

HOUSE BILL 1390

L6

8lr3040

By: ~~Delegate Lafferty~~ Delegates Lafferty and Jalisi

Introduced and read first time: February 9, 2018

Assigned to: Environment and Transportation

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 13, 2018

CHAPTER _____

1 AN ACT concerning

2 **Land Use – Development Rights and Responsibilities Agreements – Enhanced**
3 **Public Benefits**

4 FOR the purpose of requiring a certain development rights and responsibilities agreement
5 to include ~~the zoning standards applicable to the real property subject to the~~
6 ~~agreement and~~ a description of a certain enhanced public benefit; ~~clarifying that,~~
7 ~~with a certain exception, the local zoning laws, rules, regulations, and policies in~~
8 ~~force at a certain time govern the use, density, or intensity of the real property~~
9 ~~subject to the agreement; authorizing the local jurisdiction to require compliance~~
10 ~~with other local laws, rules, regulations, and policies enacted or adopted after the~~
11 ~~effective date of an agreement; limiting the maximum length of the initial term of an~~
12 ~~agreement to a certain number of years; limiting the extension of an agreement to~~
13 ~~one additional period not exceeding a certain number of years; prohibiting the parties~~
14 ~~from amending an agreement unless the planning commission of the local~~
15 ~~jurisdiction considers and makes a recommendation regarding the effect of a certain~~
16 ~~change in local laws, rules, regulations, or policies; defining a certain term; making~~
17 ~~conforming changes; and generally relating to development rights and~~
18 responsibilities agreements.

19 BY repealing and reenacting, without amendments,

20 Article – General Provisions

21 Section 1–101 and 1–110

22 Annotated Code of Maryland

23 (2014 Volume and 2017 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, with amendments,
2 Article – Land Use
3 Section 7–301 and 7–303 ~~through 7–305~~
4 Annotated Code of Maryland
5 (2012 Volume and 2017 Supplement)

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

8 **Article – General Provisions**

9 1–101.

10 Except as otherwise provided in this Code, in this Code the following words have the
11 meanings indicated.

12 1–110.

13 “Includes” or “including” means includes or including by way of illustration and not
14 by way of limitation.

15 **Article – Land Use**

16 7–301.

17 (a) In this subtitle the following words have the meanings indicated.

18 (b) “Development rights and responsibilities agreement” or “agreement” means
19 an agreement between a local governing body and a person having a legal or equitable
20 interest in real property to establish conditions under which development may proceed for
21 a specified time.

22 (c) (1) **“ENHANCED PUBLIC BENEFIT” MEANS AN IMPROVEMENT THAT**
23 **BENEFITS THE PUBLIC AND EXCEEDS THE IMPROVEMENTS A PERSON WOULD BE**
24 **REQUIRED TO PROVIDE UNDER LOCAL PLANNING, ZONING, AND ENVIRONMENTAL**
25 **LAWS.**

26 (2) **“ENHANCED PUBLIC BENEFIT” INCLUDES:**

27 (I) **PARKLANDS, OPEN SPACE, AND AFFORESTATION;**

28 (II) **MULTIMODAL TRANSPORTATION FACILITIES;**

29 (III) **TRAFFIC SAFETY IMPROVEMENTS;**

30 (IV) **INFRASTRUCTURE;**

1 (V) STORMWATER MANAGEMENT; ~~AND~~

2 (VI) STREAM RESTORATION;

3 (VII) PUBLIC SCHOOL FACILITIES;

4 (VIII) AFFORDABLE HOUSING; AND

5 (IX) PUBLIC SAFETY FACILITIES.

6 [(c)] (D) “Local governing body” means the legislative body, the local executive,
7 or other elected governmental body that has zoning powers under this division.

8 [(d)] (E) “Public principal” means the governmental entity of a local jurisdiction
9 that has been granted the authority to enter agreements under § 7–302(a) of this subtitle.
10 7–303.

11 (a) A development rights and responsibilities agreement shall include:

12 (1) a legal description of the real property subject to the agreement;

13 (2) the names of the persons having a legal or equitable interest in the real
14 property subject to the agreement;

15 (3) the duration of the agreement;

16 (4) the ~~APPLICABLE ZONING STANDARDS, INCLUDING THE~~ permissible
17 uses of the real property;

18 (5) the density or intensity of use of the real property;

19 (6) the maximum height and size of structures to be located on the real
20 property;

21 (7) **A DESCRIPTION OF THE ENHANCED PUBLIC BENEFIT THAT:**

22 ~~(I) SUPPORTS THE AGREEMENT AND THE PROPOSED~~
23 ~~DEVELOPMENT OF THE REAL PROPERTY; AND~~

24 ~~(II) SHALL BE BONDED AT THE TIME OF FINAL DEVELOPMENT~~
25 ~~APPROVAL;~~

26 [(7)] (8) a description of the permits required or already approved for the
27 development of the real property;

1 ~~[(8)] (9)~~ a statement that the proposed development is consistent with the
2 comprehensive plan and development regulations of the local jurisdiction;

3 ~~[(9)] (10)~~ a description of the conditions, terms, restrictions, or other
4 requirements determined by the local governing body of the local jurisdiction to be
5 necessary to ensure the public health, safety, or welfare; and

6 ~~[(10)] (11)~~ to the extent applicable, provisions for the:

7 (i) dedication of a portion of the real property for public use;

8 (ii) protection of sensitive areas;

9 (iii) preservation and restoration of historic structures; and

10 (iv) construction or financing of public facilities.

11 (b) An agreement may:

12 (1) set the time frame and terms for development and construction on the
13 real property; and

14 (2) provide for other matters consistent with this division.

15 ~~7-304.~~

16 ~~(a) Except as provided in subsection (b) of this section, the local ZONING laws,~~
17 ~~rules, regulations, and policies governing the use, density, or intensity of the real property~~
18 ~~subject to an agreement shall be the local ZONING laws, rules, regulations, and policies in~~
19 ~~force at the time the parties execute the agreement.~~

20 ~~(b) If the local jurisdiction determines that compliance with local ZONING laws,~~
21 ~~rules, regulations, and policies enacted or adopted after the effective date of an agreement~~
22 ~~is essential to ensure the public health, safety, or welfare, an agreement may not prevent~~
23 ~~a local government from requiring a person to comply with those local laws, rules,~~
24 ~~regulations, and policies.~~

25 ~~(C) EXCEPT AS PROVIDED IN SUBSECTIONS (A) AND (B) OF THIS SECTION,~~
26 ~~THE LOCAL JURISDICTION MAY REQUIRE COMPLIANCE WITH LOCAL LAWS, RULES,~~
27 ~~REGULATIONS, OR POLICIES ENACTED OR ADOPTED AFTER THE EFFECTIVE DATE OF~~
28 ~~THE AGREEMENT.~~

29 ~~7-305.~~

1 ~~(a) Before entering into an agreement, a person having a legal or equitable~~
2 ~~interest in real property or the person's representative shall petition the public principal of~~
3 ~~the local jurisdiction in which the property is located.~~

4 ~~(b) (1) After receiving a petition and before entering into an agreement, the~~
5 ~~public principal shall conduct a public hearing.~~

6 ~~(2) A public hearing that is required for approval of the development~~
7 ~~satisfies the public hearing requirement.~~

8 ~~(c) The public principal of a local jurisdiction may not enter into an agreement~~
9 ~~unless the planning commission of the local jurisdiction determines whether the proposed~~
10 ~~agreement is consistent with the comprehensive plan of the local jurisdiction.~~

11 ~~(d) (1) If an agreement is not recorded in the land records of the local~~
12 ~~jurisdiction within 20 days after the date on which the parties execute the agreement, the~~
13 ~~agreement is void.~~

14 ~~(2) The parties to an agreement and their successors in interest are bound~~
15 ~~to the agreement after the agreement is recorded.~~

16 ~~(e) An agreement shall be void 5 years after the date on which the parties execute~~
17 ~~the agreement unless:~~

18 ~~(1) [otherwise] A SHORTER TERM IS established under § 7-303 of this~~
19 ~~subtitle; or~~

20 ~~(2) extended FOR ONE ADDITIONAL PERIOD NOT EXCEEDING 5 YEARS~~
21 ~~by amendment under subsection (f) of this section.~~

22 ~~(f) (1) Subject to paragraph (2) of this subsection and after a public hearing,~~
23 ~~the parties to an agreement may amend the agreement by mutual consent.~~

24 ~~(2) (1) [Unless] THE PARTIES MAY NOT AMEND AN AGREEMENT~~
25 ~~UNLESS the planning commission of the local jurisdiction:~~

26 ~~1. determines whether the proposed amendment is~~
27 ~~consistent with the comprehensive plan of the local jurisdiction[, the parties may not~~
28 ~~amend an agreement]; AND~~

29 ~~2. CONSIDERS AND MAKES A RECOMMENDATION~~
30 ~~REGARDING THE EFFECT OF ANY CHANGE IN LOCAL LAWS, RULES, REGULATIONS,~~
31 ~~OR POLICIES, INCLUDING THE ADEQUATE PUBLIC FACILITIES LAW, SCHOOL~~
32 ~~CAPACITY, STORMWATER MANAGEMENT REQUIREMENTS, AND FOREST~~
33 ~~CONSERVATION REQUIREMENTS.~~

1 ~~(H) EXCEPT AS PROVIDED IN § 7-304 OF THIS SUBTITLE, THE~~
2 ~~LOCAL JURISDICTION MAY REQUIRE COMPLIANCE WITH LOCAL LAWS, RULES,~~
3 ~~REGULATIONS, OR POLICIES ENACTED OR ADOPTED AFTER THE EFFECTIVE DATE OF~~
4 ~~THE AGREEMENT.~~

5 ~~(g) (1) The parties to an agreement may terminate the agreement by mutual~~
6 ~~consent.~~

7 ~~(2) If the public principal or the local governing body determines that~~
8 ~~suspension or termination is essential to ensure the public health, safety, or welfare, the~~
9 ~~public principal or the local governing body may suspend or terminate an agreement after~~
10 ~~a public hearing.~~

11 ~~(h) Unless the agreement is terminated under subsection (g) of this section, the~~
12 ~~parties to an agreement or their successors in interest may enforce the agreement.~~

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2018.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.