

Chapter 79

(House Bill 247)

AN ACT concerning

**Chesapeake and Atlantic Coastal Bays Critical Area Protection Program –
Variances – Alterations**

FOR the purpose of altering certain standards and requirements for variances from land use requirements under the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program; and generally relating to variances under the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program.

BY repealing and reenacting, without amendments,
Article – Natural Resources
Section 8–1808(d)(1)
Annotated Code of Maryland
(2023 Replacement Volume and 2025 Supplement)

BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 8–1808(d)(3) and (5)
Annotated Code of Maryland
(2023 Replacement Volume and 2025 Supplement)

BY adding to
Article – Natural Resources
Section 8–1808(d)(10)
Annotated Code of Maryland
(2023 Replacement Volume and 2025 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.

(3) (i) A local jurisdiction shall process an application for a variance regarding a parcel or lot that is subject to a current violation of this subtitle, a regulation adopted under the authority of this subtitle, or any provision of an order, permit, plan, or local program in accordance with subsection (c)(1)(iii)15 of this section.

(ii) 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.

(iii) If the variance request is based on conditions or circumstances that are the result of actions by the applicant, a local jurisdiction shall consider that fact.

(IV) 1. THIS SUBPARAGRAPH DOES NOT APPLY TO A NEW ADDITIONAL OR ACCESSORY DWELLING UNIT, AS DEFINED UNDER AN APPROVED LOCAL CRITICAL AREA PROGRAM.

2. WHEN REQUESTING A VARIANCE FOR A NEW ACCESSORY STRUCTURE OR USE, A REBUTTABLE PRESUMPTION EXISTS THAT AN EXISTING ACCESSORY STRUCTURE OR USE ON THE PARCEL OR LOT DEMONSTRATES REASONABLE AND SIGNIFICANT USE.

(V) A LOCAL JURISDICTION MAY NOT ACCEPT AN APPLICATION FOR A VARIANCE TO:

1. AUTHORIZE A USE THAT IS NOT ALLOWED BY THE CRITICAL AREA LAND CLASSIFICATION OF THE LOT OR PARCEL;

2. ADJUST THE AMOUNT OR TYPE OF MITIGATION REQUIRED BY CRITICAL AREA REGULATIONS OR A LOCAL CRITICAL AREA PROGRAM; OR

3. PROVIDE RELIEF THAT COULD BE OBTAINED THROUGH AN AVAILABLE ADMINISTRATIVE PROCESS THAT IS APPROVED AS PART OF A LOCAL JURISDICTION'S CRITICAL AREA PROGRAM.

(5) (I) A variance to a local jurisdiction's critical area program may not be granted unless:

[(i)] 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;

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

~~[(iii)]~~ **3.** [Without] **SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH, 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;

4. THE APPLICANT DEMONSTRATES A SUBSTANTIAL NEED FOR THE VARIANCE THAT IS NOT BASED ON CONVENIENCE, PERSONAL PREFERENCE, OR FINANCIAL ADVANTAGE; AND

5. THE APPLICANT DEMONSTRATES THAT THE DEVELOPMENT CANNOT BE LOCATED OUTSIDE A HABITAT PROTECTION AREA.

(II) 1. SUBSUBPARAGRAPH 2 OF THIS SUBPARAGRAPH DOES NOT APPLY TO A NEW ADDITIONAL OR ACCESSORY DWELLING UNIT, AS DEFINED UNDER AN APPROVED LOCAL CRITICAL AREA PROGRAM.

2. THE APPLICANT MAY MAKE A COMPARISON UNDER SUBPARAGRAPH (I) ~~3~~ OF THIS PARAGRAPH ONLY TO OTHER ~~PROPERTIES OR~~ ACCESSORY STRUCTURES THAT:

~~1.~~ **A. ARE LOCATED IN THE CRITICAL AREA;**

~~2.~~ **B. WERE DEVELOPED AFTER THE ADOPTION OF THE LOCAL JURISDICTION'S CRITICAL AREA PROGRAM;**

~~3.~~ **C. WERE CONFORMING AND LEGALLY AUTHORIZED AT THE TIME OF DEVELOPMENT;**

~~4.~~ **D. ARE SIMILARLY SITUATED; AND**

~~5.~~ **E. IF LOCATED IN A MODIFIED BUFFER AREA, WERE DEVELOPED IN ACCORDANCE WITH REQUIREMENTS FOR MODIFIED BUFFER AREAS UNDER THE LOCAL JURISDICTION'S CRITICAL AREA PROGRAM.**

(10) A LOCAL BOARD OF APPEALS SHALL:

(I) HEAR ON THE RECORD AN APPEAL OF AN ADMINISTRATIVE OFFICER'S DECISION ON A CRITICAL AREA VARIANCE APPLICATION; AND

(II) GRANT DEFERENCE TO THE ADMINISTRATIVE OFFICER'S FINDINGS OF FACT.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2026.

Approved by the Governor, April 14, 2026.