IN THE ST. MARY'S COUNTY BOARD OF APPEALS

VAAP NUMBER 24-0666

GLADU PROPERTY

SECOND ELECTION DISTRICT

VARIANCE REQUEST HEARD: OCTOBER 9, 2025

ORDERED BY:

Mr. Hayden, Mr. Brown, Mr. Payne

ENVIRONMENTAL PLANNER: ANDREW CHENEY

DATE SIGNED: October 23, **2025**

Pleadings

Tyler and Taylor Gladu ("Applicants") seek a variance from the St. Mary's County Comprehensive Zoning Ordinance ("CZO") Sections 41.5.3.i.(1) to exceed lot coverage limits and 71.8.3 to disturb the Critical Area Buffer for a replacement house.

Public Notification

The hearing notice was advertised in the *Southern Maryland News*, a newspaper of general circulation in St. Mary's County, on September 19 and September 26, 2025. A physical posting was made on the property and all property owners within 200' were notified by certified mail on or before September 24, 2025. The agenda was also posted on the County's website on October 3, 2025. Therefore, the Board of Appeals ("Board") finds and concludes the variance request's notice requirements have been met.

Public Hearing

A public hearing was conducted at 6:30 p.m. on October 9, 2025 at the St. Mary's County Governmental Center, 41770 Baldridge Street, Leonardtown, Maryland. All persons desiring to be heard were duly sworn and the proceedings were recorded electronically.

The Property

The subject property (hereinafter "the Property") is situate 17581 Whitestone Drive, Leonardtown, MD 20690. It consists of 1.42 acres, more or less. It is zoned Residential, Low-Density District ("RL"), has a Resource Conservation Area ("RCA") Critical Area overlay and is found at Tax Map 65, Grid 3, Parcel 312. It is Lot 34 of the Landings at Piney Point subdivision.

The Variance Requested

Applicants seek a variance from CZO Sections 41.5.3.i.(1) to exceed lot coverage limits and 71.8.3 to disturb the Critical Area Buffer for a replacement house.

St. Mary's County Comprehensive Zoning Ordinance

CZO § 71.8.3 requires there be a minimum 100-foot buffer ("the Buffer") landward from the mean high-water line of tidal waters, tributary streams, and tidal wetlands. Generally, 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). CZO Section 41.6.3 states that development activity within the RCA Overlay District shall conform to the site development standards for the LDA Overlay established in Section 41.5. CZO Section 41.5.3.i.(1) limits lot coverage of a lot in the LDA to 15 percent of the lot area for lots and parcels that are larger than a half-acre

Departmental Testimony and Exhibits

Amanda Yowell, an Environmental Planner for the St. Mary's County Department of Land Use & Growth Management ("LUGM"), presented a slideshow summarizing the request. Additionally, a staff report prepared by Andrew Cheney, an Environmental Planner from LUGM, was entered into the record. Testimony provided by staff included:

- The subject property (the "Property") was recorded in the Land Records of St. Mary's County at Plat Book 30 Page 129 (Attachment 2), after the adoption of the Maryland Critical Area Program on December 1, 1985. The existing single-family dwelling was built in 1994 according to Real Property Data, Maryland Department of Assessments and Taxation and was lost to fire on April 24, 2024.
- According to the site plan, this property is a 1.42-acre lot located on Whitestone Drive in Tall Timbers and is adjacent to the tidal waters 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 Property, as determined by CZO 41.5.3, limits lot coverage to 15 percent of the lot area for lots and parcels that are larger than ½ acre. Thus, the lot coverage limit for this property is 9,334 square feet. The Applicant is proposing 12,049 square feet, an excess of 2,715 square feet of lot coverage.
- The Property, as it existed prior to the fire, had 12,142 square feet of lot coverage. The site plan (Attachment 4) proposes 6,415 square feet of new house, porch, patio, and driveway, while removing 6,508 square feet of existing house, decks, patios, and asphalt driveway. The total lot coverage for the parcel with the new construction is 12,049 square feet, a reduction of 93 square feet.
- The site plan (Attachment 4) proposes constructing a house, porch, and patio, 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 mitigation and 1:1 for buffer establishment for net increase in lot coverage outside of the buffer (COMAR 27.01.09.01-2). A planting agreement and plan will be required prior to the issuance of the building permit.
- The Critical Area Commission responded, and their comments are uploaded to BroardDocs (Attachment 8).
- The Department of Land Use and Growth Management has approved the site plan for zoning and floodplain requirements. Additionally, the Health Department, Metcom and Soil Conservation District have also approved the site plan. The stormwater management plan is currently pending approval.

- Attachments to the Staff Report:
    - Attachment 1: Critical Area Standards Letter
    - Attachment 2: Plat Book 30 Page 129
    - 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

Applicants' Testimony and Exhibits

Applicants appeared before the Board of Appeals to offer testimony in support of their variance request. Together, they presented a slideshow that showed pictures of the Property and their proposed improvements. They also answered questions posed by the Board. Testimony and evidence adduced by the Applicants included, but was not limited to, the following points:

- The Applicants wish to modify a variance previously granted on the Property.[1]
- A previously-constructed house on the Property was lost to fire in April, 2024. It was "roughly 7,000" square feet.
- Applicants' slideshow included a comparison of the previous variance to the pending request. With changes to form only, the table is reproduced in full on the following page.

[1] That variance, carrying the same control number as the pending variance request, was granted on November 14, 2024, with a final order signed on December 12, 2024. No appeals of that final order were noted.

Original House (Loss Due Fire)	Previously Approved (VAAP Number 24-0666)	Proposed House (VAAP Number 24-0666)
12,142 square feet of lot coverage	11,991 square feet of lot coverage	12,049 square feet of lot coverage
4,466 square feet inside buffer lot coverage	2,555 square feet inside buffer lot coverage	1,389 square feet inside buffer lot coverage
7,676 square feet outside of buffer lot coverage	3,906 square feet outside of buffer lot coverage	5,026 square feet outside of buffer lot coverage
Approx 47 feet from high water mark	Approx 66 feet from high water mark	Approx 66 feet from high water mark
Approx 14 feet from closest property line	Approx 16 feet from closest property line	Approx 22 feet from closest property line

Public Testimony

No members of the public appeared to offer testimony related to the variance request.

Decision

COMAR 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 jurisdictions 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 Applicants are entitled to the requested relief.

The Board finds that denying the Applicants' 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. *Assateague Coastal Trust* requires the Applicant to first identify a use that would be significant and reasonable. The use in question is a single-family dwelling. Such a use is, unquestionably, a foundational of the Property and is evidently "significant" and "reasonable." The use is proposed in a setting that encroaches as little upon the Buffer as may be reasonably expected – and poses less impacts than a previous variance authorized by a previous Board. As before, what the Board sees before itself, again, in this matter is a proposed improvement of the same basic nature, scale, and character as commonly seen on other properties in other variance requests. The Board once more finds that depriving Applicants of the right to build the requested single-family home would amount to denial of a reasonable and significant use of the property, and of a right commonly enjoyed by other similarly-situated property owners.

Secondly, the Board finds literal interpretation of the local Critical Area program would deprive Applicants of a substantial use of land or a structure permitted to others. The proposed single-family home is not an atypical improvement.

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 in accordance with the provisions of the local Critical Area program. Applicants avail themselves of their right to seek a variance. Natural Resources Article § 8-1808(c)(1)(iii)(13) mandates that mechanisms to petition for a variance be included in every local Critical Area program. Applicants are not afforded any greater privilege than that of requesting a variance and being given a fair opportunity to demonstrate their request satisfies the standards for receiving one.

Fourth, the variance request is not based upon conditions or circumstances that are the result of actions by the applicants. Applicants' forebears in the chain of title set the configuration of the Property's boundaries and improved it with a dwelling long before the advent of the Critical

Area program. The difficulties that accompany constructing on the Property were created when the Critical Area program imposed new development regimes upon those existing circumstances.

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

Sixth, the granting of the variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdictions local Critical Area. Heavy mitigation will be required in order to develop this Property as proposed. These plantings will help mitigate the adverse effects of development and will improve floral and fauna habitat in the Critical Area Buffer. As before, the Board of Appeals assigns particular weight to Applicants' efforts to reduce coverage in the Buffer, and note the improvements over the previous variance. On practically every front, including the lot coverage in the Buffer and proximity to the water, Applicants offer improvements and lessened impacts compared to both the previous structure and the previous variance.

Finally, 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's laws and regulation and the local Critical Area program. The Applicants proposed a significant and reasonable use; the Applicants propose what appear to be the least impactful means to establish that use on the Property; Applicants have demonstrated to the Board's satisfaction that the proposal will leave the Property better off and more compliant with the Critical Area program after completion of this development than before. We find granting the request before us, based upon the facts, circumstances, and mitigating factors presented by the Applicant at the hearing and in its standards letter, is in conformity with the goals of St. Mary's County's Critical Area program.

Finally, in satisfying each of the necessary criteria the Applicants have overcome the statutory presumption against granting a variance.

ORDER

PURSUANT to the application of Tyler and Taylor Gladu for a variance from CZO Sections 41.5.3.i.(1) to exceed lot coverage limits and 71.8.3 to disturb the Critical Area Buffer for a replacement house; 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 § 21.1.3.a and CZO § 24.8, that Applicant is granted a variance from CZO Sections 41.5.3.i.(1) to exceed lot coverage limits and 71.8.3 to disturb the Critical Area Buffer for a replacement house.

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 Applicants to construct the structures permitted in this decision, he must apply for and obtain the necessary building permits, along with any other approvals required to perform the work described herein.

Date: October 23, 2025

George Allan Hayden, Chairperson

Those voting to grant the amendment: Mr. Hayden, Mr. Brown, and Mr. Payne

Those voting to deny the amendment:

Approved as to form and legal sufficiency:

Steve Scott
Attorney to the Board

NOTICE TO APPLICANTS

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 Notice of Appeal with the County Board of Appeals. By state law, 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.