

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 243 (Delegate Lafferty, *et al.*)
Environment and Transportation

Land Use Actions - Legislative Bodies - Judicial Review

This bill authorizes specified persons to file a request for judicial review of a land use action, including a comprehensive planning or rezoning action, of a legislative body, by the circuit court of the county. The bill also identifies persons who have standing to bring and maintain such an action.

Fiscal Summary

State Effect: The bill is not expected to materially impact State finances.

Local Effect: Local government finances may be impacted to the extent the bill results in increased judicial review of local legislative body land use actions. The extent of any impact, however, cannot be reliably estimated.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The persons authorized to file a request for judicial review are:

- a person aggrieved by the decision or action;
- a taxpayer; or
- an officer or a unit of the local jurisdiction.

The bill also specifies that the following persons have standing to bring and maintain an action:

- a person that owns property located within 1,000 feet of the border of a property that has a change in zoning or use through the land use action and is presumptively aggrieved; and
- a person that (1) owns property located more than 1,000 feet from the border of a property that has a change in zoning or use through the land use action and (2) alleges and proves that the change is likely to cause that person a harm that differs in kind or degree from any harm to the public at large.

Current Law/Background: The Maryland Court of Appeals recently addressed the issue of judicial review of land use decisions of a local legislative body and specifically the question of when a person has standing to challenge a decision (*Anne Arundel County v. Bell*, 442 Md. 539 (2015)). “Standing” typically refers to an individual’s capacity to participate in a lawsuit. In order to demonstrate standing, an individual usually has to demonstrate that he/she experienced an adverse effect from the law or action in question, which will continue unless the court grants relief.

The Court of Appeals distinguished, in *Bell*, between (1) comprehensive zoning, which involves legislative determinations and focuses on a considerable number of properties and how they relate to each other and the surrounding area, and (2) administrative land use decisions such as piecemeal rezonings, special exceptions, variances, and nonconforming uses, which are accomplished through quasi-judicial or executive processes and focus on specific properties or developments.

The court indicated that a person can establish standing to challenge administrative land use decisions through “property owner standing,” which stems from State statutes that grant an “aggrieved person” the right to challenge many zoning actions. Property owner standing recognizes that a person may be specially aggrieved or harmed by a decision or action in a manner different from the general public. The court described that under property owner standing, an adjoining, confronting, or nearby property owner is, *prima facie*, specially damaged and an aggrieved person. In addition, while not a bright line rule, the court has found persons who have lived between 200 and 1,000 feet away from the subject property to be almost *prima facie* aggrieved. If those persons can offer “plus factors” supporting injury, they can establish property owner standing. Persons further away than 1,000 feet may be able to establish that their personal or property rights are specially and adversely affected, but the court expressed doubt whether such a circumstance could exist.

The court declined to apply property owner standing to challenges to comprehensive zoning, finding that doing so could confer standing on such a broad group of people (those within the area that is the subject of the comprehensive zoning and those in close proximity to its boundary) that it would lose meaning and be unworkable. Challengers to comprehensive zoning ordinances instead must satisfy requirements of “taxpayer” standing. Taxpayer standing is not based on proximity to a land use or zoning change, but instead on whether the person sufficiently alleges that a government action is illegal and that because of the action, the person may suffer a pecuniary loss or an increase in taxes.

Local Fiscal Effect: Local government finances may be affected to the extent the bill results in more individuals or entities seeking judicial review of land use actions of a legislative body and/or an increase in the length of, and resources devoted to, individual cases. Expansion of litigation of land use actions could increase local government costs and could affect the timing and outcome of the land use actions being challenged. The extent of any impact on local government finances, however, cannot be reliably estimated.

Small Business Effect: Small businesses that stand to benefit from land use actions of a legislative body, such as small business developers, builders, and subcontractors, may be meaningfully impacted by changes in the timing and outcome of land use actions and any increased legal costs resulting from additional judicial review under the bill. Other small businesses that are adversely affected by a land use action, however, presumably could meaningfully benefit from additional judicial review of the action.

Additional Information

Prior Introductions: None.

Cross File: SB 166 (Senator Conway) - Education, Health, and Environmental Affairs.

Information Source(s): Judiciary (Administrative Office of the Courts); Maryland Department of Planning; Baltimore City; Allegany, Harford, Montgomery, and Wicomico counties; Maryland-National Capital Park and Planning Commission; Maryland Building Industry Association; NAIOP (Maryland Chapters); Department of Legislative Services

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