



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

**43**

## **STANDARD VARIANCES**

**The Board of Appeals may authorize, upon appeal in specific cases, a variance from the terms of the Zoning Ordinance when special conditions exist, the enforcement of the Ordinance would result in practical difficulties or unwarranted hardship. Only variances should be approved that accomplish the purpose and intent of the Zoning Ordinance and are consistent with the Comprehensive Plan.**

There are two types of variances, Administrative or Board of Appeals. (For an Administrative Variance, Critical Area Administrative Variance, Forest Conservation Administrative Variance, Flood Plain Administrative Variance see Customer Assistance Guide 42). Included in this Customer Assistance Guide is a brief description of Standard, Floodplain, and Critical Area Variances, a description of the application process, and an explanation of the entire approval process.

- I. **General Standards for Granting Variances.** Except in cases of practical difficulty or unnecessary hardship, the Board of Appeals (Board) is not authorized to vary the regulations of the Comprehensive Zoning Ordinance, Subdivision Ordinance, Road Ordinance, and Stormwater Management, Grading, Erosion and Sediment Control Ordinance (Ordinances) unless it makes findings based upon evidence presented to it 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 would 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.

II. **Specific Standards for Granting Variances in the Critical Area.** The area, bulk, or density provisions of the Critical Area Program as implemented in Chapter 41, Critical Area Overlay Districts, and Chapter 71, Resource Protection Standards, of the Ordinance, 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 Board of Appeals 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 this 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.** In granting a variance, the Board may impose reasonable or necessary conditions on the use or development of the property 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 and 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 and Growth Management.

**Notice to the Chesapeake Bay Critical Area Commission (Commission).** All requests for variances from Critical Area standards must be reviewed by the Commission before any action can 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 the Ordinance.

III. **Specific Standards and Procedures for Granting Variances in the Floodplain.** The Board may hear and decide requests for variances from the floodplain regulations of Chapter 76 of the Ordinance. In considering a variance action, comments from the State Coordination Office of the Water Resources Administration will be considered.

**Prohibited Floodplain Variances.** Variances may not be granted for the following:

- Placement of fill or any development in the floodway causing any increase in flood levels.
- Placement of fill in the coastal high hazard area for structural support.
- New buildings in the floodway.

The general standards for granting a variance stated above do not apply to floodplain variances. Floodplain variances shall only be issued upon findings by the Board that:

- Failure to grant a variance would result in unnecessary hardship to the applicant.
- 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 granting of a variance will not result in increased flood heights, additional threats to public safety, extra public expenses, nuisances; or cause fraud or victimization of the public; or conflict with existing local and state laws or ordinances; and
- Granting the variance will not confer special benefits to the applicant not enjoyed by other floodplain residents; and
- The variance is the minimum relaxation of standards necessary, considering the flood hazard, to afford relief; and
- Potential detrimental effects will be mitigated so that other property owners shall not be adversely affected.

The Board's decision will be sent to you indicating the terms and conditions of the variance if granted. You will also be advised by the Department of Land Use and Growth Management that the variance may increase risk to life and property and premium rates for National Flood Insurance coverage. You will also be notified in writing of the requirement to record these conditions on the deed or Memorandum of Land Restriction prior to obtaining a permit, and of the need to secure all necessary permits as conditions for granting a variance. A Memorandum of Land Restriction is described in Section 3-102 and 3-103 of the Real Property Article, Annotated Code of Maryland.

- IV. **Application Procedures.** If you believe your situation meets the requirements for a variance or critical area variance 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 who 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.
- Typed Letter of Intent addressing the standards for a variance.
- Copy of the deed.
- 12 copies (14 Critical Area) of your site plan *drawn to scale* depicting existing and proposed structures; meeting all site plan requirements.
- 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.
- If applicable, 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.**

- V. **Board of Appeals Hearing.** The Board of Appeals will hold a public hearing on your application. The hearing will be conducted and a record of the proceedings will be made. The Board will report its findings and decisions, including the stipulations or conditions and guarantees deemed necessary for the protection of the public interest. In granting any variance, the Board of Appeals may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to comply with the standards for a variance and the objectives of the Zoning Ordinance. This provision does not permit the Board, under guise of a variance, to change the permitted use of the land.
- VI. **Denial of Board of Appeals 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 two years from the date of such denial.
- VII. **Lapse of Variance.** Variances shall lapse one year from the date of the grant of the variance by the Board of Appeals 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 Board of Appeals; or
  - The variance is for future installation or replacement of utilities at the time such installation becomes necessary.
- VIII. **Appeals.** Any person aggrieved by any decision of the Board of Appeals may appeal the decision to the Circuit Court for St. Mary's County pursuant to the provisions of the Zoning Ordinance.