

(3) The following compost products are [exempt from] *not* subject to registration or regulation under this chapter:

- (a) (text unchanged)
  - [(b) Compost or soil conditioner from sewage sludge or septage;]
  - [(c)] (b) (text unchanged)
  - [(d) Mulch or fertilizer products made from the processing of compostable materials;]
  - [(e)] (c)—[(f)] (d) (text unchanged)
- B.—C. (text unchanged)

EARL F. HANCE  
Secretary of Agriculture

# Title 27

## CRITICAL AREA

### COMMISSION FOR THE

### CHESAPEAKE AND

### ATLANTIC COASTAL BAYS

#### Subtitle 01 CRITERIA FOR LOCAL

#### CRITICAL AREA PROGRAM

#### DEVELOPMENT

#### 27.01.12 Variances

Authority: Natural Resources Article, §8-1806, Annotated Code of Maryland

#### Notice of Proposed Action

[12-313-P]

The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays proposes to repeal existing Regulation .01 and adopt new Regulations .01—.07 under COMAR 27.01.12 Variances. This action was considered by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays at an open meeting held on October 3, 2012 pursuant to State Government Article, §10-506 (c), Annotated Code of Maryland.

#### Statement of Purpose

The purpose of this action is to update the existing variance provisions in the Critical Area variance regulations found in COMAR 27.01.12.01. The proposed regulations do not change the meaning or the intent of the existing variance regulations. Rather, the proposed regulations consolidate the existing variance provisions of the law with the existing variance provisions from COMAR into one self-contained chapter of COMAR. This action will make it easier for local governments and variance applicants to find the applicable requirements.

#### Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

#### Estimate of Economic Impact

The proposed action has no economic impact.

#### Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

#### Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

#### Opportunity for Public Comment

Comments may be sent to Amber Widmayer, Planner, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays, 1804 West Street, Suite 100, Annapolis, MD 21401, or call 410-260-3481, or email to [awidmayer@dnr.state.md.us](mailto:awidmayer@dnr.state.md.us), or fax to 410-974-5338. Comments will be accepted through December 17, 2012. A public hearing has not been scheduled.

#### .01 Definition.

In this chapter, "unwarranted hardship" means that, without a variance, an applicant shall be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

#### .02 Local Program Requirements.

A. A local jurisdiction shall include standards and procedures in its local Critical Area program for the granting of a variance to the provisions of Title 8, Subtitle 18, Natural Resources Article, Annotated Code of Maryland, COMAR 27.01, and its local program requirements.

B. A local jurisdiction may establish additional, more restrictive standards for the granting of a variance consistent with the intent and purposes of this subtitle and the approved local Critical Area program.

#### .03 Standing.

In accordance with Natural Resources Article, § 8-1808(d)(2), Annotated Code of Maryland, if a person meets the threshold standing requirements under federal law, the person shall have standing to participate as a party in a local administrative proceeding.

#### .04 Variance Standards.

A local jurisdiction may not grant a variance unless the local jurisdiction makes written findings based on competent and substantial evidence that:

(1) In accordance with Natural Resources Article, § 8-1808(d)(3)(ii), Annotated Code of Maryland, an applicant has overcome the presumption that the specific development activity for which the variance is required does not conform with the general intent of the local jurisdiction's program; and

(2) B. The applicant has satisfied each of the following variance provisions:

(1) Due to special features of the site or special conditions or circumstances peculiar to the applicant's land or structure, a literal enforcement of the local Critical Area program would result in an unwarranted hardship to the applicant;

(2) A literal interpretation of the local Critical Area program would deprive the applicant of a use of land or a structure permitted to others in accordance with the provisions of the local Critical Area program;

(3) The granting of the variance would not confer upon the applicant any special privilege that would be denied by the local Critical Area program to other lands or structures in accordance with the provisions of the local Critical Area program;

(4) The variance request is not based upon conditions or circumstances that are the result of actions by the applicant;

(5) The variance request does not arise from any conforming or nonconforming condition on any neighboring property;

(6) The granting of the variance would not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's local Critical Area; and

(7) The granting of the variance would be in harmony with the general spirit and intent of the Critical Area law, the regulations in this subtitle, and the local Critical Area program.

**.05 Variance Procedures.**

A. With due regard for a person's experience, technical competence, and specialized knowledge, a local jurisdiction may base its written findings required in Regulation .04 of this chapter on evidence introduced and testimony presented by:

- (1) The applicant;
- (2) The local jurisdiction or another government agency; or
- (3) A person deemed appropriate by the local jurisdiction.

B. Within 10 working days after a local jurisdiction's issuance of a written variance decision described in Regulation .04 of this chapter, the Commission shall receive a copy of the decision from the local jurisdiction.

**.06 After-the-Fact Variance Procedures.**

A. A local jurisdiction may not accept an application for a variance to legalize a violation of this subtitle, including an unpermitted structure or other development activity, until the local jurisdiction;

- (1) Issues a notice of violation; and
- (2) Assesses an administrative or civil penalty for the violation.

B. A local jurisdiction may not issue a permit, approval, variance, or special exception to legalize a violation of this subtitle unless an applicant has:

(1) Fully paid all administrative, civil, and criminal penalties imposed under Natural Resources Article, § 8-308(c)(1)(iii)14-15 and (2)(i), Annotated Code of Maryland;

(2) Prepared a restoration or mitigation plan, approved by the local jurisdiction, to abate impacts to water quality or natural resources as a result of the violation; and

(3) Performed the abatement measures in the approved plan in accordance with the local Critical Area program.

C. If a local jurisdiction denies the requested after-the-fact variance, then the local jurisdiction shall:

- (1) Order removal or relocation of any structure; and
- (2) Order restoration of the affected resources.

**.07 Variance Appeals.**

A. A person with standing under Regulation .03 of this chapter may:

(1) Participate as a party in an administrative proceeding at a board of appeals even if the person was not a party to the original administrative proceeding; and

(2) Petition for judicial review and participate as a party even if the person was not a party to the action which is the subject of the petition.

B. An appeal may be filed by:

(1) A person aggrieved or adversely affected by a decision made under this chapter, including a government agency; and

(2) The Chairman, even if the Chairman was not a party to or is not specifically aggrieved by the action or decision.

C. A local jurisdiction may not issue a permit for the activity that was the subject of the variance application until the applicable 30-day appeal period has elapsed.

MARGARET G. McHALE

Chair

Critical Area Commission for the  
Chesapeake and Atlantic Coastal Bays

