

IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 25-0207

RAYMOND PROPERTY

FIRST ELECTION DISTRICT

DATE HEARD: May 8, 2025

ORDERED BY:

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

ENVIRONMENTAL PLANNER: AMANDA YOWELL

DATE SIGNED: June 12, 2025

Pleadings

Nathaniel Raymond (“Applicant”) seeks variances (VAAP # 25-0207) from St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) Schedule 32.1 to reduce the front setback from 25’ to 10’ for a replacement shed and § 71.8.3 to disturb the 100’ Critical Area Buffer to construct a patio.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on April 18, 2025 and April 25, 2025. Required mailings to neighbors and physical posting of the property was completed by April 9, 2025. The agenda was also posted on the County’s website by Friday, May 2, 2025. Therefore, the Board finds and concludes there has been compliance with the notice requirements.

Public Hearing

A public hearing was conducted at 6:30 p.m. on May 8, 2025 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were heard after being duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed variance requested by the Applicant.

The Property

Applicant owns real property situate 49521 Portneys Overlook Road, Ridge, MD (“the Property”). The Property consists of 1.00 acre, more or less, is within the Rural Preservation zoning district (“RPD”), carries a Resource Conservation Area (“RCA”) Critical Area overlay, and can be found among the Tax Maps of St. Mary’s County at Tax Map 71, Grid 8, Parcel 218.

The Variance Requested

Applicant seeks variances from CZO Schedule 32.1 to reduce the front setback from 25’ to 10’ for a replacement shed and § 71.8.3 to disturb the 100’ Critical Area Buffer to construct a

patio.

The St. Mary's County Comprehensive Zoning Ordinance

Schedule 32.1 mandates a 25' building restriction line from any front property line within the RPD. A front lot line is a boundary of a lot that is along a public street or public way. 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).

Staff Testimony

Amanda Yowell, an Environmental Planner for the St. Mary's County Department of Land Use and Growth Management ("LUGM"), presented the following evidence:

- The subject property (the "Property") was recorded in the Land Records of St. Mary's County per deeds DJB 6532 page 286, JWW 3030 page 691, and DBK 184 page 496 (Attachment 2), prior to the adoption of the Maryland Critical Area Program on December 1, 1985. According to Real Property Data, Maryland Department of Assessments and Taxation, the existing home was built in 1968.
- The property is a one-acre lot located on Portney's Overlook Road in Ridge and is adjacent to the tidal waters of Northern Prong of St. Jeromes Creek.
- The Critical Area Buffer (the "Buffer") is established a minimum of 100-feet landward from the mean high-water line of tidal waters (CZO 71.8.3). Therefore, the Property is constrained by the Buffer (Attachment 3).
- The site plan (Attachment 4) proposes the removal of 292 square feet (12'4" x 23'8") of the existing house and constructing a patio in the same footprint, which impacts the 100' Critical Area Buffer. The CZO states in Section 71.8.3.b(1) that a development activity is

not permitted in the Buffer unless the Applicant obtains a variance.

- Mitigation is required at a ratio of 3:1 for the variance (COMAR 27.01.09.01-2 Table H) and 1:1 for lot coverage outside the Buffer (COMAR 27.01.09.01-1 Table C). The total mitigation required for this proposal is 1,488 square feet of plantings to meet these mitigation requirements. A planting agreement and plan will be required prior to the issuance of the building permit.
- The Critical Area Commission responded on April 2, 2025. The Commission states that the applicant has the burden to prove each and every Critical Area variance standard, including the standard of unwarranted hardship, is met. (Attachment 8).
- Additionally, the site plan (Attachment 4) proposes the removal of an existing shed located on the front property line and replacing and moving a new 30' x 30' shed 10' away from the front property line.
- Pursuant to Schedule 32.1 of the Ordinance, a 25' front setback is required. The Applicant is requesting a reduction of the 25' front yard setback to 10', a reduction of 15' to the front setback.
- The Department of Land Use and Growth Management has approved the site plan for Floodplain requirements. The Health Department has approved the site plan. The site plan is exempt from the Soil Conservation District and the stormwater management requirements due to less than 5,000 square feet of soil disturbance.
- The following Attachments to the Staff Report were introduced:
 - Attachment 1: Critical Area Standards Letter
 - Attachment 2: Deeds
 - Attachment 3: Critical Area Map
 - Attachment 4: Site Plan

- Attachment 5: Location Map
- Attachment 6: Land Use Map
- Attachment 7: Zoning Map
- Attachment 8: Critical Area Commission Response

Applicant Testimony and Exhibits

Applicant presented before the Board. He was joined at the presenting table by Joseph Kangas. Mr. Raymond presented a slideshow that included maps, pictures of the property, and other information pertinent to the application. The testimony Mr. Raymond offered included, but was not limited to, the following points:

- Mr. Raymond purchased the property in July, 2024.
- The septic mound is located on the western side of his property, in the “oblong” shape depicted in the map on slide 3 of the presentation.
- There will be no change to the footprint nor addition to impervious surface in the Critical Area.
- The current 17’ x 17’ shed is setback five feet from the front of the Property. The replacement 30’ by 30’ shed will be pushed back an addition 5’.
- Replacement into the unencumbered portion of the Property would impact a particularly large and well-established tree, the unique physical and historical characteristics of which Applicant described in detail.¹

¹ Applicant explained the tree in question was planted on March 20, 1974, is 11’ in diameter at chest-height, has a total height of 80’, and comes with a total canopy circumference of approximately 220’. Applicant also furnished a copy of the tree’s official certification as an offspring of the Wye Oak. Recognizable to enthusiasts of state history or the forestry profession, the Wye Oak, a colossal oak tree that stood in Wye Mills in Talbot County for four-and-a-half-centuries before being felled by storm in 2002, was the genesis of Maryland’s Big Tree Program, a program that eventually spawned the National Champion Tree Program. Both programs, nearly a century old each, recognize the largest extant specimen of a given species of tree. For more information, see *The Quiet Giant, the Wye Oak*, Maryland Department of Natural Resources, accessed at <https://dnr.maryland.gov/forests/Pages/trees/giant.aspx>.

Public Testimony

No members of the public appeared to offer in-person testimony for or against the project.

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 of this matter, the Board finds and concludes

the Applicant is entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance.

First, the Board finds that denying the Applicant's request would constitute an unwarranted hardship. In *Assateague Coastal Trust, Inc. v. Roy T. Schwalbach*, 448 Md. 112 (2016), stated "unwarranted hardship" to mean the following:

[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.

The use for which a Critical Area variance is required is Applicant's proposed conversion of the existing sunroom into a patio. Applicant described the use as reasonable and states it will advance his ability to use and enjoy the Property. He amply demonstrated the impracticability of achieving the use outside of the portion of the Property encumbered by the Buffer. Accordingly, we find that he has met his burden of demonstrating an unwarranted hardship.

Second, denying the variance would deprive the Applicant of rights commonly enjoyed by other similarly situated property owners in the Rural Preservation District and Resource Conservation Area. Patios are common amenities, even when located on parcels constrained by the Buffer. The proposed patio is not of extraordinary character or size.

Third, granting a variance will not confer a special privilege upon the Applicant. The right to ask for a variance to the Critical Area program's strictures is required by law. Applicant's proposal has been subjected to a public hearing, held to the required standards, includes all required mitigation plantings, environmental considerations, and conforms to the greatest extent it can to all applicable regulations. Applicant carries a high burden of proof to meet before a variance can be granted. The Board cannot locate any definition of "special privilege" in statute or precedent

to suggest that one has been conferred when an applicant, in compliance with the procedural requirements noted above, meets that burden.

Fourth, the need for the variance does not arise from the actions of the Applicant or their predecessors in title. Applicant is primarily constrained by two things: the large portion of the Property encumbered by the Buffer and the location of the existing home, built before the advent of the Critical Law program. The home's original builders could not have foreseen the difficulty its location would pose for future expansion under the Critical Area program. The Buffer covers a majority of the Property and, as noted above, the portion outside the Buffer is reserved for the house's septic field and hosts a particular large tree that would be extraordinarily burdensome to remove.

Fifth, the need for the variance does not arise from any nonconforming feature on either the Subject Property or a neighboring property.

Sixth, granting the requested variance will not adversely affect the environment. The Applicant will be required to mitigate the proposed development with an approved planting plan established on-site (per COMAR 27.01.09.01) as part of the Building Permit process. The plantings are intended to offset any negative effects and provide improvements to water quality along with wildlife and plant habitat. The required plantings will improve plant diversity and habitat value for the site and will improve the runoff characteristics for the Property, all of which should contribute to improved infiltration and reduction of non-point source pollution leaving the site. These plantings would not be performed without grant of the variance.

Finally, the Board finds, overall, that granting the variance is in the spirit of the Critical Area program. Applicant has availed himself of his right to seek a variance and presented a site plan that identifies a reasonable and significant use that cannot be accomplished without intrusion into the Buffer. That intrusion has been minimized to the greatest extent practicable. Applicant

has been as sensitive to Critical Area's programs goals as may be reasonably expected. Accordingly, the Board finds the spirit and intent of the Critical Area program are preserved by granting this variance and that balance between allowing reasonable variances from the Critical Area program's strictures on the one hand and continued protection and stewardship of the Chesapeake Bay and our environmentally sensitive resources on the other has been struck.

By satisfying these standards the Applicant has also overcome the presumption in § 8-1808(d)(2)(ii) of the Natural Resources Article that the variance request should be denied.

Accordingly, we find the requested Critical Area variance should be granted.

County Requirements for Granting Standard Variances

The St. Mary's County Comprehensive Zoning Ordinance § 24.3 sets forth seven separate requirements that must be met for a variance to be issued:

- (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.

Id.

Findings – Standard Variance Requirements

Upon review of the facts and circumstances, the Board finds and concludes that the Applicant is entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance's front yard setback provision. Several factors support this decision.

First, the Board finds that strictly interpreting the CZO would result in practical difficulty due to the particular physical surroundings of the Property. § 24.3(1). In *McLean v. Soley*, 270 Md. 208 (1973), the 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 the ordinance will be

observed and public safety and welfare secured.

Id. at 214–15.

Denial of this variance would impose a practical difficulty upon Applicant. Applicant demonstrated the Property is relatively small and that the buildable envelope for relocation of the shed is limited. The shed is a useful, utilitarian structure. The Board perceives no practical alternatives to relocate the shed further from the front lot line such that it would not intrude into the Critical Area Buffer or the septic field.

To the second standard, the conditions creating the difficulty are not generally applicable to other similarly situated properties. Atypical site constraints, as elaborated above, drive the variance request.

To the third standard, the purpose of seeking the variance is not “based exclusively upon reasons of convenience, profit or caprice.” Applicant has demonstrated a practical difficulty meeting this requirement of the Comprehensive Zoning Ordinance. Given the constrained buildable area of the lot, the siting of the replacement shed is a decision born from necessity, and not a product of whim or caprice on the part of Applicant.

Fourth, the need for the variance does not arise from actions of the Applicant. As noted previously, Applicant’s need for a variance stem from the particular physical characteristics of the Property.

Fifth, the variance will neither detrimentally affect the public welfare, substantially injure other properties or improvements, nor change the character of the district. The neighboring property owners were notified of the variance request and given an opportunity to speak on the matter. None voiced an objection.

Sixth, the proposed development will not increase the residential use of the property. The proposed shed will be to the benefit of the existing home only.

Finally, the Board finds that granting the variance will be in harmony with the general spirit, intent, and purpose of the Comprehensive Plan. The Applicant asks for a modest improvement that would be permitted-as-of-right on most other parcels and would be permitted-as-of-right on his parcel if it had only a few additional feet in its front yard. The neighborhood is not in objection to the request, and the Board identifies no apparent reason they would be. Allowing this encroachment into the front-yard setback does not unduly alter or disrupt the general spirit, intent, and purpose of the Comprehensive Plan.

ORDER

PURSUANT to Applicant's request for a variance from Comprehensive Zoning Ordinance Schedule 32.1 to reduce the front setback from 25' to 10' for a replacement shed and § 71.8.3 to disturb the 100' Critical Area Buffer to construct a patio; and,

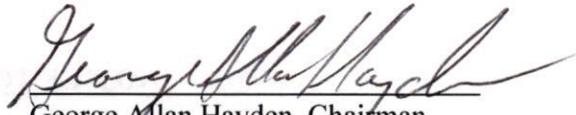
PURSUANT to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

ORDERED, by the St. Mary's County Board of Appeals, pursuant to Comprehensive Zoning Ordinance § 24.3, that the Applicant is granted the requested variances.

The foregoing variances are subject to the condition that the Applicant 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 Applicant 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: June 12, 2025

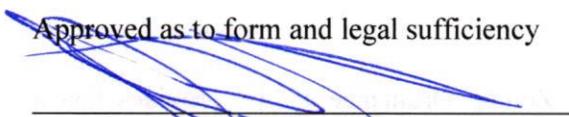

George Allan Hayden, Chairman

Those voting to grant the variance:

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

Those voting to deny the variance:

~~Approved as to form and legal sufficiency~~


Steve Scott, Board of Appeals Attorney

NOTICE TO APPLICANT

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