

~~(ii)~~ (III) 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~~ SHALL 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)~~ (2)(II) 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:

(i) Due to special features of a site, or special conditions or circumstances peculiar to the applicant's land or structure, a literal enforcement of the critical area program would result in unwarranted hardship to the applicant;

(ii) The local jurisdiction finds that the applicant has satisfied each one of the variance provisions; and

(iii) Without the variance, the applicant would be deprived of a use of land or a structure permitted to others in accordance with the provisions of the critical area program.

(5) (I) WITHIN 10 WORKING DAYS AFTER ~~ISSUANCE~~ A WRITTEN DECISION REGARDING A VARIANCE APPLICATION IS ISSUED, THE COMMISSION SHALL RECEIVE ~~WRITTEN NOTICE~~ A COPY OF THE DECISION FROM A LOCAL JURISDICTION ~~REGARDING ITS DECISION ON EACH VARIANCE APPLICATION.~~