

DRAFT

Title 27

CRITICAL AREA COMMISSION FOR THE CHESAPEAKE AND ATLANTIC COASTAL BAYS

Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

Chapter 12 Variances

Authority: Natural Resources Article, §§8-1806 and 8-1808, Annotated Code of Maryland

.01 Definition.

In this chapter, “unwarranted hardship” means that, without a variance, an applicant shall be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

.02 Local Program Requirements.

A. A local jurisdiction shall include standards and procedures in its local Critical Area program for the granting of a variance to the provisions of Title 8, Subtitle 18, Natural Resources Article, Annotated Code of Maryland, COMAR 27.01, and its local program requirements.

B. A local jurisdiction may establish additional, more restrictive standards for the granting of a variance consistent with the intent and purposes of this subtitle and the approved local Critical Area program.

C. A local jurisdiction may not accept an application for a variance to:

- (1) Increase density beyond the maximum density of one dwelling unit per 20 acres, in accordance with COMAR 27.01.02.05;
- (2) Authorize a use that is not allowed by the Critical Area land classification of the lot or parcel;
- (3) Adjust the amount or type of mitigation required by critical area regulations or a local Critical Area program; or
- (4) Provide relief that could be obtained through an available administrative process that is approved as part of a local jurisdiction’s Critical Area program.

.03 Standing.

In accordance with Natural Resources Article, §8-1808(d)(2), Annotated Code of Maryland, if a person meets the threshold standing requirements under federal law, the person shall have standing to participate as a party in a local administrative proceeding.

.04 Variance Standards.

A. A local jurisdiction may not grant a variance unless the local jurisdiction makes written findings based on competent and substantial evidence that:

[A.] (1) In accordance with Natural Resources Article, §8-1808(d)(3)(ii), Annotated Code of Maryland, an applicant has overcome the presumption that the specific development activity for which the variance is required does not conform with the general intent of the local jurisdiction’s program; and

[B.] (2) The applicant has satisfied each of the following variance provisions:

- [(1)] (a) In accordance with §B of this regulation, [Due] 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)] (b) In accordance with §C of this regulation, [A] 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)] (c) 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)] (d) The variance request is not based upon conditions or circumstances that are the result of actions by the applicant;
- [(5)] (e) The variance request does not arise from any conforming or nonconforming condition on any neighboring property;
- [(6)] (f) 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)] (g) 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[.];

49 (h) *The granting of the variance fulfills a substantial need that is not based on convenience, personal preference,*
50 *or financial advantage; and*

51 (i) *The variance request demonstrates that the development cannot be located outside a habitat protection area.*

52 B. *Excluding a new additional or accessory dwelling unit as defined under an approved local Critical Area program, when an*
53 *applicant requests a variance for a new accessory structure or use and applies the requirements of §A(2)(a), a rebuttable*
54 *presumption exists that an existing accessory structure or use on the parcel or lot demonstrates reasonable and significant use.*

55 C. *Excluding a new additional or an accessory dwelling unit as defined under an approved local Critical Area program, when*
56 *an applicant applies the requirements of §A(2)(b) of this regulation, the applicant shall make a comparison to other accessory*
57 *structures that:*

58 (1) *Are located in the Critical Area;*

59 (2) *Were developed after the adoption of the local jurisdiction's Critical Area program;*

60 (3) *Were conforming and legally authorized at the time of development;*

61 (4) *Area similarly situated; and*

62 (5) *If located in a Modified Buffer Area, were developed in accordance with requirements for Modified Buffer Areas under*
63 *the local jurisdiction's Critical Area program.*

64 **.05 Variance Procedures.**

65 A. With due regard for a person's experience, technical competence, and specialized knowledge, a local jurisdiction may base
66 its written findings required in Regulation .04 of this chapter on evidence introduced and testimony presented by:

67 (1) The applicant;

68 (2) The local jurisdiction or another government agency; or

69 (3) A person deemed appropriate by the local jurisdiction.

70 B. Within 10 working days after a local jurisdiction's issuance of a written variance decision described in Regulation .04 of
71 this chapter, the Commission shall receive a copy of the decision from the local jurisdiction.

72 **.06 After-the-Fact Variance Procedures.**

73 A. A local jurisdiction may not accept an application for a variance to legalize a violation of this subtitle, including an
74 unpermitted or otherwise unauthorized structure or other development activity, until the local jurisdiction:

75 (1) Issues a notice of violation; and

76 (2) Assesses an administrative or civil penalty for the violation.

77 B. A local jurisdiction may not issue a permit, approval, variance, or special exception to legalize a violation of this subtitle
78 unless an applicant has:

79 (1) Fully paid all administrative, civil, and criminal penalties imposed under Natural Resources Article, §8-
80 1808(c)(1)(iii)14-15 and (2)(i), Annotated Code of Maryland;

81 (2) Prepared a restoration or mitigation plan, approved by the local jurisdiction, to abate impacts to water quality or natural
82 resources as a result of the violation; and

83 (3) Performed the abatement measures in the approved plan in accordance with the local Critical Area program.

84 C. If a local jurisdiction denies the requested after-the-fact variance, then the local jurisdiction shall:

85 (1) Order removal or relocation of any structure; and

86 (2) Order restoration of the affected resources.

87 **.07 Variance Appeals.**

88 A. A person with standing under Regulation .03 of this chapter may:

89 (1) Participate as a party in an administrative proceeding at a board of appeals even if the person was not a party to the
90 original administrative proceeding; and

91 (2) Petition for judicial review and participate as a party even if the person was not a party to the action which is the subject
92 of the petition.

93 B. An appeal may be filed by:

94 (1) A person aggrieved or adversely affected by a decision made under this chapter, including a government agency; and

95 (2) The Chair, even if the Chair was not a party to or is not specifically aggrieved by the action or decision.

96 C. A local jurisdiction may not issue a permit or any other type of authorization for the activity that was the subject of the
97 variance application until the applicable 30-day appeal period has elapsed.

98 D. *A local board of appeals shall:*

99 (1) *Hear on the record an appeal of an administrative officer's decision on a Critical Area variance application; and*

100 (2) *Grant deference to the administrative officer's findings of fact.*

Administrative History

Effective date: July 9, 2012 (39:13 Md. R. 786)

Regulation .01 repealed and new Regulations .01—.07 adopted effective March 4, 2013 (40:4 Md. R. 347)

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