

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

**VAAP NUMBER 24-2067**

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**SOHN PROPERTY**

**SECOND ELECTION DISTRICT**

**VARIANCE REQUEST HEARD: MARCH 13, 2025**

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**ORDERED BY:**

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

**ENVIRONMENTAL PLANNER: STACY CLEMENTS**

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**DATE SIGNED: April 10, 2025**

### **Pleadings**

Andrew L. Sohn, Jessica Erin Sohn, and Susan D. Sohn (“Applicants”) seek a variance from the St. Mary’s County Comprehensive Zoning Ordinance (“CZO”) § 41.5.3.i(1) to exceed lot coverage limits for additions to the existing house and to construct guest quarters.

### **Public Notification**

The hearing notice was advertised in *The Southern Maryland News*, a newspaper of general circulation in St. Mary’s County, on February 21, 2025 and February 28, 2025. A physical posting was made on the property and all property owners within 200’ were notified by certified mail on or before February 26, 2025. The agenda was also posted on the County’s website on March 5, 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 March 13, 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 Applicants.

### **The Property**

The subject property may be found at 18151 River Road, Tall Timbers, Maryland (“the Property”). The Property is 10,000 square feet, more or less, is zoned Rural Preservation District (“RPD”), has Limited Development Area (“LDA”) and Buffer Management Overlay (“BMO”) Critical Area overlays, and is found at Tax Map 61, Grid 20, Parcel 247. It is Lot 48 of the Piney Point Subdivision.

### **The Variance Requested**

Applicants seek a variance from CZO § 41.5.3.i.(1) to exceed lot coverage limits for additions to the existing house and to add guest quarters.

### **St. Mary's County Comprehensive Zoning Ordinance**

CZO § 41.5.3 limits lot coverage to 31.25% of any lot or parcel between 8,001 and 21,780 square feet.

### **Departmental Testimony and Exhibits**

Stacy Clements, an Environmental Planner for the St. Mary's County Department of Land Use & Growth Management ("LUGM"), presented a staff report<sup>1</sup> and PowerPoint presentation that included the following testimony:

- The Property is a grandfathered lot in the Critical Area of St. Mary's County, since it was recorded in the Land Records of St. Mary's County at Plat Book 2 Page 322 (Attachment 2), prior to the adoption of the Maryland Critical Area Program on December 1, 1985. The existing single-family dwelling was built in 1930 according to the Maryland Department of Assessments and Taxation.
- The Property is a 10,000 square foot lot located on River Road 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).

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<sup>1</sup> The initial staff report was revised on March 11, 2025. References to the staff report are to the update staff report only.

- The Property, as it currently exists, has 4,138 square feet of lot coverage. The site plan (Attachment 4) proposes constructing a 672 square foot accessory apartment and adding 168 square feet to the existing house, while removing 1,009 square feet of sidewalks, driveway, and an existing shed with steps. The total lot coverage for the parcel with the new construction is 3,976 square feet, a 162 square foot reduction in lot coverage.
- The Property, as determined by CZO 41.5.3, limits lot coverage to 31.25 percent of the lot area for lots and parcels that have a parcel size between 8,001 and 21,780 square feet. Thus, the lot coverage limit for this property is 3,125 square feet. The Applicant is proposing 847 square feet of new lot coverage resulting in a total 3,976 square feet after removing 1,009 square feet of grandfathered lot coverage: an excess of 851 square feet of new lot coverage.
- Mitigation is required at a ratio of 3:1 for the variance (COMAR 27.01.09.01-2). The total mitigation required for this proposal is 2,553 square feet of plantings to meet these mitigation requirements. A planting plan and agreement will be required prior to the issuance of the building permit.
- The Critical Area Commission responded on March 3, 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 (Attachment 8).
- The Department of Land Use and Growth Management approved the site plan for zoning and floodplain requirements. The Health Department and Metcom reviews are pending. The project does not require site plan approval from the St. Mary's County Soil Conservation District or Stormwater Management as the proposal calls

for less than 5,000 square feet of soil disturbance.

- Attachments to the Staff Report:
  - #1: Critical Area Standards Letter
  - #2: Plat Book 2 Page 322
  - #3: Critical Area Map
  - #4: Site Plan
  - #5: Location Map
  - #6: Land Use Map
  - #7: Zoning Map
  - #8: Critical Area Commission Response

**Applicants' Testimony and Exhibits**

Applicants were represented before the Board by Christopher Longmore, an attorney from the firm of Dugan, McKissick & Longmore, LLC. Mr. Longmore presented a slideshow to the Board that included site plans, photographs of current conditions, and additional information. The following points were among those presented:

- The request relates to the proposed removal of lot coverage and structures (including a shed) and to add a studio/workshop to the Property.
- Overall, the proposal, if approved, would reduce net lot coverage by 162 square feet.
- The entire lot lies within the Critical Area.
- The Applicants have signed a planting agreement to satisfy the mitigation requirements.

## **Public Testimony**

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

## **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 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. Here, Applicants have sufficiently demonstrated that, absent the variance, they would be denied a use of the Property both significant and reasonable. Applicants propose to make modest additions to their existing house and to replace an existing outbuilding with a new, enlarged building that staff describe as "guest quarters." The guest quarters will not constitute a full, independent accessory dwelling unit. We find these improvements to be significant, considering the evident value that comes of having a separate space to be used as a studio, workshop, or

quarters for visiting for guests. These improvements are not excessive nor of an unreasonable nature or extent.

Similarly, 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 additions and “guest quarters,” as noted above, are of a reasonable extent. Their character is similar to that seen and approved by this Board in previous variance hearings. The Applicants’ proposal seems to be one that is typical for similarly situated properties within the Limited Development Area.

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. Applicants avail themselves of their right to seek a variance and are hewing as close to the Critical Area program’s strictures as may be reasonably expected, given the constraints of their lot. Provisions for requesting and granting a variance are a necessary element of any local Critical Area program. Applicants petitioned for a variance and were given the opportunity to justify the request before the Board, as any other similarly situated property owner has the right to do.

Fourth, the variance request is not based upon conditions or circumstances that are the result of actions by the Applicants. Rather, Applicants are constrained by the physical characteristics of their lot. Only 10,000 square feet in size, the entirety of it is located within the Critical Area. They have no opportunity for relocation to a less environmentally sensitive site.

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. The property is located in a Buffer Management Overlay. BMOs are areas where the Buffer has been so

overdeveloped by existing legal development that it is presumed no amount of mitigation can fully restore it. Impacts from further development are not felt so keenly in BMOs compared to areas outside of a BMP. Even so, development must still be heavily mitigated. As noted by staff, over 2,500 square feet of mitigation plantings will be required. That is a considerable amount considering the size of the lot. These plantings will mitigate the adverse effects of development and will improve floral and fauna habitat in the Critical Area Buffer. These plantings would not be required unless the Property is redeveloped.

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 Applicants have demonstrated that a variance is necessary to achieve their proposed use, which the Board finds to be significant and reasonable in nature. Even if the Property remains above the legal lot coverage limit, there will be an overall net decrease in before-and-after coverage amounts. The impacts to the Critical Area of this redevelopment will be offset by the mitigation and other site improvements that will be made.

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

Accordingly, we conclude the Applicants should be granted the requested relief.

### **ORDER**

**PURSUANT** to the application of Andrew L. Sohn, Jessica Erin Sohn, and Susan D. Sohn, petitioning for a variance from CZO § 41.5.3.i(1) to exceed lot coverage limits for additions to an existing house and to add guest quarters; and

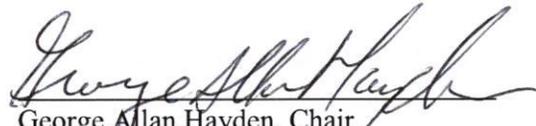
**PURSUANT** to the notice, posting of the property, and public hearing and in accordance with the provisions of law, it is,

**ORDERED**, by the St. Mary's County Board of Appeals, pursuant to CZO § 24.8, that the Applicants are granted the requested variance from CZO § 41.5.3.i(1);

**UPON CONDITION THAT**, 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 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: April 10, 2025

  
George Allan Hayden, Chair

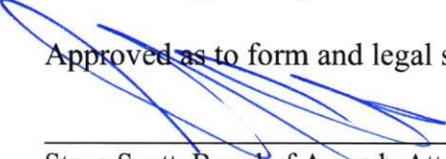
Those voting to grant the variance:

Mr. Hayden, Mr. Bradley, Mr. Brown,  
and Mr. Weaver

Those voting to deny the variance:

Mr. Payne

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.