

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

**VAAP NUMBER 25-2622**

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**NISSEN PROPERTY**

**FIRST ELECTION DISTRICT**

**DATE HEARD: MAY 14, 2026**

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**ORDERED BY:**

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

**ENVIRONMENTAL PLANNER: DULA WERETI**

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**DATE SIGNED: June 11, 2026**

### **The Variance Requested**

Susan and Robert Nissen (“Applicants”) seek a variance (VAAP # 25-2622) from St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 71.8.3.b(1) to impact the Critical Area Buffer to remove existing houses, porch, walk/pad, septic and build a new house, porch, driveways, and septic.

### **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 50825 Holly Point Road, Dameron, Maryland (“the Property”). The Property consists of 1.74 acres, more or less, is within the Rural Preservation District zoning 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 67.

## **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**

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

- The Property is a grandfathered parcel since it was recorded by deed in the Land Records of St. Mary's County per Liber 052 Folio 309 recorded on August 30, 1979, prior to the adoption of the Maryland Critical Area Program on December 1, 1985.
- The property is a 1.74 -acre lot located on Holly Point Road, Dameron, and sits adjacent to Chesapeake Bay. Therefore, the property is constrained by the Buffer.
- The site plan proposes a replacement house and septic impacting the 100-foot 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 proposed development results in 662 sf less lot coverage within the Buffer.
- Mitigation is required at a ratio of 3:1 for the variance and 1:1 for canopy removal (COMAR 27.01.09.01-2 Table H). A planting agreement and plan will be required prior to the issuance of the building permit.
- The Critical Area Commission responded on April 22, 2026. The Commission has

determined/stated that “no new lawn or turf is allowed within the Buffer and the footprint of the existing dwelling must be stabilized in native vegetation.” Also, the applicant has the burden to prove each Critical Area variance standard is met, including the standard of unwarranted hardship. The Critical Area Commission did not state that it opposes the requested variance.

- Agencies completed the review and approved the project: Department of Planning and Zoning. Agencies with comments returned: Health Department, Land Use and Growth Management, and the Soil Conservation District.
- The following Attachments to the Staff Report were introduced:
  - Attachment 1: Critical Area Standards Letter
  - Attachment 2: Deeds
  - 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**

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 already improved by an existing house that lies within the Buffer.
- The proposed dwelling will be no closer to tidal waters than the existing dwelling.
- Limits of disturbance have been reduced as far as possible, and sediment and erosion control will be provided in accordance with SCD requirements.

### **Public Testimony**

No members of the public offered testimony, in-person or written, in relation to the 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 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. Accordingly, we find the Applicant has satisfied the prongs set forth in *Schwalbach*: a significant and reasonable use has been identified, and its location outside the Buffer is precluded for substantive reasons.

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 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 and subdividers of the land could not have looked to the future and imagined the current regulatory regime, nor 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 inherent to the Property itself.

Sixth, granting the requested variance will not adversely affect the environment. On the whole, the proposal will reduce lot coverage by 662 square feet, according to staff's analysis. 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.

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,

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

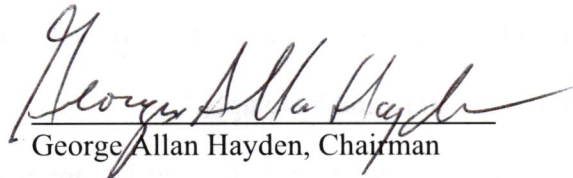
**ORDERED**, by the St. Mary's County Board of Appeals, pursuant to Comprehensive Zoning Ordinance § 24.3, that the Applicants are granted the requested variances.

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: June 11, 2026

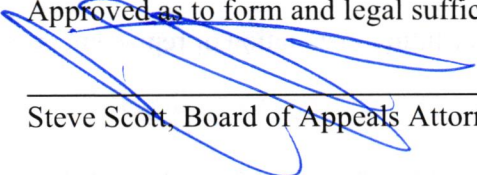
  
George Allan Hayden, Chairman

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

  
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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.