

## **CHAPTER 221**

**(Senate Bill 1030)**

AN ACT concerning

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

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

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

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

### **Article – Natural Resources**

8–1808.

(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 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 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:

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

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

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply retroactively and shall be applied to and interpreted to affect any applications for variances under the Chesapeake Bay and Atlantic Coastal Bays Critical Area Program, except for property in the North Shore Community of Anne Arundel County for which a variance was applied for in 2003.

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

**Approved by the Governor, April 24, 2007.**