

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 24-1125

QUADE PROPERTY

SEVENTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: JANUARY 23, 2025

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: February 13, 2025

Pleadings

Thomas, Eleanor, Spencer and Stephanie Quade (“Applicants”) seek a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 71.8.3 disturb the Critical Area Buffer (“the Buffer”) and the Expanded Critical Area Buffer (“the Expanded Buffer”) to construct a replacement house.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on January 3, 2025 and January 10, 2025. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before January 8, 2025. The agenda was also posted on the County’s website on January 17, 2025. Therefore, the Board of Appeals (“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 January 23, 2025 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed amendment requested by the Applicants.

The Property

The subject property may be found at 20386 Bowles Road, Leonardtown, Maryland (“the Property”). The Property is 29,620 square feet, more or less, is zoned Rural Preservation District (“RPD”), has a Limited Development Area (“LDA”) Critical Area overlay, and is found at Tax Map 53, Grid 5, Parcel 24.

The Variance Requested

Applicants seek a variance from CZO § 71.8.3 disturb the Critical Area Buffer (“the Buffer”) and the Expanded Critical Area Buffer (“the Expanded Buffer”) to construct a replacement house.

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 (“the Buffer”). 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).

Departmental Testimony and Exhibits

Stacy Clements, an Environmental Planner for the St. Mary’s County Department of Land Use & Growth Management (“LUGM”), presented a staff report and PowerPoint presentation that included the following testimony:

- The subject property (the “Property”) was recorded in the Land Records of St. Mary’s County per deeds DJB 6456 page 167, DBJ 6228 page 155, EWA 246 page 176, CBG 121 page 329 (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 manufactured home was built in 1980. The Property has been in its current configuration since 2003.
- The property is a 29,620 square foot lot located on Bowles Road in Coltons Point and is adjacent to the tidal waters of Dukeharts Creek.

- The site plan (Attachment 4) proposes removing an existing manufactured home on the property then constructing a house, porches, and additional driveway, 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 3,139 square feet of lot coverage with 2,264 square feet impacting the Buffer.
- Mitigation is required at a ratio of 3:1 for the variance (COMAR 27.01.09.01-2 Table H) and 1:1 for lot coverage outside the Buffer (COMAR 27.01.09.01-1 Table C). The total mitigation required for this proposal is 7,667 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 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.
- In its letter of January 2, 2025, the Critical Area Commission did not state it opposed the requested variance but called attention to a perceived opportunity to minimize impacts to the Buffer by utilizing and expanding the existing driveway in lieu of the proposed replacement driveway.
- Attachments to the Staff Report:
 - 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: Critical Area Commission Response

Applicants' Testimony and Exhibits

Applicants Spencer and Stephanie Quade appeared before the Board. They presented a slideshow which contained site plans, building plans, photographs of the site, and offered oral testimony. The following evidence and testimony was included in his presentation:

- Mrs. Quade stated there is no existing driveway, and that the “existing driveway” depicted on the site plan is actually an ingress/egress road that serves other lots. She said parking is not permitted on the “existing driveway.”¹
- Bowles Road is a county road that runs to the west of the property line. It terminates and becomes a private road that crosses over to the southern side of the property. Mrs. Quade said this route was the subject of old litigation and an easement over it was awarded to a neighbor to the east.
- A living shoreline will be installed along the shore of the property. Plantings for the living shoreline – 385 square feet – will count towards the mitigation required for the proposed replacement dwelling.

Public Testimony

No members of the public appeared to offered testimony in this matter.

¹ From this point forward we will refer to the “existing driveway” as the ingress/egress route.

Decision

County 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) also 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, the Board finds and concludes the Applicants are entitled to the requested relief.

The Board finds that denying the Applicants' request would constitute an unwarranted hardship. In *Assateague Coastal Trust, Inc. v. Roy T. Schwalbach*, 448 d. 112 (2016), the Court of Appeals established the statutory definition for "unwarranted hardship" as it pertains to prospective development in the Critical Area:

[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, Applicants have sufficiently demonstrated that, absent the variance, they would be denied a use of the Property both significant and reasonable. Constructing a single-family dwelling is a foundational use of one's own real property, as is the replacement of an existing, but functionally obsolete, dwelling with a modern equivalent. The proposed replacement home is not of a nature or character that is excessive. The Applicants demonstrated impediments and obstacles to relocating the house and its attendant improvements further out of the Buffer, among them limitations imposed by existing location of their septic system and pre-existing easements imposed on their property.

Similarly, the Board finds literal interpretation of the local Critical Area program would deprive Applicants of a substantial use of land or a structure permitted to others. Single-family homes are commonplace improvements to properties located in the Buffer. Mrs. Quade testified that the replacement house would be of similar construction and quality as other houses in the neighborhood, and would be a significant improvement in consistency over the current structure. In all, the Applicants' proposal seems to be one that is typical for similarly situated properties within the Limited Development Area.

To the third factor, 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. Applicants avail themselves of their right to seek a variance and are hewing as close to the Critical Area program's strictures as may be reasonably expected, given the Subject Property's constraints. Their proposal will not be granted unless accompanied by no less than the full mitigation required by law. Provisions for requesting and granting a variance are a necessary element of any local Critical Area program. A variance is, by definition, a departure from at least one plain element of the local Critical Area program and each request must be considered case-by-case. The Board can find nothing in the record evincing that Applicants have received any special treatment or consideration that would not be conferred upon any other similarly-situated property owner, nor do they stand to receive relief that any other similarly-situated property owner, making a similarly compelling case, would stand to receive.

Fourth, the variance request is not based upon conditions or circumstances that are the result of actions by the Applicants. Rather, Applicants are constrained by the physical characteristics of their lot and the existence of easements that are impossible to relocate.

Fifth, the variance request does not arise from any conforming or nonconforming condition on any neighboring property.

Sixth, 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. When development is permitted in the Critical Area Buffer it must be heavily mitigated. As noted by staff, over 7,600 square feet of mitigation plantings will be required. These plantings will mitigate the adverse effects of development and will improve floral and fauna habitat in the Critical Area Buffer. These plantings would not be required unless the Property is redeveloped.

Lastly, by satisfying the above criteria the Board finds that granting of the variance will 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. In total, the Applicants have demonstrated that a variance is necessary to achieve their intended use. The Applicants demonstrated concrete and physical obstacles to relocating the replacement house further away from the Buffer and amply demonstrated why they are unable to respond to the Critical Area Commission's suggested revision. We are satisfied the Applicants carried their burden and that their proposed redevelopment will leave the Subject Property better off – for the Applicants and the Chesapeake Bay – than it is today.

Finally, by satisfying each of the necessary criteria the Applicants have overcome the statutory presumption against granting a variance to a local Critical Area program's regulations.

ORDER

PURSUANT to the application of Thomas, Eleanor, Spencer and Stephanie Quade, petitioning for a variance from CZO § 78.3 to disturb the Critical Area Buffer to construct a replacement house; and

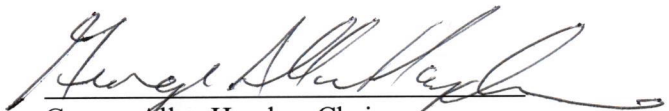
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

ORDERED, by the St. Mary's County Board of Appeals, pursuant to CZO § 24.8, that the Applicants are granted a variance from CZO § 78.3 to disturb the Critical Area Buffer to construct a replacement house;

UPON CONDITION THAT, 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: February 13, 2025

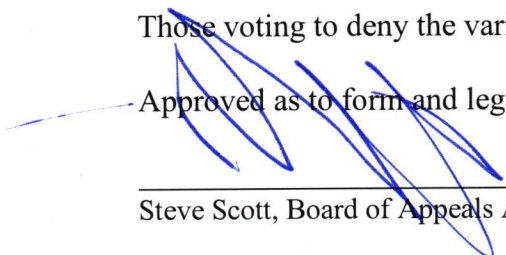

George Allen Hayden, Chairperson

Those voting to grant the variance:

Mr. Hayden, Mr. Bradley, Mr. Payne, Mr. Brown, 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 (30) days from the date of this Order, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Petition for Judicial Review in the St. Mary's County Circuit Court. 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.