

SENATE BILL 523

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2000 Regular Session
(01r1820)

ENROLLED BILL

-- *Economic and Environmental Affairs/Environmental Matters* --

Introduced by **Senator Frosh (Article 66B Study Commission)**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER 427

1 AN ACT concerning

2

Land Use

3 FOR the purpose of making certain changes to the State law on land use; authorizing
4 a local legislative body to grant an adaptive reuse that allows a change of use
5 restrictions in a zoning classification for a particular improved property in a
6 certain type of neighborhood under certain conditions; authorizing a local
7 legislative body to authorize a planning director or other designee to grant
8 certain administrative adjustments; providing for the criteria and procedures
9 for administrative adjustments and the processes for adopting those criteria and
10 procedures; allowing for an appeal of a decision on an administrative
11 adjustment; providing for the interpretation of certain provisions relating to
12 administrative adjustments; clarifying certain scope provisions relating to
13 Baltimore City; requiring a hearing examiner and a member of a board of
14 appeals to take a recusal where there may be a conflict of interest or an
15 appearance of a conflict of interest; altering the number of members of a board of
16 appeals; authorizing a board of appeals to require a person requesting a
17 recording or transcript of a recording to pay the costs; providing that, with a

1 certain exception, an appeal to a circuit court of a decision of a hearing examiner
 2 or a board of appeals is to be on the record transmitted to the court; altering the
 3 authority of a planning commission with regard to regulations governing the
 4 subdivision of land and providing a standard for that authority; authorizing a
 5 local jurisdiction to take certain forms of security to secure the construction and
 6 installation of certain required improvements or utilities; clarifying a provision
 7 relating to historic district commissions and historic preservation commissions;
 8 repealing certain duplicative provisions relating to specific counties; authorizing
 9 the Frederick County Board of Commissioners to overrule an action of the
 10 Frederick County planning commission under certain circumstances; defining a
 11 certain term; making this Act contingent on the taking effect of another act; and
 12 generally relating to land use authority in the State and the authority and
 13 duties of local jurisdictions, local legislative bodies, planning commissions,
 14 hearing examiners, and boards of appeals.

15 BY renumbering

16 Article 66B - Zoning and Planning
 17 Section 1.00(b) through (k), respectively
 18 to be Section 1.00(c) through (l), respectively
 19 Annotated Code of Maryland
 20 (1998 Replacement Volume and 1999 Supplement)
 21 (As enacted by Chapter ___ (~~S.B. _____ (01r1823)~~)/~~H.B. _____ (01r0484)~~) (S.B.
 22 624/H.B. 889) of the Acts of the General Assembly of 2000)

23 BY adding to

24 Article 66B - Zoning and Planning
 25 Section 1.00(b), 4.05(d) and (e), 4.06(a)(3), and 4.07(a)(8) and (9) and (c)(6)
 26 Annotated Code of Maryland
 27 (1998 Replacement Volume and 1999 Supplement)
 28 (As enacted by Chapter ___ (~~S.B. _____ (01r1823)~~)/~~H.B. _____ (01r0484)~~) (S.B.
 29 624/H.B. 889) of the Acts of the General Assembly of 2000)

30 BY repealing and reenacting, with amendments,

31 Article 66B - Zoning and Planning
 32 Section 2.13, 4.07(a)(2), 4.08(b), 5.03(a)(1) and (b)(3), ~~and~~ 8.05(d), and 14-06(b)
 33 Annotated Code of Maryland
 34 (1998 Replacement Volume and 1999 Supplement)
 35 (As enacted by Chapter ___ (~~S.B. _____ (01r1823)~~)/~~H.B. _____ (01r0484)~~) (S.B.
 36 624/H.B. 889) of the Acts of the General Assembly of 2000)

37 BY repealing

38 Article 66B - Zoning and Planning
 39 Section 14.05(c) and 14.08
 40 Annotated Code of Maryland
 41 (1998 Replacement Volume and 1999 Supplement)

1 (As enacted by Chapter ___ (~~S.B. _____ (01r1823)~~)/H.B. _____ (01r0484)) (S.B.
2 624/H.B. 889) of the Acts of the General Assembly of 2000)

3 BY renumbering

4 Article 66B - Zoning and Planning

5 Section 14.05(d) through (g), respectively

6 to be Section 14.05(c) through (f), respectively

7 Annotated Code of Maryland

8 (1998 Replacement Volume and 1999 Supplement)

9 (As enacted by Chapter ___ (~~S.B. _____ (01r1823)~~)/H.B. _____ (01r0484)) (S.B.
10 624/H.B. 889) of the Acts of the General Assembly of 2000)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
12 MARYLAND, That Section(s) 1.00(b) through (k), respectively, of Article 66B - Zoning
13 and Planning of the Annotated Code of Maryland (as enacted by Chapter ___ (~~S.B.~~
14 ~~_____ (01r1823)~~/H.B. _____ (01r0484)) (S.B. 624/H.B. 889) of the General
15 Assembly of 2000) be renumbered to be Section(s) 1.00(c) through (l), respectively.

16 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
17 read as follows:

18 **Article 66B - Zoning and Planning**

19 1.00.

20 (B) "ADAPTIVE REUSE" MEANS A CHANGE GRANTED BY A LOCAL LEGISLATIVE
21 BODY, UNDER § 4.05 OF THIS ARTICLE, TO THE USE RESTRICTIONS IN A ZONING
22 CLASSIFICATION, AS THOSE RESTRICTIONS ARE APPLIED TO A PARTICULAR
23 IMPROVED PROPERTY.

24 2.13.

25 (a) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, Sections 3.01
26 through 8.15 of this article do not apply in Baltimore City.

27 (b) [(1)] ~~Sections 2.01 through 2.11 of this article and all laws and ordinances~~
28 ~~passed under those sections are not affected by the remaining provisions of this~~
29 ~~article~~ THE FOLLOWING SECTIONS OF THIS ARTICLE APPLY TO BALTIMORE CITY:

30 (1) § 1.00(I) (DEFINITION OF "SENSITIVE AREAS");

31 (2) § 1.01 (VISIONS);

32 (3) § 1.03 (CHARTER COUNTY - COMPREHENSIVE PLANS);

33 (4) § 4.01(B)(2) (REGULATION OF BICYCLE PARKING);

34 (5) § 5.03(D) (EASEMENTS FOR BURIAL SITES);

- 1 (6) § 7.02 (CIVIL PENALTY FOR ZONING VIOLATION);
 2 (7) § 10.01 (ADEQUATE PUBLIC FACILITIES ORDINANCES);
 3 (8) § 11.01 (TRANSFER OF DEVELOPMENT RIGHTS);
 4 (9) § 12.01 (INCLUSIONARY ZONING); AND
 5 (10) § 13.01 (DEVELOPMENT RIGHTS AND RESPONSIBILITIES
 6 AGREEMENTS).

7 [(2) In Baltimore City, the provisions of this article other than §§ 2.01
 8 through 2.11 of this article are intended to supplement §§ 2.01 through 2.11 of this
 9 article.]

10 4.05.

11 (D) (1) A LOCAL LEGISLATIVE BODY MAY AUTHORIZE THE PLANNING
 12 DIRECTOR OR ANOTHER DESIGNEE TO GRANT ADMINISTRATIVE ADJUSTMENTS
 13 FROM THE FOLLOWING REQUIREMENTS IN A ZONING ORDINANCE ENACTED BY THE
 14 LOCAL LEGISLATIVE BODY:

- 15 (I) LOCAL HEIGHT REQUIREMENTS;
 16 (II) LOCAL SETBACK REQUIREMENTS;
 17 (III) LOCAL BULK REQUIREMENTS;
 18 (IV) LOCAL PARKING REQUIREMENTS;
 19 (V) LOCAL LOADING, DIMENSIONAL, OR AREA REQUIREMENTS; OR
 20 (VI) SIMILAR LOCAL REQUIREMENTS.

21 (2) BEFORE DEVELOPING CRITERIA AND PROCEDURES FOR
 22 ADMINISTRATIVE ADJUSTMENTS UNDER THIS SUBSECTION, THE LOCAL
 23 LEGISLATIVE BODY SHALL:

- 24 (I) CONSULT WITH THE PLANNING COMMISSION AND THE BOARD
 25 OF APPEALS; AND
 26 (II) PROVIDE:
 27 1. REASONABLE PUBLIC NOTICE OF THE PROPOSED
 28 CRITERIA AND PROCEDURES;
 29 2. AN OPPORTUNITY FOR PUBLIC HEARING; AND
 30 3. AN OPPORTUNITY FOR PUBLIC REVIEW AND COMMENT.

1 (3) THE CRITERIA FOR AN ADMINISTRATIVE ADJUSTMENT SHALL
2 INCLUDE:

3 (I) STANDARDS FOR ACTIONS ON REQUESTS;

4 (II) STANDARDS FOR THE CLASSES OF DEVELOPMENT THAT ARE
5 ELIGIBLE FOR AN ADMINISTRATIVE ADJUSTMENT; AND

6 (III) THE MAXIMUM VARIATION FROM A ZONING REQUIREMENT
7 THAT IS ALLOWED UNDER AN ADMINISTRATIVE ADJUSTMENT.

8 (4) PROCEDURES FOR ADMINISTRATIVE ADJUSTMENTS MAY INCLUDE:

9 (I) APPLICATIONS;

10 (II) NOTICE TO THE PUBLIC AND TO THE PARTIES IN INTEREST;

11 (III) AN OPPORTUNITY FOR PUBLIC HEARING;

12 (IV) AN OPPORTUNITY FOR THE TAKING OF TESTIMONY AND
13 EVIDENCE; AND

14 (V) DECISION MAKING.

15 (5) A DECISION ON AN APPLICATION FOR AN ADMINISTRATIVE
16 ADJUSTMENT SHALL INCLUDE WRITTEN FINDINGS OF FACT.

17 (6) BY THE ENACTMENT OF AN ORDINANCE OR THE ADOPTION OF A
18 PROCEDURE, A LOCAL LEGISLATIVE BODY MAY AUTHORIZE THE APPEAL TO THE
19 BOARD OF APPEALS OF A DECISION TO APPROVE OR DENY AN ADMINISTRATIVE
20 ADJUSTMENT.

21 (7) NOTHING IN THIS SUBSECTION IS INTENDED TO AUTHORIZE A
22 LOCAL GOVERNMENT TO ~~ABROGATE STATE MANDATED CRITICAL AREA OR~~
23 ~~SENSITIVE AREA REQUIREMENTS~~ PERMIT AN ADMINISTRATIVE ADJUSTMENT TO
24 STATE OR LOCAL REQUIREMENTS THAT ARE INTENDED TO PROTECT
25 ENVIRONMENTALLY SENSITIVE AREAS, SUCH AS STREAMS, SLOPES, WETLANDS,
26 NATURAL HERITAGE AREAS, OR CRITICAL AREAS.

27 (E) (1) A LOCAL LEGISLATIVE BODY MAY AUTHORIZE, ON APPLICATION BY A
28 PROPERTY OWNER, HOW THE USES ALLOWED IN A ZONING CLASSIFICATION ARE TO
29 BE APPLIED TO A PARTICULAR IMPROVED PROPERTY BY GRANTING AN ADAPTIVE
30 REUSE.

31 (2) BEFORE GRANTING AN ADAPTIVE REUSE, THE LOCAL LEGISLATIVE
32 BODY SHALL ~~DETERMINE~~ MAKE SPECIFIC FINDINGS SUPPORTED BY FACTS IN THE
33 RECORD THAT:

34 (I) THE CHANGE IS CONSISTENT WITH THE PLAN FOR THE LOCAL
35 JURISDICTION;

1 (II) THE CHANGE IS IN THE PUBLIC INTEREST AND PROVIDES A
2 POSITIVE BENEFIT TO THE COMMUNITY; AND

3 (III) LITERAL ENFORCEMENT OF THE ZONING CLASSIFICATION
4 WOULD DEPRIVE THE OWNER OF ALL REASONABLE ECONOMICALLY VIABLE USE OF
5 THE PROPERTY.

6 4.06.

7 (a) (3) A HEARING EXAMINER SHALL RECUSE HIMSELF OR HERSELF FROM
8 PARTICIPATING IN A MATTER IN WHICH THE HEARING EXAMINER MAY HAVE A
9 CONFLICT OF INTEREST OR THE APPEARANCE OF A CONFLICT OF INTEREST.

10 4.07.

11 (a) (2) A board of appeals consists of [either] AT LEAST three [or five]
12 members.

13 (8) A LOCAL LEGISLATIVE BODY MAY NOT SERVE AS A BOARD OF
14 APPEALS.

15 (9) A MEMBER OF THE BOARD OF APPEALS SHALL RECUSE HIMSELF OR
16 HERSELF FROM PARTICIPATING IN A MATTER IN WHICH THE MEMBER MAY HAVE A
17 CONFLICT OF INTEREST OR AN APPEARANCE OF A CONFLICT OF INTEREST.

18 (C) (6) IF A RECORDING OR A TRANSCRIPT OF A RECORDING IS NOT
19 PREPARED IN THE NORMAL COURSE OF THE BOARD'S PROCEEDINGS, THE PARTY
20 WHO REQUESTS A COPY OF THE RECORDING OR ITS TRANSCRIPT SHALL PAY THE
21 COST OF PREPARING THE RECORDING OR TRANSCRIPT.

22 4.08.

23 (b) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN
24 APPEAL TO A CIRCUIT COURT FROM THE DECISION OF A BOARD OF APPEALS OR A
25 HEARING EXAMINER UNDER THIS SECTION SHALL BE DECIDED BY THE CIRCUIT
26 COURT ON THE RECORD TRANSMITTED BY THE BOARD OF APPEALS OR HEARING
27 EXAMINER, AND MAY NOT BE HEARD DE NOVO.

28 (2) If, after a hearing, the court determines that testimony is necessary
29 for the proper disposition of the matter, the court may take evidence or appoint a
30 referee to take the required evidence and report the evidence to the court with the
31 referee's findings of fact and conclusions of law.

32 [(2)] (3) The referee's evidence, findings, and conclusions shall
33 constitute a part of the proceedings on which the determination of the court shall be
34 made.

1 5.03.

2 (a) (1) Before exercising the powers granted in § 5.02 of this subtitle, the
3 planning commission shall [prepare] RECOMMEND regulations TO THE LOCAL
4 LEGISLATIVE BODY governing the subdivision of land within the local jurisdiction,
5 FOR THE HEALTH, SAFETY, WELFARE, AND COMMON INTEREST OF THE CITIZENS OF
6 THE LOCAL JURISDICTION.

7 (b) (3) (i) Instead of requiring the completion of improvements and
8 utilities before the final approval of a plat, a planning commission may accept a bond
9 with surety, AN IRREVOCABLE LETTER OF CREDIT, OR ANY OTHER FORM OF
10 SECURITY ACCEPTABLE TO AND APPROVED BY THE LOCAL JURISDICTION, to secure
11 to the local jurisdiction the actual construction and installation of the improvements
12 or utilities.

13 (ii) The bond SECURITY shall specify the time for completion and
14 specifications fixed by or in accordance with the regulations of the planning
15 commission.

16 (iii) The local jurisdiction may enforce the bond SECURITY by any
17 appropriate legal or equitable remedy.

18 8.05.

19 (d) The local jurisdiction may not grant a permit for a change [under this
20 section] TO A SITE OR STRUCTURE OR TO A SITE OR STRUCTURE LOCATED IN A
21 DISTRICT until the historic district commission or historic preservation commission
22 has acted on the application as provided under § 8.06 of this subtitle.

23 14.06.

24 (b) Notwithstanding any other provision of this article, the Board of County
25 Commissioners may overrule an action of the Frederick County planning commission
26 UNDER §§ 3.05, 3.06, 3.07, AND 3.08 OF THIS ARTICLE by a majority vote of the
27 membership of the Board of County Commissioners.

28 SECTION 3. AND BE IT FURTHER ENACTED, That Section(s) 14.05(c) and
29 14.08 of Article 66B - Zoning and Planning of the Annotated Code of Maryland (as
30 enacted by Chapter ___ (~~S.B. _____ (01r1823)/H.B. _____ (01r0484)~~) (S.B. 624/H.B. 889) of
31 the Acts of the General Assembly of 2000) be repealed.

32 SECTION 4. AND BE IT FURTHER ENACTED, That Section(s) 14.05(d)
33 through (g), respectively, of Article 66B - Zoning and Planning of the Annotated Code
34 of Maryland (as enacted by Chapter ___ (~~S.B. _____ (01r1823)/H.B. _____ (01r0484)~~) (S.B.
35 624/H.B. 889) of the Acts of the General Assembly of 2000) be renumbered to be
36 Section(s) 14.05(c) through (f), respectively.

37 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
38 October 1, 2000, contingent on the taking effect of Chapter ___ (~~S.B. _____~~
39 (~~01r1823)/H.B. _____ (01r0484)~~) (S.B. 624/H.B. 889) of the Acts of the General Assembly

1 of 2000, and if Chapter ___ does not become effective, this Act shall be null and void
2 without the necessity of further action by the General Assembly.