



St. Mary's County  
Department Land Use and Growth Management  
**Customer Assistance Guide**

**42**

## **ADMINISTRATIVE VARIANCES**

*(Dimensional, Critical Area and Forest Conservation)*

There are three types of administrative variances: dimensional, critical area, and forest conservation. Included in this Customer Assistance Guide is a brief description of each type administrative variance, a description of the application process, and an explanation of the entire approval process. Information on Standard Variances can be found in Customer Assistance Guide #43

### **Administrative Variances**

The purpose of the administrative variance is to delegate approval authority to the Planning Director. Such authority includes granting variances from:

- The minimum lot dimensions or minimum setback standards of Schedule 32.1 of the Zoning Ordinance (Ordinance) or the elevation requirement for substantially renovated historic structures located in the 100-year floodplain.
- Critical Area standards for impervious surface cover, buffer encroachment, or disturbance of steep slopes.
- The provision of the Ordinance addressing Forest Conservation.

#### **NOTE**

**An administrative variance may not reduce specified dimensional requirements by more than 50 percent.**

General Standards for Granting Administrative Variances - Except as provided in the Zoning Ordinance, the Planning Director can not vary the regulations of the Ordinance unless he/she makes findings based upon evidence presented to him/her that:

- Because of particular physical surroundings such as exceptional narrowness, shallowness, size, shape, or topographical conditions of the property involved, strict enforcement of the Ordinance will result in practical difficulty; and
- The conditions creating the difficulty are not applicable, generally, to other properties within the same zoning classification; and
- The purpose of the variance is not based exclusively upon reasons of convenience, profit, or caprice. It is understood that any development necessarily increases property value, and that alone shall not constitute an exclusive finding; and
- The alleged difficulty has not been created by the property owner or the owner's predecessors in title; and
- The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood and the character of the district will not be changed by the variance; and
- The proposed variance will not substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood; and

- The variance complies, as nearly as possible, with the spirit, intent, and purpose of the Comprehensive Plan.

**Critical Area Administrative Variances.**

If your property is in the Critical Area, you will need to request a Critical Area administrative variance. The granting of an administrative variance in the Critical Area is limited to applications to construct, alter, or enlarge attached decks (open or covered), porches, sheds, garages (detached or attached), patios, breezeways, septic fields, wells, utility installations, principal structures for residential use, or structures for incidental storage uses. A Critical Area administrative variance may be sought for construction that would exceed impervious surface cover limits, encroach on the critical area buffer, or disturb steep slopes provided the construction:

- Is on a lot or parcel recorded prior to December 1, 1985; and
- Will have little or no impact on the Critical Area Buffer or water quality; and
- Is located at the greatest possible distance from and, in all cases no closer than 50 feet from mean high water (MHW), tidal wetlands and tributary streams; and
- Is located no closer than 25 feet from any non-tidal wetland; and
- Does not require the removal of existing vegetation except for the area of proposed construction itself; and
- Does not result in cumulative impervious surfaces of the existing and proposed construction on the site exceeding 150 percent of the allowed impervious surface on the site; and
- Is mitigated according to a planting agreement agreed upon by the applicant and the Planning Director, and executed by the applicant.

Notice to the Chesapeake Bay Critical Area Commission - All requests for administrative variances from critical area standards must be reviewed by the Maryland Critical Area Commission (Commission) before any action may be taken by the Planning Director. Department of Land Use and Growth Management personnel will notify the Commission of your request. The Commission will also be notified of any administrative action by the Planning Director within 10 days of the action. The Chairman of the Commission may appeal an administrative variance granted by the Planning Director pursuant to the provisions of Chapter 22 of the Ordinance.

Specific Standards for Granting Variances in the Critical Area. - The area, bulk, or density provisions of the Critical Area Program as implemented in the Zoning Ordinance, Resource Protection Standards, may be varied when, owing to special features of the site or circumstances, the literal enforcement of those provisions would result in unwarranted hardship on the landowner. The General Standards for Granting Variances stated above do not apply to Critical Area variances. Before a Critical Area variance may be granted, the Planning Director must find the following:

- That special conditions or circumstances exist that are peculiar to the land or structure involved and that strict enforcement of the Critical Area provisions of this Ordinance would result in unwarranted hardship; and
- That strict interpretation of the Critical Area provisions of this Ordinance will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area of St. Mary's County; and
- The granting of a variance will not confer upon an applicant any special privilege that would be denied by the Critical Area provisions of the Ordinance to other lands or structures within the Critical Area of St. Mary's County; and
- The variance request is not based upon conditions or circumstances that are the result of actions by the applicant; and

- The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area program; and
- The variance is the minimum necessary to achieve a reasonable use of land or structures.

Conditions on Variances. The Planning Director may impose on the use or development of property that is granted a variance conditions it finds reasonable or necessary to assure that the spirit and intent of the Critical Area Program is maintained, including but not limited to:

- ◆ Location of new or expanded structures or other impervious surfaces the greatest practicable distance from mean high water, tidal wetlands, tributary streams, non-tidal wetlands, or steep slopes.
- ◆ Mitigation of adverse impacts resulting from the granting of a variance, including:
  - Vegetative plantings to offset proposed disturbance on the site at no less than a three-to-one basis or as recommended by the Department of Land Use & Growth Management.
  - Reforestation on the site to offset proposed disturbance of forest or developed woodland.
  - Implementation of mitigation measures for Habitat Protection Areas that are recommended by the Department of Land Use & Growth Management.

**Forest Conservation Administrative Variance.**

The Planning Director will not grant a variance to forest conservation standards of the Ordinance except upon findings that the general standards for variances described above have been met and that the granting of a variance will not adversely affect resource habitat or water quality.

Notice to Department of Natural Resources. Notice of a request for a Forest Conservation Variance must be given to the Department of Natural Resources within 15 days of receipt of such a request. Department of Land Use and Growth Management personnel will provide notification. The Department of Natural Resources will have the right and authority to initiate or intervene in an administrative, judicial, or other original proceeding or to appeal the approval of an administrative variance under Sections 5-1601-5-1612 of the Natural Resources Article, Annotated Code of Maryland, or the Ordinance.

**Application Procedures.**

If you believe your situation meets the requirements mentioned above, you may apply to the Department of Land Use and Growth Management for a variance. The application process is as follows:

Pre-Application Meeting – The first step in the application process is to schedule a pre-application meeting with the Zoning Administration Planner. The Zoning Administration Planner can be contacted by dialing 301-475-4200, ext. 1523. The pre-application meeting is a short meeting designed to review your application with you and assist you in fulfilling application requirements.

Application Submission – In order to be scheduled for a hearing you must have provided us with the following:

- Board of Appeals Application Form (DPZ Form 2)
- Typed Letter of Intent addressing the standards for a variance
- Copy of the deed
- 3 copies of your site plan drawn to scale depicting existing and proposed structures; meeting all site plan regulations.
- A check made out to the Board of County Commissioners (see current schedule of fees)

Additionally, the following approvals must be received before your case can be scheduled:

- Approval from the Health Department.
- Approval from the Soil Conservation District.
- Comments from the Chesapeake Bay Critical Area Commission. (Comments will come directly to the Department of Land Use and Growth Management.)

Once all submissions and approvals have been received, you will be scheduled for inclusion on the next available meeting agenda. You will be notified that you have been scheduled and the date and time of the meeting.

**NOTE**  
**You must give notice to your neighbors and the general public 15 days prior to the date of your hearing. Customer Assistance Guide 41 explains specific notification requirements.**

Administrative Variance Public Hearing. The Planning Director will conduct a public hearing on your application for the variance. The hearing will be open to the public, and anyone in attendance will have an opportunity to be heard concerning the application. If an agreement is executed with the owners of all properties that abut a side or rear property line of your property and such agreement is/are submitted to the Planning Director, then no public hearing is required.

Administrative Variance Decision. Within 15 days of the close of the hearing, the Planning Director will decide the issue raised by your application. The decision will be in writing and provide a brief explanation of the law, the standards for variance, and facts that support the decision. In making the decision, the Planning Director may grant the variance only in cases where strict compliance with the terms of the Ordinance would result in practical difficulties that have not been caused by you or your predecessors in title. The Planning Director will not grant a variance if to do so would violate the spirit and intent of the Ordinance, the Comprehensive Plan, or functional or area plans, or cause or be likely to cause substantial injury to the public health, safety, and welfare. The Planning Director will be guided in making this decision by the considerations set forth in the standards for granting variances. Any person, firm or corporation aggrieved by a decision to grant an administrative variance may appeal to the Board of Appeals within 30 calendar days of the decision. You may also appeal the Planning Director's decision to the Board of Appeals within 30 days of the Director's decision.

Denial of Administrative Appeal Application. If the application is denied, the Board of Appeals will take no further action on another application for substantially the same proposal on the same premises until after 2 years from the date of the denial.

Lapse of Variance. Administrative variances shall lapse one year from the date of the grant of the variance by the Planning Director unless:

- 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; or
- A longer period for validity is established by the Planning Director; or
- The variance is for future installation or replacement of utilities at the time such installation becomes necessary.