

_ShoreRivers Testimony SUPPORT HB247.docx.pdf

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Position: FAV



Testimony in Support of House Bill 247- Chesapeake and Atlantic Coastal Bays Critical Area Protection Program – Variances – Alterations

February 9, 2026

Dear Chair Korman and committee members,

Thank you for this opportunity to submit testimony in **SUPPORT** of **HB247** on behalf of ShoreRivers. ShoreRivers is a river protection organization on Maryland’s Eastern Shore with more than 2,000 members. Our mission is to protect Maryland’s Eastern Shore waterways through science-based advocacy, restoration, education, and engagement. In our work we regularly see how variance decisions directly affect water quality, habitat, and shoreline resilience in communities that are already highly vulnerable to flooding and sea level rise. **HB 247 makes beneficial clarifications to the Critical Area variance process that will strengthen protections for Maryland’s tidal waters while promoting fairness, consistency, and accountability in local decision-making.**

The Critical Area law was enacted to limit development impacts in the areas where pollution and habitat loss most immediately threaten the Chesapeake and Atlantic Coastal Bays. Variances were intended to be rare exceptions based on true unwarranted hardship—not a routine tool to authorize development that does not meet the law’s standards. Over time, inconsistent application of variance criteria has weakened these protections. HB 247 clarifies that additional variance requests must be justified by **substantial need** rather than convenience, personal preference, or financial gain. **The bill appropriately reinforces that development should be located outside Habitat Protection Areas whenever possible—an especially important safeguard on the Eastern Shore, where wetlands, forest buffers, and shorelines play a critical role in protecting water quality and reducing flood risk.**

The bill also improves consistency and transparency by clarifying how hardship comparisons are made and by requiring Boards of Appeals to give deference to administrative findings of fact. These provisions help ensure that variance decisions are grounded in sound analysis and aligned with the purposes of the Critical Area program.

HB 247 does not eliminate flexibility for property owners. Instead, it ensures that flexibility is applied responsibly and in a manner that protects the public interest in clean water, healthy habitats, and resilient coastal communities. For these reasons, ShoreRivers urges a **favorable report on House Bill 247.**

Respectfully,

Annie Richards, **Chester Riverkeeper** on behalf of: **ShoreRivers**

ShoreRivers

Scott Budden, Executive Director

Annie Richards, Chester Riverkeeper | Matt Pluta, Choptank Riverkeeper

Ben Ford, Miles Wye Riverkeeper | Zack Kelleher, Sassafras Riverkeeper

ArundelRiversFAV247_variances.pdf

Uploaded by: Elle Bassett

Position: FAV



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Testimony in SUPPORT of HB247 – Chesapeake and Atlantic Coastal Bays Critical Area Protection Program – Variance - Alterations

Environment & Transportation Committee
February 11, 2026

Dear Chair Korman and members of the Committee,

Thank you for the opportunity to submit testimony in **SUPPORT of HB247** on behalf of Arundel Rivers Federation. Deeply rooted in the South, West, and Rhode Rivers, Arundel Rivers Federation heals and protects our waterways and champions clean water across Maryland. Our vision is healthy waterways for all, and we achieve our mission through restoration, education and outreach, and Riverkeeper programs.

Our critical areas are among Maryland’s most treasured and vital natural resources – this land helps protect water quality and wildlife habitat. This legislation will strengthen protection to the critical area while providing clear and reasonable standards for variances. House Bill 247 seeks to update and simplify the variance process, promoting consistency when applying the variance standards. It will (1) incorporate case law into the variance standards and (2) support local administrative approvals.

House Bill 247 will provide clarity on how to compare a variance request to the situation of other properties in the vicinity of the application. As a Riverkeeper, I often see requests for variances to build within the critical area because “my neighbor was able to.” This bill will clarify that neighboring properties may only be considered in comparison if that structure was developed after the adoption of the local jurisdiction’s critical area program. Additionally, the applicant must prove that the development cannot be located in another area outside of the critical area, or that the need for the variance is not based on convenience, personal preference, or financial advantage. HB247 reduces ambiguity and ensures that necessary land use changes can proceed with minimal environmental impacts.

Maryland chose to specifically protect the Critical Area by limiting development practices allowed within it – this bill strengthens those protections and helps local governments and property owners clearly understand expectations and requirements. Arundel Rivers Federation strongly supports the protection and preservation of our critical areas we respectfully request a **favorable report** on HB247.

Sincerely,

A handwritten signature in cursive script that reads "Elle Bassett".

Elle Bassett
South, West, and Rhode Riverkeeper
Arundel Rivers Federation

HB 247 CAC_Favorable_E&T_2 11 26.pdf

Uploaded by: Lisa Hoerger

Position: FAV

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...."

HB 247 - CBF - FAV.pdf

Uploaded by: Matt Stegman

Position: FAV



CHESAPEAKE BAY FOUNDATION

House Bill 247

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

Date: February 11, 2026

To: House Environment & Transportation Committee

Position: **FAVORABLE**

From: Gussie Maguire,
MD Staff Scientist

The Chesapeake Bay Foundation (CBF) **SUPPORTS House Bill 247**, which clarifies requirements for Chesapeake and Atlantic Coastal Bays Critical Area land use variances. The Critical Area Protection Program minimizes adverse impacts of human activities on water quality and natural habitats and fosters consistent, uniform, and more sensitive development activity within the Critical Area, a ribbon of land within 1000 feet of the tidal influence of the Bay. The Program is implemented through local governments and reviewed by the Critical Area Commission.

The clarifications set forth in the bill will help ensure that local Critical Area Programs continue to be implemented in a way that is consistent with the water quality and habitat goals they are intended to meet. Currently, variances to land use in the Critical Area can be granted under a broad definition of “unwarranted hardship” and “substantial need”; the bill explicates the common-sense interpretation that “convenience, personal preference, or financial advantage” do not constitute substantial need. This and other small clarifications in the bill remove guesswork from variance decision-making at the local level while still remaining relatively flexible and, most importantly, protective of coastal ecosystems.

CBF urges the Committee’s FAVORABLE report on HB 247.

For more information, please contact Matt Stegman, Maryland Staff Attorney, at mstegman@cbf.org.

Maryland Office • Philip Merrill Environmental Center • 6 Herndon Avenue • Annapolis • Maryland • 21403

The Chesapeake Bay Foundation (CBF) is a non-profit environmental education and advocacy organization dedicated to the restoration and protection of the Chesapeake Bay. With over 200,000 members and e-subscribers, including 71,000 in Maryland alone, CBF works to educate the public and to protect the interest of the Chesapeake and its resources.

HB0247-ET_MACo_OPP.pdf

Uploaded by: Dominic Butchko

Position: UNF



House Bill 247

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

MACo Position: **OPPOSE**

To: Environment & Transportation Committee

Date: February 11, 2026

From: Dominic J. Butchko

The Maryland Association of Counties (MACo) **OPPOSES** HB 247. This bill makes significant changes to when a county can authorize a variance within their share of the critical area. These new, more stringent changes would reduce county flexibility—further straining counties’ ability to support and deliver affordable housing.

Maryland is facing a historic housing shortage. Recently, the General Assembly enacted a significant slate of housing legislation, and in 2026, both the Governor and the presiding officers have signaled affordability as a top priority. Yet rural communities—particularly on the Eastern Shore and in Western Maryland—continue to face unique development constraints that have not been meaningfully addressed by other bills introduced so far this session. HB 247 cuts against this multi-year policy direction and, if enacted, would further limit counties’ ability to accommodate growth.

Variances are a core land-use tool that give counties flexibility to allow a project to deviate from certain development requirements. In practice, strict application of regulations can be impractical or counterproductive. While variances can be narrow or broad, their central purpose is to keep the regulatory framework from becoming overly rigid.

HB 247 would constrain county authority to issue variances within the Critical Area, weakening one of the few practical tools local officials can use to facilitate housing production. The bill also goes further by prohibiting variances granted for “financial advantage,” which would effectively bar counties from using targeted flexibility to reduce regulatory burdens for affordable housing projects.

Counties are engaging with the Commission to identify potential middle ground that could address these concerns. As drafted, however, HB 247 would weaken counties’ ability to deliver needed housing and affordability. Accordingly, MACo urges the Committee to issue an **UNFAVORABLE** report for **HB 247**.

HB 247 - Critical Areas - Variances - NAIOP Testim

Uploaded by: Tom Ballentine

Position: UNF



February 9, 2026

The Honorable, Marc Korman, Chair
House Environment and Transportation Committee
250 Taylor House Office Building
Annapolis, Maryland 21401

Unfavorable: HB 247 – Critical Area Variances

Dear Chair, Korman and Committee Members:

The NAIOP Maryland Chapters representing approximately 700 companies involved in all aspects of commercial, industrial, and mixed-use real estate recommend your unfavorable report on HB 247. NAIOP’s membership includes companies with water-dependent operations and properties that can be affected by changes to Critical Area, law and regulations. Our opposition to HB 247 is based on two provisions that would significantly affect the administration of Critical Area variance applications.

First, the bill creates a “*rebuttable presumption*” that any existing accessory structure or use on a parcel qualifies as “*reasonable and significant use.*” Because properties that already meet this standard are generally ineligible for a variance, this change would make it much harder for applicants to qualify. Older accessory structures—such as pre-Critical Area piers or boathouses—could automatically block applicants from even demonstrating the need for a variance. A presumption under these circumstances is not supported by recent case law and would impose unnecessary barriers to redeveloping commercial and industrial properties. For these reasons, this provision should be removed.

Second, the bill requires local Boards of Appeals to hear “*on the record appeals*” of administrative decisions and to “*grant deference*” to the administrative officer’s findings of fact. (p. 3, lines 27-31) This change would have wide-ranging operational impacts that would upend current practice in many counties.

For example, in Anne Arundel County, all Critical Area variances are currently heard first by an Administrative Hearing Officer, after which the Board of Appeals conducts a “*de novo*” review, meaning the Board looks at all of the facts and law independently and makes its own decision. The proposed requirement would substantially alter this established process.

This change would also increase costs and procedural complexity. Applicants cannot predict whether opposition will appear at a hearing; as a result, every administrative case—no matter how minor—would have to be prepared as if it were being fully litigated for the record at the appellate level. In jurisdictions where all appeals must already pass through a hearing officer before reaching the Board of Appeals or Board of Zoning Appeals, this change would be counterproductive.

For these reasons, NAIOP respectfully requests your unfavorable report on HB 247.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Ballentine".

Tom Ballentine, Vice President for Policy
NAIOP – Maryland Chapters, *The Association for Commercial Real Estate*

cc: Environment and Transportation Committee Members
Nick Manis – Manis, Canning Assoc.