

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

**VAAP NUMBER 24-1611**

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**KEEFE PROPERTY**

**FIRST ELECTION DISTRICT**

**DATE HEARD: July 10, 2025**

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**ORDERED BY:**

**Mr. Brown, Mr. LaRocco,  
Mr. Payne, Ms. Weaver, and Dr. Valcke**

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

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**DATE SIGNED: August 14, 2025**

### **The Variance Requested**

Timothy and Rumsey Keefe (“Applicants”) seek a variance (VAAP # 24-1611) from St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 71.8.3 to disturb the 100’ Critical Area Buffer for an after-the-fact deck, porch, shed, and stone replacement above mean high water, and for a new proposed deck.

### **Public Notification**

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on June 20, 2025 and June 27, 2025. Required mailings to neighbors and physical posting of the property was completed by June 25, 2025. The agenda was also posted on the County’s website on or before July 4, 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 July 10, 2025 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 Applicant.

### **The Property**

Applicant owns real property situate 50810 Holly Point Road, Dameron, Maryland (“the Property”). The Property consists of 3.11 acres, more or less, is within the Rural Preservation District (“RPD”), 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 68, Grid 11, Parcel 244.

### **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**

Amanda Yowell, an Environmental Planner for the St. Mary's County Department of Land Use and Growth Management ("LUGM"), presented the following evidence:

- The subject property (the "Property") was recorded by deed in the Land Records of St. Mary's County at Book 52 Page 305 (Attachment 2), 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 1979. The Property has been in its current configuration since March 2, 1954.
- The property is a 3.11-acre lot located on Holly Point Road in Dameron and is adjacent to the tidal waters of St. Clarence Creek.
- The Critical Area Buffer (the "Buffer") is established a minimum of 100-feet landward from the mean high-water line of tidal waters (CZO 71.8.3). Therefore, the Property is constrained by the Buffer (Attachment 3).
- The site plan (Attachment 4) requests an after-the-fact deck, porch, shed, and stone placement above mean high water; and a proposed deck, which impact the 100' Critical Area Buffer. The CZO states in Section 71.8.3.b(1) that a development activity is not permitted in the Buffer unless the Applicant obtains a variance. The proposal results in 1,843 square feet of permanent disturbance impacting the Buffer.
- Mitigation is required at a ratio of 3:1 for the variance (COMAR 27.01.09.01-2 Table H). Violation mitigation is also required at a ratio of 4:1 for the after-the-fact permanent

disturbance in the buffer and 3:1 for the after-the-fact lot coverage outside the buffer. A planting agreement and planting plan must be approved prior to the issuance of a permit. A bond has been received for the violation mitigation.

- The Critical Area Commission responded on June 9, 2025. The Commission opposes the variance request to legalize the unpermitted deck, unpermitted shed, the unpermitted revetments, and the proposed deck, but not the replacement screened porch provided it is determined by the Board to be in-kind to the previously existing screened porch. (Attachment 8). The Commission requested a continuance until MDE comments were received. MDE comments were received on June 18, 2025 and are attached hereto (Attachment 9).
- The Department of Land Use and Growth Management has approved the site plan for zoning and floodplain requirements. The Health Department has approved the site plan. The site plan is exempt from Soil Conservation and stormwater management requirements due to less than 5,000 square feet of soil disturbance.
- The following Attachments to the Staff Report were introduced:
  - Attachment 1: Critical Area Standards Letter
  - Attachment 2: Deed
  - Attachment 3: Critical Area Map
  - Attachment 4: Site Plan
  - Attachment 5: Location Map
  - Attachment 6: Land Use Map
  - Attachment 7: Zoning Map
  - Attachment 8: Critical Area Commission Response

- Attachment 9: MDE Comments June 18, 2025

### **Applicant Testimony and Exhibits**

Applicant was represented before the Board by Jeffrey Nieman, of Linear Surveys. Mr. Nieman is a licensed surveyor. Mr. Nieman appeared with Mr. Keefe. Mr. Nieman presented a slideshow that included maps, pictures of the property, and other information pertinent to the application. The testimony Mr. Nieman offered included, but was not limited to, the following points:

- Mr. Keefe explained that he has spent the last five decades visiting Holly Point Road, after his grandparents bought a summer cottage there in the 1960s. The family property now belongs to Mr. Keefe's sibling. The Property in question tonight consists of an A-frame house that had fallen into disrepair, which the Keefes acquired in 2022 and rehabilitated.
- Mr. Keefe explained that the Property consists of 1.35 acres of actual land, with the remainder comprised of the creek and marsh.
- The property was in disrepair prior to the Keefes' acquisition of the project.
- Specific improvements that are the subject of the variance request are as follows:
  - After-the-fact:
    - A 314 s.f. wooden deck on the northern side of the house, replacing a wooden deck that used to be on the Property
    - A 31 s.f. wooden deck on the eastern side of the house
    - A 188 s.f. screen porch on the western side of the house, which replaced a 124 s.f. screen porch
    - A 163 s.f. shed
    - 1,084 s.f. of stone revetment on the shore immediately adjacent the house

- 113 s.f. of stone revetement on the far western side of the Property
- Proposed:
  - A 270 s.f. wooden deck on the southern side of the house, to replace an existing 70 s.f. wooden deck
- Mr. Nieman testified that the stone revetments replaced existing revetments which had become compromised, and that repairing the revetments were necessary to prevent erosion.

### **Public Testimony**

The following members of the public

- *Susan Nissen, 50825 Holly Point Road*
  - Mrs. Nissen is the last road on Holly Point, and is the Applicants' neighbor to the north. She said her parents were the original owners of the A-frame. Subsequent owners of the Property abandoned maintenance of the Property, and ignored the community's offers to help maintain the Property. She described her father as "heartbroken" over the collapse of the Property. She commended the Applicants for rehabilitating the Property and supported the requested variances.
- *Robert Abbot, 50705 Holly Point Road*
  - Dr. Abbot referred to the Property as "the neighborhood eyesore" before the Keefes rehabilitated the Property. He supported the variances. He referred to the required plantings as "excessive."
- *Brandy Bryant, 50705 Holly Point Road*
  - Ms. Bryant agreed with the points made by previous speakers, and also pointed out that Applicants had removed a pool a previous owner put up.

- *Dean Westcoat, 50675 Holly Point Road*

- Mr. Westcoat testified that he supported the Applicants' request.

In addition, written comments were received by Dean Westcoat and Brian Keefe. Both letters urged the Board to grant the requested variances and commended the Applicants for the work they had done to improve the Property.

The Critical Area Commission's letter stated, with respect to the requested variances, that it opposed the requests for the back deck, shed, and front deck. The Commission stated there appears to be opportunity to relocate the shed from the Buffer and that the Applicant had "reasonable and significant use of their entire lot" with the pre-existing dwelling. It also alleged that granting the variances would constitute a special privilege, that the request is engendered by the actions of the Applicants, and that cumulative impact of development in the Critical Area will have a substantial and negative impact on the Chesapeake Bay, and that the specific improvements in this matter would negatively impact the Buffer.

### **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 the 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 Applicant is entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance.

First, the Board finds that denying the Applicant's 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 Applicant seeks to make reasonable improvements to an existing A-frame structure built before the advent of the Critical Area program that had fallen into woeful disrepair. These improvements – decks, porches, and a shed – are of unexceptional size, scale, and character.



Most are minor expansions of existing improvements. A dwelling, along with reasonable accompanying improvements and amenities, is a foundational use of one's own property and we conclude the improvements before us in this matter are uses both "significant and reasonable" that will greatly enhance the Applicants' ability to use, enjoy, and protect the Property. And we maintain respectful disagreement with the Critical Area Commission's assertion that an unwarranted hardship requires denial of "reasonable and significant use of the entire parcel." The Critical Area Commission's stance appears to us to be directly opposite the Court of Appeals' holding in *Schwalbach*, quoted above. *Schwalbach* was decided after the existing definition of "unwarranted hardship" was fixed by the General Assembly, something discussed at great length, including a painstakingly thorough analysis of the legislative history of the phrase, in *Schwalbach* itself. *Id.*, 122-139. Accordingly, we follow what we find to be the prevailing and controlling law of Maryland: that the appropriate test is whether denial of a variance would deny Applicants "a use" both reasonable and significant, not whether denial would deny Applicants from making any reasonable or significant use of the Property at all.

Identification of a use "significant and reasonable" is only one half of the test for an unwarranted hardship. The second half is whether or not the significant and reasonable can be achieved by some other means that would not require the need for a variance at all. In this matter, the Applicant is constrained by the existing location of the A-frame structure. The structure was built before the advent of the Critical Area program, and its original builders could not have predicted its future nonconforming status. The requested decks and porches cannot reasonably be relocated away from the structure. As to the shed, the small size of the Property potentially limits its ability to be relocated.

Second, denying the variance would deprive the Applicant of rights commonly enjoyed by

other similarly situated property owners in the Rural Preservation District and Resource Conservation Area. The requested variances are for improvements of similar size, build, and character to neighboring dwellings. Applicants propose nothing extraordinary or exceptional with their intended use of the Property.

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. Natural Resources § 8-1808(c)(1)(iii)(13). 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 Applicant or her predecessors in title. The Critical Area program allows for after-the-fact variances and prescribes penalties that must be satisfied before a variance can be granted. Applicants did not base their request upon, and the Board in no way considers as a factor, the expense the Applicants undertook creating the improvements or the cost and difficulty of removing them. The question before the Board in this matter, in so many words, is whether the variances could be approved had the Applicants come before the Board first. Here, we conclude the Board would have, for the reasons enumerated in this decision.

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 Applicant will be required to extensively mitigate the proposed development with an approved planting plan – so extensive that neighbors questioned the propriety of the planting requirements. 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. And it is worth noting that the mitigation plantings are greatly enhanced than what would ordinarily be required, owing to the after-the-fact penalties required of this project.

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 reasonable and significant uses that must be located in the Buffer, by virtue of the existing home's location. Buffer intrusions have been minimized to the greatest extent practicable, and Applicant has been as sensitive to Critical Area's programs goals as may be reasonably expected. The request is for rehabilitation of an existing structure. The Applicants do not propose tearing down an existing structure and replacing it with a larger, modern alternative. On the whole, we conclude this proposal is in the spirit of the Critical Area program, and that the Applicants appear to be willing to act as good stewards of the Property and their community.

By satisfying these standards the Applicant has 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 Applicant's request for a variance from Comprehensive Zoning Ordinance § 71.8.3 to disturb the 100' Critical Area Buffer for an after-the-fact deck, porch, shed, and stone replacement above mean high water, and for a new proposed deck; 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 Applicant is granted the requested variances.

The foregoing variances are subject to the condition that the Applicant 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 Applicant 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.

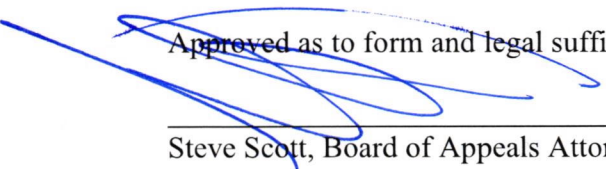
Date: August 14, 2025

  
John Brown, Vice Chairman

Those voting to grant the variance:

Mr. Brown, Mr. LaRocco  
Mr. Payne, Dr. Valcke, and Ms. Weaver

Those voting to deny the variance:

  
Approved as to form and legal sufficiency

Steve Scott, Board of Appeals Attorney

### **NOTICE TO APPLICANT**

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.