

Annotated Code of Maryland  
(2000 Replacement Volume and 2001 Supplement)

BY repealing and reenacting, with amendments,

Article - Natural Resources

Section 8-1808 and 8-1809(g)

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#### Preamble

WHEREAS, State lawmakers in 1984 recognized the importance of fostering more sensitive development activity along the shoreline areas of the Chesapeake Bay and its tributaries, from the standpoint of protecting and preserving water quality and natural habitats, with the adoption of the Chesapeake Bay Critical Area Protection Act; and

WHEREAS, The grandfathering provisions of the enabling Act and its accompanying Criteria provided certain exemptions for grandfathered properties from density limits, but the Criteria expressly provided that grandfathered properties were not exempt from Habitat Protection Area (HPA) or water-dependent facilities requirements; and

WHEREAS, The Criteria provide that variances to a jurisdiction's local Critical Area Program may be granted in certain circumstances; and

WHEREAS, Recent decisions by the Maryland Court of Appeals have held that a variance may be granted if the regulations would deny development on a specific portion of an applicant's property rather than considering alternative locations on-site; and

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, The Court of Appeals has ruled that an applicant for a variance from Critical Area requirements may generally satisfy the variance standards of a local zoning ordinance, rather than satisfy all of the standards; and

WHEREAS, These recent rulings by the Court of Appeals are contrary to the intent of the General Assembly in enacting the Chesapeake Bay Critical Area Protection Act; 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; now, therefore,

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows: