

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 25-1027

KLIKA PROPERTY

FOURTH ELECTION DISTRICT

DATE HEARD: August 14, 2025

ORDERED BY:

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

ENVIRONMENTAL PLANNER: AMANDA YOWELL

DATE SIGNED: September 11, 2025

Pleadings

Donald and Wendy Klika, as Trustees of the Klika Trust (“Applicants”) seek a variance (VAAP # 25-1027) from St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Section 41.5.3.i(1) to exceed lot coverage limits construct a new dwelling with a deck, patio, and parking pad.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on July 25, 2025 and August 1, 2025. The hearing notice was posted on the property by July 30, 2025. The file contains the certification of mailing to all adjoining landowners, even those located across a street. Each person designated in the application as owning land that is located within two hundred feet of the subject property was notified by mail, sent to the address furnished with the application. The agenda was also posted on the County’s website by Friday, August 8, 2025. Therefore, the 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 August 14, 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 Applicants.

The Property

Applicants own real property situate 23864 Old Chaptico Wharf Lane, Chaptico, Maryland (“the Property”). The Property is in the Rural Preservation District zoning district (“RPD”), lies within a Limited Development Area (“LDA”) Critical Area overlay, and is identified at Tax Map

29, Grid 5, Parcel 18.

The Variance Requested

Applicants seek a variance from CZO § 41.5.3.i(1) to exceed lot coverage limits to construct a new dwelling with a deck, patio, and parking pad.

The St. Mary's County Comprehensive Zoning Ordinance

CZO § 41.5.3.i(1) establishes lot coverage limits of 5,445 square feet for lots between 21,781 and 36,300 square feet in size.

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") has been in the current configuration since March 15, 1952, as recorded by deed in the Land Records of St. Mary's County at Liber 36 Folio 15 (Attachment 2), prior to the adoption of the Maryland Critical Area Program on December 1, 1985. The existing single-family dwelling was built in 1956 according to Real Property Data, Maryland Department of Assessments and Taxation.
- According to the site plan (Attachment 4), this property is a 29,500 square foot lot located on Old Chaptico Wharf Lane in Chaptico and is adjacent to the tidal waters of the Wicomico River.
- The Property, as it currently exists, has 6,288 square feet of lot coverage. The site plan proposes adding an additional 2,923 square feet of new house, porches, steps, and a concrete parking pad, while removing 5,462 square feet of existing house, carport, and driveway. The total proposed lot coverage for the parcel with the new construction is 5,749 square feet.

- The Property, as determined by CZO 41.5.3, limits lot coverage to 5,445 square feet for lots between 21,781 and 36,300 square feet. The Applicant is proposing 5,749 square feet of lot coverage, an excess of 304 square feet.
- Mitigation is required at a ratio of 3:1 for the variance and 2:1 for new permanent disturbance in the expanded buffer (COMAR 27.01.09.01-2). The applicant will receive credit for lot coverage removed from the buffer in the amount of 5,462 square feet. The total mitigation required for this proposal is 5,296 square feet of plantings to meet these mitigation requirements. A planting agreement and plan will be required prior to the issuance of the building permit.
- The Critical Area Commission responded on July 21, 2025 and is opposed to this variance request (Attachment 8).
- The Department of Land Use and Growth Management has approved the site plan for zoning, floodplain, and stormwater requirements. The Health Department and Soil Conservation District have also approved the site plan.
- If a variance is granted but a building permit is not issued, the variance shall lapse one year from the date of grant (CZO Section 24.8.1).
- The following Attachments to the Staff Report were introduced:
 - #1: Critical Area Standards Letter;
 - #2: Deed;
 - #3: Critical Area Map;
 - #4: Site Plan;
 - #5: Location Map;
 - #6: Land Use Map;

#7: Zoning Map; and,

#8: Critical Area Commission Response

Applicant Testimony and Exhibits

Applicant was represented by Christopher Longmore, Esq. of Dugan, McKissick & Longmore LLC and Barry Vukmer, a licensed surveyor, of Chesapeake Trails Surveying, LLC. The evidence offered by Applicants and their agents included, but was not limited to, the following:

- The Property has been within the same family since the 1950s.
- There will be an overall reduction of 539 s.f. of lot coverage if the proposal is granted.
- Mr. Vukmer stated, “We have reduced everything on this site we possibly could.” He elaborated that continued efforts to reduce footprint would be thwarted. He said the development has slid the replacement house back as far as it can be, and that moving further away from the water would not be possible because of the Property’s septic system.
- The road that runs through the Property cannot be removed because it continues beyond the Property and serves several houses south of the Property. If this right-of-way were not included, the property would be well within lot coverage limits.
- The new design will be “more environmentally friendly” when it is finished than current conditions.
- The proposed house will be entirely outside the Critical Area Buffer.

Public Testimony

The following members of the public appeared to offer testimony related to the proposal:

- *Helen Mattingly Wernecke, 23902 Old Chaptico Wharf Lane*
 - Mrs. Wernecke stated she lives four doors down from the Property, and that

the written comments come from the other neighbors. She said that she has the same ‘challenge’ with the right-of-way, and struggled to meet lot coverage limits when she built five years ago. She urged the Board to support the variance request and said that the Applicants have taken care of an elderly property and are doing their best to change it to something new and ‘hopeful.’

- *Walter Caskey, 1861 Potomac Station, Leesburg, Virginia*
 - Mr. Caskey is Mrs. Klika’s son. He said he has been coming to the Property for 40 years and that it is a “big part” of his life. He said the Property is a huge part of his family and believes the variance request, if granted, will enable the family to continue the tradition of using the Property and sharing time on the river.

In addition to the above in-person testimony, the following written comments were received and entered into the record:

- *Kenneth Kline, 23874 Old Chaptico Wharf Lane*
 - Mr. Kline identified himself as the next door neighbor to the Property. He said the Applicants are “good stewards” of the Property and that all improvements they have ever undertaken have been “in good taste and unobjectionable in any way.” He stated he and his wife have no objections to the variance request and “wholly support them in this endeavor.”
- *Brian Shaklee*
 - Mr. Shaklee stated that Mrs. Klika is “a very good neighbor and has taken numerous steps to mitigate the existing impervious” coverage on the

Property. He fully supports the pending variance request.

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 Applicants 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), the Court of Appeals stated "unwarranted hardship," as used in the Natural Resources Article, has the following meaning:

[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 Board concludes the Applicant has satisfied the standard of an unwarranted hardship. The Applicants seek approval to construct a replacement home with a deck, patio, and parking pad. A residential dwelling, and its associated improvements, are foundational uses of real property. It is a significant and reasonable use of property. Contra the Critical Area Commission's letter, *Assateague* stands for the proposition that correct analysis is not whether denial of the variance would deprive "all" significant use of the lot, but whether denial would deprive the Applicants of "a" significant and reasonable use that could be maintained on the Property. *Id.* The proposed house and its improvements are of modest size and reasonable character. There is no question in the Board's opinion that they constitute "a" significant and reasonable use. Given that the entire property lies within the Critical Area there is no opportunity for the Applicants to locate these significant and reasonable uses on it without triggering the need for a variance.

Second, denying the variance would deprive the Applicants of rights commonly enjoyed by other similarly situated property owners in the Rural Preservation District and Limited Development Area. As mentioned above, the proposed uses are among the first and most basic one might expect a property owner to desire on their property. A 2,611 square foot dwelling is not

opulent or excessive. And Applicants' agents adequately demonstrated that, but for the right-of-way that cuts through the property, the proposed improvements would be well within lot coverage limits.

Third, granting a variance will not confer a special privilege upon the Applicant. The right to ask for a variance to the Critical Area program's strictures is required by law. Applicants' proposed site plan has been subjected to a public hearing and held to the required standards, including all required mitigation plantings. Applicants carry the burden of proof to demonstrate their proposal satisfies the standards for granting a variance. We cannot find any definition of "special privilege" in statute or case law to suggest that one has been conferred when an applicant, in compliance with the procedural requirements noted above, meets his or her burden.

Fourth, the need for the variance does not arise from the actions of the Applicant or their predecessors in title. The Property's configuration, and the road that cuts through it, were laid down well before the advent of the Critical Area program. Those two realities, which Applicants have no ability to alter, drive the need for the requested variance.

Fifth, the need for the variance does not arise from any nonconforming feature on a neighboring property.

Sixth, granting the requested variance will not adversely affect the environment. The Applicants have a vested right to maintain the existing lot coverage, of which there is more and more that is closer to the most environmentally sensitive portions of the Property than the proposed replacement coverage. The Applicants will be required to mitigate the proposed development with an approved planting plan per COMAR 27.01.09.01. That planting plan will have to encompass at least 5,296 square feet of plantings. 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.

Finally, the Board finds, overall, that granting the variance is in the spirit of the Critical Area program. Should this proposal proceed, lot coverage will be reduced and development will be pushed further away from the Buffer and the water's edge. Over 5,000 square feet of plantings will be required. These are all net improvements over existing conditions. The continuing nonconformity will only amount to a 1% overage in lot coverage limits. The effect Old Chaptico Wharf Lane has on the development potential of the Property is also apparent. But for it, and Applicants' obligation to allow its continuation, this project would fall well within lot coverage limits. On these facts, it appears the environment and the Property's surrounding environs receive the better part of the bargain struck between sensitivity to the state's treasured natural resources and recognition of a property owner's right to make reasonable use of their property on the other.

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.

ORDER

PURSUANT to Applicants' request for a variance from CZO § 41.5.3.i(1) to construct a new dwelling with a deck, patio, and parking pad; and,

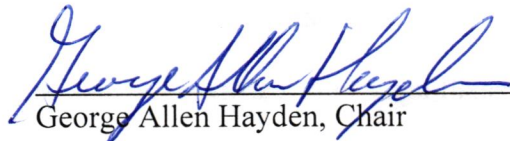
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

ORDERED, by the St. Mary's County Board of Appeals, pursuant to Comprehensive Zoning Ordinance § 24.3, that the Applicants are granted a variance from Section 41.5.3.i(1) to exceed lot coverage limits to construct a new dwelling with a deck, patio, and parking pad.

The foregoing variance is 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, they must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Date: September 11, 2025

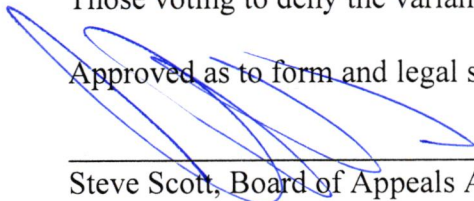

George Allen Hayden, Chair

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 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.