

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 25-0306

PARSONS PROPERTY

SIXTH ELECTION DISTRICT

DATE HEARD: June 26, 2025

ORDERED BY:

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

ENVIRONMENTAL PLANNER: AMANDA YOWELL

DATE SIGNED: July 24, 2025

The Variance Requested

James and Jean Parsons (“Applicants”) seek a variance (VAAP # 25-0306) from St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 71.8.3 to disturb the 100’ Critical Area Buffer to construct a 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 6, 2025 and June 13, 2025. Required mailings to neighbors and physical posting of the property was completed by June 11, 2025. The agenda was also posted on the County’s website on or about June 20, 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 June 26, 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 43085 Island View, Hollywood, MD (“the Property”). The Property consists of 16,604 square feet, more or less, is within the Residential Neighborhood Conservation zoning district (“RNC”), carries a Limited Development Area (“LDA”) Critical Area overlay, and can be found among the Tax Maps of St. Mary’s County at Tax Map 20B, Grid 0, Parcel 0.

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 in the Land Records of St. Mary's County per Plat Book 2 page 50 (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 1970. The Property has been in its current configuration since March 2, 1954.
- The property is a 16,604 square foot lot located on Island View in Hollywood and is adjacent to the tidal waters of Cole 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 almost entirely constrained by the Buffer (Attachment 3).
- The site plan (Attachment 4) proposes the addition of a deck, which impacts 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 146 square feet of deck impacting the Buffer.
- Mitigation is required at a ratio of 3:1 for the variance (COMAR 27.01.09.01-2 Table H). The total mitigation required for this proposal is 441 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 April 21, 2025. The Commission states that the applicant has the burden to prove each and every Critical Area variance standard is met, including the standard of unwarranted hardship (Attachment 8).
- 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 the Soil Conservation District and the 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: Plat
 - 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

Applicants' Testimony and Exhibits

Applicants were represented before the Board by Chris Longmore, Esq., of Dugan, McKissick & Longmore, LLC. Mr. Longmore presented a slideshow that included maps, pictures of the property, and other information pertinent to the application. He was joined for a portion by Mr. Parsons, to answer one question posed by Ms. Weaver. The testimony Mr. Longmore and Mr. Parsons offered included, but was not limited to, the following points:

- The deck will consist of approximately 146 square feet.
- Almost the entirety of the deck lies within the 100-foot Critical Area Buffer
- The deck is “reasonable sized,” modest, and meets all requirements.

Public Testimony

No members of the public appeared to offer in-person testimony for or against the project. One letter was received by email from Guy Curley, who owns a vacant lot on Peninsular Drive which is next to Island View, who stated he had no objections to the project as presented.

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. Contra the Critical Area Commission's statement that "unwarranted hardship" means "an applicant shall be denied reasonable and significant use of the entire parcel or lot," Maryland's Court of Appeals, 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.

The "use" in question is an attached deck of modest size and character to be employed for a family's personal recreation and enjoyment of their property. Decks are commonplace improvements that greatly enhance a property owner's ability to use and enjoy his or her property, and this Board is not unfamiliar with variance requests for constructing them within the Critical Buffer. There is no obvious means to construct a deck, attached or not, that would not impact the Buffer

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 noted above, and as this Board takes notice of from its prior variance hearings, decks are common amenities, even when located on parcels constrained by the Buffer. The proposed deck is of the same character as decks other similarly situated property owners enjoy and that this Board has approved before, nor is its size or character out of scope considered against a “common” deck.

Third, granting a variance will not confer a special privilege upon the Applicants. 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, 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. 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 that burden.

Fourth, the need for the variance does not arise from the actions of the Applicants or their predecessors in title. Applicants are primarily constrained by two things: the Buffer’s large impacts on their Property and the location of their existing home, built approximately a decade and a half before the advent of the Critical Law program. The home’s original builders could not have looked to the future and foreseen the difficulty its location would pose for future expansion under the Critical Area program. And even had they been so able, they would still be confronted by a Buffer that covers a majority of the Property.

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

Sixth, granting the requested variance will not adversely affect the environment. The Applicants will be required to mitigate the proposed development with an approved planting plan established on-site (per COMAR 27.01.09.01) as part of the Building Permit process. 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 performed without grant of the variance.

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. The required mitigation will leave more vegetative coverage on the lot than existed prior to this development proposal. The Applicants have demonstrated to the Board that they have been as sensitive to Critical Area's programs goals as may be reasonably expected. Accordingly, the Board finds the spirit and intent of the Critical Area program are preserved by granting this variance and that balance between allowing reasonable variances from the Critical Area program's strictures on the one hand and continued protection and stewardship of the Chesapeake Bay and our environmentally sensitive resources on the other has been struck.

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.

Accordingly, 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 to construct a deck; and,

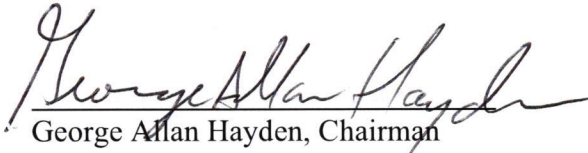
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

ORDERED, by the St. Mary's County Board of Appeals, pursuant to Comprehensive Zoning Ordinance § 24.3, that the 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 perform the work 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.

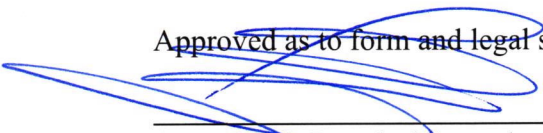
Date: July 24, 2025


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 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.