulty meeting this requirement of the Comprehensive Zoning Ordinance. There is no realizable way to avoid the variance that was presented to the Board. Applicants’ request for the variance is borne by necessity rather than a desire to achieve the intended use with marginally less expense or marginally more convenience.

Fourth, the need for the variance does not arise from actions of the Applicant. As noted previously, and as mentioned in the staff report and Ms. Gruber’s letter, Applicants’ need for a variance stems from the original configuration of the Property laid down in 1925, well before the advent of modern zoning regulations.

Fifth, the variance will neither detrimentally affect the public welfare, substantially injure other properties or improvements, nor change the character of the district. The neighboring property owners were notified of the variance request and given an opportunity to speak on the matter. None voiced an objection, and one wrote in support.

Sixth, the proposed development will not increase the residential use of the property. The replacement house will replace a previous dwelling located on the property.

Finally, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan. The Comprehensive Plan encourages the redevelopment of existing properties. This project carries forth these goals, and others, without encouraging reckless disregard of current zoning standards or creating development potentially injurious to the public at large.

**ORDER**

**PURSUANT** to Applicants’ request for a variance from Comprehensive Zoning Ordinance

to allow a replacement house within the required 15' side yard setback; and,

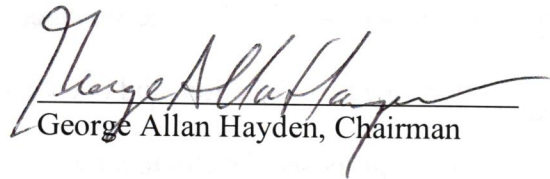
**PURSUANT** to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

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

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: June 11, 2026

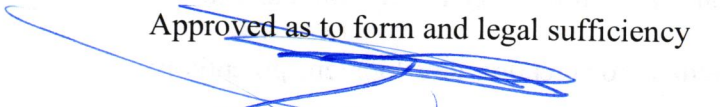
  
George Allan Hayden, Chairman

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.

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.