

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 25-1354 & 25-1355

TALL TIMBERS TAVERN PROPERTY

SECOND ELECTION DISTRICT

VARIANCE REQUEST HEARD: MAY 14, 2026

HEARD BY:

**George Allan Hayden, Chair
John Brown, Vice Chair
Donald LaRocco, Member
Ronald Payne, Sr., Member
Rita Weaver, Member**

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: July 9, 2026

Pleadings

Michael Hewitt LLC (“Applicant”) seeks a variance from the St. Mary’s County Comprehensive Zoning Ordinance (hereinafter “CZO”), specifically §71.5.2.b, to disturb the expanded non-tidal wetland buffer to clear existing vegetation to create an overflow parking area for an adjoining parcel.

Public Notification

Notice of the hearing for the requested variance was published in the *Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on April 24, 2026, and May 1, 2026. Physical postings were made on the property, and all neighboring property owners within 200-feet of the property were notified by certified mail, on or before April 29, 2026. The agenda for the Board of Appeals (“Board”) meeting during which the variance was heard was posted on the County’s website on April 29, 2026, and the variance hearing was duly noted as an item of new business on the agenda. Therefore, the Board finds compliance with all applicable 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, located at 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were duly sworn and the proceedings were electronically recorded.

The Property

The subject property comprises two unaddressed adjacent parcels, under common ownership, located at the intersection of Tall Timbers Road and Old Tall Timbers Road in Tall Timbers, Maryland (hereinafter, collectively, the “Property”). They may be found among the Tax Maps of St. Mary’s County at Tax Map 61, Grid 21, Parcels 127 & 356. Per the Applicant’s site

plan, Parcel 127 consists of 25,182 square feet and Parcel 356 consists of 25,269 square feet. Both are zoned Rural Preservation District (“RPD”). Approximately 6,339 square feet of the northern portion of Parcel 127 lies within the thousand-foot Critical Area, carrying a Resource Conservation Area (“RCA”) overlay, and the remainder of the Property lies outside the Critical Area.¹ No portion of the Property lies within the 100’ Critical Area Buffer or any expanded Critical Area Buffer. The Property lies across Old Tall Timbers Road from the improved parcel at 44600 Tall Timbers Road, also under common ownership with the Property, the site of the former Tall Timbers Tavern.

The Variance Requested

Applicant seeks a variance from CZO § 71.5.1.b(2) to disturb an expanded nontidal wetland buffer for the purpose of clearing existing vegetation for the purpose of creating sufficient cleared space for overflow parking for Applicant’s adjacent property at 44600 Tall Timbers Road.

Definitionally, a variance is a request to modify the requirements, on a case-by-case basis, of the Comprehensive Zoning Ordinance. Maryland law generally distinguishes between “area variances” (sometimes referred to as dimensional variances), which are modifications to density, height, bulk, setback, or other “physical” restraints on a property, and “use variances,” in which an applicant seeks authorization to establish a use on a property whose nature is generally prohibited within the applicable zoning district (a request, for example, to develop a large store on a property zoned solely for residential use). See, e.g., *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, (1974).

Maryland law, at Md. Land Use Article § 4-305(3), empowers the Board to grant *area*

¹ As shown on Applicant’s site plan, the proposal shows no impacts to the portion of the Property encumbered by the Critical Area. When a property is partially within and partially without the Critical Area, the restrictive development regulations pertinent to the Critical Area apply only to that portion of the subject property within the Critical Area. See, e.g., CZO § 11.3.6; 41.1.4.

variances, and the Comprehensive Zoning Ordinance prescribes standards and the process for the Board of Appeals to do so in Chapter 24. To grant a variance, the Board must find a given request satisfies the seven standards for a general variance listed in CZO § 24.3.²

Applicable Environmental Protection Standards
in the St. Mary's County Comprehensive Zoning Ordinance

CZO §71.5 sets forth county-level site development standards for wetlands resources.³ When a property is impacted by non-tidal wetlands, the CZO mandates a 25-foot buffer from the edge of all mapped non-tidal wetlands. CZO § 71.5.2.b. Development within the buffer is prohibited without a variance from the Board.

The 25-foot buffer may be expanded up to 100' feet to include adjacent land composed of "hydric soils," which are soils "wet frequently enough to periodically produce anerobic conditions, thereby influencing the species composition or growth, or both, on those soils." CZO Article 9, Definitions. Whether a given soil is "hydric" is generally governed by the list of soil types in Table 71.7.1.e of the CZO and the reports of the Soil Survey Geographic Database, a compilation of general information about soil types collected by the National Cooperative Soil Survey and published by the Natural Resources Conservation Service.

Staff Testimony and Exhibits

Stacy Clements and LUGM Staff Report

Stacy Clements, a Planner IV for the St. Mary's County Government's Department of Land Use and Growth Management ("LUGM"), presented a staff report prepared by Dula Wereti, an

² Standards for a variance from a general dimensional requirement of the Comprehensive Zoning Ordinance differ from the standards for a variance from the Ordinance's regulations applicable to projects within the Critical Area. Critical Area standards are, generally speaking, more restrictive and require a showing of the harder-to-reach "unwarranted hardship" standard than the standard of "practical difficulty" required of a general variance.

³ Local standards for the protection of wetlands are additive to, and not in lieu of, state-level protections. State regulations applicable to wetlands resources are not the jurisdiction of the Board.

Environmental Planner within LUGM. The staff report contained an overview of the property, its physical characteristics, the variance request, and applicable regulations. It did not include, as is currently customary for staff reports to the Board, a recommendation for or against the requested variance. In addition to the staff report, Ms. Clements also presented a slideshow presentation summarizing the contents of the staff report and containing maps of the Property and a reproduction of the Applicant's site plan. Pertinent information produced by the staff report and presentation included:

- Applicant's site plan proposes overflow parking comprising an approximately 225' x 123' area on the Property. The parking will be accessed by entrances on both Tall Timbers Road and Old Tall Timbers Road.
- The proposed parking area impacts the non-tidal wetland buffer, which is expanded due to the presence of hydric soils on the Property.
- The expanded nontidal wetlands buffer impacts almost, if not all, of the Property that lies outside the portion of the Property outside the Critical Area.
- The Maryland Department of the Environment ("MDE") has approved an updated delineation of the wetlands as shown on the site plans by approving the MDE permit through its approval process.
- The site plan remains under review with the Department of Public Works and Transportation and Soil Conservation District. LUGM has approved the proposed use of the property with regard to zoning, but a dimensional variance allowing the proposed impacts to the nontidal wetlands buffer must be approved by the Board to approve the project. Stormwater management review is still pending.
- The Maryland Department of the Environment has issued a permit for disturbance to the

wetlands and the initial 25' wetlands buffer.

- Attachments to the Staff Report, including:
 - #1: General Standards Letter;
 - #2: Site Plan;
 - #3: Location Map;
 - #4: Land Use Map;
 - #5: Zoning Map;
 - #6: Wetland & Hydric Soils Map;
 - #7: MDE Wetlands and Waterways Permit

John Norris, Director, Public Works & Transportation

John Norris is the Director of the Department of Public Works & Transportation, as well as a professional engineer and attorney. Mr. Norris spoke briefly on three occasions in response to questions posed by the Board. These comments included a summation of his department's review of stormwater management (namely, that though it was still pending, it appears to be approvable with only minor adjustments and that it appears post-development flow of water will be equal or less than the existing flow of water), a rough analysis of hypothetical queuing and parking conditions on Tall Timbers Road and the approach to Piney Point Elementary School, and an explanation of the review of inspections conducted after grading permits are issued.

John Houser, Deputy County Attorney

John Houser is the Deputy County Attorney and spoke in response to questions posed by Ms. Weaver. These questions centered, chiefly, on 44600 Tall Timbers Road, its current and past

zoning, and a high-level summation of the variety of uses allowed under its current zoning. He also offered an observation that the County's current temporary event regulations allow "events" to be held on a property up to 20 days in a year, cumulative, before a property must seek to establish a permanent legal use as an event venue or other applicable permanent use.

Applicant's Testimony and Exhibits

Applicant was represented before the Board by Christopher T. Longmore, of Dugan, McKissick & Longmore, LLC, as counsel; by Patrick Mudd, of Mudd Engineering, LLC, as the project engineer; and by Michael Hewitt, as the managing member of Michael Hewitt LLC. Their written materials included a three-page formal letter from Mr. Longmore providing Applicant's reasoning why the request complies with the County's standards for granting a variance and a slideshow showing present site conditions and Mr. Mudd's site plan. For a little under two hours the Applicant's team presented and described the project and responded to multitudinous questions posed by the Board and the public. A summation of pertinent information, testimony, and argument adduced by the Applicant's team is:

- Mr. Longmore summarized the historical use of 44600 Tall Timbers Road, stating that it was originally built as a bar and dance hall in 1936 and operated commercially until approximately 1978, when a purchaser closed Tall Timbers Tavern and began, after some time, to use the building as a residence. At the time of the purchase there were four apartments in the small outbuilding adjacent to the principal structure, and that, historically, four EDUs were allocated to the property for its use and remain allocated to the present.
- Applicant purchased 44600 Tall Timbers Road in 2014, renovating the property. The property is maintained as a second residence, and no permanent commercial use has been reestablished at it. From time-to-time, social events on the property, such as holiday

parties, reunions, anniversary parties, and birthday parties are hosted on the property which draw significant attendance. Mr. Hewitt said that, on occasion, attendance can exceed 200 persons, and that a recent holiday party had cars parked alongside both sides of Tall Timbers Road all the way to Route 249.

- Applicant's intended use of the Property is to provide overflow parking for these events.
- The Property is significantly constrained because nearly the entirety of the approximately 1.1 acres the Property comprises falls within the expanded 100' wetland buffer imposed by County regulations, and that strict adherence to the buffer's prohibition on any disturbance within would render Applicant unable to make any meaningful use of the Property.
- The requested variance does not propose any permanent structures or significant development activity and will only comprise the removal of existing vegetation and the planting of grass afterwards to create a grass overflow parking lot.
- Overflow parking is desirable because noncommercial, social events at 44600 Tall Timbers Road result in guests parking on the shoulders of Tall Timbers Road and Old Tall Timbers Road and walking along the road to reach Tall Timbers Tavern. Creating space for parking on the Property will allow guests to park somewhere other than the shoulder of those public roads and reduce traversal across and alongside the roads.
- Few properties in the County, relatively speaking, are as totally encumbered by a nontidal wetlands buffer as the Property.
- The Applicant will provide stormwater management to any extent required by the County's Stormwater Management, Grading, Erosion, and Sediment Control Ordinance. In addition, the Applicant stated a vegetated buffer on the northern portion of the property will be maintained. Mr. Mudd described, at length, the purported benefits of the wet swale he

designed for the Property, stating that it will capture runoff and release it more slowly than current conditions, effectively improving the Property's stormwater performance over its present state.

- Approval of the variance will not be detrimental to public safety and will instead be a net increase, because guests will be able to park in the parking area instead of on the shoulders of the public road. Mr. Longmore noted that if the variance is disapproved guests could continue to keep parking on the shoulders as they have been, and that disapproval will not lead to any decrease in that custom.

Written Public Comment

The Board offers members of the public the opportunity to submit written comments on requested variances. Advertised notice stated that written comments must be submitted no later than 12:00 p.m. the preceding day to be entered into the record. Written comments are entered into the record by LUGM staff in the exact form received.

Seven written comments were received, with pertinent information and claims in each summarized as follows:

- *Caitlin Ridgell,⁴ Tall Timbers*
 - Ms. Ridgell sent a letter, including attached exhibits and pictures, via email. In her letter, she said she opposed the variance request and believed the overflow parking was “unnecessary,” and questioned whether it was necessary for a residentially zoned property. She stated she believed the variance request was a “strategic move” to ultimately have the property zoned commercial. She stated that since Tall Timbers is

⁴ Ms. Ridgell's comment is labelled among the record as “Catie Bowes,” reflecting the name in her email address. Her signature to the letter was Catie Ridgell.

“primarily an area where people come to retire due to its quiet rural feel,” she did not see where there would be demand for more commercially zoned property.

- *Chris Allen, Tall Timbers*

- As the president of the Tall Timbers Citizens Association, Chris Allen wrote in “strong opposition” to the requested variance, stating that numerous neighbors have stated they are not in favor of the proposal. Chris Allen said that Mr. Hewitt “has taken steps to turn it into a de facto commercial project.” Regarding the variance, Chris Allen wrote that variances are normally reserved for “hardship” situations and that it was “hard to believe this is anything but an end run to ultimately get the property zoned from residential to commercial.” Chris Allen also wrote that, “As a residential property, I have no issue with him throwing an occasional party in his ‘man-cave’ and having overflow parking along Old Tall Timbers Road for those cars unable to fit into an already large parking area.”

- *David Dent, Tall Timbers*

- David Dent is the owner/operator of WJ Dent & Sons / Chief’s Bar, which comprises the other properties at the intersection of Old Tall Timbers Road and Tall Timbers Road. Mr. Dent supported the variance request. He wrote that he has firsthand knowledge of the importance of safe and properly managed parking in the community, that Applicant’s proposal would maintain a rural look and feel, and that the proposal would be

beneficial to the surrounding community. Mr. Dent wrote that he had partnered with Applicant regarding the proposed overflow parking area because his business occasionally faces parking limitations during peak periods of operation.

- *Henrietta Kundert, No Address Provided*

- Ms. Kundert wrote in opposition to the variance request. She wrote that when large groups have been to 44600 Tall Timbers Road in the past the Applicant had been able to find parking then, and that taking down “numerous trees, negatively impacting a watershed and wildlife area” was unnecessary and would be an eyesore. She asked whether the Applicant had inquired if the parking lot at Piney Point Elementary School would be a viable alternative.

- *Raymond Norris, No Address Provided*

- Raymond Norris wrote, in an email forwarded by Chris Allen, that he opposes the variance request. He questioned the intention of the variance and asked if more commercial development would ensue and asked what hardship there was when Applicant had “landscaped over existing parking,” and intimated that variances to allow development in areas “specifically earmarked for no new development” and “abandoning the concept of wetland retention” were contrary to the spirit of the County’s ordinances.

- *Steve and Rebecca Elledge, Tall Timbers*

- Mr. and Mrs. Elledge live in Tall Timbers and wrote in support of the

variance request. They wrote that the parking area would provide “a much safer alternative to parking on the side of Tall Timbers Road during peak hours or community events.” The Elledges noted MDE had approved impacts to the wetlands and that “the parking lot can coexist with the character of the Tall Timbers community as well as improve public safety.”

- *Laurel Bradford, Tall Timbers*
 - Laurel Bradford wrote in support of the requested variance. Stating, “I have resided in Tall Timbers Tavern and am a frequent patron of WJ Dent & Sons / Chief’s Bar,” Laurel expressed familiarity with the parking limitations and the resulting safety issues due to roadside parking. Laurel said the parking lot would maintain the rural character of the area and noted MDE had approved impacts to the wetlands.

In-Person Public Testimony

The following members of the public appeared to offer in-person testimony at the variance hearing:

- *David Dent, Tall Timbers*
 - In addition to the written comment submitted above, Mr. Dent appeared to offer in-person testimony. He stated he supported the variance and said that he has limited parking at his property, and that when events are held at 44600 Tall Timbers Road event attendees sometime park at Mr. Dent’s business, which also has limited parking.
- *Terry Melvin, Tall Timbers*

- Describing herself as a lifelong resident of Tall Timbers, she said that it was necessary to address the public school and that parents, during drop off and pick up, queue on Tall Timbers Road. She said parking does obstruct drivers. She stated she has been to events at 44600 Tall Timbers Road but that there was always sufficient parking. She thought adding two new entrances to a road, across an elementary school, “didn’t make any sense.” She said she has had to “jump through hoops” to perform work on her property, said 44600 Tall Timbers Road is rarely utilized or occupied, and questioned whether the variance is necessary. During a response to a question posed by the Chair, Ms. Melvin observed that she believed the reality of the parking lot would be that it will be used by non-guests if it is not gated off.
- *Caitlin Ridgell, Tall Timbers*
 - Ms. Ridgell appeared to offer in-person comments in addition to her written comments. She also identified as a life-long resident of Tall Timbers and said her family owned property adjacent to the elementary school. In addition to the comments made in her letter, she said there were several wooded lots in the area purchased by neighbors and members of the community to preserve them in their wooded state. She said the variance would only be for the Applicant’s occasional convenience and profit. Finally, she said the parking lot would still require guests to cross Old Tall Timbers Road. She stated any similar development project on her property would be held to a different standard than this project – and

in response to a question posed by Ms. Weaver, acknowledged that her property is situated within the Critical Area.

- *Bryce Hunt, Tall Timbers*

- Mr. Hunt lives on Finnacom Road in Tall Timbers. He said he wanted to “back up” everything that the previous two speakers have said, and that only one or two events are held at 44600 Tall Timbers Road a year. He generally questioned the need for additional parking spaces.

- *George Allen, Tall Timbers*

- Mr. Allen said he “was not here to speak against the variance,” but said he has “trust issues.” He questioned why anyone would buy “that property,” invest significant money into it knowing there was unplentiful parking on site, and then acquire adjacent parcels for the purpose of providing additional parking. Mr. Allen said that in his travels he has never seen 44600 Tall Timbers Road’s parking lot full or nearing capacity. He repeated a comment made by a previous speaker that if conditions on the grass parking lot become muddy the Applicant may seek to pave it in the future.

- *Merl Evans, Tall Timbers*

- Mr. Evans requested the variance be denied. He said that most of the area in Tall Timbers is flat and that water often stays wherever it falls, as evidenced by frequently filled ditches. He said that both sides of Route 249 often flood, and that along it are signs of “drowned” vegetation. He said the property would become a bog if the variance is granted and the

Property is cleared, and that the mature trees on the site are “necessary” for water uptake. He questioned whether MDE or LUGM had performed a site visit and asked the procedure to challenge MDE’s authorization of the wetland disturbances. Mr. Evans also suggested a shared parking agreement, as authorized by the Comprehensive Zoning Ordinance, may be a vehicle to allow Mr. Dent and Mr. Hewitt to make joint use of each other’s existing parking lots, obviating the need for a variance.

Decision

The seven standards a request for a general requirement for a variance from dimensional requirements of the Comprehensive Zoning Ordinance are:

- (1) Because of particular physical surroundings, such as exceptional narrowness, shallowness, size, shape, or topographical conditions of the property involved, strict enforcement of this Ordinance will result in practical difficulty;
- (2) The conditions creating the difficulty are not applicable, generally, to other properties within the same zoning classification;
- (3) The purpose of the variance is not based exclusively upon reasons of convenience, profit, or caprice. It is understood that any development necessarily increases property value, and that alone shall not constitute an exclusive finding;
- (4) The alleged difficulty has not been created by the property owner or the owner’s predecessors in title;
- (5) The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood and the character of the district will not be changed by the variance;

- (6) The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood; and
- (7) The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.

Upon review of the facts and circumstances, a majority of the Board finds and concludes that the Applicant is entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance. Our discussion of each standard follows.

Firstly, the Board finds that strict interpretation of the CZO would result in a practical difficulty due to the physical characteristics of the Property. CZO § 24.3.1. The Maryland Supreme Court (formerly "Maryland Court of Appeals") established the standard by which a zoning board is to review "practical difficulty" when determining whether to grant a variance:

1. *Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk, or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome;*
2. *Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners;*
3. *Whether relief can be granted in such fashion that the spirit of ordinance will be observed and public safety and welfare secured.*

McLean v. Soley, 270 Md. 208, 214-215 (1973).

Here, the Applicant has demonstrated that a particular physical constraint of the Property prevents its use for a purpose that would otherwise be permitted. Property owners are allowed to hold social events on their property, and attendees are allowed to park on-site when and where

available parking exists, and property owners are not prohibited from clearing land on their property to provide that parking space (provided any applicable development regulations are satisfied – such as compliance, if required, with the County’s Critical Area program, Forest Conservation Area program, stormwater management ordinance, or other development regulations as may be applicable). Applicable regulatory agencies have reviewed the request and found it approvable or have stated it is on the cusp of becoming approvable. The only element of the proposed work that removes this project from one that could be approved by-right, without a public hearing of any kind, is the presence of nontidal wetlands and their attendant buffers, which cover the near-entirety of the Property. Applicant has stated, and demonstrated to the Board’s satisfaction, that social events are held on the property with some regularity, that those events draw a multitude of guests, and that a great number of those guests, for want of available parking, are relegated to parking on the shoulders of the public roads in the immediate vicinity. It is not a requirement that the additional parking be necessary every day of the year for it to be necessary to Applicant in general. And there is no lesser variance evident to the Board that would accomplish this purpose for Applicant other than the variance request presently before the board. Testimony from the immediate neighbors to the property – those properties at the intersection of Tall Timbers Road and Old Tall Timbers Road owned by Mr. Dent – was that the additional parking would be beneficial, and even some public comment otherwise in opposition acknowledged the need for parking. Accordingly, we find competent, substantial evidence exists to find that denial of the requested variance would constitute a practical difficulty.

The second standard is that the conditions creating the need for the variance are not generally applicable to properties in St. Mary’s County. Certainly, this is not the only property zoned within the Rural Preservation District impacted by nontidal wetlands – but, as Applicant

pointed out, most similarly zoned properties in the County are not impacted by wetlands, and certainly not to the extent the Property is. The extent to which wetlands and buffers impact the Property is not typical of most land zoned for the Rural Preservation District.

The third standard is a finding that the request for the application is not based “exclusively” on reasons of convenience, profit, or caprice. (Emphasis in the statutory text). The formulation of “convenience, profit, or caprice” appears, from time to time, in opinions from Maryland and out-of-state courts that discuss how to approach variance standards. See, e.g., *Belvoir Farms Homeowners Association v. North*, 355 Md. 259 (1999) (quoting *Bowman v. City of York*, 240 Neb. 201 (1992)). These standards appear, in general, to be held to mean that an Applicant may not be granted a variance when the allowable use can be achieved while adhering strictly to the requirements of the law, but that a variance would allow an alternative that may be marginally more convenient, or easier, or less expensive. Applicant’s argument was that to make any meaningful use of the Property at all – whether for the parking area requested, or any other use which might have been permitted on the Property – a variance from this provision of the CZO would be required, given the extent to which the Property is impacted by the expanded nontidal wetlands buffer.

The fourth standard is that the alleged difficulty must not be the Applicant’s own creation. Generally, variances are not permitted for “self-created” hardships. Self-created hardships occur when a property owner creates, through their own affirmative actions, the need for a variance – by building, for example, a house close to a neighbor’s property line when there was ample room to build elsewhere on the property, and then asking, in several years’ time, for a variance to build an addition that intrudes into a required building restriction line from the neighboring property line. The key is that the constraint must be created by the Applicant itself. Purchasing a property

knowing that it has site constraints is not the same as creating the site constraints oneself. *Richard Roeser, Professional Builder v. Anne Arundel County*, 368 Md. 294 (2002) (“It should not be within the discretion of a board of appeals to deny a variance solely because a purchaser bought with knowledge of zoning restrictions,” quoting Arden H. Rathkopf & Daren A. Rathkopf, *The Law of Zoning and Planning* § 58.22, 141-48 (Edward H. Ziegler, Jr. revision, vol. 3, West 1991)). Applicant did not place the wetlands on the property itself; accordingly, we may find the Applicant does not bring a self-created hardship before us.

The fifth standard is a finding that the proposed project will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood and that the character of the district will not be changed by the variance. Public comment on whether the project would be to the detriment or benefit of the public welfare was split. The Board of Appeals must draw its own conclusions based on the factual record before it, and an administrative proceeding cannot become a vehicle for neighbors to force the property of another into a *de facto* public trust. *See, e.g., Montgomery Council v. Scrimgeour*, 211 Md. 306 (1956) (“A plebiscite of the neighborhood does not determine zoning,” quoting *Benner v. Tribbitt*, 190 Md. 6 (1948)). As noted above, the property owner physically closest to the Property spoke in support, stating it would be of benefit and maintain the existing character of neighborhood. Many of those who spoke against the proposal live considerable distance from the Property, in some cases up to a mile away (although they stated they frequently drove by or passed by the Property). It is difficult for the Board to conclude a grass-covered lot is contrary to the look, feel, or touch of a rural neighborhood, and the public safety benefit of allowing guests to park in a designated spot, versus the shoulder of public roads, is self-evident. On the whole, the Board finds and concludes the request will be to the net benefit of the general public and will not alter the existing character of the neighborhood.

The penultimate standard is that the request must not substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood. The Board finds it will not and, on the contrary, will be a benefit to public safety. The Board discussed, at great length, the purported public safety benefits of transferring parking from the status quo of parking on roadside shoulders to a designated spot off the road. Particularly with the Board's condition that appropriate signage and pedestrian crossings from the parking area to 44600 Tall Timbers Road be provided, the new arrangement will be a net benefit to public safety, and not a detriment. Many objections voiced were based not on the proposal before the Board but on a fear of what it may someday become. It is not the Board's place to deny an otherwise meritorious request because of speculative apprehension. The Board's decision is based on the request before it and authorizes only the relief presently requested.

Finally, the Board must conclude that the request complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan. The Board believes it does. At the bottom of it, the Applicant is entitled to some beneficial use of the Property, and achieving any beneficial use of the Property requires some impact to the nontidal wetland buffer. The pending request is, as Mr. Longmore noted, among the more limited impacts for which a variance has been sought from the Board in recent memory. Variances are authorized by the Comprehensive Zoning Ordinance, and variances from this specific requirement are not altogether uncommon.⁵ The Comprehensive Plan's Land Use Plan Concept for the Rural Preservation District says land within

⁵ By no means an exhaustive list, a survey of past orders of the Board shows variances to permit disturbance to a non-tidal wetlands buffer were granted in VAAP # 23-1210, signed November 9, 2023; VAAP # 23-1084, signed December 14, 2023; VAAP # 23-1370, signed December 14, 2023; VAAP 22-0256, signed March 14, 2024; VAAP 23-2566, signed May 9, 2024; and VAAP # 25-0169, signed June 12, 2025. Though a final order is yet to be signed, the Board heard and voted to grant, unanimously, a variance to disturb a nontidal wetland buffer on June 11, 2026, in VAAP # 25-1709, a month after the hearing in this matter.

that zoning district should comprise “Prime farm land, timber land and mineral resource lands, agriculturally related industries and limited nonfarm cottage industries, and low density nonfarm residential developments characteristic of the county’s rural character which are to be preserved for a wide range of economic and aesthetic purposes.” Comprehensive Plan, § 3-6. Applicant’s proposal falls within that range and is a lesser impact on the property than many other contemplatable uses, such as clearing the parcels to create a single-family dwelling on each. The Applicant’s request is a limited proposal for a use that would otherwise be permitted by-right. Impacts to the wetland have been minimized to the most reasonable extent practicable given the constraints of the Property. The Board is more than able to conclude, on the whole, that the proposal complies with the overall spirit, intent, and purpose of the Comprehensive Plan.

Accordingly, for the reasons noted above, the Board finds and concludes the Applicant has met its burden to demonstrate the request satisfies each applicable variance standard.

ORDER

PURSUANT to the application of Michael Hewitt LLC, petitioning for a variance from CZO Section 71.5.2.b to disturb an expanded nontidal wetland buffer to create a grass-covered parking area; and

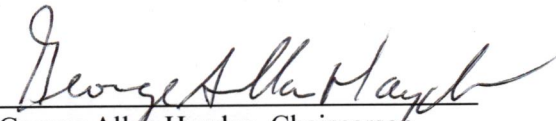
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is, hereby,

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, Applicant shall provide a crosswalk from the proposed parking area across Old Tall Timbers Road, in accordance with any applicable regulations of St. Mary’s County.

This Order does not constitute a building permit. For the Applicants to construct any improvements authorized by 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 9, 2026


George Allan Hayden, Chairperson

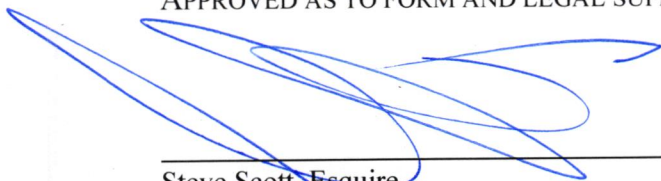
Those voting to grant the variance:

Mr. Hayden, Mr. Brown, Mr. Payne,
Ms. Weaver

Those voting to deny the variance:

Mr. LaRocco

APPROVED AS TO FORM AND LEGAL SUFFICIENCY



Steve Scott, Esquire,
Board of Appeals Attorney

NOTICE TO APPLICANTS

Within thirty (30) days from the date of this Decision, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Notice of Appeal with the Circuit Court for St. Mary's County, Maryland.

Further, St. Mary's County Comprehensive Zoning Ordinance § 24.8 provides that a variance shall lapse one (1) 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 sixty (60) days of the date of this Order; otherwise, they will be discarded.