ST. MARY'S COUNTY GOVERNMENT DEPARTMENT OF LAND USE AND GROWTH MANAGEMENT

Courtney Jenkins, Deputy Director, AICP



COUNTY COMMISSIONERS OF ST. MARY'S:

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Michael R. Alderson, Jr., Commissioner
Eric Colvin, Commissioner
Michael L. Hewitt, Commissioner
Scott R. Ostrow, Commissioner

March 9, 2023

Commissioners of St. Mary's County Chesapeake Building 41770 Baldridge Street Leonardtown, Maryland 20650

Re: Board of Appeals 2022 Annual Report

Dear Commissioners:

On behalf of the Board of Appeals I am pleased to present our Annual Report for Calendar Year 2022. The report provides an overview of the Board's responsibilities and includes several charts comparing the different types of cases heard over the past four years. A summary noting the cases heard in 2022 and the Board's decisions on these cases is attached.

Sincerely,

Daniel F. Ichniowski, Chair

St. Mary's County Board of Appeals

St. Mary's County Board of Appeals Annual Report



Calendar Year 2022

Prepared By:
The Department of Land Use and Growth Management

ST. MARY'S COUNTY BOARD OF APPEALS 2022 MEMBERSHIP

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Rich Richardson, Member
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Ronald Payne, Sr., Alternate

BOARD COUNSEL

Steve Scott, Special Counsel to Board of Appeals

COUNTY COUNSEL

David W. Weiskopf, County Attorney Neil Murphy, Deputy County Attorney Buffy Giddens, Deputy County Attorney John Houser, Assistant County Attorney

DEPARTMENT OF LAND USE AND GROWTH MANAGEMENT SUPPORT STAFF

William B. Hunt, AICP, Director
Harry Knight, Deputy Director
Courtney Jenkins, Acting Deputy Director
Amanda Yowell, Zoning Administrator - Zoning Division
Stacy Clements, Planner III- Zoning Division
Sherrie Young, BOA Recording Secretary- Zoning Division
Amber Thompson, Permits Manager- Permits Division

Department of Land Use and Growth Management 23150 Leonard Hall Drive Post Office Box 653 Leonardtown, Maryland 20650

I. INTRODUCTION

A. Formation of the Board of Appeals in St. Mary's County

The Board of Appeals (hereinafter the "Board") was created pursuant to Subtitle 3, §4-301, Land Use Article, Annotated Code of Maryland.

The Board consists of five (5) members and one (1) alternate appointed by the Commissioners of St. Mary's County. Board members can serve no more than two consecutive, three-year, staggered terms. To ensure the Board can meet its quorum requirements and hold public hearings, the *Land Use Article* authorizes a local legislative body to designate one alternate member who has been empowered to sit on the Board in the absence of any member.

B. Functions of the Board of Appeals in St. Mary's County

The Board is a quasi-judicial body responsible for presiding over public hearings on appeals, variances, and conditional uses. By doing so, the Board, as a whole, is responsible for defending the public interests as defined by the St. Mary's County Comprehensive Zoning Ordinance Z-10-02, as amended, (hereinafter the "Ordinance"). The purpose of the Board is to ensure that zoning is fair, correctly interpreted, and does not cause excessive hardship upon landowners in St. Mary's County.

As outlined in the Ordinance and the *Land Use Article*, the Board has four (4) main functions to ensure that the goals and objectives of the Comprehensive Plan are met and that the regulations of the Ordinance are implemented. These powers and duties include:

- 1) To hear and decide appeals when it is alleged there is an error in any order, requirement, decision, or determination made regarding the enforcement of the Ordinance or of any amendments adopted thereto.
- 2) To authorize, upon application in specific cases, a variance from specific regulations of the Ordinance. The modifications in a variance may be only of density, bulk, dimensional, or area requirements of the Ordinance in accordance with Section 4-206 of the *Land Use Article*.
- 3) To authorize, upon application in specific cases, a variance from Critical Area regulations of the Ordinance. The modifications in a Critical Area variance may only be approved when owing to special features of a site or circumstances, the literal enforcement of those provisions would result in unwarranted hardship on the landowner in accordance with requirements of the Ordinance.
- 4) To adopt and promulgate such rules and regulations as it shall deem necessary in the conduct of its hearings; and

5) To hear and act upon conditional use applications as provided in Chapter 25 of the Ordinance.

All decisions and findings of the Board on appeals or on applications for a standard variance or conditional use are final administrative decisions and are subject to judicial review. All final decisions must be rendered in writing within 60 days of the close of the public hearing in accordance with Section 20.3.6 of the Ordinance.

II. 2022 CASELOAD

A. Board of Appeals Variance Cases for 2022

The Board of Appeals (the "Board") has the authority to vary the density, bulk, dimensional, or area requirements of the Ordinance in accordance with allowed modifications specified in the *Land Use Article* of the *Annotated Code*. A variance may only be allowed where, owing to conditions peculiar to the property and not because of any action taken by the applicant, a literal enforcement of the Ordinance would result in unnecessary hardship or practical difficulty as specified in the Ordinance. A variance may not be contrary to the public interest.

1. Standard Variances

Standard variance requests are often made to the Board to enable a property owner to make modest improvements to an existing single-family dwelling, or to construct a detached accessory structure such as a garage, or shed, where the property is constrained by various setback requirements. The Board also hears requests from developers to reduce setbacks, or buffer yards on proposed commercial projects where a property is so constrained that development would be prohibited without the variances.

The Board heard ten (10) standard variance requests in 2022:

One (1) on January 13, 2022, the Board of Appeals Final Resolution was Approved (3-1), for a reduction of the mandatory side yard setbacks to construct additions to an existing house. One (1) on January 13, 2022, the Board of Appeals Final Resolution was Approved (4-0), to expand an existing nonconforming structure more than 50 percent by seeking variances from Schedule 32.1 of the CZO for a reduction of the mandatory setbacks to construct a second story addition to an existing house. One (1) on February 10, 2022, the Board of Appeals Final Resolution was (5-0) Approved, to disturb the Critical Area Buffer and to disturb the non-tidal wetland buffer to construct a new house. One (1) on April 14, 2022, the Board of Appeals Final Resolution was (5-0) Approved, to disturb the non-tidal wetland buffer. Site plan proposes demolition of the existing single-family dwelling, and construction of a replacement home with a porch, deck, steps, and additional driveway. One (1) on May12, 2022, the Board of Appeals Final Resolution was Approved (5-0), to disturb the Critical Area Buffer and to disturb the non-tidal wetland buffer to construct a

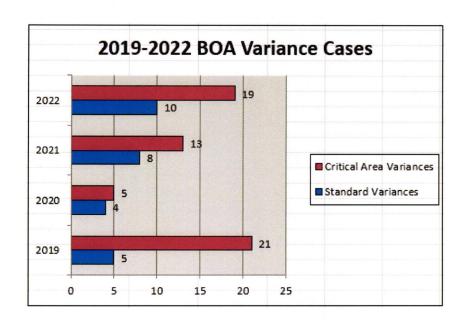
replacement house. **One** (1) on June 9, 2022, the Board of Appeals Final Resolution was Approved (5-0), to disturb the 100' perennial stream buffer to construct a walkway bridge, path, and road culvert repair. **One** (1) on August 11, 2022, the Board of Appeals Final Resolution was Approved (5-0), to reduce the required Type "C" buffer yard. **One** (1) on November 10, 2022, the Board of Appeals Final Resolution was Approved (5-0), for a reduction of the mandatory front yard setbacks and to reduce the 10-foot setback to 2-feet to replace a carport. **One** (1) on December 08, 2022, the Board of Appeals Final Resolution was Approved (5-0), to disturb the expanded non-tidal wetland buffer to construct a garage. **One** (1) on December 8, 2022, the Board of Appeals Final Resolution was Approved (5-0), for a reduction of the mandatory front and side setbacks to replace an existing dwelling, to reduce the 10-foot setback to 5-feet between the replacement house and an existing shed, and from for a new accessory structure to be closer to the water than the principal structure on the property.

2. Critical Area Variances

Variances may be granted from the provisions of the Critical Area Program as implemented in Chapter 41 of the Ordinance, Chesapeake Bay Critical Area Overlay Districts, and Chapter 71, Resource Protection Standards, when it has been found that the literal enforcement of those provisions would result in unwarranted hardship on the landowner. The most common Critical Area variance request is to disturb the Critical Area Buffer, which is a protected area measured a minimum of 100 feet landward from the mean high-water line of tidal waters, tidal wetlands, and tributary streams in the Critical Area.

The Board heard **nineteen (19) Critical Area variance requests in 2022** compared to one (1) request in 2021. **Nineteen (19)** of the Critical Area variances in 2022 were to disturb the Critical Area Buffer and **five (5)** also disturbing the non-tidal wetland buffer. Out of the nineteen (19) requests, all nineteen (19) were approved.

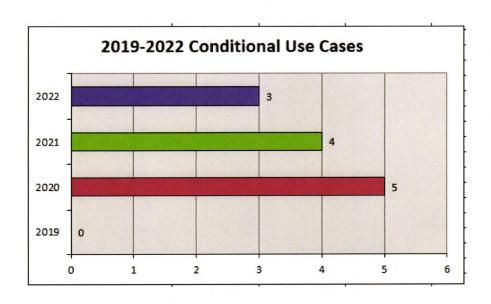
The chart below provides an itemization of Board of Appeals variance requests heard and decided in calendar years 2019 through 2022. As shown in the chart, the Board heard a total of fifty-seven (58) Critical Area variance requests during this period, an average of about fourteen (15) cases per year. During this same time the Board heard twenty-seven (27) standard variance requests, an average of seven (7) cases per year.



B. Board of Appeals Conditional Use Cases for 2022

The Board heard **three (3) Conditional Use Requests in 2022** for a AAA Gravel Pit Expansion, Chaney Loveville Gravel Mine, and the WillowBee Airfield Landing Strip.

The following chart provides an itemization of Board of Appeals conditional use cases heard and decided in calendar years 2019 through 2022.

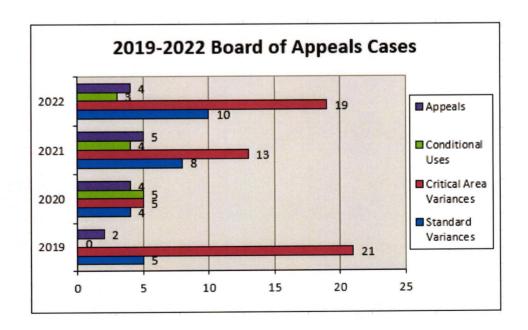


C. Board of Appeals Appeal Cases for 2022

The Board decided four (4) Appeal cases in 2022. One (1) appeal of the decision the Planning Commission made on March 21, 2022, to deny the Concept Plan for a proposed 5,380 square foot convenience store with fuel sales and a 2,365 square foot fast-food restaurant with a drive-through, in accordance with the St. Mary's County Comprehensive Zoning Ordinance Section 60.6. One (1) an appeal of the decision of the Planning Commission made on the February 28, 2022, the Board of Appeals Final Resolution was (3-2) to approve one additional lot on a private road in accordance with the St. Mary's County Subdivision Ordinance 10-01, Section 30.14.4. Family Conveyance Provision. One (1) an Appeal of a Planning Commission decision made on April 25, 2022, to approve the Concept Plan for a proposed for a 5,154 square foot convenience store with 5,280 sq. ft. fuel sales canopy, the case was dismissed by a joint motion of the parties. Lastly, one (1) an appeal of the decision the Director of Land Use and Growth Management made on June 9, 2022, approving Building Permit Number 22–1118, for a residential accessory structure over six hundred square feet in area, the Board of Appeals Final Resolution was (5-0) to uphold the Planning Director's decision on.

D. Board of Appeals Total Cases for 2019 – 2022

The following chart is a summary of all Board of Appeals cases, variances, conditional uses, and appeals, beginning with calendar year 2019 through calendar year 2022. The Board heard an average of twenty-eight (28) cases per year over the past four years.



January 2022 – December 2022

Pursuant to the Regulations of the St. Mary's County Comprehensive Zoning Ordinance (Z 10-02)

FIRST QUARTER

Hearing Date O1/13/2022 VAAP 21-2589 HOUCHENS & KING		Request	Decision	Critical Area Y/N	Order Signed
		Variance from Schedule 32.1 of the St. Mary's County Comprehensive Zoning Ordinance (CZO) for a reduction of the mandatory side yard setbacks to construct additions to an existing house.	Approved N 3-1		02/10/2022
01/13/2022	VAAP 21-2508 POTEAT	Variance Section 52.3.3.e of the St. Mary's County Comprehensive Zoning Ordinance (CZO) to expand an existing nonconforming structure more than 50 percent by seeking Variances from Schedule 32.1 of the CZO for a reduction of the mandatory setbacks to construct a second story addition to an existing house.	Approved 4-0	N	02/10/2022
01/27/2022	VAAP 21-1268 HOCKEY	Variance from Section 71.8.3 to disturb the Critical Area Buffer to construct a forty-seven linear foot retaining wall.	Approved 5-0	Y	03/17/2022
01/27/2022	VAAP 21-1319 CROWLEY			Y	03/10/2022
01/27/2022	VAAP 21-1863 YAZDAN Variance from Section 71.8.3 to disturb the Critical Area Buffer to construct a replacement dwelling.		Approved 5-0	Y	02/22/2022
01/27/2022	VAAP 21-1886 SIMMS	Variance from Section 71.8.3 to disturb the Critical Area Buffer to regrade 585 square feet of an existing riparian access road using 190 square feet of soil from an adjacent vegetated bank.	Approved 5-0	Y	03/17/2022
02/10/2022	VAAP 21-1062 HO	Variance from Section 71.8.3 to disturb the Critical Area Buffer and Section 71.5.1.b.(1) to disturb the Nontidal Wetland Buffer to construct a new house.	Approved 5-0	Y	03/10/2022

Hearing Date	Case No.	Request	Decision	Critical Area Y/N	Order Signed
02/10/2022	CUAP 21-0116 AAA GRAVEL PIT EXPANSION	Variance for conditional use approval, pursuant to Chapter 25 of the Comprehensive Zoning Ordinance, for use type 82, Extractive Industry.	Approved 5-0	N	03/17/2022
03/10/2022	VAAP 21-0159 MORRIS POINT RESTAURANT	ariance from the Comprehensive Zoning Ordinance ection 71.8.3 for development activity in the 100-foot ritical Area buffer and from Section 41.5.3 to exceed the at coverage limit.		Y	04/21/2022
03/10/2022 Continued from 02/10/2022	VAAP 21-1154 MATTINGLY	Variance from Section 71.8.3, of the Comprehensive Zoning Ordinance (CZO), to disturb the Critical Area Buffer to construct proposed additions (covered entries) to existing buildings. Also seeking "after-the-fact" variance for unauthorized and pre-existing development activity, in the Critical Area Buffer, which occurred prior to the applicant's taking ownership of the property.	Approved 5-0	Y	04/14/2022
03/17/2022 Continued from 02/17/2022, 01/13/2022	VAAP 20-1047 & 20-1048 CLOSE	Variance from Section 71.8.3 to disturb the Critical Area Buffer for an addition, porch, and ramps and Section 41.5.3.i to exceed the maximum allowable lot coverage to construct additions to two existing houses.	Approved 4-1	Y	04/14/2022
03/17/2022	VAAP 19-131-019 SMITH CREEK MARINE, LLC	Variance from the Comprehensive Zoning Ordinance Section 71.8.3 for after-the-fact development activity in the 100-foot Critical Area buffer and from Section 41.8.2.a(1) for the after-the-fact new eating/drinking establishment within the 100-foot Critical Area buffer.	Approved 4-1	Y	04/14/2022

January 2022 – December 2022

Pursuant to the Regulations of the St. Mary's County Comprehensive Zoning Ordinance (Z 10-02)

SECOND QUARTER

Hearing Date	Date		Decision	Critical Area Y/N	Order Signed		
04/14/2022	VAAP 21-0824 BOWLES	Variance from Section 71.8.3 to disturb the Critical Area Buffer. Site plan proposes construction of a single-family dwelling and porch on an existing concrete slab.	Approved 5-0				
04/14/2022	buffer. Site plan proposes demolition of the existing single-family dwelling, and construction of a replacement home with a porch, deck, steps, and additional driveway. CUAP 21-0026 CHANEY CUAP 21-0026 CHANEY LOVEVILLE CRAVEL MINE Description: CUAP 21-0026 CHANEY C		buffer. Site plan proposes demolition of the existing single-family dwelling, and construction of a replacement home with				
04/21/2022 Continued from 03/10/2022			Approved N 5-0		05/12/2022		
05/12/2022			Approved 5-0	N	06/09/2022		
05/12/2022	VAAP 21-1320 BOB HALL	Variance from Section 71.8.3 to disturb the Critical Area Buffer to construct an addition to an existing house.	Approved 5-0	Y	6/9/2022		

Hearing Date	Case No.	Request	Decision	Critical Area Y/N	Order Signed	
06/09/2022	VAAP 21-1598 BRACKETT	Variance from Section 71.4.2.a(2) of the St. Mary's County Comprehensive Zoning Ordinance to disturb the one hundred' perennial stream buffer to construct a walkway bridge, path, and road culvert repair.	Approved 5-0	N	07/14/2022	
06/09/2022	VAAP 21-0897 MD 5 LAYDOWN AREA	Variance from Section 71.8.3 of the St. Mary's County Comprehensive Zoning Ordinance to disturb the Critical Area Buffer and Section 71.5.2 to disturb the Wetland Buffers due to the temporary disturbance resulting from the construction trailer area and temporary laydown areas associated with the construction of MD 5 Point Lookout Road.	Approved 4-1	Y	07/14/2022	

January 2022 – December 2022

Pursuant to the Regulations of the St. Mary's County Comprehensive Zoning Ordinance (Z 10-02)

		THIRD QUARTER	- 0			
Hearing Date	9					
Continued From 05/26/2022 THREE NOTCH COMMERCIAL Compression Plannin Concep store wirestaura Mary's 60.6. 07/28/2022 ZAAP 22-1118 BOWDEN APPEAL Appeal approvi		CH Comprehensive Zoning Ordinance, to appeal the decision the Planning Commission made on March 21, 2022, to deny the Concept Plan for a proposed 5,380 square foot convenience store with fuel sales and a 2,365 square foot fast-food restaurant with a drive-through, in accordance with the St. Mary's County Comprehensive Zoning Ordinance Section		Approved N 5-0		
		Appeal of the administrative decision on June 9, 2022, approving Building Permit Number 22–1118, for a Residential Accessory Structure over six hundred square Feet in Area.	Upheld 5-0	N	08/11/2022	
08/11/2022	VAAP 21-2955 HUCKO	Variance from Comprehensive Zoning Ordinance Section 71.8.3; disturb the Critical Area Buffer to construct a deck over an existing shed and provide access to a new structure.	Approved 5-0	Y	09/08/2022	
08/11/2022	VAAP 22-0056 STAUFFER	Variance for conditional use approval pursuant to Chapter 25 of the Comprehensive Zoning Ordinance for use type 1, Agricultural Industry, Major within the Rural Preservation District (RPD).	Approved 5-0	N	09/08/2022	
08/11/2022	VAAP 20-133-010 R.E. MICHEL CO.	Variance from the St. Mary's County Comprehensive Zoning Ordinance Section 51.81.a(2) to reduce the required Type "C" buffer yard.	Approved 5-0	N	09/08/2022	

Hearing Date	Case No.	Request	Decision	Critical Area Y/N	Order Signed	
08/18/2022 Continued From 06/16/2022 05/12/2022	ZAAP 21-0058 O'GRADY APPEAL	Appeal of the decision of the Planning Commission made on February 28, 2022, to approve one additional lot on a private road in accordance with the St. Mary's County Subdivision Ordinance 10-01, Section 30.14.4, Family Conveyance Provision.	Upheld 3-2	N	09/08/2022	
09/08/2022 Postponed, from 8/25/2022 7/14/2022	ZAAP 21-0176 KING & CARR APPEAL OF PC DECISION	Parties joint motion for dismissal of appeal; Appeal of a Planning Commission decision made on April 25, 2022, to approve the Concept Plan for a proposed for a 5,154 square foot convenience store with 5,280 sq. ft. fuel sales canopy.	Approved 5-0	N	10/27/2022	
09/08/2022	VAAP 22-0320 GEARY	Variance from the St. Mary's County Comprehensive Zoning Ordinance Section 71.8.3 to disturb the Critical Area Buffer to construct two decks and a porch addition.	Approved 5-0	Y	10/27/2022	
09/08/2022	VAAP 20-1247 BAKHAJE	Variance from the St. Mary's County Comprehensive Zoning Ordinance Section 71.8.3 to disturb the Critical Area Buffer and from Section 71.5.2 to disturb the non-tidal wetland buffer to construct a single-family home.	Approved 5-0	Y	10/27/2022	

January 2022 – December 2022

Pursuant to the Regulations of the St. Mary's County Comprehensive Zoning Ordinance (Z 10-02)

FORTH QUARTER

Hearing Date			Decision	Critical Area Y/N	11/10/2022	
10/27/2022	VAAP 22-0992 SCHLUETER	Variance from the St. Mary's County Comprehensive Zoning Ordinance Section 71.8.3 to disturb the Critical Area to renovate a single-family home with porch and deck additions.	Approved Y 5-0			
11/10/2022	VAAP 22-1658 GUYTHER	Variance from the St. Mary's County Comprehensive Zoning Ordinance Schedule 32.1 for a reduction of the mandatory front yard setbacks and Section 51.2.4.c. to reduce the 10-foot setback to 2-feet to replace a carport.	Approved 5-0	N	12/08/2022	
11/10/2022	VAAP 19-1713 KELLY	Variance from the St. Mary's County Comprehensive Zoning Ordinance Section 71.8.3 to disturb the Critical Area Buffer to construct a swimming pool.	Approved 5-0	Y	12/08/2022	
11/10/2022	CUAP 22-1771 MATTHEWS (WillowBee Airfield Landing Strip)	Variance for conditional use approval pursuant to Chapter 25 of the Comprehensive Zoning Ordinance for use type 88, Airport, Landing Strip and Heliport in the Rural Preservation District.	Approved 5-0	N	12/08/2022	
11/10/2022	VAAP 22-1460 WEBER	Variance from the St. Mary's County Comprehensive Zoning Ordinance Section 71.8.3 to disturb the Critical Area Buffer to construct a sunroom.	Approved 5-0	Y	12/08/2022	
12/08/2022	VAAP 22-0836 GUNTOW	Variance from the St. Mary's County Comprehensive Zoning Ordinance Section 71.8.3 to disturb the Critical Area Buffer to construct a house with driveway.	Approved 5-0	Y	01/12/2023	

Hearing Date	Case No.	Request	Decision	Critical Area Y/N	Order Signed
12/08/2022	VAAP 22-0836 FLEURY	Variance from the St. Mary's County Comprehensive Zoning Ordinance Section 71.5.2.b to disturb the expanded non-tidal wetland buffer to construct a garage.	Approved 5-0	N	01/12/2023
12/08/2022	VAAP 22-2084 FERBER	Variance from the St. Mary's County Comprehensive Zoning Ordinance Schedule 32.1 for a reduction of the mandatory front and side setbacks to replace an existing dwelling, from Section 51.2.4.c to reduce the 10-foot setback to 5-feet between the replacement house and an existing shed, and from Section 41.7.4.a(7)(a) for a new accessory structure to be closer to the water than the principal structure on the property.	Approved 5-0	N	01/12/2023

January 2022 – December 2022

Pursuant to the Regulations of the St. Mary's County Comprehensive Zoning Ordinance (Z 10-02)

Abbreviations:

Overlay	vs:	Zonin	g Districts:	RL	Residential, Low-Density
AE	Airport Environs	CC	Community Commercial	RL-T	Residential, Low-Density, Transitional Area
AICUZ	Air Installations Compatible Use	CM	Commercial Marine	RMX	Residential Mixed Use
	Zone	CMX	Corridor Mixed Use	RNC	Residential Neighborhood Conservation District
IDA	Intensely Developed Area	DMX	Downtown Core Mixed Use	RPD	Rural Preservation District
LDA	Limited Development Area	I	Industrial District	RSC	Rural Service Center
RCA	Resource Conservation Area	MXM	Medium Mixed Use	VMX	Village Center Mixed Use
		OBP	Office and Business Park	TMX	Town Center Mixed Use
		RCL	Rural Commercial Limited	Miscellaneous:	
		RH	Residential, High-Density	SFD	Single-family dwelling

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