

(2) IN DETERMINING THE AMOUNT OF THE PENALTY TO BE ASSESSED UNDER PARAGRAPH (1)(XIV) OF THIS SUBSECTION, A LOCAL JURISDICTION MAY CONSIDER:

(I) THE GRAVITY OF THE VIOLATION;

(II) ANY WILLFULNESS OR NEGLIGENCE INVOLVED IN THE VIOLATION; AND

(III) THE ENVIRONMENTAL IMPACT OF THE VIOLATION.

(d) (1) IN THIS SUBSECTION, "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.

(2) (I) IN CONSIDERING AN APPLICATION FOR A VARIANCE, A LOCAL JURISDICTION SHALL PRESUME THAT ~~ANY NEW~~ 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 LOCAL PROGRAM GENERAL PURPOSE AND INTENT OF THIS SUBTITLE, REGULATIONS ADOPTED UNDER THIS SUBTITLE, AND THE REQUIREMENTS OF THE LOCAL JURISDICTION'S PROGRAM.

(II) 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, A LOCAL JURISDICTION MAY CONSIDER THAT FACT.

(3) (I) AN APPLICANT HAS THE BURDEN OF PROOF AND THE BURDEN OF PERSUASION TO OVERCOME THE PRESUMPTION ESTABLISHED UNDER PARAGRAPH (2)(I) OF THIS SUBSECTION.

(II) 1. BASED ON COMPETENT AND SUBSTANTIAL EVIDENCE, A LOCAL JURISDICTION SHALL MAKE WRITTEN FINDINGS AS TO WHETHER THE APPLICANT HAS OVERCOME THE PRESUMPTION ESTABLISHED UNDER PARAGRAPH (2)(I) OF THIS SUBSECTION.

2. WITH DUE REGARD FOR THE PERSON'S EXPERIENCE, TECHNICAL COMPETENCE, AND SPECIALIZED KNOWLEDGE, THE WRITTEN FINDINGS MAY BE BASED ON EVIDENCE INTRODUCED AND TESTIMONY PRESENTED BY:

A. THE APPLICANT;

B. THE LOCAL JURISDICTION OR ANY OTHER GOVERNMENT AGENCY; OR

C. ANY OTHER PERSON DEEMED APPROPRIATE BY THE LOCAL JURISDICTION.

(4) A variance to a local jurisdiction's critical area program may not be granted unless: