

**Department of Legislative Services**

Maryland General Assembly

2007 Session

**FISCAL AND POLICY NOTE**

**Revised**

Senate Bill 1030

(Senator Dyson)

Education, Health, and Environmental Affairs

Environmental Matters

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**Critical Areas - Applications for Variances - Local Jurisdictions**

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This bill specifies that State law relating to variances in a critical area applies to, and must be applied by, local jurisdictions in the consideration, processing, and decision on an application for a variance.

The bill takes effect June 1, 2007 but applies retroactively to any applications for variances under the Chesapeake Bay and Atlantic Coastal Bays Critical Area Programs with the exception of property in the North Shore Community of Anne Arundel County for which a variance was applied for in 2003.

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**Fiscal Summary**

**State Effect:** None. The bill would not directly affect State operations or finances.

**Local Effect:** None. The bill is not expected to directly affect local government operations or finances.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** Under State law, a variance from a local jurisdiction's critical area program may be granted if • 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 program would result in unwarranted hardship to the applicant; • the local jurisdiction finds the applicant has satisfied each one of the variance provisions; and • 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.

“Unwarranted hardship” is defined to mean 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.

A local jurisdiction must presume that the specific development activity for which a variance is requested does not conform with the local jurisdiction’s critical area program and the overall Chesapeake and Atlantic Coastal Bays program. The person requesting the variance has the burden of proof and the burden of persuasion to overcome the presumption.

**Background:** Chapter 794 of 1984 established the Chesapeake Bay Critical Area Protection Program in order to minimize damage to water quality and wildlife habitat by fostering more sensitive development activity along the shoreline areas of the Chesapeake Bay and its tributaries. The law identified the “critical area” as all land within 1,000 feet of the mean high water line of tidal waters or the landward edge of tidal wetlands and all waters of and lands under the Chesapeake Bay and its tributaries. Viewed as particularly sensitive were the “buffer areas” falling within 100 feet of the shoreline. Because the unique and critical environmental functions of these buffers were regarded as compromised by clearing and construction, their protection was considered a cornerstone of the program.

The 1984 legislation also created a statewide Chesapeake Bay Critical Area Commission that oversees the development and implementation of local land use programs dealing with the critical area. Each local jurisdiction is charged with the primary responsibility for development and implementation of its own local program; that local authority, however, is subject to commission review and approval. According to the commission, the vast majority of applications for variances in the critical area are approved by local jurisdictions.

State law was amended by Chapter 431/432 of 2002 and Chapter 526 of 2004 to clarify standards for variances from critical area programs in response to court decisions that had loosely interpreted the standards. Recently, Anne Arundel County has argued in the Court of Special Appeals that a local zoning board is precluded from relying on the variance standards set forth in the changes made in 2002 and 2004 if the local ordinance has not been amended to incorporate those changes. The bill would clarify that the standards set out in State law apply to, and must be applied by, local jurisdictions.

## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of Planning, Department of Natural Resources (Critical Area Commission), Montgomery County, Kent County, Department of Legislative Services

**Fiscal Note History:** First Reader - March 21, 2007  
mll/ljm Revised - Senate Third Reader - April 9, 2007

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