



## Dorchester County Critical Area Administrative Variance Application Packet

### Application Instructions

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1. Application for Variance: Complete the Administrative Variance Application form. This application informs the Planning Director of the purposes of the application and provides general information. You may attach additional typewritten pages if more space is needed.
2. Variance Criteria & Written Statements: This portion of the application sets forth the legal findings on which the Planning Director will base their decision. Please respond in writing to each of the warrants. The Director and Planning Commission will use this information to help better understand your request. They are the basis for the Variance.
4. Site Plan: The applicant is responsible for preparing a site plan which included: dimensions of the property; location of all existing buildings and proposed additions or relocation showing setbacks from property lines; lot coverage calculations; buffer lines.
5. Notification of Administrative Variance request sent to Surrounding Property Owners by mail.
6. Fee: Application fee of \$150.00 made out to Dorchester County.

**The following criteria are for informational purposes only. Please read and if you have any questions please ask for clarification.**

Meeting Notice: Public notice shall be given for a public meeting by notifying surrounding property owners.

Planning Director Staff Report: Before making a recommendation for any application for an Administrative Variance the Planning Commission shall seek staff comments from the Planning Director. The Commission may request from the Planning Director such technical service, data, or factual evidence as will further assist them in reaching decisions.

Planning Director Conditions of Approval: In granting Administrative Variances, the Planning Director may impose reasonable conditions as to ensure that the use of the property to which the Variance applies will be as practicable with the surrounding properties.

Variance Time Limit: The Planning Director may impose a time limit to which an approved Administrative Variance must be executed.

Planning Director's Decision: The decision and supported findings, along with any conditions attached to the decision shall be entered into and become part of the written record of the

Critical Area Notification: The Planning Director shall forward a copy of all Critical Area Administrative Variance applications to the Chesapeake Bay Critical Area Commission prior to Planning Commission review. Any comments received from the Critical Area Commission in response to an application for an Administrative Variance shall be forwarded to the Planning

Commission and Planning Officer for consideration.

Appeal of Planning Director's Decision: Upon a determination by the Planning Director that the proposed Administrative Variance does not meet the criteria the applicant may file for an appeal within 30 days in the form of an application for a Variance by the Board of Appeals.

**ADMINISTRATIVE VARIANCES IN THE CRITICAL AREA STANDARDS:**

On a lot or parcel that was recorded before January 1, 2010, an administrative variance in the critical area may be granted for the **replacement, expansion, or relocation of a legally existing, nonconforming structure, the construction of a new accessory structure, or the construction of a new primary structure within the buffer that meets the following conditions:** All properties will comply with the lot coverage restrictions in § 68-16.E

**Replacement of a structure or the expansion of a structure in the 100-foot tidewater buffer:**

- (i) The replacement or expansion does not encroach any further than the existing structure into the 100-foot tidewater buffer, unless the proposed development is restricted by more than one buffer; in this case, the proposed expansion may not encroach any further than 50 feet into any one of the buffers;
- (ii) The proposed expansion will not enlarge the existing footprint of the structure by greater than 30% of what existed on March 8, 2010, or 500 square feet, whichever is greater; and

**Replacement of a structure or the expansion of a structure in the expanded buffer (Except as in COMAR 27.01.09.01.E.8 (75% rule))**

- (i) The replacement or expansion does not encroach into the 100-foot tidewater buffer;
- (ii) the proposed expansion will not enlarge the existing footprint of the structure by greater than 30% of what existed on March 8, 2010, or 500 square feet, whichever is greater

**Relocation in the 100-foot or expanded buffer:**

- (i) The relocated structure lessens the extent of the nonconformity, unless the proposed development is restricted by more than one buffer; in this case the proposed relocation may not encroach any further than 50 feet into any one of the buffers;

**Construction of a driveway in the 100-foot and/or expanded buffer:**

- (i) The routing of the driveway through the buffer shall provide direct access to the property, given site conditions, and for which there is no feasible alternative. Tree clearing and impacts to Habitat Protection Areas as defined in §68-24 shall be minimized;
- (ii) The width of the driveway shall not exceed 12 feet;

**New accessory structure in the 100-foot or expanded buffer:**

- (i) The new accessory structure will not be located any further shoreward than the closest point of the existing primary structure , unless the proposed development is restricted by more than one buffer; in this case the proposed expansion may not encroach any further than 50 feet into any one of the buffers;
- (ii) The size of the new accessory structure will not exceed 30% of the footprint of the primary structure as it existed on March 8, 2010;
- (iii) If no lot coverage associated with a primary structure existed on the site as of March 8, 2010, the size of the new accessory structure will not exceed 500 square feet; and
- (iv) The property will comply with the lot coverage restrictions in § 68-7.C.(10), (11) and accessory structure limitations in § 155-50.A. A lot coverage exchange may be conducted in accordance with §68-7.C.(10).(f).
- (v) The footprint of any new accessory structure approved by an administrative variance shall be counted against the expansion of a primary structure allowed under § 68-16.E.

**New principal in the expanded buffer** (Except as in COMAR 27.01.09.01.E.8, 75% rule);

- (i) The new principal structure and any associated parking pad or accessory structure shall not encroach into the 100-foot tidewater buffer;
- (ii) The footprint of the new principal structure and any associated parking pad and/or accessory structure within the expanded buffer shall not exceed 2,500 square feet;
- (iii) The width of a proposed driveway within the expanded buffer shall not exceed 12 feet.

**Deck attached to the primary structure:**

- (i) Within the 100-foot buffer:
  - (a) The deck is constructed with decking material that has gaps to allow water to pass freely;
  - (b) Lot coverage cannot be located over and/or under the proposed deck;
  - (c) The deck will be no greater than 500 square feet; and
  - (d) The location of the deck cannot result in the 100-foot buffer being reduced to less than 50 feet.
- (ii) Within the expanded buffer:
  - (a) The deck is constructed with decking material that has gaps to allow water to pass freely;

- (b) Lot coverage cannot be located over and/or under the proposed deck;
  - (c) The deck will be no greater than 500 square feet; and
  - (d) The location of the deck does not encroach into the 100-foot buffer.
- (iii) An approval of a deck(s) through an administrative variance:
- (a) Does not expand the footprint of the existing structure;
  - (b) Does not allow the deck to become the closest point to the water of the structure to which it is attached; the closest point shall remain within the footprint of the existing structure.
- (iv) A deck(s) approved by an administrative variance shall not be converted to lot coverage.

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**PLANTINGS MITIGATION:** Any approved Administrative Variance in the Critical Area for buffer encroachment under the provisions of §68-16.E of the Dorchester County Chesapeake Bay Critical Area Ordinance shall be mitigated as per §68-25.E.

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**CRITERIA:** The applicant shall provide **written statements** and has the burden of proof to satisfy each of the following variance provisions below: (see form)

- (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 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, and the local Critical Area program.



**Forms:**

Application Form, Criteria Written Statements, and Disclosure and Acknowledgement Form

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The request is hereby made for an Administrative Variance of the 100' Buffer and Expanded Buffer for Hydric Soils pursuant to the provisions of Chapter 68-16.E., Chesapeake Bay Critical Area, of the Dorchester County Code on a lot or parcel that was recorded before January 1, 2010.

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**Application Form**

Name of Applicant: \_\_\_\_\_

Date \_\_\_\_\_

Briefly describe Variance requested:

\_\_\_\_\_  
\_\_\_\_\_

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NOTE: IN SUBMITTING THIS APPLICATION, YOU GRANT THE PLANNING DIRECTOR AND STAFF THE RIGHT OF UNSCHEDULED ENTRY ONTO THE PROPERTY FOR PURPOSES OF OBTAINING INFORMATION AND PHOTOGRAPHS FOR A STAFF REPORT.

**PROPERTY DESCRIPTION:** Tax Map No. \_\_\_\_\_ Parcel \_\_\_\_\_ Block \_\_\_\_\_  
Section \_\_\_\_\_ Lot \_\_\_\_\_

Tax ID No. \_\_\_\_\_ Property Zoning Classification \_\_\_\_\_ CA Classification \_\_\_\_\_

Property Address \_\_\_\_\_

Has subject property ever been before the Board of Appeals? \_\_\_ (yes) \_\_\_ (no)

Has subject property ever submitted for/received Administrative Variance? \_\_\_ (yes) \_\_\_ (no)

If yes to either, give Case No. and date: \_\_\_\_\_

**PROPERTY OWNER(S):**

Printed Name(s): \_\_\_\_\_

Mailing address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: Home: \_\_\_\_\_ Work: \_\_\_\_\_ Cell: \_\_\_\_\_

Email Address: \_\_\_\_\_

Owner's signature and date:

Co-Owner's signature and date:

\_\_\_\_\_  
\_\_\_\_\_

**Applicant** (if different from owner):

Printed Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**PURPOSE OF VARIANCE**

**REQUEST IS FOR:** (check all items that apply)

- Variance
- Revision to a Previously Approved Variance

**Check all that apply:**

- Replacement or Expansion of Structure in the 100' Buffer
- Replacement or Expansion of Structure in the Expanded Buffer
- Relocation of Structure in the 100' Buffer or Expanded Buffer
- New Accessory Structure in the 100' Buffer or Expanded Buffer
- New Principal Structure in the Expanded Buffer
- Deck in the 100' Buffer or Expanded Buffer

**Attached:**

- Site Plan  Criteria Written Statements  Disclosure Form  Fee Paid

*For Office Use Only:* Date Received: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_



**CRITICAL AREA ADMINISTRATIVE VARIANCE CRITERIA STATEMENTS:**

**APPLICANT:** \_\_\_\_\_

1. The variance (**will**) (**will not**) (circle one) be contrary to the public interest.

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- a. Special conditions and circumstances (**do**) (**do not**) exist which are peculiar to the land, structure or building involved and that literal enforcement of the provisions of the Critical Area Protection Program (**would**) (**would not**) result in unwarranted hardship.

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- b. Literal interpretation of the provisions of this ordinance and the Critical Area Protection Program (**would**) (**would not**) deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of the Dorchester County Zoning Ordinance.

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- c. Granting the variance requested **(will) (will not)** confer upon the applicant any special privilege that is denied by the Dorchester County Zoning Ordinance to other land, structure or buildings in the same district or within the Critical Area.

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- d. The special conditions or circumstances **(did) (did not)** result from actions of the applicant, (including the commencement of development activity before an application for a variance or building permit has been filed), nor does the request arise from any condition relating to land or building use, either permitted or nonconforming on any neighboring property.

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- e. The granting of a variance **(will) (will not)** adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area, and **(will) (will not)** be in harmony with the general spirit and intent of the Critical Area Law.

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- f. Applicant **(has) (has not)** met the burden of proof and persuasion sufficient to overcome the presumption of nonconformity based on all of the foregoing criteria.

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## Independent Procedures Disclosure and Acknowledgement Form

Proposed Project Name: \_\_\_\_\_

Physical Address of Property: \_\_\_\_\_

Tax Map: \_\_\_\_\_ Grid: \_\_\_\_\_ Parcel: \_\_\_\_\_ Lot: \_\_\_\_\_ Zone: \_\_\_\_\_

Name of Applicant: \_\_\_\_\_

Phone Number(s): \_\_\_\_\_

Applicant Agent: \_\_\_\_\_

Phone Number(s): \_\_\_\_\_

Property Owner: \_\_\_\_\_

Phone Number(s): \_\_\_\_\_

Applicant acknowledges and understands:

1. This Application may be subject to local, state and federal laws, Ordinances, rules, or regulations (hereafter "Laws") other than those that the Director of Planning or Board of Appeals reviews, administers, or applies in connection with this review.
2. Other agencies, including but not limited to the Dorchester County Health Department, Division of Environmental Health, Maryland Department of the Environment, U.S. Army Corps of Engineers, Maryland Department of Natural Resources, US Fish and Wildlife Service and others may also have review authority over the project or development proposed in the application.
3. Applicant remains solely responsible for compliance with all applicable laws, ordinances, rules, or regulations.
4. Applicant understands that review of this Application does not necessarily include review of any other applicable laws.
5. Applicant understands that neither the Office of Planning & Zoning nor any of its employees has authority to grant permission or approval of any project or proposed development that violates any applicable law, ordinance, rule, or regulation of Dorchester County, Maryland, and that any such approval issued in error has no enforceable legal effect.
6. Applicant understands that any decision issued by the Director of Planning or by the Board of Appeals does not necessarily guarantee or assure the applicant that this project or proposed development may proceed.

I HEREBY CERTIFY that I have read, acknowledge, and understand the foregoing.

\_\_\_\_\_ (signature)

Applicant

\_\_\_\_\_ (signature)

Applicant/Agent

*For Office Use Only:* Date Received: \_\_\_\_\_

Comments: \_\_\_\_\_

\_\_\_\_\_