

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 247

(Chair, Environment and Transportation Committee, *et al.*) (By Request - Departmental - Critical Area Commission)

Environment and Transportation

Education, Energy, and the Environment

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

This departmental bill alters certain standards and requirements for variances from land use requirements under the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program.

Fiscal Summary

State Effect: The bill is not expected to affect State finances.

Local Effect: The bill is not expected to materially affect local government finances.

Small Business Effect: The Department of Natural Resources (DNR) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: Under the bill, when a variance is requested for a new accessory structure or use, other than a new additional or accessory dwelling unit (as defined under an approved local critical area program), there is a rebuttable presumption that an existing accessory structure or use on the parcel or lot demonstrates reasonable and significant use.

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.

The bill establishes additional conditions for granting a variance to a local jurisdiction's critical area program, by establishing that a variance may not be granted unless (1) the applicant demonstrates a substantial need for the variance that is not based on convenience, personal preference, or financial advantage and (2) the applicant demonstrates that the development cannot be located outside a habitat protection area.

The bill also clarifies an existing condition for granting a variance – the condition that 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. The bill clarifies the condition by establishing that, except in the case of a new additional or accessory dwelling unit (as defined under an approved local critical area program), an applicant may make a comparison only to other accessory structures that (1) are located in the Critical Area; (2) were developed after the adoption of the local jurisdiction's critical area program; (3) were conforming and legally authorized at the time of development; (4) are similarly situated; and (5) 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.

A local board of appeals must (1) hear on the record an appeal of an administrative officer's decision on a critical area variance application and (2) grant deference to the administrative officer's findings of fact.

Current Law: A local critical area program must contain provisions for granting a variance to the local jurisdiction's critical area program, in accordance with specified Critical Area Commission regulations, including certain variance standards (see COMAR [27.01.12.04](#)).

Statute establishes that a variance to a local jurisdiction's critical area program may not be granted unless:

- 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 that 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 critical area program.

“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.

In considering an application for a variance, a local jurisdiction must 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 the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program, regulations adopted under it, and the requirements of the local jurisdiction’s program. A local jurisdiction must take into consideration whether the variance request is based on conditions or circumstances that are the result of actions by the applicant.

Background:

Changes Made by the Bill

The Critical Area Commission indicates that the bill primarily (1) allows for minor variance requests to be managed through a simplified, ministerial administrative process (through the bill’s provision referencing relief being obtained through an available administrative process); (2) adds language to variance standards that reflects recent case law; (3) clarifies that a variance cannot provide relief from certain critical area program requirements; and (4) establishes that appeals of variance decisions made by an administrative hearing officer or other official that hears and decides a variance case are heard based on the record of the administrative hearing officer’s or official’s decision, and not heard *de novo* (anew). (The commission’s indications do not reflect amendments to the bill.)

Chesapeake and Atlantic Coastal Bays Critical Area Protection Program

Chapter 794 of 1984 established the Chesapeake Bay Critical Area Protection Program (now the Chesapeake and Atlantic Coastal Bays Critical Area Protection Program) 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 goals of the program now are applicable to both the Chesapeake Bay and the Atlantic Coastal Bays (after enactment of Chapter 433 of 2002) and include (1) protection of water quality; (2) conservation of habitat; (3) accommodation of future growth and development without adverse environmental impacts; (4) improvement of climate resiliency; and (5) equitable distribution of the burdens and benefits of development, mitigation, restoration, conservation, and climate change adaptation within the Critical Area.

Chapter 794 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 to the head of tide. In 2002, the Critical Area was expanded to include the State's coastal bays, and, in 2024, the program was modified to incorporate climate resilience, environmental justice, and equity measures. The 1984 legislation also created the Critical Area Commission within DNR, which 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 and must be consistent with the commission's regulations.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Department of Natural Resources; cities of Annapolis and Salisbury; Baltimore City; Anne Arundel, Baltimore, Calvert, Cecil, Charles, Dorchester, Harford, Kent, Prince George's, Queen Anne's, St. Mary's, and Worcester counties; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Chesapeake and Atlantic Coastal Bays Critical Area Protection Program - Variances - Alterations

BILL NUMBER: HB 247

PREPARED BY: Nick Kelly, Executive Director, Critical Area Commission for the Chesapeake and Atlantic Coastal Bays

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

There will be minimal economic impacts on small businesses. The bill is meant to simplify the variance process and provide clarifications to the statute. This legislation may result in small businesses having shorter waiting periods to receive variances and permits.