

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 25-1740

REESE PROPERTY

SIXTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: JANUARY 8, 2026

ORDERED BY:

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

ENVIRONMENTAL PLANNER: ANDREW CHENEY, JR

DATE SIGNED: February 26 2026

Pleadings

Gerald and Laura Reese (“Applicants”) seek a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 71.8.3 disturb the Expanded Critical Area Buffer (“the Expanded Buffer”) for a pool and patio.¹

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on December 19 and December 26, 2025. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before December 24, 2025. The agenda was also posted on the County’s website on or before Wednesday, December 31, 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 8, 2026 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 is situate 27885 Queentree Road, Mechanicsville, Maryland (“the Property”). The Property is 1.42 acres, more or less, is zoned Rural Preservation District (“RPD”), is within the Resource Conservation Area (“RCA”) Critical Area overlay, and may be found at Tax Map 10, Grid 23, Parcel 161.

¹ As part of their development application, Applicants also propose construction of a garage and driveway on the southern edge of the property, beyond the Critical Area Buffer and Expanded Critical Area Buffer. As discussed further herein, no variance is required for these improvements as the site plan is currently configured.

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). Moreover, the 100-foot buffer may be expanded up to 300-feet in the presence of steep slopes, highly erodible soils, or hydric soils. CZO 71.8.3.a(1).

Departmental Testimony and Exhibits

Stacy Clements, an Environmental Planner for the St. Mary's County Department of Land Use & Growth Management ("LUGM"), presented the staff materials in this matter. Her presentation consisted of a PowerPoint presentation and a staff report prepared by Andrew Cheney, Jr., an Environmental Planner at LUGM. Both were entered into the record. Ms. Clements also answered questions posed by the board. Summarized below, testimony and evidence adduced by staff included, but were not limited to, the following:

- The Property was recorded after the adoption of the Critical Area program on December 1, 1985.
- The Property is 1.42 acre lot located on Queentree Road in Mechanicsville and is adjacent to tidal waters of the Patuxent River. Therefore, the Property is partially constrained by the Buffer.
- The site plan proposes a pool and a patio, which impacts the Expanded 100' Critical Area Buffer. The proposal results in a 816 square foot impact to the Expanded Buffer.
- The Critical Area Commission responded to the variance request on November 24, 2025.

- LUGM has approved the site plan for zoning, floodplain, and stormwater requirements. The Soil Conservation District has approved the site plan. The St. Mary's County Health Department has approved the site plan.
- In the site plan attached to the staff report, total proposed lot coverage after development of the pool, patio, garage, and driveway is 9,247 square feet.
- In response to a question posed by member Payne, Ms. Clements confirmed the proposal has been subject to zoning review and that the proposal does not violate any required property line setbacks or yard requirements.
- Attachments to the Staff Report:
 - #1: Critical Area Standards Letter
 - #2: Plat
 - #3: Critical Area Map
 - #4: Site Plan
 - #5: Location Map
 - #6: Land Use Map
 - #7: Zoning Map
 - #8: Existing Conditions Map
 - #9: Critical Area Commission Response

The Critical Area Commission's Response

The Critical Area Commission ("CAC") provided detailed comments to the variance request in a letter dated November 24, 2025. The Critical Area Commission stated it opposes the requested variance, and provided argument on why the Applicants failed to satisfy six of the seven factors. The Critical Area Commission also provided an alternate location of the proposed

pool and patio that could, potentially, satisfy the variance standards. Information and arguments provided from the Critical Area Commission included the following:

- The Applicants fail to satisfy the test for an unwarranted hardship because, *inter alia*, “a pool and surrounding concrete patio are not integral to ensure reasonable and significant use of the parcel.
- The parcel has “available upland space outside the Expanded Buffer that can accommodate the proposed pool and pool patio without requiring a variance.” This proposed reconfiguration of the development application was demonstrated on an attachment included with the CAC’s letter.
- A pool is “an amenity, not a need, and certainly not a right guaranteed in the Critical Area Buffer,” and the Critical Area Commission “does not consider, nor has it previously considered, a pool with patio in the Buffer to be a right guaranteed to property owners under the Critical Area law.”
- The proposed pool and its patio will increase runoff within the Buffer, “which carries with it pollutants that will negatively impact the water quality and habitat of Cove Creek.” The cumulative impact of such development activity in the Buffer done at a large scale, even if the impact of an individual project has a relatively small impact, carries a substantial and negative impact on the Chesapeake Bay.

Applicants’ Testimony and Exhibits

Mr. and Mrs. Reese appeared before the Board of Appeals to offer testimony and answer questions posed by the Board. Their testimony included a slideshow that contained pictures of their home, a summary of their proposed work, and site plans. A letter prepared by Patrick Offenbacher, whom Mr. Reese stated was the project’s engineer, addressing each of the standards

for granting a variance was also submitted. The contents of the letter were repeated in the Applicants' presentation. Summarized below, testimony and evidence adduced by staff included, but were not limited to, the following:

- Mr. and Mrs. Reese stated they are both disabled veterans. Their proposal to add a detached garage² and a pool would enhance their quality of life at their residence.
- Aerial photographs of the house showed the lot, aside from a handful of trees and landscaping in the immediate proximity of the house, is largely bare grass.
- Existing wooden steps leading from the house to the water are rotten and will be removed. Pictures showed additional concrete steps that will also be removed as part of the proposed development. The proposed pool will be located over an existing developed, landscaped part of the property immediately adjacent to the house.
- A walk around concrete pool deck will also be placed around the pool. It will be partially extended to allow the Applicants and guests to access the pool from the garage area and the parking deck.
- The pool's dimensions will be 12' x 36'.
- In response to a question posed by member Weaver, Mr. Reese stated the septic easement is located in the front of the house. The septic reserve area is shown on the site plan.
- Asked for additional clarity on existing improvements to be removed by the Chair, Mr. Reese clarified that the 781 s.f. of removed lot coverage are the patio and step removals and replacements earlier, and a removed portion of the driveway related to the garage

² Applicants' presentation made several references to the proposed garage. As clarified by staff at the presentation, the garage is proposed outside of the Buffer and does not require a variance to be approved, unless the site plan should be amended and lot coverage limits are exceeded.

project, as that is the only part of the property aside from the house that has existing asphalt coverage.

- During the Applicants' testimony, member Weaver asked Ms. Clements whether relocating the Buffer to the alternative site proposed by the Critical Area Commission would incur the need for a variance. Ms. Clements said that as long as the pool is located entirely outside of the Expanded Buffer and lot coverage remained the same it would not. The proposed relocation does not include a walkway to access the relocated pool. Ms. Clements testified that inclusion of a walkway would "probably" require a variance to exceed lot coverage limits.
- During their colloquy with the Board, the Applicants acknowledged potential health benefits of having access to the pool. Mr. Reese recently suffered a stroke and Mrs. Reese has a replacement knee. These statements were not challenged by any party to the case, but were not supported by any testimony beyond the Reeses' own statements.
- Acknowledging the arguments and opposition presented by the Critical Area Commission, the Board confirmed with Applicants they had received the CAC letter and knew of the proposed alternate location. The Applicants, questioned if the proposed relocation was viable, said it was not, because they would be unable to walk to and fro. Mr. Reese said that "if the only result is the other alternate location, the project will be canceled," stating as reason Mrs. Reese's inability to reach the pool without a walkway.

Public Testimony

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

Findings and Discussion

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) 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 have satisfied the seven required factors and may be granted the requested relief. Our discussion follows.

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 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.

Schwalbach, reciting a lengthy discussion of the legislative history of the statutory definition of "unwarranted hardship," clearly states the appropriate inquiry is whether the Applicants would be denied *a use* of the Property, not *all use* of the Property. "A reading of the statute that would require the applicant to demonstrate that, without a variance, the applicant would be foreclosed from *any* reasonable and significant use of the entire property under the Critical Area requirements would appear to require the applicant to meet the standards for a "taking" of the property... The common understanding is that a showing of "unwarranted hardship" is not whether, without the variance, the applicant is denied "all reasonable and significant use" of the property, but whether, without the variance, the applicant is denied "*a* reasonable and significant

use” that cannot be accomplished somewhere else on the property.” *Id.* at 128, 139. The first prong of *Schwalbach*’s test is whether the proposed pool and patio is a “reasonable and significant use.” We conclude it is. The proposed pool is of modest size and character; one board member, without challenge, referred to it as a “lap pool” in discussion. There is no statutory prohibition against granting a variance to a pool, provided it satisfies the required standards.³ The recreational and health benefits of having the pool were testified to by Mr. and Mrs. Reese, and their desire for and expected use of the improvement is not superficial or based upon mere whim and caprice. Their testimony was that they would derive significant, meaningful benefit from the improvements.

The second prong of *Schwalbach* – whether there is adequate ability to achieve the desired use without having to resort to a variance (i.e., whether it can be located outside the Buffer) - is the more challenging of the two. The proposed pool is located outside the 100’ Critical Area Buffer but within the Expanded Critical Area Buffer. There is bare land on the Property outside of the Expanded Critical Area Buffer, between the house and the proposed garage, that the Critical Area Commission puts forth as an alternate location. The proposed alternate location appears to implicate no building setback lines or yards requirements, and does not appear to crowd out the required septic reserve easement. Two obstacles emerged in the hearing that render the alternate location impracticable. Applicants’ testimony, and the Board’s own practical sense, is that the pool would require a walkway. The alternate location did not appear to take into account providing one. Staff’s testimony was that inclusion of a walkway would likely incur the need for a variance

³ There was, until fairly recently, such a statutory prohibition in the County’s Comprehensive Zoning Ordinance. Ordinance 2022-024, adopted by the Commissioners of St. Mary’s County on June 7, 2022, repealed a provision in CZO § 51.3.122.a that stated “swimming pools and associated decks and enclosures shall be prohibited in the Critical Area Buffer. Variances for these structures cannot be granted.” That refinement to the local Critical Area Program was approved by the Critical Area Commission in September, 2022, and the ordinance became effective thereafter.

for lot coverage – an assessment supported by the incredibly narrow margin on allowed lot coverage noted on the site plan and Critical Area Commission. In the current site plan, Applicants are only 31 square feet below required lot coverage. Assuming a modest width of 3’ for a required walkway, Applicants would only be able to install a hair over 10’ of walkway before exceeding allowable lot coverage. The alternate location proposed cannot be reached with a walkway of that length, and the topography, septic reserve area, and extent of the Expanded Critical Area Buffer shown on the site plan do not support any suggestion the pool could be located so close to the house as to make a 10’ long walkway viable.⁴ Accordingly, we must conclude the Applicants have sufficiently demonstrated an unwarranted hardship.

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. As stated above, the Board finds the proposed use significant and reasonable. The limited time in which these uses have been candidates for variance requests – discussed in Footnote 3 – limits the Board’s pool of comparable properties. This is not the first variance granted by the Board for a swimming pool in the last several years, however, and the proposed improvement and location thereof is not exceptional compared to prior requests. Rather, the pool appears relatively modest in size.

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 their desired use and the physical constraints of the Property. Procedures for requesting and granting a variance are

⁴ For comparison, 3’ was the width of the disputed walkway in *Schwalbach*, and the maximum width of a *riparian* access walkway that may be placed within the Buffer under county regulations (CZO § 71.9.8.j) without incurring a need for a variance.

mandatory elements of any local Critical Area program. Natural Resources Article § 8-1808(c)(1)(iii)4.13. Applicants have exercised their right to petition for a variance and, given the chance to justify the request to the Board of Appeals, met their burden. We cannot deem their compliance with the procedural and substantive requirements of the variance process, and ultimate success before the Board, a “special privilege.”

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 its existing configuration. The core need for the variance does not stem from the Applicants’ aesthetic or locational preferences. Considering the alternate location brought forward, the Applicants’ testified that need and access, not cost or preference, drive the proposed location of the pool.

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 on the site plan, 4,574 square feet of mitigation will be planted. These plantings will mitigate the adverse effects of development and will improve floral and fauna habitat in the Critical Area Buffer. Notably, all plantings are proposed to be completed within the 100’ Buffer, versus the expanded Critical Area Buffer. This area of the property is shown on the site plan and pictures to be largely bare grass, with only four existing trees. These plantings, at the most environmentally sensitive site of the Property, would not be required unless the Applicants move forward with the proposal. Applicants propose improvements no closer to the water’s edge than what is already existing, and

the removal of several steps and decks that come closer to the Buffer than their proposed replacements.

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 proposed use, which the Board finds to be significant and reasonable in nature. There is no viable alternative before the Board, based on the evidence in the record, that would obviate the need for a variance to achieve that use. Impacts to the Chesapeake Bay, the Buffer, and the Expanded Buffer improvements will be offset by the substantial mitigation to be performed. While acknowledging the stated intent of the Critical Area program and the potential adverse impacts of cumulative small-scale development stated by the Critical Area Commission in its letter – and appreciating the seriousness and care with which the Critical Area Commission stated its position in this matter – the evidence before the Board leads it to conclude the Applicants have satisfied the applicable standards.

Finally, in satisfying each of the necessary criteria the Applicants have overcome the statutory presumption at Natural Resources Article § 8-1808(d)(3)(ii) against granting a variance.

Accordingly, we conclude the Applicants should be granted the requested relief.

ORDER

PURSUANT to the application of Gerald and Laura Reese, petitioning for a variance from CZO § 71.8.3 to disturb the Expanded Critical Area Buffer for a pool and patio; 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 the requested variance;

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 26, 2026


George Allan Hayden, Chair

Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Mr. LaRocco,
Mr. Payne, 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.