

Wes Moore
Governor
Aruna Miller
Lt. Governor



Erik Fisher
Chair
Nick Kelly
Executive Director

**STATE OF MARYLAND
CRITICAL AREA COMMISSION
CHESAPEAKE AND ATLANTIC COASTAL BAYS**

February 11, 2026

BILL NUMBER: HOUSE BILL 247 – First Reader

**SHORT TITLE: Chesapeake and Atlantic Coastal Bays Critical Area Protection Program
– Variances - Alterations**

COMMISSION’S POSITION: FAVORABLE

EXPLANATION OF COMMISSION’S POSITION

The Commission supports HB 247 and requests a favorable report from the Environment & Transportation Committee. We requested HB 247 to simplify the variance process and to improve the consistency of variance decisions across the 64 local jurisdictions with Critical Area programs.

The Commission reviews every variance request and has noted numerous decisions where the standards for granting a variance have not been applied consistently across the 64 Critical Area jurisdictions. Many of these decisions end up in the appeals process, which can delay applicants a year or more and cost thousands of dollars in legal fees. Similarly, the appeals process requires significant resource outlays and extensive staff time for the Commission and the local government. Decisions that are inconsistent with the variance standards risk significant environmental harm that is out of step with the goals of the Critical Area law.

The provisions in this bill, drawn directly from Maryland case law and standard appeals procedures, will improve the consistency of variance decisions, reduce the time it takes to complete processing, simplify the appeals process, and reinforce the tools local jurisdictions have to conduct fair, consistent, and efficient evaluations.

BACKGROUND INFORMATION

Critical Area program

The Critical Area Law was enacted in 1984 to establish a Resource Protection Program for the Chesapeake Bay and its tributaries by fostering more sensitive development activity for certain shoreline areas to minimize damage to water quality and natural habitats. The General Assembly established the Critical Area program to be implemented on a cooperative basis between state and local governments, with local governments implementing their programs in a “consistent, uniform, and equitable manner” subject to state criteria and oversight.

Critical Area variances

A variance is a legally authorized exception to a development regulation that is granted to a specific property. According to the Maryland courts, variances are only to be “granted sparingly, and under exceptional circumstances.” Applicants for a variance must show that they have been denied a reasonable and significant use of their property, at no fault of their own, that other similarly situated property owners enjoy. Most variances involve the construction or expansion of an accessory structure such as a deck, garage, driveway, or path. A variance can allow for such a use to encroach upon the 100-foot buffer, or exceed lot coverage or forest clearing limits.

Critical Area variances are not used to subdivide new residential lots or facilitate the construction of Accessory Dwelling Units (ADUs); nor do they govern zoning setbacks or other local zoning standards for subdivision or site plan review.

Variance review, approval, and appeal

The review of a variance request is a collaborative process between the local jurisdiction and the Critical Area Commission. CAC staff review every variance and often provide comments and a recommendation to the local jurisdiction based on the standards of review. The decision on a variance request is made by the local Board of Zoning Appeals or an empowered administrative officer. The applicant, an aggrieved party with standing, or the Chair of the Commission may appeal a decision. Currently, appeals of an administrative decision must be re-heard *de novo* by the local Board of Zoning Appeals.

BILL EXPLANATION

HB 247 ensures the variance standards are fully codified as they have been articulated by the Maryland General Assembly and applied by the Maryland courts. In doing so, the bill does not alter the existing rights of landowners. Specifically, HB 247 would clarify:

1. How the existing standards of “reasonable and significant use” and “unwarranted hardship” are applied, based on a series of instructive rulings from the Maryland courts. The list of cases, including representative text from these rulings, is attached.
2. Which properties a variance request can be compared to when evaluating what rights are commonly enjoyed by others.
3. That the variance process is not applicable to certain classes of requests, such as a change in use, as other processes exist to govern those requirements.

The bill directs applicants to use existing administrative processes in jurisdictions that have them. It also mirrors the standard for the appeal of an administrative decision that is already in place in the courts to improve consistency and reduce duplication of time and expense.

HB 247 does not change the current process for requesting a variance, the standard of review for granting a variance, or place new procedural requirements on local jurisdictions.

Contact: Lisa Hoerger at (410) 271-6522 or by email at lisa.hoerger@maryland.gov

HB 247 - Chesapeake and Atlantic Coastal Bays Critical Area Protection Program - Variances - Alterations
- Case Review -

8-1808(d)(3)(iv)

p. 2 lines 17-20

Existing accessory use demonstrates reasonable use

Assateague Coastal Trust v. Schwalbach, 448 Md. 112, 139 (2016)

“the applicant has the burden of demonstration that, without a variance, the applicant would be denied a use of the property that is both significant and reasonable.”

Citrano v. North, 123 Md. App. 234 (1998)

"Petitioner's property is already developed with a single family dwelling and related improvements. ...hardships must be such as would preclude the Petitioners from developing their lot... Their lot is developed, and like the property in St. Mary's County, a reasonable use of property exists.”

North v. St. Mary's County, 99 Md.App. 502, 638 A.2d 1175 (1994)

“The applicant, Mr. Enoch, the county, and the trial judge for that matter when discussing the reasonable use of the property seemed to restrict their considerations to just that part of the property where Enoch desires to construct the gazebo. That is incorrect, the property at issue here is the 4+ acre site already developed with a ranch house of approximately 1,100 square feet with extensive decking, an improved walkway, and a pier, from which expansive views are present. Thus, the property already is subject to a reasonable use.”

(continued on reverse)

8-1808(d)(5)(i)(4) **p. 3 lines 10-12** **Establishing substantial need**

Chesley v. City of Annapolis, 176 Md.App. 413, 435-36 (2007)

"the fact that a particular improvement would enhance the owner's enjoyment of the property did not establish that it would be a hardship to continue using the property without the variance."

Belvoir Farms v. North, 255 Md. 259, 276-77 (1999)

The need for CA variance "must be substantial and urgent and not merely for the convenience of the applicant."

8-1808(d)(5)(i)(5) **p. 3 lines 13-14** **Location of the proposed use**

Assateague Coastal Trust v. Schwalbach, 448 Md. 112, 139 (2016)

"In addition, the applicant has the burden of showing that such a use cannot be accomplished elsewhere on the property without a variance."

Wagner v. Anne Arundel County Board of Appeals, Court of Special Appeals, No. 2448, Sept. Term 2016 (Jan. 23, 2018) – Unreported

The mere fact that the Applicant "wanted to construct the proposed structure to the west of the Property because it was a less 'awkward' spot is not a sufficient reason to justify the granting of the variance."

8-1808(d)(5)(ii) **p. 3 lines 15-26** **Comparison with other uses**

Preamble of Ch. 431 of the 2002 Laws of Maryland

"WHEREAS, The Court of Appeals has ruled that a local Board of Appeals, when determining if denial of a variance would deny an applicant rights commonly enjoyed by others in the Critical Area, may compare a proposal to nonconforming uses or development that predated implementation of a local Critical Area Program; and WHEREAS, It is the intent of this Act to overrule these recent decisions of the Court of Appeals regarding variances to Critical Area regulations"

Becker v. Anne Arundel County, 174 Md. App. 114, 131 (2007)

"The amendments to the law provided that, . . . (2) in order to grant a variance, the Board had to find that, without a variance, the applicant would be deprived of a use permitted to others in accordance with the provisions in the critical area program...."