HB 661

Department of Legislative Services

Maryland General Assembly
2001 Session

FISCAL NOTE

House Bill 661 (Delegate Weir, *et al.*)
(Chairman, Critical Areas Oversight Committee)
Environmental Matters

Chesapeake Bay Critical Area Protection Program - Variances

This bill provides that a local jurisdiction's critical area program must include provisions for granting a variance to the program in accordance with specified regulations adopted by the Critical Areas Commission. A variance may not be granted unless: (1) 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; (2) the local jurisdiction finds that the applicant has satisfied each of the variance provisions; and (3) without the variance, the applicant would be deprived of a use of land or a structure permitted to others under the jurisdiction's critical area program.

Fiscal Summary

State Effect: None. The bill codifies and clarifies existing regulations.

Local Effect: The bill would not materially affect local operations or finances.

Small Business Effect: Minimal.

Analysis

Bill Summary: "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.

Current Law: Each local jurisdiction has primary responsibility for developing and implementing a local critical areas program, subject to review and approval by the Chesapeake Bay Critical Areas Commission. The Governor must include in the budget each year a sum of money to be used for grants to assist local jurisdictions with the reasonable costs of implementing such a program. At a minimum, a program sufficient to meet the goals of the critical areas law includes: (1) a map designating the critical area in a local jurisdiction; (2) a comprehensive zoning map for the critical area; (3) as necessary, new or amended provisions of specified regulations, plans, and enforcement provisions; (4) provisions requiring project approvals to be based on findings that meet specified standards; (5) provisions to limit the amount of land covered by specified impervious surfaces and to require or encourage cluster development; (6) establishment of buffer areas along shorelines; (7) requirements for minimum setbacks for structures and septic fields along shorelines; (8) designation of shoreline areas suitable for specified uses; (9) provisions related to harvesting of timber; (10) provisions establishing the applicability of specified water pollution controls; and (11) provisions for reasonable accommodations in policies or procedures when the accommodations are necessary to avoid discrimination on the basis of physical disability.

Background: Chapter 794 of 1984 established the Chesapeake Bay Critical Area Protection Program in the Department of Natural Resources (DNR) to foster more sensitive development activity in a consistent and uniform manner along shoreline areas of the Chesapeake Bay and its tributaries so as to minimize damage to water quality and natural habitats.

Current regulations provide that local jurisdictions must make provision for the granting of variances to those criteria where, owing to special features of a site or other circumstances, local government implementation or a literal enforcement of provisions within the jurisdiction's critical area program would result in unwarranted hardship to an applicant. The variance provisions must, at a minimum, provide for the following:

- that findings are made by the local jurisdiction which demonstrate that special conditions or circumstances exist that are peculiar to the land or structure within the jurisdiction's program, would result in unwarranted hardship;
- that a literal interpretation of the regulations or the local 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 local jurisdiction;
- that the granting of a variance will not confer upon an applicant any special privilege that would be denied to other lands or structures within the jurisdiction's critical area;

- that the variance request is not based upon conditions or circumstances that are the result of actions by the applicant, nor does the request arise from any condition conforming, on any neighboring property;
- that the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the jurisdiction's critical area, and that the granting of the variance will be in harmony with the general spirit and intent of the law and regulations; and
- that applications for a variance will be made in writing to the local approving authority with a copy provided to the Critical Area Commission.

According to DNR, judicial interpretation of these regulations has been inconsistent over the last several years.

Additional Information

Prior Introductions: None.

Cross File: SB 607 (Senator Dyson) – Economic and Environmental Affairs.

Information Source(s): Department of Natural Resources, Prince George's County, Department of Legislative Services

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ef/jr

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