

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 26-0485

SCHOENBAUER PROPERTY

SEVENTH ELECTION DISTRICT

VARIANCE REQUEST HEARD: JULY 9, 2026

ORDERED BY:

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

ENVIRONMENTAL PLANNER: ANDREW CHENEY

DATE SIGNED: August 13, 2026

Pleadings

Francis William Schoenbauer III and Judith Heather Elaine Schoenbauer (“Applicants”) seek a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 71.8.3 to disturb the 100’ Critical Area Buffer for a 12’ x 18’ deck attached to an existing dwelling.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on June 19 and June 26, 2026. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before June 24, 2026. The agenda was also posted on the County’s website on or before June 24, 2026. 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 July 9, 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 variance requested by the Applicants.

The Property

The subject property is situate 20379 Bowles Road, Coltons Point, Maryland (“the Property”). The Property is 13.056 square feet, more or less, is zoned Rural Preservation District (“RPD”), is covered in part by Limited Development Area (“LDA”) and in part by Resource Conservation Area (“RCA”) Critical Area overlays, and may be found at Tax Map 53, Grid 5, Parcel 3.

The Variance Requested

Applicants seek a variance from CZO § 71.8.3 to disturb the Buffer to construct a 12' x 18' deck attached to an existing dwelling.

St. Mary's County Comprehensive Zoning Ordinance

CZO § 71.8.3 requires there to 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).

Departmental Testimony and Exhibits

Andrew Cheney, an Environmental Planner for the St. Mary's County Department of Land Use & Growth Management ("LUGM"), presented a staff report and a PowerPoint presentation that included the following testimony:

- The Property was recorded in the Land Records of St. Mary's County per deed Liber 17, Folio 241, 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 1955.
- The property sits adjacent to the tidal waters of Dukehart's Creek. Therefore, the Property is constrained by the expanded Buffer.
- The site plan submitted with the permit application proposes a 12' x 18' deck attached to an existing dwelling on the property which impacts the 100' Critical Area Buffer. The proposal results in 216 square feet of disturbance to the 100' Critical Area Buffer.
- All staff and approving state agencies indicated they can approve the application.

- The Critical Area Commission submitted a letter dated June 9, 2026. The Critical Area Commission did not state it opposes the requested variance.
- Mitigation is required at a ratio of 3:1 for the variance. The total mitigation required for this proposal is 648 square feet of plantings to meet these mitigation requirements. A planting plan and agreement will be required prior to the issuance of the building permit.
- Attachments to the Staff Report:
 - #1: Deed
 - #2: Critical Area Map
 - #3: Site Plan
 - #4: Critical Area Commission Response
 - #5: Critical Area Standards Letter
 - #6: Location Map
 - #7: Existing Conditions Map
 - #8: Land Use Map
 - #9: Zoning Map

Applicants' Testimony and Exhibits

Mr. Schoenbauer appeared before the Board to present the variance request. He explained the proposal and offered a slideshow depicting the current state of the Property. The following evidence and testimony was included in his presentation:

- The primary purpose of the deck will be creation of a safe area for elderly family members and friends who visit to sit and enjoy the water view afforded by the Property.
- The Applicants intend to keep an existing, large shade tree near the proposed deck.

- Existing steps will be used to access the deck.

Public Testimony

No members of the public appeared to offer testimony in this matter, and no written comments were submitted.

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) 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 Md. 112 (2016), the Court of Appeals established the 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 that is both significant and reasonable. Applicant asks to construct a modestly sized deck that will be used to enhance elderly family members' recreational use and enjoyment of the Property. The proposed deck is far from unreasonable, and the described enhancement of recreational use of the lot is, the Board finds, significant. The limited size of the Property—little more than a quarter-acre—and the footprint of the existing improvements constrain Applicants from achieving this use elsewhere on the Property. Accordingly, the Board

finds the Applicants have demonstrated that denial of the variance would amount to an unwarranted hardship.

Similarly, the Board finds a literal interpretation of the local Critical Area program would deprive Applicants of a substantial use of land or a structure permitted to others. The Applicants' proposal is of a character and nature one might expect in the Limited Development Area, and of a like kind as other variances granted by this Board.

As to the third factor, the granting of the variance would not confer upon the Applicants 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. Provisions for requesting and granting a variance are a necessary element of any local Critical Area program. Applicants have exercised their right to petition for a variance and, given the chance to justify the request to the Board of Appeals, appear to have met their burden.

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 configuration of its existing improvements.

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, 648 square feet of mitigation plantings will be required. These plantings will mitigate the

adverse effects of development and improve flora and fauna habitat in the Critical Area Buffer. These plantings would not be required unless the variance is granted.

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 the proposed use, which the Board finds to be significant and reasonable in nature. The requested improvement is not extravagant. Potential impacts to the Buffer will be offset by required mitigation. On the whole, this proposal strikes the necessary balance between allowing property owners reasonable use and enjoyment of their property while simultaneously shepherding the County's and the State's natural environment.

Finally, in satisfying each of the necessary criteria the Applicants have overcome the statutory presumption against granting a variance.

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

ORDER

PURSUANT to the application of Francis William Schoenbauer III and Judith Heather Elaine Schoenbauer, petitioning for the above-described variance; 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 to disturb the 100' Critical Area Buffer for a 12' x 18' deck attached to an existing dwelling;

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.

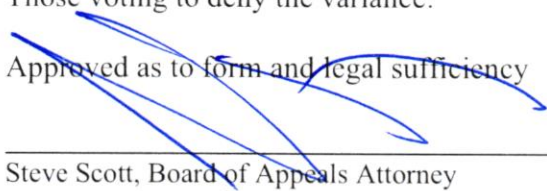
Date: August 13, 2026


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.