IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 25-1801

RICKETT PROPERTY

THIRD ELECTION DISTRICT

DATE HEARD: November 19, 2025

ORDERED BY:

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

ENVIRONMENTAL PLANNER: STACY CLEMENTS

DATE SIGNED: January 8, **2026**

The Variance Requested

Kenneth and Terri Rickett ("Applicants") seek a variance (VAAP # 25-1801) from St. Mary's County Comprehensive Zoning Ordinance ("CZO") § 71.8.3 to disturb the 100' Critical Area Buffer to construct a deck.

Public Notification

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary's County, on October 31, 2025 and November 7, 2025. Required mailings to neighbors and physical posting of the property was completed by November 4, 2025. The agenda was posted on the County's website on or before November 14, 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 November 19, 2025 at the St. Mary's County Governmental Center, 41770 Baldridge 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 Applicants.

The Property

Applicants own real property situate 21829 Rosebank Court, Leonardtown, MD ("the Property") and may be found among the tax maps of St. Mary's County at Tax Map 40, Grid 19, Parcel 202. The Property consists of 2.04 acres, more or less, is zoned Rural Preservation District ("RNC") and carries a Limited Development Area ("LDA") Critical Area overlay..

The St. Mary's County Comprehensive Zoning Ordinance

CZO § 71.8.3 requires there be a minimum 100-foot buffer landward from the mean high-

water line of tidal waters, tributary streams, and tidal wetlands. No new impervious surfaces or development activities are permitted in the 100-foot buffer unless an applicant obtains a variance. CZO § 71.8.3(b)(1)(c).

Staff Testimony

Stacy Clements, a Planner IV for the St. Mary's County Department of Land Use and Growth Management ("LUGM") entered a staff report prepared by Andrew Cheney, an Environmental Planner with LUGM, into the record and presented a slideshow that included a summary of the staff report, zoning maps and satellite photography of the Property, and site plans. A non-exhaustive list of her testimony includes:

- The Property was recorded in the Land Records of St. Mary's County per Plat Book 31 Page 43, after the adoption of the Maryland Critical Area Program on December 1, 1985.
- The Property is a 2.04 acre lot located on Rosebank Court in Leonardtown and is adjacent to the tidal waters of Cherry Cove Creek.
- The "Buffer" is established a minimum of 100-feet landward from the mean high-water line of tidal waters. Therefore, the Property is constrained by the Buffer.
- The site plan proposes the addition of a deck, which impacts the 100' Critical Area Buffer. The proposal results in a 384 square foot deck impacting the Buffer.
- Mitigation is required at a ratio of 3:1 for the variance COMAR 27.01.09.01-2 Table H. A planting agreement and plan will be required prior to the issuance of the building permit.
- The Critical Area Commission responded on October 27, 2025.
- The Department of Land Use and Growth Management has approved the site plan for zoning, floodplain, and stormwater requirements. Soil Conservation District has approved the site plan.

- If a variance is granted but a building permit is not issued, the variance shall lapse one year from the date of grant.
- The following Attachments to the Staff Report were introduced:
    - Attachment 1: Critical Area Standards Letter
    - Attachment 2: Plat
    - Attachment 3: Critical Area Map
    - Attachment 4: Site Plan
    - Attachment 5: Location Map
    - Attachment 6: Land Use Map
    - Attachment 7: Zoning Map
    - Attachment 8: Existing Conditions Map
    - Attachment 9: Critical Area Commission Response

Applicants' Testimony and Exhibits

Applicants appeared before the Board and presented a slideshow that included maps, pictures of the property, site plans, and other information pertinent to the application. Testimony Mr. and Mrs. Ricketts offered included, but was not limited to, the following:

- The Buffer partially impacts the existing home.
- The Applicants' proposed deck is only partially located within the Buffer. Of the approximately 345 square feet of proposed deck, only approximately 100 square feet will be located in the Buffer.
- Moving the deck entirely outside of the Buffer by pushing it "up the hill" would be impracticable because it would frustrate existing features of the house.
- The deck will be freestanding. The only thing touching the ground will be footings. Mr.

Ricketts described these as two footers, both 16" by 16", three feet deep.

Public Testimony

No members of the public appeared to offer in-person testimony for or against the project and no written comments were received.

Decision

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 Applicants 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 Applicants are entitled to relief from the St. Mary's County Comprehensive Zoning Ordinance.

First, the Board finds that denying the Applicants' request would constitute an unwarranted hardship. Maryland's Court of Appeals, 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" in question is an attached deck of modest size and character to be employed for a family's personal recreation and enjoyment of their property. Decks are commonplace improvements that greatly enhance a property owner's ability to use and enjoy his or her property. The Applicant testified to the impracticality of modifying the site plan to locate the deck outside of the Buffer. Accordingly, we find the Applicant has met both prongs of the test articulated in *Schwalbach* and demonstrated an unwarranted hardship.

Second, denying the variance would deprive the Applicants of rights commonly enjoyed by other similarly situated property owners in the Rural Preservation District and Limited Development Area. As noted above, decks are common amenities, even when located on parcels constrained by the Buffer. The proposed deck is of the same character as decks other similarly situated property owners enjoy and that this Board has approved before, nor is its size or character out of scope considered against the size and character of a "common" deck.

Third, granting a variance will not confer a special privilege upon the Applicants. The

right to ask for a variance to the Critical Area program's strictures is required by law. Applicants' proposed site plan has been subjected to a public hearing, held to the required standards, includes all mitigation required, and conforms to the greatest extent it can to all applicable regulations. Applicants carry a high burden of proof to meet before a variance can be granted. We cannot find any definition of "special privilege" in statute or case law 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 Applicants or their predecessors in title. Applicants is constrained by the location of their existing home, something the plat contained in the staff report shows to pre-exist the development of the Critical Area program and its regulatory framework. The home's original builders could not have looked to the future and foreseen the difficulty its location would pose for future expansion under the Critical Area program.

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 Applicants 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. Applicants have availed themselves of their right to seek a variance and presented a site plan that identifies a reasonable and significant use that cannot be accomplished without some intrusion into the Buffer. That intrusion has been minimized to the greatest extent practicable. Accordingly, the Board finds the spirit and intent of the Critical Area program are preserved.

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

ORDER

PURSUANT to Applicants' request for a variance from Comprehensive Zoning Ordinance § 71.8.3 to disturb the 100' Critical Area Buffer to construct a deck; 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 Applicants are granted the requested variance.

The foregoing variance is subject to the condition that the 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 perform the work 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: 01-08, 2026

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.

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.