

COUNTY COUNCIL  
OF DORCHESTER COUNTY, MARYLAND

2005 Legislative Session,  
Legislative Day No. April 12, 2005

Introduced by: County Council

Bill No. 2005 - 6

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND, TO AMEND CHAPTER 155, SECTION 155- 38 (M) OF THE DORCHESTER COUNTY CODE TO REVISE VARIANCE STANDARDS AND PROCEDURES AND ALLOW REASONABLE ACCOMODATIONS IN THE CRITICAL AREA FOR DISABLED CITIZENS PURSUANT TO HOUSE BILL 1009 AND HOUSE BILL 1323; REVISE UNWARRANTED HARDSHIP, BUFFER AND DWELLING UNIT DEFINITIONS IN SECTION 155-13 PURSUANT TO HOUSE BILL 1009 AND HOUSE BILL 1345; ADD SECTION 155- 38 (P) TITLED VIOLATIONS AND PENALTIES PROVISIONS IN CRITICAL AREA PURSUANT TO HOUSE BILL 1009; AND TO PERMIT ONE GUEST HOUSE UNDER CERTAIN CONDITIONS IN RC, RR-C, RR-RCA, AC-RCA, AND SR-RCA ZONING DISTRICTS FOR PARCELS OF RECORD AS OF DECEMBER 1, 1985 PURSUANT TO HOUSE BILL 1345. THE AFORESAID HOUSE BILLS 1009, 1323, AND 1345 WERE ALL ENACTED BY THE MARYLAND GENERAL ASSEMBLY DURING THE 2000 AND 2004 REGULAR SESSION.

Introduced, read first time, order posted on official bulletin board of Dorchester County, County Office Building, 501 Court Lane, Cambridge, Maryland 21613.

Ordered publication for once a week for two (2) successive weeks, and public hearing scheduled on Tuesday, May 17, 2005, room 110, County Office Building, 501 Court Lane, Cambridge, Maryland at 6:30 p.m.

By Order:

  
Jane Baynard, County Manager

FILED

05 MAY 23 AM 9:41

AN ACT OF THE COUNTY COUNCIL OF DORCHESTER COUNTY, MARYLAND, TO AMEND CHAPTER 155, SECTION 155- 38 (M) OF THE DORCHESTER COUNTY CODE TO REVISE VARIANCE STANDARDS AND PROCEDURES AND ALLOW REASONABLE ACCOMODATIONS IN THE CRITICAL AREA FOR DISABLED CITIZENS PURSUANT TO HOUSE BILL 1009 AND HOUSE BILL 1323; REVISE UNWARRANTED HARDSHIP, BUFFER AND DWELLING UNIT DEFINITIONS IN SECTION 155-13 PURSUANT TO HOUSE BILL 1009 AND HOUSE BILL 1345; ADD SECTION 155- 38 (P) TITLED VIOLATIONS AND PENALTIES PROVISIONS IN CRITICAL AREA PURSUANT TO HOUSE BILL 1009; AND TO PERMIT ONE GUEST HOUSE UNDER CERTAIN CONDITIONS IN RC, RR-C, RR-RCA, AC-RCA, AND SR-RCA ZONING DISTRICTS FOR PARCELS OF RECORD AS OF DECEMBER 1, 1985 PURSUANT TO HOUSE BILL 1345. THE AFORESAID HOUSE BILLS 1009, 1323, AND 1345 WERE ALL ENACTED BY THE MARYLAND GENERAL ASSEMBLY DURING THE 2000 AND 2004 REGULAR SESSION.

SECTION ONE: Acting under Article 25A, Section 5(x) of the Annotated Code of Maryland (the "Act"), be it ENACTED and ORDAINED by the County Council of Dorchester County, Maryland that Chapter 155, Section 155 - 13 of the Dorchester County Code be amended to revise definition for buffer and dwelling unit and add new definition for unwarranted hardship as follows:

Article II, Definitions

**BUFFER – CA – A AN EXISTING, NATURALLY** vegetated area, **OR AN AREA** established **IN VEGETATION AND** ~~or~~ managed to protect aquatic, wetland, shoreline and terrestrial environments from ~~human~~ **MAN MADE** disturbance. See also "tidewater buffer."

**DWELLING UNIT – CA –** ~~One room or rooms connected together constituting a separate, independent housekeeping and living establishment for one family and containing independent kitchen, bathroom, and sleeping facilities.~~ **A SINGLE UNIT PROVIDING COMPLETE, INDEPENDENT LIVING FACILITIES FOR AT LEAST ONE PERSON, INCLUDING PERMANENT PROVISIONS FOR SANITATION, COOKING, EATING, SLEEPING, AND OTHER ACTIVITIES ROUTINELY ASSOCIATED WITH DAILY LIFE. DWELLING UNIT INCLUDES A LIVING QUARTERS FOR A DOMESTIC OR OTHER EMPLOYEE OR TENANT, AN IN LAW OR ACCESSORY APARTMENT, A QUEST HOUSE, OR A CARETAKER RESIDENCE.** A "dwelling unit" shall be located in a structure containing a minimum gross floor area of 600 square feet.

**UNWARRANTED HARDSHIP – CA – 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.**

SECTION TWO: Acting under Article 25A, Section 5(x) of the Annotated Code of Maryland (the "Act"), be it ENACTED and ORDAINED by the County Council of Dorchester County, Maryland that Chapter 155, Section 155 – 38 (M) of the Dorchester County Code be amended to revise variance standards and procedures in the critical area and allow reasonable accommodations for disabled citizens as follows:

**M. Variances**

Variances to these regulations may be granted as follows:

1. IN CONSIDERING AN APPLICATION FOR A VARIANCE, THE COUNTY 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 NATURAL RESOURCES ARTICLE, TITLE 8, SUBTITLE 18, COMAR TITLE 27, AND THE REQUIREMENTS OF THE COUNTY'S CRITICAL AREA PROGRAM.
2. IF THE VARIANCE REQUEST IS BASED ON CONDITIONS OR CIRCUMSTANCES THAT ARE THE RESULT OF ACTIONS BY THE APPLICANT, INCLUDING THE COMMENCEMENT OF DEVELOPMENT ACTIVITY BEFORE AN APPLICATION FOR A VARIANCE HAS BEEN FILED, THE COUNTY MAY CONSIDER THAT FACT.
3. AN APPLICANT HAS THE BURDEN OF PROOF AND THE BURDEN OF PERSUASION TO OVERCOME THE PRESUMPTION OF NONCONFORMANCE ESTABLISHED IN ITEM 1 ABOVE.
4. BASED ON COMPETENT AND SUBSTANTIAL EVIDENCE, THE COUNTY SHALL MAKE WRITTEN FINDINGS AS TO WHETHER THE APPLICANT HAS OVERCOME THE PRESUMPTION OF NONCONFORMANCE AS ESTABLISHED ABOVE.
5. WITH DUE REGARD FOR THE PERSON'S EXPERIENCE, TECHNICAL COMPETENCE, AND SPECIALIZED KNOWLEDGE, THE WRITTEN FINDINGS MAY BE BASED ON EVIDENCE INTRODUCED AND TESTIMONY PRESENTED BY:
  - a. THE APPLICANT;
  - b. THE COUNTY OR ANY OTHER GOVERNMENT AGENCY:OR
  - c. ANY OTHER PERSON DEEMED APPROPRIATE BY THE COUNTY.
16. A Variance to these regulations may NOT be granted UNLESS where, owing due to special features of a site, or specific conditions or other circumstances peculiar to the applicant's land or structure, implementation of the provisions of this section or of the Dorchester County

**Critical Area Protection Program would result in unwarranted hardship to an applicant. The following conditions apply:**

- a. Findings must be made which demonstrate that special conditions or circumstances exist which are peculiar to the land or structure involved, and that literal enforcement of the provisions of the Critical Area Protection Program would result in unwarranted hardship.
  - b. A literal interpretation of the Critical Area Protection Program and related ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar parts of the critical area.
  - c. The granting of a variance will not confer upon an applicant any special privilege that would be denied to other land or structures within the critical area.
  - d. The variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming on any neighboring property.
  - e. The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the critical area, and will be in harmony with the general spirit and intent of the Critical Area Law.<sup>1</sup>
7. **Reasonable accommodations for the needs of disabled citizens. The Board of Appeals may make reasonable accommodations to avoid discrimination on the basis of a physical disability. Reasonable accommodations for the needs of disabled citizens may be permitted in accordance with the evidentiary requirements set forth in the following paragraphs.**
- a) **An applicant shall have the burden of demonstrating the following:**
    1. **The existence of a physical disability;**
    2. **Literal enforcement of the provisions of this ordinance would result in discrimination by virtue of such disability;**

3. A reasonable accommodation would reduce or eliminate the discriminatory effect of the provisions of this ordinance;
  4. The accommodation requested will not substantially impair the purpose, intent, or effect, of the provisions of this ordinance as applied to the property;
  5. Environmental impacts associated with the accommodation are the minimum necessary to address the needs resulting from the particular disability of the applicant.
- b. The Board of Appeals shall determine the nature and scope of any accommodation under this section and may award different or other relief than requested after giving due regard to the purpose, intent, or effect of the applicable provisions of this ordinance. The Board may also consider the size, location, and type of accommodation proposed and whether alternatives exist which accommodate the need with less adverse effect.
  - c. The Board of Appeals may require, as condition of approval, that upon termination of the need for accommodation, that the property be restored to comply with all applicable provisions of this ordinance. Appropriate bonds may be collected or liens placed in order to ensure the County's ability to restore the property should the applicant fail to do so.
28. Applications for a variance shall be made in writing to the Dorchester County Board of Zoning Appeals, in accordance with the procedures set forth herein. The Chesapeake Bay Critical Area Commission shall receive a copy of the application for any variance that relates to the critical area at least 15 days prior to any hearing on such matter and shall receive a copy of the finding.
  39. Variance decisions may be appealed as provided herein. In addition, the Chairman of the Critical Area Commission may appeal an action or decision, even if the Chairman was not a party to or is not specifically aggrieved by the action or decision.

SECTION THREE: Acting under Article 25A, Section 5(x) of the Annotated Code of Maryland (the "Act"), be it ENACTED and ORDAINED by the County Council of Dorchester County, Maryland that Chapter 155, Section 155 - 38 of the Dorchester

County Code be amended to add new Section 155-38 (P) entitled "Violations and Penalty Provisions" as follows :

**P. VIOLATIONS AND PENALTY PROVISIONS IN THE CRITICAL AREA.**

1. IN ADDITION TO ANY OTHER PENALTY APPLICABLE UNDER STATE OR COUNTY LAW, A PERSON WHO VIOLATES A PROVISION OF NATURAL RESOURCES ARTICLE, TITLE 8 SUBTITLE 18, OR THE COUNTY'S CRITICAL AREA PROGRAM, ORDINANCE, OR REGULATIONS IS SUBJECT TO A FINE NOT EXCEEDING \$10,000.00.
2. IN DETERMINING THE AMOUNT OF THE PENALTY TO BE ASSESSED UNDER ITEM 1 ABOVE, THE COUNTY MAY CONSIDER THE FOLLOWING:
  - A. THE GRAVITY OF THE VIOLATION.
  - B. ANY WILLFULLNESS OR NEGLIGENCE INVOLVED IN THE VIOLATION; AND
  - C. THE ENVIRONMENTAL IMPACT OF THE VIOLATION.

SECTION FOUR: Acting under Article 25A, Section 5(x) of the Annotated Code of Maryland (the "Act"), be it ENACTED and ORDAINED by the County Council of Dorchester County, Maryland that Chapter 155, Table of Permitted Uses by Zoning District of the Dorchester County Code be amended to add guest house as permitted residential use under certain conditions as shown on attachment "A".

SECTION FIVE: BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY that General Code Publishers is directed to codify amended Section 155- 13, Section 155-38 (M) and Section 155-38 (P) of Chapter 155 in the Dorchester Code accordingly.

SECTION SIX: BE IT FURTHER ENACTED AND ORDAINED BY THE COUNTY COUNCIL OF DORCHESTER COUNTY, that this bill shall be known as Bill No. 2005-6 of Dorchester County, Maryland and shall take effect sixty (60) days after its final passage or upon Critical Area Commission approval whichever is later.

PASSED this 17th day of May, 2005.

ATTEST:

COUNTY COUNCIL OF DORCHESTER  
COUNTY:

BY:

Jane Baynard  
Jane Baynard, County Manager

Glenn L. Bramble  
Glenn L. Bramble, President

Bramble - *aye*  
Yockey - *aye*  
Elzey - *aye*  
Flowers - *aye*  
Nichols - *aye*

