

# SENATE BILL 1030

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By: **Senator Dyson**

Constitutional Requirements Complied with for Introduction in the last 35 Days of Session

Introduced and read first time: March 15, 2007

Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **Critical Areas – Applications for Variances – Local Jurisdictions**

3 FOR the purpose of clarifying that certain provisions of law apply to a local  
4 jurisdiction during the consideration, processing, and decision on an application  
5 for a certain variance notwithstanding any provision, or lack of provision, in the  
6 local jurisdiction's local laws and ordinances; providing for the application of  
7 this Act; and generally relating to applications for variances in the Chesapeake  
8 Bay and Atlantic Coastal Bays Critical Area Program.

9 BY repealing and reenacting, with amendments,  
10 Article – Natural Resources  
11 Section 8–1808(d)  
12 Annotated Code of Maryland  
13 (2000 Replacement Volume and 2006 Supplement)

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

16 **Article – Natural Resources**

17 8–1808.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1           (d)   (1)   In this subsection, “unwarranted hardship” means that, without a  
2 variance, an applicant would be denied reasonable and significant use of the entire  
3 parcel or lot for which the variance is requested.

4                   (2)   (i)   In considering an application for a variance, a local  
5 jurisdiction shall presume that the specific development activity in the critical area  
6 that is subject to the application and for which a variance is required does not conform  
7 with the general purpose and intent of this subtitle, regulations adopted under this  
8 subtitle, and the requirements of the local jurisdiction’s program.

9                           (ii)   If the variance request is based on conditions or  
10 circumstances that are the result of actions by the applicant, including the  
11 commencement of development activity before an application for a variance has been  
12 filed, a local jurisdiction may consider that fact.

13                   (3)   (i)   An applicant has the burden of proof and the burden of  
14 persuasion to overcome the presumption established under paragraph (2)(i) of this  
15 subsection.

16                           (ii)   1.   Based on competent and substantial evidence, a local  
17 jurisdiction shall make written findings as to whether the applicant has overcome the  
18 presumption established under paragraph (2)(i) of this subsection.

19                                   2.   With due regard for the person’s experience, technical  
20 competence, and specialized knowledge, the written findings may be based on evidence  
21 introduced and testimony presented by:

22   A.   The applicant;

23   B.   The local jurisdiction or any other government  
24 agency; or

25   C.   Any other person deemed appropriate by the local  
26 jurisdiction.

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

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

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

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

6                   (5)    This subsection does not apply to building permits or activities that  
7 comply with a buffer exemption plan or buffer management plan of a local jurisdiction  
8 which has been approved by the Commission.

9                   **(6)    NOTWITHSTANDING ANY PROVISION OF A LOCAL LAW OR**  
10 **ORDINANCE, OR THE LACK OF A PROVISION IN A LOCAL LAW OR ORDINANCE,**  
11 **ALL OF THE PROVISIONS OF THIS SUBSECTION SHALL APPLY TO, AND SHALL BE**  
12 **APPLIED BY, A LOCAL JURISDICTION IN THE CONSIDERATION, PROCESSING,**  
13 **AND DECISION ON AN APPLICATION FOR A VARIANCE.**

14           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
15 construed to apply retroactively and shall be applied to and interpreted to affect any  
16 applications for variances under the Chesapeake Bay and Atlantic Coastal Bays  
17 Critical Area Program.

18           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
19 June 1, 2007.