

**IN THE ST. MARY'S COUNTY BOARD OF APPEALS**

**VAAP APPLICATION 25-0376**

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**WAITE PROPERTY**

**NINTH ELECTION DISTRICT**

**VARIANCE REQUEST HEARD: APRIL 24, 2025**

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**ORDERED BY:**

**Mr. Hayden, Mr. Bradley, Mr. Brown,  
Mr. LaRocco, and Mr. Payne**

**ENVIRONMENTAL PLANNER: AMANDA YOWELL**

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**DATE SIGNED: May 22, 2025**

### **Pleadings**

Myrtle Cottage Oasis, LLC (“Applicant”) seeks a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 71.8.3 disturb the Critical Area Buffer (“the Buffer”) for sidewalk and driveway.

### **Public Notification**

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on April 4, 2025 and April 11, 2025. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before April 9, 2025. The agenda was also posted on the County’s website on April 16, 2025. Therefore, the Board of Appeals (“Board”) finds and concludes that there has been compliance with the notice requirements.

### **Public Hearing**

A public hearing was conducted at 6:30 p.m. on April 24, 2025 at the St. Mary’s County Governmental Center, 41770 Baldrige Street, Leonardtown, Maryland. All persons desiring to be heard were duly sworn, the proceedings were recorded electronically, and the following was presented about the proposed amendment requested by the Applicant.

### **The Property**

The subject property may be found at 16584 Piney Point Road, Piney Point, Maryland (“the Property”). The Property is 4,834 square feet, more or less, is zoned Rural Preservation District (“RPD”), has a Limited Development Area (“LDA”) Critical Area overlay, and is found at Tax Map 69, Grid 8, Parcel 55.

### **The Variance Requested**

Applicant seeks a variance from CZO § 71.8.3 disturb the Critical Area Buffer (“the Buffer”) to construct a sidewalk and driveway.

### **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 (“the Buffer”). No new impervious surfaces or development activities are permitted in the 100-foot buffer unless an applicant obtains a variance. CZO § 71.8.3(b)(1)(c).

### **Departmental Testimony and Exhibits**

Amanda Yowell, an Environmental Planner for the St. Mary’s County Department of Land Use & Growth Management (“LUGM”), presented a staff report and PowerPoint presentation that included the following testimony:

- The subject property (the “Property”) was recorded in the Land Records of St. Mary’s County per deeds DJB 6467 page 53, DBJ 5996 page 386, JWW 4469 page 171, EWA 2140 page 193, and CBG 57 page 428 (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 1930 and renovated in the last year. The Property has been in its current configuration since 1935 according to CBG 57 page 428.
- The property is a 4,834 square foot lot located on Piney Point Road in Piney Point and is adjacent to the tidal waters and tidal wetlands of the Potomac River.
- 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 addition of a sidewalk and driveway, which impact 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. The proposal results in 863 square feet of new sidewalk and driveway impacting the Buffer.
- 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 2,589 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 11, 2025. The Commission states that the applicant has the burden to prove each and every Critical Area variance standard, including the standards of unwarranted hardship, is met. (Attachment 8).
- The Department of Land Use and Growth Management has approved the site plan for zoning and 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 and the State Highway Administration approval is pending.
- Attachments to the Staff Report:
  - 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's Testimony and Exhibits**

Applicant was represented before the Board by Jacob Waite. Mr. Waite presented a slideshow which contained site plans, building plans, photographs of the site, and offered oral testimony. The following evidence and testimony was included in his presentation:

- Mr. Waite's slideshow depicted the existing right-of-way and planned location of the new driveway entrance. It also showed the flooding conditions experienced by the Property, necessitating installation of a sidewalk.
- In his oral testimony, Mr. Waite explained that the property previously accessed the property over an adjacent property. Mr. Waite contacted the owner of that property when he began renovating the Property, and the owner stated she did not want to enter into any formal road sharing agreement.

### **Public Testimony**

No members of the public appeared to offered testimony in this matter.

### **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) also requires the Applicant to overcome the presumption that the variance request should be denied.

#### Findings - Critical Area Variance

Upon review of the facts and circumstances, the Board finds and concludes the Applicant

is entitled to the requested relief.

The Board finds that denying the Applicant's request would constitute an unwarranted hardship. In *Assateague Coastal Trust, Inc. v. Roy T. Schwalbach*, 448 d. 112 (2016), the Court of Appeals established the statutory definition for "unwarranted hardship" as it pertains to prospective development in the Critical Area:

[I]n order to establish an unwarranted hardship, the applicant has the burden of demonstrating that, without a variance, the applicant would be denied a use of the property that is both significant and reasonable. In addition, the applicant has the burden of showing that such a use cannot be accomplished elsewhere on the property without a variance.

*Id.* at 139. Here, Applicant has sufficiently demonstrated that, absent the variance, they would be denied a use of the Property both significant and reasonable. As Applicant testified, access to the Property has, in the past, been attained by traversing a neighboring property. From the record, that seems to have been accomplished by custom or implied license, and not any written, binding easement or agreement. Mr. Waite testified the owner of that adjacent property is not presently willing to enter into such an easement or agreement. This driveway is the only obvious means Mr. Waite can secure permanent, legal access to the Property, and with nearly the entirety of the Property constrained by the Buffer it does not seem possible to construct a driveway without locating it somewhere in the Buffer.

Similarly, the Board finds literal interpretation of the local Critical Area program would deprive Applicant of a substantial use of land or a structure permitted to others. An owner's right of access is a fundamental right of any property.

To the third factor, 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. As noted above, the request in this case is for a driveway that would provide access to

the Property. This is a fundamental right of any property owner, and Applicant has gone through the legal, established procedure to ask for a variance. We find no special privilege present in granting the requested variance.

Fourth, the variance request is not based upon conditions or circumstances that are the result of actions by the Applicant. Rather, Applicant is constrained by the physical characteristics of their lot and the extent of its coverage by the Buffer.

Fifth, the variance request does not arise from any conforming or nonconforming condition on any neighboring property.

Sixth, the granting of the variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdictions local Critical Area. When development is permitted in the Critical Area Buffer it must be heavily mitigated. As noted by staff, over 2,500 square feet of mitigation plantings will be required. These plantings will mitigate the adverse effects of development and will improve floral and fauna habitat in the Critical Area Buffer.

Lastly, by satisfying the above criteria the Board finds that granting of the variance will be in harmony with the general spirit and intent of the Critical Area law, the regulations in this subtitle, and the local Critical Area program. In total, the Applicant demonstrated that a variance is necessary to achieve legal, permanent access to the Property. The Applicant demonstrated concrete and physical obstacles to relocating the driveway outside the Buffer. We are satisfied the Applicant carried its burden and that their proposed redevelopment will leave the Subject Property better off – for the Applicant and the Chesapeake Bay – than it is today.

Finally, by satisfying each of the necessary criteria the Applicant has overcome the statutory presumption against granting a variance to a local Critical Area program's regulations.

**ORDER**

**PURSUANT** to the application of Myrtle Cottage Oasis, LLC, petitioning for a variance from CZO § 71.8.3 to disturb the Critical Area Buffer to construct a driveway and sidewalk; and,

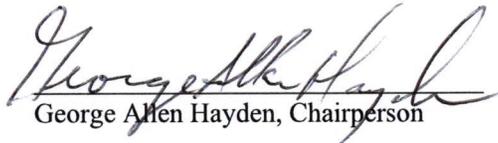
**PURSUANT** to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

**ORDERED**, by the St. Mary's County Board of Appeals, pursuant to CZO § 24.8, that the Applicant is granted a variance from CZO § 71.8.3 to disturb the Critical Area Buffer to construct a driveway and sidewalk.

**UPON CONDITION THAT**, 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: May 22, 2025

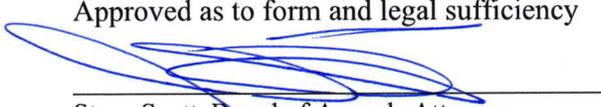
  
George Allen Hayden, Chairperson

Those voting to grant the variance:

Mr. Hayden, Mr. Bradley, Mr. Brown,  
Mr. LaRocco, Mr. Payne

Those voting to deny the variance:

Approved as to form and legal sufficiency

  
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Steve Scott, Board of Appeals Attorney

### **NOTICE TO APPLICANTS**

Within thirty (30) days from the date of this Order, any person, firm, corporation, or governmental agency having an interest therein and aggrieved thereby may file a Petition for Judicial Review in the St. Mary's County Circuit Court. St. Mary's County may not issue a permit for the requested activity until the 30-day appeal period has elapsed.

Further, St. Mary's County Comprehensive Zoning Ordinance § 24.8 provides that a variance shall lapse one year from the date the Board of Appeals granted the variance unless: (1) A zoning or building permit is in effect, the land is being used as contemplated in the variance, or regular progress toward completion of the use or structure contemplated in the variance has taken place in accordance with plans for which the variance was granted; (2) a longer period for validity is established by the Board of Appeals; or (3) the variance is for future installation or replacement of utilities at the time such installation becomes necessary.

If this case is not appealed, exhibits must be claimed within 60 days of the date of this Order; otherwise, they will be discarded.