

HOUSE BILL 297

L1, M1, M3

9lr0246
CF SB 280

By: **The Speaker (By Request – Administration) and Delegates Ali, Barve, Beidle, Cane, Carr, V. Clagett, Feldman, Frush, Gaines, Gilchrist, Gutierrez, Healey, Howard, Hucker, Lafferty, Lee, Mizeur, Montgomery, Niemann, and Pena–Melnik**

Introduced and read first time: January 29, 2009

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Smart, Green, and Growing – Smart and Sustainable Growth Act of 2009**

3 FOR the purpose of defining a certain term applicable to the exercise by a local
4 jurisdiction of certain land use, water and sewer plan review, growth allocation,
5 and annexation powers to require consistency with a local comprehensive plan
6 under certain circumstances; altering the applicability of certain land use
7 provisions to certain local jurisdictions; requiring a local jurisdiction to enact a
8 certain land use plan; requiring a member of a local planning commission to
9 complete a certain education course; requiring a member of a board of appeals
10 to complete a certain education course; declaring the intent of the General
11 Assembly; requiring a member of a local planning commission and a member of
12 a board of appeals to complete a certain education course by a certain date;
13 requiring the Task Force on the Future for Growth and Development to make
14 certain recommendations; requiring the Department of Planning to develop a
15 certain education course by a certain date; providing for the application of this
16 Act; defining certain terms; and generally relating to land use.

17 BY renumbering

18 Article 66B – Land Use

19 Section 1.03

20 to be Section 1.04

21 Annotated Code of Maryland

22 (2003 Replacement Volume and 2008 Supplement)

23 BY repealing and reenacting, without amendments,

24 Article 66B – Land Use

25 Section 1.00(a), 1.01, and 4.09

26 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2003 Replacement Volume and 2008 Supplement)

2 BY repealing and reenacting, with amendments,
3 Article 66B – Land Use
4 Section 1.00(h) and (k), 1.02, 2.13, 3.01, 3.02, and 4.07
5 Annotated Code of Maryland
6 (2003 Replacement Volume and 2008 Supplement)

7 BY adding to
8 Article 66B – Land Use
9 Section 1.02
10 Annotated Code of Maryland
11 (2003 Replacement Volume and 2008 Supplement)

12 BY repealing and reenacting, without amendments,
13 Article 66B – Land Use
14 Section 1.04(e)
15 Annotated Code of Maryland
16 (2003 Replacement Volume and 2008 Supplement)
17 (As enacted by Section 1 of this Act)

18 Preamble

19 WHEREAS, Land use planning in the State of Maryland has revolved around
20 comprehensive plans enacted by local governments, following the eight visions
21 established in the Economic Growth, Resource Protection, and Planning Act of 1992;
22 and

23 WHEREAS, The decision of the Maryland Court of Appeals in David Trail, et al.
24 v. Terrapin Run, LLC et al., 403 Md. 523 (2008) held that a special exception could be
25 granted even if it did not strictly conform to the comprehensive plan; and

26 WHEREAS, While the holding of the Terrapin Run decision could be narrow
27 and confined to the granting of special exceptions, the General Assembly is concerned
28 that a broader interpretation of the decision could undermine the importance of
29 making land use decisions that are consistent with the comprehensive plan; and

30 WHEREAS, Article 66B, § 4.09 of the Annotated Code of Maryland requires a
31 local jurisdiction to implement the provisions of its local comprehensive plan through
32 “the adoption of applicable zoning ordinances and regulations, planned development
33 ordinances and regulations, subdivision ordinances and regulations, and other land
34 use ordinances and regulations that are consistent with the plan;” and

35 WHEREAS, Citizens invest countless hours in determining the future direction
36 of their jurisdiction through local comprehensive plans; and

37 WHEREAS, The people of Maryland are best served if land use decisions are
38 consistent with locally adopted comprehensive plans; and

1 WHEREAS, It is the intent of the General Assembly, as evidenced in Article
2 66B, §§ 1.03(e) and 4.09, that comprehensive plans should be followed as closely as
3 possible while not being elevated to the status of an ordinance and that deviations
4 from the plan should be rare; now, therefore,

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
6 MARYLAND, That Section(s) 1.03 of Article 66B – Land Use of the Annotated Code of
7 Maryland be renumbered to be Section(s) 1.04.

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

10 Article 66B – Land Use

11 1.00.

12 (a) In this article the following words have the meanings indicated, except
13 where the context clearly indicates otherwise.

14 (h) (1) “Plan” means the policies, statements, goals, and interrelated
15 plans for private and public land use, transportation, and community facilities
16 documented in texts and maps which constitute the guide for the area’s future
17 development.

18 (2) “Plan” includes a general plan, master plan, comprehensive plan,
19 or community plan adopted in accordance with §§ **1.03 AND** 3.01 through 3.09 of this
20 article.

21 (k) “Special exception” means a grant of a specific use that would not be
22 appropriate generally or without restriction and shall be based upon a finding that
23 certain conditions governing special exceptions as detailed in the zoning ordinance
24 exist, that the use [conforms to] **IS CONSISTENT WITH** the plan and is compatible
25 with the existing neighborhood.

26 1.01.

27 In addition to the requirements of § 3.05(c) of this article, a commission shall
28 implement the following visions through the plan described in § 3.05 of this article:

29 (1) Development is concentrated in suitable areas.

30 (2) Sensitive areas are protected.

31 (3) In rural areas, growth is directed to existing population centers
32 and resource areas are protected.

1 (4) Stewardship of the Chesapeake Bay and the land is a universal
2 ethic.

3 (5) Conservation of resources, including a reduction in resource
4 consumption, is practiced.

5 (6) To assure the achievement of items (1) through (5) of this section,
6 economic growth is encouraged and regulatory mechanisms are streamlined.

7 (7) Adequate public facilities and infrastructure under the control of
8 the county or municipal corporation are available or planned in areas where growth is
9 to occur.

10 (8) Funding mechanisms are addressed to achieve these visions.

11 **1.02.**

12 **WHEN A PROVISION IN A STATUTE LISTED IN ITEMS (1) THROUGH (4) OF**
13 **THIS SECTION REQUIRES THAT AN ACTION OF A LOCAL GOVERNMENT BE**
14 **“CONSISTENT WITH” OR HAVE “CONSISTENCY WITH” A COMPREHENSIVE PLAN,**
15 **THE TERM SHALL BE DEFINED TO MEAN AN ACTION TAKEN THAT WILL**
16 **FURTHER, AND NOT BE CONTRARY TO, THE POLICIES, TIMING, DEVELOPMENT**
17 **PATTERNS, LAND USES, AND DENSITIES OR INTENSITIES IN THE PLAN:**

18 (1) **§§ 1.00(K), 1.04(E), AND 4.09 OF THIS ARTICLE;**

19 (2) **§§ 9-505(A)(1), 9-506(A)(1), AND 9-507(B)(2) OF THE**
20 **ENVIRONMENT ARTICLE (WATER AND SEWER PLAN REVIEW);**

21 (3) **§ 8-1808.1(C)(2)(I) OF THE NATURAL RESOURCES ARTICLE**
22 **(CRITICAL AREA COMMISSION REVIEW OF GROWTH ALLOCATION); AND**

23 (4) **ARTICLE 23A, § 19(O)(3)(III) (ANNEXATION PLAN) OF THE**
24 **CODE.**

25 **[1.02.] 1.03.**

26 (a) Except as provided in this section, this article does not apply to charter
27 counties.

28 (b) The following sections of this article apply to a charter county:

29 (1) § 1.00(j) (Definition of “sensitive areas”);

30 (2) § 1.01 (Visions);

- 1 **(3) § 1.02 (CONSISTENCY WITH PLANS);**
- 2 ~~[(3)] (4) § 1.03 (Charter county – Comprehensive plans);~~
- 3 **(5) § 3.02(H) (PLANNING COMMISSION – EDUCATION);**
- 4 ~~[(4)] (6) § 4.01(b)(2) (Regulation of bicycle parking);~~
- 5 **(7) § 4.07(A)(10) (BOARD OF APPEALS – EDUCATION);**
- 6 ~~[(5)] (8) § 5.03(d) (Easements for burial sites);~~
- 7 ~~[(6)] (9) § 7.02 (Civil penalty for zoning violation);~~
- 8 ~~[(7)] (10) § 10.01 (Adequate Public Facilities Ordinances);~~
- 9 ~~[(8)] (11) § 11.01 (Transfer of Development Rights);~~
- 10 ~~[(9)] (12) § 12.01 (Inclusionary Zoning);~~
- 11 ~~[(10)] (13) Except in Montgomery County or Prince George’s County, §~~
12 13.01 (Development rights and responsibilities agreements);
- 13 ~~[(11)] (14) For Baltimore County only, § 14.02; and~~
- 14 ~~[(12)] (15) For Howard County only, § 14.06.1.~~
- 15 (c) This section supersedes any inconsistent provision of Article 28 of the
16 Code.
- 17 1.04.
- 18 (e) On or before July 1, 1997, and subsequently at intervals of not more than
19 6 years which correspond to the comprehensive plan revision under subsection (c) of
20 this section, a charter county shall ensure that the implementation of the provisions of
21 the comprehensive plan that comply with § 1.01 of this article and subsection (a)(1)(iii)
22 and (iv) of this section are achieved through the adoption of:
- 23 (1) Applicable zoning ordinances and regulations;
- 24 (2) Planned development ordinances and regulations;
- 25 (3) Subdivision ordinances and regulations; and
- 26 (4) Other land use ordinances and regulations that are consistent with
27 the comprehensive plan.

1 2.13.

2 (a) Except as provided in subsection (b) of this section, §§ 3.01 through 8.15
3 of this article do not apply in Baltimore City.

4 (b) The following sections of this article apply to Baltimore City:

5 (1) § 1.00(j) (Definition of “sensitive areas”);

6 (2) § 1.01 (Visions);

7 **(3) § 1.02 (CONSISTENCY WITH PLANS);**

8 ~~[(3)] (4)~~ § 1.03 (Charter county – Comprehensive plans);

9 **(5) § 3.02(H) (PLANNING COMMISSION – EDUCATION);**

10 ~~[(4)] (6)~~ § 4.01(b)(2) (Regulation of bicycle parking);

11 **(7) § 4.07(A)(10) (BOARD OF APPEALS – EDUCATION);**

12 ~~[(5)] (8)~~ § 5.03(d) (Easements for burial sites);

13 ~~[(6)] (9)~~ § 7.02 (Civil penalty for zoning violation);

14 ~~[(7)] (10)~~ § 10.01 (Adequate Public Facilities Ordinances);

15 ~~[(8)] (11)~~ § 11.01 (Transfer of Development Rights);

16 ~~[(9)] (12)~~ § 12.01 (Inclusionary Zoning); and

17 ~~[(10)] (13)~~ § 13.01 (Development Rights and Responsibilities
18 Agreements).

19 3.01.

20 (a) A local jurisdiction [may] **SHALL** enact, adopt, amend, and execute a plan
21 as provided in this article and **MAY** create by ordinance a planning commission with
22 the powers and duties set forth in this article.

23 (b) A municipal corporation may be included as part of a county plan under
24 this article if:

1 (1) The legislative body of the municipal corporation, by a resolution
2 directed to the legislative body of the county in which the municipal corporation is
3 located, indicates the intention to participate in the county plan; and

4 (2) The legislative body of the county approves the resolution.

5 3.02.

6 (a) (1) Except as otherwise provided in this article, a planning
7 commission created under this subtitle shall consist of three, five or seven members.

8 (2) One of the members may be a member of the local legislative body,
9 serving in an ex officio capacity concurrent with the member's official term.

10 (b) (1) The members of a planning commission shall be appointed by the
11 local legislative body or by the person designated as the appointing power in the
12 ordinance creating the commission.

13 (2) Where there is a single local elected executive, the members of a
14 planning commission shall be appointed by the local executive and confirmed by the
15 local legislative body.

16 (c) Each member of a planning commission is entitled to the compensation
17 that the local legislative body considers appropriate.

18 (d) (1) The term of each member is 5 years or until the member's
19 successor takes office.

20 (2) The terms of the members of a planning commission shall be
21 staggered.

22 (e) (1) After a public hearing, the local legislative body may remove the
23 members of a planning commission for inefficiency, neglect of duty, or malfeasance in
24 office.

25 (2) The local legislative body that removes a member of a planning
26 commission shall file a written statement of reasons for the removal.

27 (f) Vacancies occurring other than through the expiration of a term shall be
28 filled for the unexpired term by the local legislative body or by the person designated
29 in the ordinance as the appointing power.

30 (g) In a municipal corporation, the local legislative body may designate one
31 alternate member of the commission who may sit on the commission in the absence of
32 any member of the commission. When the alternate is absent, the local legislative
33 body may designate a temporary alternate to sit on the commission.

1 **(H) (1) IN THIS SUBSECTION, "PLANNING COMMISSION" INCLUDES A**
2 **PLANNING COMMISSION OR BOARD ESTABLISHED UNDER ARTICLE 25A OR**
3 **ARTICLE 28 OF THE CODE.**

4 **(2) WITHIN 6 MONTHS AFTER APPOINTMENT TO A PLANNING**
5 **COMMISSION, A MEMBER SHALL COMPLETE AN EDUCATION COURSE THAT**
6 **INCLUDES EDUCATION ON:**

7 **(I) THE ROLE OF THE COMPREHENSIVE PLAN;**

8 **(II) PROPER STANDARDS FOR SPECIAL EXCEPTIONS AND**
9 **VARIANCES; AND**

10 **(III) THE JURISDICTION'S ZONING ORDINANCES AND**
11 **REGULATIONS, PLANNED DEVELOPMENT ORDINANCES AND REGULATIONS,**
12 **SUBDIVISION ORDINANCES AND REGULATIONS, AND OTHER LAND USE**
13 **ORDINANCES AND REGULATIONS.**

14 **(3) THE FAILURE OF A MEMBER TO COMPLETE AN EDUCATION**
15 **COURSE MAY NOT:**

16 **(I) INVALIDATE A DECISION OF THE COMMISSION; OR**

17 **(II) BE CONSTRUED TO CREATE A PRIVATE CAUSE OF**
18 **ACTION BY ANY PERSON.**

19 4.07.

20 (a) (1) Each local legislative body shall provide for the appointment of a
21 board of appeals.

22 (2) A board of appeals consists of at least three members.

23 (3) The terms of office of the members of a board of appeals are 3
24 years.

25 (4) A member of a board of appeals shall be appointed by the local
26 executive and confirmed by the local legislative body.

27 (5) A member of a board of appeals may be removed:

28 (i) For cause;

29 (ii) On written charges; and

1 (iii) After a public hearing.

2 (6) The appointing authority shall appoint a new member to fill the
3 unexpired term of any member who leaves a board of appeals.

4 (7) A member of a board of appeals may receive the compensation that
5 the local legislative body considers appropriate.

6 (8) A local legislative body may not serve as a board of appeals.

7 (9) A member of the board of appeals shall recuse himself or herself
8 from participating in a matter in which the member may have a conflict of interest or
9 an appearance of a conflict of interest.

10 (b) (1) Each local legislative body shall designate one alternate member
11 for the board of appeals who may sit on the board when any other member of the board
12 is absent.

13 (2) When the alternate member is absent, the local legislative body
14 may designate a temporary alternate.

15 (c) (1) A board of appeals shall adopt rules in accordance with the
16 provisions of any ordinance adopted under this article.

17 (2) The meetings of a board of appeals shall be held at the call of the
18 chairman and at other times determined by the board.

19 (3) The chairman of a board of appeals or the acting chairman may
20 administer oaths and compel the attendance of witnesses.

21 (4) All meetings of a board of appeals shall be open to the public.

22 (5) (i) A board of appeals shall make a transcript of all
23 proceedings, showing the vote of each member on each question, or the member's
24 absence or failure to vote.

25 (ii) 1. A board of appeals shall immediately file the
26 transcript of its proceedings in the office of the board.

27 2. A transcript shall be a public record.

28 (6) If a recording or a transcript of a recording is not prepared in the
29 normal course of the board's proceedings, the party who requests a copy of the
30 recording or its transcript shall pay the cost of preparing the recording or transcript.

31 (d) A board of appeals shall have the following powers:

1 (1) Hear and decide appeals where it is alleged there is an error in any
2 order, requirement, decision, or determination made by an administrative officer in
3 the enforcement of this article or of any ordinance adopted under this article;

4 (2) Hear and decide special exceptions to the terms of an ordinance on
5 which the board is required to pass under the ordinance; and

6 (3) Authorize on appeal in specific cases a variance from the terms of
7 an ordinance.

8 (e) (1) An appeal to the board of appeals may be filed by:

9 (i) Any person aggrieved by any decision of the administrative
10 officer; or

11 (ii) Any officer, department, board, or bureau of the jurisdiction
12 affected by any decision of the administrative officer.

13 (2) An appeal shall be taken within a reasonable time, as provided by
14 the rules of the board of appeals, by filing with the administrative officer from whom
15 the appeal is taken and with the board of appeals a notice of appeal specifying the
16 grounds of the appeal.

17 (3) The officer from whom the appeal is taken shall promptly transmit
18 to the board all papers constituting the record on which the action appealed was
19 based.

20 (f) (1) Except as provided in paragraph (2) of this subsection, an appeal to
21 a board of appeals stays all proceedings in furtherance of the action appealed.

22 (2) If an administrative officer certifies to the board of appeals facts
23 stated in the certificate that indicate to the administrative officer that a stay would
24 cause imminent peril to life or property as provided in paragraph (1) of this subsection,
25 the board of appeals or the court of record may stay the proceedings:

26 (i) Only for due cause shown; and

27 (ii) Through the issuance of a restraining order after notice is
28 given to the administrative officer.

29 (g) (1) A board of appeals shall fix a reasonable time for the hearing of an
30 appeal, give public notice of the hearing and due notice to the parties in interest, and
31 decide the appeal within a reasonable time.

32 (2) At a hearing, a party may appear in person or be represented by an
33 agent or attorney.

1 (h) (1) In exercising its powers, a board of appeals may, in conformity
2 with the provisions of this article:

3 (i) Wholly or partly reverse the order, requirement, decision, or
4 determination from which the appeal is taken;

5 (ii) Wholly or partly affirm the order, requirement, decision, or
6 determination from which the appeal is taken;

7 (iii) Modify the order, requirement, decision, or determination
8 from which the appeal is taken; or

9 (iv) Issue a new order, requirement, decision, or determination.

10 (2) The board shall have all the powers of the administrative officer
11 from whom the appeal is taken.

12 **(I) (1) IN THIS SUBSECTION, "BOARD OF APPEALS" INCLUDES A**
13 **BOARD OF APPEALS ESTABLISHED UNDER ARTICLE 25A OR ARTICLE 28 OF THE**
14 **CODE OR § 2.08 OF THIS ARTICLE.**

15 **(2) WITHIN 6 MONTHS AFTER APPOINTMENT TO A BOARD OF**
16 **APPEALS, A MEMBER SHALL COMPLETE AN EDUCATION COURSE THAT**
17 **INCLUDES EDUCATION ON:**

18 **(I) THE ROLE OF THE COMPREHENSIVE PLAN;**

19 **(II) PROPER STANDARDS FOR SPECIAL EXCEPTIONS AND**
20 **VARIANCES; AND**

21 **(III) THE JURISDICTION'S ZONING ORDINANCES AND**
22 **REGULATIONS, PLANNED DEVELOPMENT ORDINANCES AND REGULATIONS,**
23 **SUBDIVISION ORDINANCES AND REGULATIONS, AND OTHER LAND USE**
24 **ORDINANCES AND REGULATIONS.**

25 **(3) THE FAILURE OF A MEMBER TO COMPLETE AN EDUCATION**
26 **COURSE MAY NOT:**

27 **(I) INVALIDATE A DECISION OF THE BOARD; OR**

28 **(II) BE CONSTRUED TO CREATE A PRIVATE CAUSE OF**
29 **ACTION BY ANY PERSON.**

30 4.09.

1 On or before July 1, 1997, and subsequently at intervals of no more than 6 years
2 which correspond to the plan revision under § 3.05(b) of this article, a local jurisdiction
3 shall ensure that the implementation of the provisions of the plan that comply with §§
4 1.01 and 3.05(a)(4)(vii) and (ix) of this article are achieved through the adoption of
5 applicable zoning ordinances and regulations, planned development ordinances and
6 regulations, subdivision ordinances and regulations, and other land use ordinances
7 and regulations that are consistent with the plan.

8 SECTION 3. AND BE IT FURTHER ENACTED, That it is the intent of the
9 General Assembly that this Act overturn the Court of Appeals ruling in David Trail, et
10 al. v. Terrapin Run, LLC et al., 403 Md. 523 (2007).

11 SECTION 4. AND BE IT FURTHER ENACTED, That:

12 (a) Members of a local jurisdiction's planning commission and board of
13 appeals shall complete an education course in accordance with Article 66B, §§ 3.02
14 (h)(10) and 4.07(i) of the Code, as enacted by Section 2 of this Act, on or before July 1,
15 2010;

16 (b) The Task Force on the Future for Growth and Development, as
17 established by Chapter 381 of the Acts of 2006, as amended by Chapter 626 of the Acts
18 of 2007, shall make recommendations on the education course for members of a local
19 jurisdiction's planning commission and board of appeals by July 1, 2009;

20 (c) The Department of Planning, in consultation with the Task Force on the
21 Future for Growth and Development, shall develop an online education course for
22 members of planning commissions and boards of appeals. Completion of the
23 Department's training program shall meet the requirements of Article 66B, §§ 3.02(h)
24 and 4.07(b) of the Code, as enacted by Section 2 of this Act. The online education
25 course shall be available by January 1, 2010; and

26 (d) A local jurisdiction may develop an education course for members of the
27 local jurisdiction's planning commission and board of appeals in lieu of the
28 Department's education course.

29 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall be
30 construed to apply only prospectively and may not be applied or interpreted to have
31 any effect on or application to any action covered under Article 66B, § 1.02(1) of the
32 Code, as enacted by Section 2 of this Act.

33 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect
34 July 1, 2009.