

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

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**11-1 BOARD OF APPEALS**

11-1.01 Variances<sup>1</sup>

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 hardships<sup>2</sup> 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
  - c. the variance is the minimum adjustment necessary to afford relief from the regulations; and

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<sup>1</sup> 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)

<sup>2</sup> 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.

- 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. With due regard for the person's technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:
  1. The applicant;
  2. The County or any other government agency; or
  3. Any other person deemed appropriate by the County
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

(05/04/10)

- h. the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the County'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.

(05/04/10)

- 7. Within ten working days after a written decision regarding a variance application is issued, a copy of the decision will be sent to the Critical Area Commission. Within thirty days after the date the Critical Area Commission receives the order or decision of the Board, the Commission may file a petition for judicial review of that decision. The County may not issue a permit for the activity that was the subject of the order or decision until the Commission's 30-day appeal period has elapsed.

C. Variances; Forest Conservation.

- 1. The Board of Appeals shall have the authority to grant variances from the Forest Conservation requirements of Section 8-3 of this Ordinance.
- 2. The Department of Planning and Zoning shall send notice of a request for a variance to the Maryland Department of Natural Resources within 15 days of receipt of a request for a variance.
- 3. A variance may be granted only if the criteria set forth in paragraph 'A.2' of this Section are met, the Board of Appeals makes the findings required by paragraph 'A.3' of this Section, and the applicant demonstrates and the Board further finds:
  - a. That 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 Forest Conservation Program would result in unwarranted hardship;
  - b. That a literal interpretation of the Calvert County Forest Conservation Program will deprive the applicant of rights commonly enjoyed by other properties in similar areas;
  - c. That the granting of a variance will not confer upon an applicant any special privilege that would be denied to other applicants;
  - d. That the variance request does not arise from any condition relating to land or building use, either permitted or non-conforming, on any neighboring property; and
  - e. That the granting of a variance will not adversely affect water quality.

D. Variances; Floodplain.

- 1. The Board of Appeals shall have the authority to grant variances from the floodplain requirements of Section 8-2 of this Ordinance and the Floodplain Management Ordinance.
- 2. A variance may be granted only if the criteria set forth in paragraph 'A.2' of this Section are met, the Board of Appeals makes the findings required by paragraph 'A.3' of this Section, and the applicant demonstrates and the Board further finds:
  - a. a showing of good and sufficient cause; and
  - b. a determination that failure to grant a variance would result in unwarranted hardship (other than economic) to the applicant; and

## 11-1.02 Special Exceptions

- c. a determination that the granting of a variance will not result in increased flood heights, increased threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing local or State laws or Ordinances.
  3. The variance shall be the minimum necessary, considering the flood hazard, to afford relief.
  4. The Department of Planning and Zoning shall solicit comments regarding the variance application from the Maryland Department of the Environment. Such comments shall be forwarded to, and considered by, the Board of Appeals.
- E. Change to Land Use Not Permitted.  
The provisions of this Section shall not be construed to permit the Board, under the guise of a variance, to change the permissible use of land.
- F. Imposition of Conditions.
  1. In granting a variance, the Board of Appeals may impose conditions or restrictions as it deems necessary or advisable for the protection of surrounding and neighboring properties.
  2. When appropriate, the Board may require a written agreement to be recorded among the land records maintained by the Clerk of the Circuit Court stipulating these conditions or restrictions.
  3. Any violation of conditions imposed by the Board of Appeals shall be considered a violation of this Ordinance and subject to the enforcement provisions of Section 1-7.
- G. If any application for a variance is denied by a final order of the Board, a second application involving substantially the same subject matter shall not be filed within one year from the date of the final order. If any such denial by the Board is appealed to a higher Court and the Board's denial is upheld, a second application involving substantially the same subject matter shall not be filed within one year from the date of the final order of the Court.

## 11-1.02 Special Exceptions

- A. The Board of Appeals shall have the authority to hear and decide petitions for special exceptions. Uses that require special exception approval are listed in the Land Use Charts (Article 3). A special exception is defined as, "A grant of a specific use that would not be appropriate generally or without restriction. Approval of a special exception is based upon a finding that certain conditions as detailed in the Zoning Ordinance are met, that the use conforms to the Comprehensive Plan and is compatible with the existing neighborhood."
- B. A special exception may be granted provided the applicant demonstrates and the Board of Appeals finds that:
  1. the proposed special exception does not adversely affect the implementation of the Comprehensive Plan for the physical development of the County, and
  2. the proposed special exception will not be detrimental to the permissible use and enjoyment of adjacent properties, or to the health, safety or general welfare of the County, and
  3. the proposed special exception will not create congestion on roads or streets, create fire hazards, tend to overcrowd land or unduly concentrate population, interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public services, or adversely interfere with the surrounding environment, and

4. the applicant can meet the conditions required by the Board and/or those specified in the Ordinance. The Board may waive the conditions spelled out in the Ordinance if such a waiver is specifically permitted by the Ordinance.
  5. Where the special exception is a use based upon the Historic District status of the property, the proposed use will not be detrimental to the historic integrity of the property.
- C. Imposition of Conditions.
1. In granting a special exception, the Board of Appeals shall impose conditions or restrictions as it deems necessary or advisable for the protection of surrounding and neighboring properties.
  2. When appropriate, the Board may require that a written agreement be recorded among the land records maintained by the Clerk of the Circuit Court stipulating these conditions or restrictions.
  3. Any violation of conditions imposed by the Board of Appeals shall be considered a violation of this Ordinance and subject to the enforcement provisions of Section 1-7. In addition, the Board of Appeals may rescind its approval of the special exception under the provisions of paragraph 'F' of this Section.
- D. The grant of a special exception shall lapse if:
1. the proposed use or the proposed construction has not commenced within a period of two years after the effective date of the special exception, or
  2. where the grant of the special exception has been appealed, the proposed use or the proposed construction has not commenced within two years of the date of a final order of the last appellate court to hear the matter including the granting of a special exception upon the remand by an appellate court.
- E. If the Board of Appeals finds that conditions unforeseeable at the time of the granting of the special exception have occurred, it may grant an extension to the two-year lapse provisions contained in paragraph 'D' of this Section, provided that application for an extension is made at least 30 days prior to the expiration date of the special exception.
- F. The Board of Appeals shall have the authority to rescind approval of a special exception if the conditions of approval are not met. The Department of Planning and Zoning may initiate action to have the special exception rescinded following the procedures listed below, in addition to other enforcement procedures authorized by Section 1-7 of this Zoning Ordinance.
1. If a violation is not corrected within the time specified by a violation notice issued by the Department of Planning and Zoning, the Department may forward a copy of the violation notice to the Board of Appeals so that a public hearing can be scheduled to consider rescinding the special exception.
  2. The Board of Appeals shall schedule and advertise a public hearing and notify parties of the hearing in accordance with its Rules of Procedure.
  3. The public hearing shall be limited to consideration of issues relating to the alleged violation(s).

#### 11-1.04 Decisions on Alleged Errors

4. After holding a public hearing, the Board of Appeals shall issue a written Order revoking or reaffirming the special exception. If the special exception is reaffirmed, the Board may amend, add to, or delete any of the conditions of the original approval. The Board may also reaffirm the special exception subject to a schedule for correction of specified violations, with provisions for automatic revocation if the property is not brought into compliance within the time period specified by the schedule.
- G. If any application for a special exception is denied by a final order of the Board, a second application involving substantially the same subject matter shall not be filed within one year from the date of the final order. If any such denial by the Board is appealed to a higher Court and the Board's denial is upheld, a second application involving substantially the same subject matter shall not be filed within one year from the date of the final order of the Court.

#### 11-1.03 Other Appeals to the Board of Appeals

The Board of Appeals shall have the authority to hear and decide other special requests as specified in the Ordinance, including but not limited to requests for expansion or replacement of non-conforming buildings or uses, requests for extension of the time period allowed for emergency use of recreational vehicles, etc.

#### 11-1.04 Decisions on Alleged Errors

(08/28/07)

- A. Unless otherwise provided in this Ordinance, the Board of Appeals shall have the authority to hear and decide appeals where it is alleged that there is an error:
1. in any denial of an application for a building permit, or
  2. in any other order, requirement, decision or determination made by the Zoning Officer or the Zoning Officer's designee or any other administrative official in the administration and enforcement of this Ordinance. This provision does not include decisions made by the Planning Commission. See Section 11-2 for appeals of Planning Commission decisions.
- B. An appeal noted under paragraph 'A' of this Section shall be filed with the Board of Appeals within 30 days after issuance of the decision on which the appeal is based.
- C. An appeal to the Board of Appeals may be filed by:
- any person or any officer, department, board, or bureau of the County aggrieved by any order, requirement, decision or determination made by the Zoning Officer or the Zoning Officer's designee or an administrative official in the administration or enforcement of this Ordinance.
- D. In exercising its powers, the Board of Appeals shall have all the powers of the Zoning Officer or administrative official from whom the appeal is taken and may:
1. wholly or partly reverse the order, requirement, decision or determination; or
  2. wholly or partly affirm the order, requirement, decision or determination; or
  3. modify the order, requirement, decision or determination; or
  4. issue a new order, requirement, decision or determination.

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.

(05/12/09) **11-2 APPEALS OF PLANNING COMMISSION DECISIONS**

Appeals of Decisions of the Planning Commission shall be noted in the Circuit Court of Calvert County. Appeals to Circuit Court shall be made in accordance with 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 final decision.

(08/28/07) 11-2.01 Appeals to the Planning Commission (Section Deleted 05/12/09)  
(05/12/09)

(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;
  - 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.

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