

**ARTICLE 11
VARIANCES, SPECIAL EXCEPTIONS, & APPEALS**

		Article 11, Page No.
11-1	Board of Appeals	1
	11-1.01 Variances	1
	11-1.02 Special Exceptions	4
	11-1.03 Other Appeals to the Board of Appeals	6
	11-1.04 Decisions on Alleged Errors	6
	11-1.05 Special Accommodations	7
	11-1.06 Board of Appeals Hearings	7
	11-1.07 Appeals of Board of Appeals Decisions	7
11-2	Planning Commission	8
	11-2.01 Appeals to the Planning Commission	8
	11-2.02 Appeals of Planning Commission Decisions	8
11-3	Administrative Variances	8
	11-3.01 Administrative Variances	8

**ARTICLE 12
DEFINITIONS**

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	Article 11, Page No.
11-1 Board of Appeals	1
11-1.01 Variances	1
11-1.02 Special Exceptions	4
11-1.03 Other Appeals to the Board of Appeals	6
11-1.04 Decisions on Alleged Errors	6
11-1.05 Special Accommodations	7
11-1.06 Board of Appeals Hearings	7
11-1.07 Appeals of Board of Appeals Decisions	7
11-2 Planning Commission	8
11-2.01 Appeals to the Planning Commission	8
11-2.02 Appeals of Planning Commission Decisions	8
11-3 Administrative Variances (06/10/08)	8
11-3.01 Administrative Variances	8

11-1 BOARD OF APPEALS

11-1.01 Variances¹

A. Variances; Generally.

1. The Board of Appeals shall have the authority to grant variances from the strict application of the lot area, lot width, setback, and height requirements of this Ordinance. The Board may also grant variances from other requirements as stipulated in this Ordinance.
2. A variance may only be granted if peculiar and unusual practical difficulties or unwarranted hardships² exist on a parcel, and such difficulties and hardships are created by exceptional narrowness, shallowness, or shape of the parcel, by reason of exceptional topographical conditions, or by other extraordinary situations or conditions affecting the property.
3. A variance shall be granted only if the applicant demonstrates, and the Board finds that:
 - a. the variance will not result in injury to the public interest; and
 - b. granting the variance will not adversely affect the implementation of the Comprehensive Plan; and

¹ Note: This Section applies to variances granted by the Board of Appeals. For Administrative Variances granted by the Administrative Variance Officer, see Section 11-3. (06/10/08)

² 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.

- c. the variance is the minimum adjustment necessary to afford relief from the regulations; and
- d. the variance request is not based upon conditions or circumstances which are the result of actions by the applicant.

B. Variances; Critical Area.

1. The Board of Appeals shall have the authority to grant variances from the Critical Area requirements of Section 8-1 of this Ordinance.
2. In considering an application for a variance, the Board of Appeals 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 Natural Resources Article, Title 8, subtitle 18, COMAR Title 27, and the requirements of the County's Critical Area Program.
3. An applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in paragraph '2' of this Section.
4. Based on competent and substantial evidence, the Board of Appeals shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established by this Section.
5. An application for a variance shall be made in writing to the Board of Appeals with a copy provided to the Maryland Critical Area Commission.
6. A variance may be granted only if the applicant demonstrates, and the Board makes written findings that the applicant has met each of the following variance standards:
 - a. the variance will not result in injury to the public interest; and
 - b. granting the variance will not adversely affect the implementation of the Comprehensive Plan; and
 - c. the variance is the minimum adjustment necessary to afford relief from the regulations; and
 - d. special conditions or circumstances exist that are peculiar to the land or structure within Calvert County and that a literal enforcement of provisions within the County's Critical Area Program would result in unwarranted hardship; and
 - e. a literal interpretation of the Critical Area Legislation and the Calvert County 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 County; and
 - f. the granting of a variance will not confer upon an applicant any special privilege that would be denied by the Calvert County Critical Area Program to other lands or structures within the County's Critical Area; and
 - g. 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 relating to land or building use, either permitted or non-conforming, on any neighboring property. If the variance request is based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, the Board of Appeals may consider that fact; and

11-1.05 Special Accommodations

- A. The Board of Appeals may include provisions that allow for the accommodation of persons with disabilities.
- B. Accommodations for the needs of persons with disabilities may be permitted if the applicant demonstrates and the Board of Appeals finds that:
 - 1. the applicant or owner of the property has a physical disability;
 - 2. that literal enforcement of the provisions of this ordinance would result in discrimination by virtue of such disability;
 - 3. special accommodations would reduce or eliminate the discriminating effect of the provisions of this Ordinance; and
 - 4. the accommodation requested will not substantially impair the purpose, intent, or effect, of the provisions of this Ordinance as applied to the property; and
 - 5. environmental impacts associated with the accommodation are the minimum necessary to address the needs resulting from the physical disability of the applicant or the owner of the property.
- C. The Board of Appeals shall determine the nature and scope of any accommodation under this Section and may award different or other relief than requested after giving due regard to the purpose, intent, or effect of the applicable provisions of this Ordinance. The Board may also consider the size, location, and type of accommodation proposed and whether alternatives exist which will accommodate the need with less adverse effect.
- D. The Board of Appeals may require, as a condition of approval, that upon termination of the need for accommodation, the property be restored to comply with all applicable provisions of this Ordinance.

11-1.06 Board of Appeals Hearings

The Board of Appeals shall establish rules of procedure which shall, at a minimum, set a reasonable time for the hearing of an appeal, provide for public notice and set a reasonable time for rendering a decision after the hearing. At the hearing, any party may appear in person or be represented by an agent or attorney.

11-1.07 Appeals of Board of Appeals Decisions

(08/08/06)

Board of Appeals decisions may be appealed to the Circuit Court of Calvert County by: (1) any person aggrieved by any decision of the Board of Appeals or (2) any taxpayer, or (3) any officer, department, board or bureau of Calvert County. Such appeal shall be taken according to the Maryland Rules as set forth in Title 7, Chapter 200, as amended from time to time, within 30 days of the Board of Appeals Order.

11-2 PLANNING COMMISSION

(08/28/07) 11-2.01 Appeals to the Planning Commission

- A. In addition to the authority granted to the Planning Commission herein and by Article 66B of the Annotated Code of Maryland, the Planning Commission shall have the authority to hear appeals as specified by this Ordinance.
- B. The Planning Commission shall establish rules of procedure which shall set a reasonable time for the hearing of an appeal, provide for public notice, and set a reasonable time for rendering a decision after the hearing. At the hearing, any party may appear in person or be represented by an agent or attorney.

11-2.02 Appeals of Planning Commission Decisions

Notwithstanding any other provisions of this Article, any appeal from a decision of the Planning Commission shall be noted in the Circuit Court of Calvert County³ by: (a) any person aggrieved by any decision of the Planning Commission, or (b) any taxpayer, or (c) any officer, department, board or bureau of Calvert County. Such appeal shall be taken according to the Maryland Rules as set forth in Title 7, Chapter 200, as amended from time to time, within 30 days of the Planning Commission's decision.

(06/10/08) **11-3 ADMINISTRATIVE VARIANCES**

11-3.01 Administrative Variances

A. Purpose.

The purpose of this Section is to delegate to the Administrative Variance Officer approval authority to grant setback variances for single-family residences, accessory residential structures, and additions to residences and accessory structures.

B. Application.

1. An applicant seeking a variance may request the same of the Board of Appeals, pursuant to Section 11-1.01.A of this Ordinance, without first applying for an administrative variance.
2. A person requesting an administrative variance must file the required application with the Department of Planning and Zoning.
3. The application consists of the following:
 - a. an application form;
 - b. application fee;

³ Note: Any appeal from a decision of the Planning Commission for architectural review of a project associated with a Category I Site Plan (See Section 4-2.01.B.3) shall be noted in the Circuit Court for Calvert County. Such appeal shall be taken according to the Maryland Rules as set forth in Title 7, Chapter 200, as amended from time to time, within 30 days of the Planning Commission's decision. Any appeal from a decision of the Planning Commission for architectural review of any project other than those associated with a Category I Site Plan may be appealed to the Board of Appeals. Such appeal shall be made in accordance with Section 11-1.04 of the Calvert County Zoning Ordinance within 30 days of the Planning Commission's decision.

- c. written documents bearing the signatures of all affected property owners demonstrating that they agree with the requested variance for the specific, proposed development activity. Affected property owners include all owners of all properties that abut the side or rear property line from which an administrative variance is sought; or in the case of an administrative variance request for front setback adjustment, all owners of all properties that abut a side property line of the subject property and those whose properties lie directly across the street from the subject property; and
- d. a scale-drawing of the property showing the location and size of proposed structures and any additions to existing structures, as well as the distance between those structures and/or additions and all property boundaries.

C. Procedure.

The Administrative Variance Officer shall establish and publish procedures for the processing of applications including, but not limited to, the following:

- 1. Upon acceptance of the application, the Administrative Variance Officer shall mail a confirmatory notice to all affected property owners providing them with an opportunity to comment on the request within a specified time period.
- 2. The applicant shall post the property with a notice of the variance request for a period of 10 days after acceptance of the application by the Administrative Variance Officer.
- 3. If adverse comments are received from any property owners objecting to the variance request, the applicant shall be required to withdraw the application and submit a variance request to the Board of Appeals.
- 4. Prior to making a decision, the Administrative Variance Officer may visit the property to verify information contained in the application.

D. Criteria.

The Administrative Variance Officer may grant setback variances only where it is demonstrated that peculiar and unusual practical difficulties exist on the parcel which warrant a setback variance, and such difficulties are created by exceptional narrowness, shallowness, or shape of the parcel, by reason of exceptional topographical conditions, or by other extraordinary situations or conditions affecting the property. The applicant shall demonstrate that the following additional criteria have been met:

- 1. The requested variance shall not reduce required setbacks by more than 50 percent and in no case shall the required setback be reduced to less than five feet.
- 2. The proposed structure for which a variance is requested shall not exceed 1000 square feet in gross floor area.
- 3. Nothing in this Section is intended to authorize the Administrative Variance Officer to grant variances to State or local requirements that are intended to protect environmentally sensitive areas, such as streams, slopes, wetlands, natural heritage areas, or critical areas.
- 4. Administrative variances may not be granted for after-the-fact variance requests or to correct a zoning violation. Such variance requests shall be made to the Board of Appeals.

E. Decisions.

Unless delayed by actions of the applicant or affected property owners, the Administrative Variance Officer shall decide the issue raised by the application within 30 days of acceptance of the application. The decision shall be in writing and shall include findings of fact that support the decision. In granting an administrative variance, the Administrative Variance Officer may impose conditions that are reasonable or necessary for the protection of surrounding and neighboring properties.

F. Denials.

If the application is denied, all future variance applications involving substantially the same proposal on the same property shall be submitted to the Board of Appeals.

G. Appeals.

1. Any applicant aggrieved by a decision made pursuant to this Section may apply for a variance from the Board of Appeals in accordance with Section 11-1.01.A of this Ordinance.
2. Any person or persons, other than the applicant, aggrieved by a decision made pursuant to this Section may file an appeal with the Clerk to the Board of Appeals no later than 30 days from the date of the Administrative Variance Officer's decision. The Board of Appeals Clerk will schedule the appeal for the next available Board of Appeals public hearing. Such an appeal will be heard de novo in accordance with Section 11-1.04 of this Ordinance.

H. Fees.

The Board of County Commissioners shall be responsible for establishing the fee schedule for administrative variances, in accordance with Section 1-5 of this Ordinance.

**ARTICLE 12
DEFINITIONS**

<u>Term</u> (Date of Amendment)	<u>Definition</u>
Access	A way or means of approach to provide physical entrance to a property.
Accessory Apartment (08/27/07)	A second dwelling unit either within or added to a single-family detached dwelling, or in a separate accessory structure on the same lot as the principal dwelling, that functions as a complete, independent living facility with provisions for cooking, eating, sanitation, and sleeping.
Accessory Building, Structure, or Use (3/25/08)	A building, structure, or use on the same lot with, and of a nature customarily incidental to, a principal building, structure, or use.
Activities, Development	<u>See: Development Activities</u>
Activities, Fisheries	<u>See: Fisheries Activities</u>
Activity, Agricultural	<u>See: Agricultural Activity</u>
Activity, Regulated	<u>See: Regulated Activity</u>
Adaptive Re-use	A technique for leaving the outer shell of an old building intact and converting its interior to a more modern and profitable use.
Address, Premise	<u>See: Premise Address</u>
Administrative Variance (06/10/08)	A modification of the setback requirements of this Zoning Ordinance granted by the Administrative Variance Officer in accordance with Section 11-3.
Administrative Variance Officer (06/10/08)	The Director of the Department of Planning & Zoning or another designee authorized by the Board of County Commissioners to grant administrative variances in accordance with Section 11-3 of this Zoning Ordinance.
Adult Bookstore	<u>See: Adult Entertainment Business</u>
Adult Cabaret	<u>See: Adult Entertainment Business</u>
Adult Drive-in Theatre	<u>See: Adult Entertainment Business</u>
Adult Entertainment Business	Enterprises that provide activities characterized by live, closed circuit, or reproduced material, including print, audio, and audiovisual media, that has an emphasis on nudity and/or sexual activity and/or sexual stimulation. Adult entertainment businesses include but are not limited to the following types of establishments: adult bookstores, adult theaters, adult arcades, adult cabarets, gentlemen’s clubs or shows, strip clubs or shows, burlesque clubs or shows, adult paraphernalia shops, and other establishments which feature a combination of activities or merchandise described above which collectively make up a substantial or significant portion of the establishment’s activities or merchandise. The term adult entertainment business also includes other uses similar to the uses listed above, presenting material for patrons to view (live, closed circuit or reproductions using all types of media), and/or purchase or rent, a substantial portion of which is characterized by an emphasis on nudity and/or sexual activity and/or sexual stimulation, and limiting entrance to patrons who are over 18 years of age.

<u>Term</u> (Date of Amendment)	<u>Definition</u>
Adult Motion Picture Theatre	<u><i>See: Adult Entertainment Business</i></u>
Affordable Housing Agency	An agency organized for the purpose of developing residential housing for rental or ownership by residents having low and moderate incomes. These are defined as those below 80 percent of the median family income for the County. Further, to qualify as an Affordable Housing Agency, the agency must be established as a not-for-profit organization and meet Internal Revenue Service 5.01.C.3 criteria.
Afforestation	The creation of a biological community dominated by trees and other woody plants in an area that is not presently in forest cover
Agency, Affordable Housing	<u><i>See: Affordable Housing Agency</i></u>
Age-Qualified Resident	An occupant of a dwelling unit in an Age-Restricted Housing Community who is fifty-five (55) years of age or older who occupies the dwelling unit as his or her primary residence.
Age-Restricted Housing Community	A residential subdivision, townhouse, or multi-family development consisting of 20 or more residential units intended and operated for occupancy by at least one person fifty-five (55) years of age or older per dwelling unit.
Age-Restricted Housing Community Association	Any Maryland non-stock corporation or unincorporated residential association, established in accordance with the Maryland Homeowners Association Act or the Maryland Condominium Act to administer the covenants in an Age-Restricted Housing Community.
Age-Restricted Housing Community Covenants	Those portions of the governing documents of an Association that impose age restrictive requirements.
Agreement, Forest Conservation and Management	<u><i>See: Forest Conservation and Management Agreement</i></u>
Agreement, Maintenance	<u><i>See: Maintenance Agreement</i></u>
Agricultural / Seafood / Livestock Processing Plant	A facility used for the handling, unloading, storing, shucking, freezing, preparing, changing into different market forms, manufacturing, preserving, packing or labeling of agricultural commodities or fish, shellfish and related products.
Agricultural Activity	Farming activities including plowing, tillage, cropping, installation of best management practices, seeding, cultivating, and harvesting for production of food and fiber products (except commercial logging and timber harvesting operations), the grazing and raising of livestock, aquaculture, sod production, orchards, nursery, and other products cultivated as part of a recognized commercial enterprise.
Agricultural Easement	A non-possessory interest in land which restricts the conversion of use of the land, preventing non-agricultural uses.
Agricultural Machinery, Service and/or Supplies	A facility designed for the maintenance and sale of goods related to farm machinery including tractors, plows, backhoes, balers, harrows, harvesters, manure spreaders, seeders, and similar machinery used directly in agricultural production.