

HOUSE BILL 528

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SB 607/01 - EEA

2002 Regular Session
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By: **Delegate Weir (Chairman, Joint Committee on the Chesapeake Bay
Critical Areas), the Speaker (Administration), and Delegates W. Baker,
Cadden, and Owings**

Introduced and read first time: January 31, 2002
Assigned to: Environmental Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 22, 2002

CHAPTER _____

1 AN ACT concerning

2 **Chesapeake Bay Critical Area Protection Program**

3 FOR the purpose of altering the requirements for local critical area programs to
4 include certain variance provisions; prohibiting a variance from being granted
5 unless certain conditions are met; requiring a local jurisdiction, in considering
6 an application for a variance, to consider reasonable use of the entire parcel or
7 lot for which the variance is requested; providing that certain provisions of this
8 Act do not apply to certain permits or activities which comply with certain buffer
9 exemption plans or buffer management plans; revising the period of time for the
10 review of certain critical area programs by local jurisdictions; ~~defining a certain~~
11 ~~term~~; removing certain obsolete language; providing for the application of this
12 Act; and generally relating to the Chesapeake Bay Critical Area Protection
13 Program.

14 BY repealing and reenacting, without amendments,
15 Article - Natural Resources
16 Section 8-1801
17 Annotated Code of Maryland
18 (2000 Replacement Volume and 2001 Supplement)

19 BY repealing and reenacting, with amendments,
20 Article - Natural Resources
21 Section 8-1808 and 8-1809(g)
22 Annotated Code of Maryland
23 (2000 Replacement Volume and 2001 Supplement)

1

Preamble

2 WHEREAS, State lawmakers in 1984 recognized the importance of fostering
3 more sensitive development activity along the shoreline areas of the Chesapeake Bay
4 and its tributaries, from the standpoint of protecting and preserving water quality
5 and natural habitats, with the adoption of the Chesapeake Bay Critical Area
6 Protection Act; and

7 WHEREAS, The grandfathering provisions of the enabling Act and its
8 accompanying Criteria provided certain exemptions for grandfathered properties
9 from density limits, but the Criteria expressly provided that grandfathered properties
10 were not exempt from Habitat Protection Area (HPA) or water-dependent facilities
11 requirements; and

12 WHEREAS, The Criteria provide that variances to a jurisdiction's local Critical
13 Area Program may be granted in certain circumstances; and

14 WHEREAS, Recent decisions by the Maryland Court of Appeals have held that
15 a variance may be granted if the regulations would deny development on a specific
16 portion of an applicant's property rather than considering alternative locations
17 on-site; and

18 WHEREAS, The Court of Appeals has ruled that a local Board of Appeals, when
19 determining if denial of a variance would deny an applicant rights commonly enjoyed
20 by others in the Critical Area, may compare a proposal to nonconforming uses or
21 development that predated implementation of a local Critical Area Program; and

22 WHEREAS, The Court of Appeals has ruled that an applicant for a variance
23 from Critical Area requirements may generally satisfy the variance standards of a
24 local zoning ordinance, rather than satisfy all of the standards; and

25 WHEREAS, These recent rulings by the Court of Appeals are contrary to the
26 intent of the General Assembly in enacting the Chesapeake Bay Critical Area
27 Protection Act; and

28 WHEREAS, It is the intent of this Act to overrule these recent decisions of the
29 Court of Appeals regarding variances to Critical Area regulations; now, therefore,

30 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
31 MARYLAND, That the Laws of Maryland read as follows:

32

Article - Natural Resources

33 8-1801.

34 (a) The General Assembly finds and declares that:

35 (1) The Chesapeake Bay and its tributaries are natural resources of
36 great significance to the State and the nation;

1 (2) The shoreline and adjacent lands constitute a valuable, fragile, and
2 sensitive part of this estuarine system, where human activity can have a particularly
3 immediate and adverse impact on water quality and natural habitats;

4 (3) The capacity of these shoreline and adjacent lands to withstand
5 continuing demands without further degradation to water quality and natural
6 habitats is limited;

7 (4) National studies have documented that the quality and productivity
8 of the waters of the Chesapeake Bay and its tributaries have declined due to the
9 cumulative effects of human activity that have caused increased levels of pollutants,
10 nutrients, and toxics in the Bay System and declines in more protective land uses
11 such as forestland and agricultural land in the Bay region;

12 (5) Those portions of the Chesapeake Bay and its tributaries within
13 Maryland are particularly stressed by the continuing population growth and
14 development activity concentrated in the Baltimore-Washington metropolitan
15 corridor;

16 (6) The quality of life for the citizens of Maryland is enhanced through
17 the restoration of the quality and productivity of the waters of the Chesapeake Bay
18 and its tributaries;

19 (7) The restoration of the Chesapeake Bay and its tributaries is
20 dependent, in part, on minimizing further adverse impacts to the water quality and
21 natural habitats of the shoreline and adjacent lands;

22 (8) The cumulative impact of current development is inimical to these
23 purposes; and

24 (9) There is a critical and substantial State interest for the benefit of
25 current and future generations in fostering more sensitive development activity in a
26 consistent and uniform manner along shoreline areas of the Chesapeake Bay and its
27 tributaries so as to minimize damage to water quality and natural habitats.

28 (b) It is the purpose of the General Assembly in enacting this subtitle:

29 (1) To establish a Resource Protection Program for the Chesapeake Bay
30 and its tributaries by fostering more sensitive development activity for certain
31 shoreline areas so as to minimize damage to water quality and natural habitats; and

32 (2) To implement the Resource Protection Program on a cooperative
33 basis between the State and affected local governments, with local governments
34 establishing and implementing their programs in a consistent and uniform manner
35 subject to State criteria and oversight.

1 8-1808.

2 (a) (1) It is the intent of this subtitle that each local jurisdiction shall have
3 primary responsibility for developing and implementing a program, subject to review
4 and approval by the Commission.

5 (2) The Governor shall include in the budget a sum of money to be used
6 for grants to reimburse local jurisdictions for the reasonable costs of developing a
7 program under this section. Each local jurisdiction shall submit to the Governor [by
8 October 31, 1984] a detailed request for funds that are equivalent to the additional
9 costs incurred in developing the program under this section.

10 (3) The Governor shall include in the budget annually a sum of money to
11 be used for grants to assist local jurisdictions with the reasonable costs of
12 implementing a program under this section. Each local jurisdiction shall submit to
13 the Governor by May 1 of each year a detailed request for funds to assist in the
14 implementation of a program under this section.

15 (b) A program shall consist of those elements which are necessary or
16 appropriate:

17 (1) To minimize adverse impacts on water quality that result from
18 pollutants that are discharged from structures or conveyances or that have run off
19 from surrounding lands;

20 (2) To conserve fish, wildlife, and plant habitat; and

21 (3) To establish land use policies for development in the Chesapeake Bay
22 Critical Area which accommodate growth and also address the fact that, even if
23 pollution is controlled, the number, movement, and activities of persons in that area
24 can create adverse environmental impacts.

25 (c) At a minimum, a program sufficient to meet the goals stated in subsection
26 (b) of this section includes:

27 (1) A map designating the critical area in a local jurisdiction;

28 (2) A comprehensive zoning map for the critical area;

29 (3) As necessary, new or amended provisions of the jurisdiction's:

30 (i) Subdivision regulations;

31 (ii) Comprehensive or master plan;

32 (iii) Zoning ordinances or regulations;

33 (iv) Provisions relating to enforcement; and

34 (v) Provisions as appropriate relating to grandfathering of
35 development at the time the program is adopted or approved by the Commission;

1 (4) Provisions requiring that project approvals shall be based on findings
2 that projects are consistent with the standards stated in subsection (b) of this section;

3 (5) Provisions to limit the amount of land covered by buildings, roads,
4 parking lots, or other impervious surfaces, and to require or encourage cluster
5 development, where necessary or appropriate;

6 (6) Establishment of buffer areas along shorelines within which
7 agriculture will be permitted only if best management practices are used, provided
8 that structures or any other use of land which is necessary for adjacent agriculture
9 shall also be permitted in any buffer area;

10 (7) Requirements for minimum setbacks for structures and septic fields
11 along shorelines;

12 (8) Designation of shoreline areas, if any, that are suitable for parks,
13 hiking, biking, wildlife refuges, scenic drives, public access or assembly, and
14 water-related recreation such as boat slips, piers, and beaches;

15 (9) Designation of shoreline areas, if any, that are suitable for ports,
16 marinas, and industries that use water for transportation or derive economic benefits
17 from shore access;

18 (10) Provisions requiring that all harvesting of timber in the Chesapeake
19 Bay Critical Area be in accordance with plans approved by the district forestry board;

20 (11) Provisions establishing that the controls in a program which are
21 designed to prevent runoff of pollutants will not be required on sites where the
22 topography prevents runoff from directly or indirectly reaching tidal waters; [and]

23 (12) Provisions for reasonable accommodations in policies or procedures
24 when the accommodations are necessary to avoid discrimination on the basis of
25 physical disability, including provisions that authorize a local jurisdiction to require
26 removal of a structure that was installed or built to accommodate a physical disability
27 and require restoration when the accommodation permitted by this paragraph is no
28 longer necessary; AND

29 (13) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,
30 PROVISIONS FOR GRANTING A VARIANCE TO THE LOCAL JURISDICTION'S CRITICAL
31 AREA PROGRAM, IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE
32 COMMISSION CONCERNING VARIANCES SET FORTH IN COMAR 27.01.11.

33 (D) (1) ~~IN THIS SUBSECTION, "UNWARRANTED HARDSHIP" MEANS THAT,~~
34 ~~WITHOUT A VARIANCE, AN APPLICANT WOULD BE DENIED REASONABLE AND~~
35 ~~SIGNIFICANT USE OF THE ENTIRE PARCEL OR LOT FOR WHICH THE VARIANCE IS~~
36 ~~REQUESTED.~~

37 (2) A VARIANCE TO A LOCAL JURISDICTION'S CRITICAL AREA PROGRAM
38 MAY NOT BE GRANTED UNLESS:

1 (I) DUE TO SPECIAL FEATURES OF A SITE, OR SPECIAL
 2 CONDITIONS OR CIRCUMSTANCES PECULIAR TO THE APPLICANT'S LAND OR
 3 STRUCTURE, A LITERAL ENFORCEMENT OF THE CRITICAL AREA PROGRAM WOULD
 4 RESULT IN UNWARRANTED HARDSHIP TO THE APPLICANT;

5 (II) THE LOCAL JURISDICTION FINDS THAT THE APPLICANT HAS
 6 SATISFIED EACH ONE OF THE VARIANCE PROVISIONS; AND

7 (III) WITHOUT THE VARIANCE, THE APPLICANT WOULD BE
 8 DEPRIVED OF A USE OF LAND OR A STRUCTURE PERMITTED TO OTHERS IN
 9 ACCORDANCE WITH THE PROVISIONS OF THE JURISDICTION'S CRITICAL AREA
 10 PROGRAM.

11 ~~(3)~~ (2) IN CONSIDERING AN APPLICATION FOR A VARIANCE, A LOCAL
 12 JURISDICTION SHALL CONSIDER THE REASONABLE USE OF THE ENTIRE PARCEL OR
 13 LOT FOR WHICH THE VARIANCE IS REQUESTED.

14 ~~(4)~~ (3) THIS SUBSECTION DOES NOT APPLY TO BUILDING PERMITS OR
 15 ACTIVITIES THAT COMPLY WITH A BUFFER EXEMPTION PLAN OR BUFFER
 16 MANAGEMENT PLAN OF A LOCAL JURISDICTION WHICH HAS BEEN APPROVED BY
 17 THE COMMISSION.

18 [(d)] (E) (1) The Commission shall adopt by regulation on or before
 19 December 1, 1985 criteria for program development and approval, which are
 20 necessary or appropriate to achieve the standards stated in subsection (b) of this
 21 section. Prior to developing its criteria and also prior to adopting its criteria, the
 22 Commission shall hold at least 6 regional public hearings, 1 in each of the following
 23 areas:

- 24 (i) Harford, Cecil, and Kent counties;
- 25 (ii) Queen Anne's, Talbot, and Caroline counties;
- 26 (iii) Dorchester, Somerset, and Wicomico counties;
- 27 (iv) Baltimore City and Baltimore County;
- 28 (v) Charles, Calvert, and St. Mary's counties; and
- 29 (vi) Anne Arundel and Prince George's counties.

30 (2) During the hearing process, the Commission shall consult with each
 31 affected local jurisdiction.

32 [(e)] (F) Nothing in this section shall impede or prevent the dredging of any
 33 waterway in a critical area. However, dredging in a critical area is subject to other
 34 applicable federal and State laws and regulations.

1 8-1809.

2 (g) Each local jurisdiction shall review its entire program and propose any
3 necessary amendments to its entire program, including local zoning maps, at least
4 every [4] 6 years [beginning with the 4-year anniversary of the date that the
5 program became effective and every 4 years after that date] ~~IN COORDINATION WITH~~
6 ~~THE REVIEW OF THE COMPREHENSIVE PLAN BY THE PLANNING COMMISSION AS~~
7 ~~REQUIRED UNDER ARTICLE 66B, §§ 1.03(B) AND 3.05(B) OF THE CODE.~~ Each local
8 jurisdiction shall send in writing to the Commission, within 60 days after [each
9 4-year anniversary,] ~~THE COMPLETION OF ITS REVIEW,~~ the following information:

10 (1) A statement certifying that the required review has been
11 accomplished;

12 (2) Any necessary requests for program amendments, program
13 refinements, or other matters that the local jurisdiction wishes the Commission to
14 consider;

15 (3) An updated resource inventory; and

16 (4) A statement quantifying acreages within each land classification, the
17 growth allocation used, and the growth allocation remaining.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
19 construed to apply only prospectively and may not be applied or interpreted to have
20 any effect on or application to any variance application for which a petition for judicial
21 review of a decision to grant or deny a variance under a local critical area program
22 was filed before the effective date of this Act.

23 SECTION 2. 3. AND BE IT FURTHER ENACTED, That this Act shall take
24 effect June 1, 2002.