



**ANNE ARUNDEL**  
**COUNTY**  
MARYLAND

# Variance Process

A variance is a modification of specific requirements contained in the Anne Arundel County Zoning Ordinance relating to the location and/or size of a structure or use.

## **Chesapeake Bay Critical Area Requirements**

All property in Anne Arundel County within 1,000 feet of tidal waters is located in an area known as the Chesapeake Bay Critical Area. An applicant for a variance within this area must submit a Critical Area Report with the variance application. This report contains written findings addressing the impact of the proposed construction on the property and the measures that will be taken to lessen or eliminate these impacts. It is important to note that the Office of Planning and Zoning will not accept an application for a variance in the Critical Area without a complete Critical Area Report.

An applicant who knows or believes his property is located within the Chesapeake Bay Critical Area should contact the Zoning Division of the Office of Planning and Zoning at (410) 222-7437 for guidance in determining their Critical Area Classification and/or completing the Critical Area Report.

## **Time to Process Applications**

Once an application for a Variance has been accepted by the Zoning Division of the Office of Planning and Zoning, a case number is assigned to the application. It is then transmitted to the following agencies for their review and comments: Health Department, Office of the Fire Marshall, Department of Public Works, Soil Conservation District, Recreation and Parks, State Highway Administration, Public Schools, Department of Natural Resources and, if applicable the Chesapeake Bay Critical Area Commission. It is also reviewed by the Environmental, Traffic and Utilities sections of the Office of Planning and Zoning.

Several weeks are allotted for the agencies to review the application and provide written comments to the Office of Planning and Zoning. The Zoning Division of the Office of Planning and Zoning will then review the application and the agencies comments in formulating its Findings and Recommendations.

The [Administrative Hearings Schedule](#) are assigned by the Office of Administrative Hearings and are scheduled in chronological order as the applications are received by them. Applicants for a variance should generally allow a minimum of twelve to fourteen weeks from the date the application is accepted by the Zoning Division of the Office of Planning and Zoning to the date of the public hearing.

## **Posting of Signs**

It is the responsibility of the applicant to post the required sign(s) on the property for which a variance is being requested. The sign(s) is provided to the applicant by the [Map Information Section](#) of the Office of Planning and Zoning and must be posted on the property a minimum of fourteen (14) days prior to the date of the hearing. It is the applicant's responsibility to pick up the sign and to make sure it is posted for the required time. Signs are to be posted no more than 10 feet from the boundary of the property where it abuts a public street or a body of water. After receiving confirmation of a hearing date from the Office of Administrative Hearings, the applicant should contact the Map Information Section of the Office of Planning and Zoning at [\(410\) 222-7463](tel:(410)222-7463) to inquire as to when the sign will be completed and ready for pickup. At the Zoning Hearing the applicant must present evidence to the Administrative Hearing Officer that the sign was posted in accordance with the above requirements.

### **Written Notice of Hearing**

The Office of Administrative Hearings will mail a written notice of the date and time of the hearing to all nearby property owners per Code requirements.

### **Withdrawal of Request by Applicant, Resubmission of Request**

A withdrawal of a variance application will result in denial of the request by the Administrative Hearing Officer.

An application for a variance which has been denied by the Administrative Hearing Officer cannot be reconsidered within 18 months of the date of final action by the Administrative Hearing Office, the County Board of Appeals or a Court, whichever action is the latest.

### **Postponement of Hearing**

After the hearing date has been set a hearing may not be postponed unless a written request specifying compelling circumstances is received in the Office of Administrative Hearings no later than ten (10) days prior to the hearing.

If a postponement is granted and the delay was not caused by the County or by an error, the applicant shall be required to pay all costs incurred by virtue of the requested postponement. This shall include, but not be limited to all re-advertising costs and the Temporary Hearing Officer fee, if any. Note: A case will not be rescheduled until said fees have been received by the Office of Administrative Hearings.

### **The Zoning Hearing**

The Zoning Hearing is a public hearing presided over by the Administrative Hearing Officer and attended by a representative of the Office of Planning and Zoning, the applicant and any other persons interested in the case (e.g. neighbors, community associations, etc.).

The hearing is conducted in the following order: the Office of Planning and Zoning presents its findings and recommendations, the applicant presents testimony as to why the variance should be granted, and any persons opposing or supporting the applicant's request will then present their views. The applicant may call witnesses to testify at the hearing.

Any person testifying at the hearing does so under oath and may be cross-examined by the representative of the Office of Planning and Zoning, the applicant or any persons opposing or supporting the request.

## Representation at the Hearing

An individual may appear on his or her own behalf. A member of a partnership may represent the partnership. A bona fide officer of a corporation, trust or association may represent the corporation, trust or association. An officer or employee of a municipal corporation, political subdivision, body or department may represent the municipal corporation, political subdivision, body or department.

A representative of a community or civic association may testify or represent the association provided:

1. The association by resolution gives authority to the individual
2. The resolution specifies the views of the association and the name of the representative

Forms of resolution for the above may be obtained from the Office of Administrative Hearings.

A person may be represented by an Attorney at Law admitted to practice before the Court of Appeals of Maryland. An attorney acting in a representative capacity shall file a written notice of appearance with the Administrative Hearing Officer prior to the hearing. The notice of appearance shall state:

1. The attorney's name, office address and telephone number
2. The names and addresses of the person represented

## Marking of Exhibits

The applicant is encouraged to bring photographs of the subject property and the area to be affected by the proposed variance. This gives the Administrative Hearing Officer a clearer understanding of the area to be impacted by the request.

If more than three (3) exhibits are to be introduced by the applicant, it is the responsibility of the applicant to pre-mark all exhibits in the following manner:

Exhibit Number, Title of Exhibit, Case Number, Case Name, Date of Hearing. Please place this information on the first page of each exhibit.

## Findings Required for Granting a Variance

A variance may be granted by the Administrative Hearing Officer only after determining:

1. Because of certain unique physical conditions, such as irregularity, narrowness or shallowness of lot size and shape, or exceptional topographical conditions peculiar to and inherent in the particular lot, there is no reasonable possibility in developing the lot in strict conformance with zoning regulations
2. Because of exceptional circumstances other than financial considerations, the granting of a variance is necessary to avoid practical difficulties or unnecessary hardship, and to enable the applicant to develop the lot

## Standards for Granting a Variance in the Critical Area or a Bog Protection Area

For a property located in the Critical Area or a Bog Protection Area, a variance to the requirements of the County Critical Area program or a Bog Protection Program may be granted if the Administrative Hearing Officer determines that:

1. Because of certain unique physical conditions, such as exceptional topographical conditions peculiar to and inherent in the particular lot, or irregularity, narrowness, or shallowness of lot size and shape, strict implementation of the county's Critical Area program or Bog Protection Program would result in

an unwarranted hardship to the applicant.

2. A literal interpretation of the Code of Maryland Regulations, Title 27, Subtitle 01, Criteria for Local Critical Area Program Development, the County Critical Area program and related ordinances or the County's Bog Protection Program will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area or the Bog protection Area of the county.
3. The granting of a variance will not confer on an applicant any special privilege that would be denied by:
  - (a) COMAR, Title 27, Subtitle 01 or the County Critical Area program to other lands or structures within the county Critical Area
  - (b) The County's Bog Protection Program or to other lands or structures within a Bog Protection Area.
4. The variance request:
  - (a) Is not based on conditions or circumstances that are the result of actions by the applicant;
  - (b) Does not arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property.
5. The granting of a variance:
  - (a) Will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the County's Critical Area or a Bog Protection Area
  - (b) Will be in harmony with the general spirit and intent of the County Critical Area program or Bog Protection Program.

**A Variance may not be granted unless it is found that:**

1. That the variance is the minimum necessary to afford relief
2. The granting of the variance will not:
  - (a) Alter the essential character of the neighborhood or district in which the lot is located
  - (b) Substantially impair the appropriate use or development of adjacent property
  - (c) Reduce forest cover in the Limited Development and Resource Conservation areas of the Critical Area
  - (d) Be contrary to acceptable clearing and replanting practices required for development in the of the Critical Area or a Bog Protection Area; or be detrimental to the public welfare
3. For properties located in the Critical Area or a Bog Protection Area, the granting of the variance will not be inconsistent with the spirit and intent of the Critical Area Program or Bog Protection Program and will not adversely affect water quality or adversely impact fish, wildlife or plant habitat

**Decision of the Hearing Officer**

The Administrative Hearing Officer has thirty (30) days from the close of the hearing to render a decision in the case. Persons interested in obtaining a copy of the written decision in a variance case should contact the Office of Administrative Hearings at (410) 222-1266. Persons attending the hearing who have signed in will receive a copy of the Hearing Officer's decision.

### Lapse of Variance

A variance that is not extended or tolled expires by operation of law unless the applicant within 18 months of the granting of the variance (1) obtains a building permit or (2) files an application for subdivision. Thereafter, the variance shall not expire so long as (1) construction proceeds in accordance with the permit or (2) a record plat is recorded among the land records pursuant to the application for subdivision, the applicant obtains a building permit within one year after recordation of the plat, and construction proceeds in accordance with the permit.

### Appeals

Any person aggrieved by a decision of the Administrative Hearing Officer may appeal the decision to the County Board of Appeals. An appeal must be filed in writing with the Board of Appeals within thirty (30) days of the date of the Administrative Hearing Officer's decision. Persons wishing to file appeals should contact the Board of Appeals at [\(410\) 222-1119](tel:410-222-1119).

Appeals from a decision of the County Board of Appeals are made to the Circuit Court of Anne Arundel County.