

CHESAPEAKE BAY CRITICAL AREA LAW VARIATION OF STANDARDS APPLICATION INSTRUCTIONS AND INFORMATION

Who Must Apply for a Variation of Standards

In accordance with Section 33-2-205 of the Baltimore County Code, an applicant for a proposed development that is not in compliance with the Chesapeake Bay Critical Area law or regulations must apply for a Critical Area variation of standards subject to Baltimore County Planning Board review and approval unless the development is exempted from review and approval under Section 32-4-106 of the Code or granted a hearing waiver under Section 32-4-107(b) of the Code. In the event that the proposed development involves just a building permit, or qualifies for a limited exemption or hearing waiver as noted above, an applicant may apply for a Critical Area administrative variance subject to review and approval by the Department of Environmental Protection and Sustainability (EPS).

General Instructions and Processing Information for Applicants

1. For clarification purposes related to this application, the terms “variation of standards” and “variance” have the same meaning and may be used interchangeably.
2. It is strongly recommended that you read the Chesapeake Bay Critical Area law and regulations prior to applying for a variation of standards. EPS Environmental Impact Review staff are available daily from 8:30 to 4:30 to assist you with questions, and may be reached by calling 410-887-3980.
3. In order to apply for a variation of standards, you must fill out the attached application form. The form must be fully completed, or your application may be returned as incomplete.
4. Mail or return the completed application form to:

Environmental Impact Review Section
Department of Environmental Protection and Sustainability
111 W. Chesapeake Avenue, Room 319
Towson, Maryland 21204
5. Once an application has been received, it will be reviewed by EPS staff to determine completeness. The application will also be sent to State Critical Area Commission staff for their review, as mandated by COMAR 27.03.01.
6. EPS will forward a variation of standards package to the Baltimore County Planning Board via the Department of Planning. At this point in the process, you must provide EPS with additional copies of the complete application in order for the process to continue. The overall package to be sent to the Board will include the application copies and EPS recommendations regarding the variation of standards. EPS will consider comments from Critical Area Commission staff in making the recommendations, and may include approval

conditions such as site design conditions or mitigation to minimize adverse impacts to water quality or fish, wildlife, or plant habitat.

7. The Department of Planning and EPS will coordinate with you to schedule the variation of standards application review by the Planning Board. A referral from the Hearing Officer to the Board will also be required to proceed, in accordance with Section 32-4-231 of the Baltimore County Code.
8. At the Planning Board meeting(s), you will be asked to present the application to the Board, and explain how the variation of standards criteria have been met. You may also be asked to answer any Planning Board member questions that arise. It is suggested that you prepare a PowerPoint presentation for this purpose. Audio/visual equipment is available for your use in the hearing room; please contact the Department of Planning at 410-887-3495 for more information. EPS staff will also make a presentation to the Board regarding the application. After the Planning Board has evaluated the application, the Board members will vote on whether to approve the application. The overall process generally takes two Planning Board meetings, with introduction of the application at the first meeting, and a vote on the application at the second meeting.
9. Once the Planning Board has voted on the variation of standards request, the Board will file a written decision regarding the application with the Hearing Officer. Pursuant to Section 32-4-232(f), the Planning Board's decision is binding upon the Hearing Officer.

What to Submit With Your Application

A site plan must be submitted along with each application showing sufficient information to allow for a proper evaluation of the request. The information listed below must be included with your Critical Area variation of standards application in order for the application to be considered complete. Please be advised that the Department may require additional supplemental information on an as-needed basis in order to evaluate the request. This information may include, but is not limited to, an alternatives analysis or other site-specific information to justify the need for a variation of standards, or a conceptual mitigation plan.

1. A site plan to scale must show the following information:
 - a. Property lines.
 - b. Critical Area outer boundary and land use designations (i.e., Intensely Developed Area, Limited Developed Area, or Resource Conservation Area).
 - c. Forest and developed woodland, including individual trees and shrubs.
 - d. Existing and proposed contour lines if wetland or Critical Area buffer impacts are involved.
 - e. Existing and proposed structures including buildings, accessory structures, sidewalks, driveways, sewage disposal systems.
 - f. Existing and proposed lot coverage information.
 - g. Proposed limits of disturbance.
 - h. Existing and proposed utility lines and easements.

- i. Existing and proposed piers, bulkheads, riprap, boat ramps, and other water dependent facilities; if these are the subject of the variance request.
 - j. Stream, tidal wetland and non-tidal wetland delineations, as applicable.
 - k. The full extent of all Critical Area and wetland buffers in accordance with COMAR 27.01.09.01 and Baltimore County Code Sections 33-2-303 and 32-3-401.
 - l. Quantification of any proposed Critical Area buffer or wetland impacts.
 - m. Any proposed Critical Area or wetland buffer (i.e. show where the Critical Area and wetland buffers would be located if the variation of standards is granted.)
2. If applicable, a buffer establishment plan or buffer management plan, if applicable, in accordance with COMAR 27.01.09.01-1 through 27.01.09.01-4.
3. Photographs of pertinent portions of the site related to the variance request, if available.

Authority, Baltimore County Code and State Critical Area Law and Regulations

The following excerpts of the Baltimore County Code specify the authority and conditions under which the Baltimore County Planning Board may grant variation of standards to the Chesapeake Bay Critical Area law. In addition to the requirements in Section 32-4-241(a)(4), applicants must also meet all requirements of COMAR 27.01.11 and Natural Resources Article § 8-1808(d). Copies of these State provisions are attached to these instructions.

§ 32-4-231. REFERRAL TO THE PLANNING BOARD.

(a) *In general.* The Hearing Officer shall refer the Development Plan to the Planning Board when:

(4) The applicant has made a written request, under the authority of COMAR 27.01.11.01.A, for a variation from the standards provided under Article 33, Title 2 of the Code.

(b) *Review by the Planning Board at next meeting.* The Planning Board shall review a referred plan at its next scheduled meeting.

(c) *Continuation of hearing.* A hearing may be continued by the Hearing Officer.

(d) *Final action.* When applicable, the final action of the Hearing Officer is subject to action by the Planning Board and the County Council.

§ 32-4-232. SAME – PROCEDURE OF THE PLANNING BOARD.

(a) *Issues considered by Planning Board; comments.* When considering Development Plan issues, the Planning Board shall:

(1) Only consider those issues referred under § 32-4-231(a) of this subtitle; and

(2) Allow the applicant, a person, or an agency to submit oral or written comments concerning the issues referred under § 32-4-231(a) of this subtitle.

(c) *Written decision; Master Plan required referral and landmark historic preservation.* With respect to issues referred under § 32-4-231(a) or (b) of this subtitle, the Planning Board shall file a written decision with the Hearing Officer that includes the reasons for the decision no later than 45 days after referral to the Planning Board.

(d) *Written decision; critical areas.*

(1) With respect to issues referred under § 32-4-231(a)(4) of this subtitle, the Planning Board shall file a written decision with the Hearing Officer no later than 45 days after the date of referral to the Planning Board.

(2) Consistent with state law or regulations, the Board's decision shall contain findings of fact whether:

(i) Special conditions or circumstances exist that are peculiar to the land or structure within the critical area of the county;

(ii) Strict compliance with the critical area regulations would result in unwarranted hardship;

(iii) Strict compliance with the critical area regulations will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the critical area of the county;

(iv) The granting of a variation will not confer upon an applicant any special privilege that would be denied by the critical area regulations to other lands or structures within the critical area of the county;

(v) The variation request is not based on conditions or circumstances that are the result of actions by the applicant;

(vi) The request does not arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property;

(vii) The granting of a variation will be in harmony with the general spirit and intent of the critical area regulations of the county; and

(viii) The variation conforms to the requirements as stated in § 32-4-226(d) of this subtitle.

(e) *Referral date.* The date of the referral to the Planning Board is:

(1) The Hearing Officer's referral date; or

(2) In the case of a building permit, the date of the filing.

(f) *Planning Board decision is final; exceptions.*

(1) Except as provided under paragraph (2) of this subsection, a decision of the Planning Board on an issue referred under § 32-4-231 of this subtitle is binding upon the Hearing Officer and shall be incorporated as part of the Hearing Officer's final action on a plan.

(2) A decision of the Planning Board is not binding on the Hearing Officer if the decision of the Planning Board on an issue referred under § 32-4-231(a)(1) of this subtitle is overruled by action of the County Council.

§ 32-4-226. COUNTY REVIEW.

(d) *Information submitted to Hearing Officer.*

(1) At least 5 working days before the Hearing Officer's hearing, the Director of Permits, Approvals and Inspections shall submit in writing to the Hearing Officer the following information:

(iv) Comments from the Director of Environmental Protection and Sustainability as to whether the proposed development and resource protection activities under § 33-2-202 of the code:

1. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or conveyances or that have run off from surrounding lands;
2. Conserve fish, wildlife, and plant habitat; and
3. Are consistent with established land use policies for development in the Chesapeake Bay Critical Area, which accommodate growth and also address the fact that, even if pollution is controlled, the number, movement, and activities of persons in that area can create adverse environmental impacts.

Title 27
CRITICAL AREA COMMISSION

Subtitle 01 CRITERIA FOR LOCAL CRITICAL AREA PROGRAM DEVELOPMENT

Chapter 11 Variances

.01 Local Programs.

A. In the preparation of local programs, local jurisdictions shall make provision for the granting of variances to these criteria where, owing to special features of a site or other circumstances, local government implementation of this subtitle or a literal enforcement of provisions within the jurisdiction's Critical Area program would result in unwarranted hardship to an applicant. These variance provisions shall be designed in a manner consistent with the spirit and intent of this chapter and all local Critical Area program elements. The variance provisions shall, at a minimum, provide for the following:

- (1) That findings are made by the local jurisdiction which demonstrate that special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's Critical Area program, would result in unwarranted hardship.
- (2) That a literal interpretation of this subtitle or the local Critical Area program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of the local jurisdiction;
- (3) That the granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the local Critical Area program to other lands or structures within the jurisdiction's Critical Area;
- (4) That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition conforming, on any neighborhood property;
- (5) That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area law and the regulations adopted in this subtitle; and
- (6) That applications for a variance will be made in writing to the local approving authority with a copy provided to the Commission.

B. Local jurisdictions may establish additional, more restrictive standards for the granting of variances consistent with the intent and purposes of this subtitle and the approved local Critical Area program, and further, shall establish notification procedures to permit Commission review of findings made in the granting of variances.

C. Appeals from decisions concerning the granting or denial of a variance under these regulations shall be taken in accordance with all applicable laws and procedures of each local jurisdiction for variances. Variance decisions by local boards of appeal or the local legislative body may be appealed to the circuit

court in accordance with the Maryland Rules of Procedure. Appeals may be taken by any person, firm, corporation, or governmental agency, aggrieved or adversely affect by any decision made under this section, and the Chairman may appeal an action or decision even if the Chairman was not a party to or is not specifically aggrieved by the action or decision.

NATURAL RESOURCES ARTICLE

Title 8 WATERS

Subtitle 18 CHESAPEAKE AND ATLANTIC COASTAL BAYS CRITICAL AREA PROTECTION PROGRAM

§ 8-1808. Program Development.

(d) *Granting of variance.* -

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

(2) (i) Notwithstanding any other provision of law, the provisions of this paragraph shall apply to a proceeding that involves a variance for a development activity in the buffer under the requirements of:

1. This subtitle;
2. A regulation adopted under the authority of this subtitle; or
3. An approved program.

(ii) 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; and

(iii) A person that has standing under subparagraph (ii) of this paragraph may:

1. Participate as a party in an administrative proceeding at a board of appeals even if the person was not a party to the original administrative proceeding; and
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 of the petition.

(3) (i) A local jurisdiction shall process an application for a variance regarding a parcel or lot that is subject to a current violation of this subtitle, a regulation adopted under the authority of this subtitle, or any provision of an order, permit, plan, or local program in accordance with subsection (c)(1)(iii)15 of this section.

(ii) In considering an application for a variance, a local jurisdiction shall presume that the specific development activity in the critical area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of this subtitle, regulations adopted under this subtitle, and the requirements of the local jurisdiction's program.

(iii) If the variance request is based on conditions or circumstances that are the result of actions by the applicant, a local jurisdiction shall consider that fact.

(4) (i) An applicant has the burden of proof and the burden of persuasion to overcome the presumption established under paragraph (3)(ii) of this subsection.

(ii) 1. Based on competent and substantial evidence, a local jurisdiction shall make written findings as to whether the applicant has overcome the presumption established under paragraph (3)(ii) of this subsection.

2. With due regard for the person's experience, technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:

A. The applicant;

B. The local jurisdiction or any other government agency; or

C. Any other person deemed appropriate by the local jurisdiction.

(5) A variance to a local jurisdiction's critical area program may not be granted unless:

(i) Due to special features of a site, or special conditions or circumstances peculiar to the applicant's land or structure, a literal enforcement of the critical area program would result in unwarranted hardship to the applicant;

(ii) The local jurisdiction finds that the applicant has satisfied each one of the variance provisions; and

(iii) Without the variance the applicant would be deprived of a use of land or a structure permitted to others in accordance with the provisions of the critical area program.

(6) (i) Within 10 working days after a written decision regarding a variance application is issued, the Commission shall receive a copy of the decision from a local jurisdiction.

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(ii) A local jurisdiction may not issue a permit for the activity that was the subject of the variance application until the applicable 30-day appeal period has elapsed.

(7) (i) A development activity commenced without a required permit, approval, variance, or special exception is a violation of this subtitle.

(ii) A local jurisdiction may not accept an application for a variance to legalize a violation of this subtitle, including an unpermitted structure or development activity, unless the local jurisdiction first issues a notice of violation, including assessment of an administrative or civil penalty, for the violation.

(iii) If a final adjudication of a notice of violation results in a determination that a violation has occurred, the person shall be liable for a penalty that is twice the amount of the assessment in the notice of violation, in addition to the cost of the hearing and any applicable mitigation costs.

(iv) Application for a variance under this paragraph constitutes a waiver of the right to appeal the terms of a notice of violation and its final adjudication, including the payment of any penalties and costs assessed.

(v) If the local jurisdiction finds that the activity or structure for which a variance is requested commenced without permits or approvals and:

1. Does not meet each of the variance criteria under this subsection, the local jurisdiction shall deny the requested variance and order removal or relocation of any structure and restoration of the affected resources; or

2. Does meet each of the variance criteria under this subsection, the local jurisdiction may grant approval to the requested variance.

(8) This subsection does not apply to building permits or activities that comply with a buffer exemption plan or buffer management plan of a local jurisdiction which has been approved by the Commission.

(9) Notwithstanding any provision of a local law or ordinance, or the lack of a provision in a local law or ordinance, all of the provisions of this subsection shall apply to, and shall be applied by, a local jurisdiction in the consideration, processing, and decision on an application for a variance.

**BALTIMORE COUNTY CHESAPEAKE BAY CRITICAL AREA LAW
VARIATION OF STANDARDS (AKA VARIANCE) APPLICATION**

Part A. Applicant/Property Owner Information. Date: _____

Applicant(s):

Name(s) _____ Phone No. (_____) _____

Company _____

Street Address _____

City _____ State _____ Zip Code _____

Property Owner(s):

Name(s) _____ Phone No. (_____) _____

Company _____

Street Address _____

City _____ State _____ Zip Code _____

Contract Purchaser(s):

Name(s) _____ Phone No. (_____) _____

Company _____

Street Address _____

City _____ State _____ Zip Code _____

Engineer/Other Representative:

Name(s) _____ Phone No. (_____) _____

Company _____

Street Address _____

City _____ State _____ Zip Code _____

Part B. Property Information.

Property Address/Location _____

Tax Account Number(s) _____

Subdivision _____

Tax Map _____ Parcel No. _____ Lot No. _____

Acreage/Lot Size _____ Zoning _____ Council District _____

Water: public private Sewer: public private

Part C. Variation Type.

Indicate the specific section(s) of the Baltimore County Code from which you are requesting a variation of standards:

Part D. Project Description.

Briefly describe the proposed project or activity for which a variation is requested.

Part E. Alternates to Variance Request.

Briefly describe any alternates to requesting a variation of standards which you considered, and why these alternates are not feasible.

Part F. Variation Provisions of the Critical Area Criteria (COMAR 27.01.11) and Baltimore County Code 32-4-232(d)(2).

Briefly explain any special conditions or circumstances which exist that are peculiar to the land or structure within the Critical Area of the County.

Part H. Signatures.

All persons having legal or equitable interest in the property must sign below. Unsigned applications will be returned to the applicant as incomplete.

I/We do solemnly declare and affirm under the penalties of perjury that the contents of this application are true and correct to the best of my/our knowledge, and that the application contains names and addresses of all persons having legal or equitable interest in the property.

Applicant Signature Date

Applicant Signature Date

Property Owner Date
Signature

Property Owner Date
Signature

Property Owner
Printed Name

Property Owner
Printed Name

Contract Purchaser Date
Signature

Contract Purchaser Date
Signature

Contract Purchaser
Printed Name

Contract Purchaser
Printed Name