

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1449 (Delegate Lehman)
Environment and Transportation

Zoning – Board of Appeals Decisions or Zoning Actions – Judicial Review

This bill alters statewide the following with respect to a decision of a board of appeals or a zoning action of a legislative body: (1) zoning actions subject to judicial review; (2) persons who may file a request for judicial review by the circuit court of the county; (3) requirements for a person to be aggrieved; and (4) availability of judicial review related to specified types of development.

Fiscal Summary

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

Local Effect: Local government finances may be impacted to the extent the bill results in increased judicial review of local legislative body zoning actions and decisions of boards of appeals, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

The bill makes the following changes statewide:

- ***Zoning Actions Subject to Judicial Review*** – The bill alters the legislative body zoning actions subject to judicial review by including a comprehensive planning or rezoning action of a legislative body.

- ***Associational Standing*** – The bill allows a corporation, an association, or any other organization to request judicial review, by the circuit court of the county, of a decision of a board of appeals or a zoning action (including a comprehensive planning or rezoning action) of a legislative body, if it (1) consists of two or more members joined by mutual consent for a common purpose; (2) has one or more members who meet one of the standing requirements under the statute; (3) seeks to protect interests related to its purpose; and (4) neither the claim asserted nor the relief requested requires the participation of a member.
- ***Aggrievement*** – The bill specifies that a person is aggrieved by a decision or an action if the person can demonstrate that as a result of the decision or action the person is likely to suffer an “injury in fact.” “Injury in fact” means an invasion of a legally protected interest that is (1) concrete and particularized; (2) actual or imminent; and (3) not conjectural or hypothetical. It includes (1) a property right or personal interest that is distinct from, or specifically affected in a way that is distinct from, a property right or personal interest of the general public and (2) a negative impact, or the threat of a negative impact, to a person’s health or use and enjoyment of a natural resource or the environment, including a negative impact to aesthetic, recreational, conservational, and economic interests shared among community members.
- ***Judicial Review of Specified Types of Development*** – Judicial review may not be requested by a corporation, an unincorporated association, or any other organization if the decision of the board of appeals or zoning action is related to (1) development of affordable housing under an affordable housing program, as specified under the Local Government Article; (2) development of a brownfield site, as specified under the Tax-Property Article; or (3) redevelopment of previously developed property.

The bill repeals a provision, applicable to Division I jurisdictions under the Land Use Article, that specifies that the existing standards for judicial review of a zoning action are not changed by the applicable standing provisions of the statute.

Current Law:

Standing under Federal Law

Under federal law, the constitutional minimum of standing requires that (1) the plaintiff suffered an injury in fact (an actual or imminent concrete and particularized invasion of a legally protected interest); (2) the injury must be fairly traceable to the challenged action of the defendant; and (3) it must be likely that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992).

In *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333, 343 (1977), the U.S. Supreme Court stated that “an association has standing to bring suit on behalf of its

members when (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.”

Associational Standing – Maryland

In Maryland, an association must have a property interest of its own, separate from that of its members, in order to have standing to sue. *Citizens Planning & Hous. Ass’n v. County Exec. of Baltimore County*, 273 Md. 333, 345, 329 A.2d 681 (1974). See *Greater Towson Council of Cmty. Ass’ns v. DMS Dev., LLC*, 234 Md. App. 388 (2017) (“To have standing to appeal a zoning and land use decision of the Board, a neighborhood or community association itself must be “aggrieved” by the decision of the Board regardless of its members’ property ownership.”)

Judicial Review – Local Jurisdictions

Statutory provisions related to judicial review are similar within Division I of the Land Use Article of the Maryland Code. However, the provisions for judicial review differ in Montgomery and Prince George’s counties under Division II of the Land Use Article.

Under Division I of the Land Use Article, legislative bodies, the elected body of a local jurisdiction, including the board of county commissioners, the county council, and the governing body of a municipal corporation, enact zoning ordinances and regulations, and must appoint a board of appeals, that may, among other things, hear and decide special exceptions to, and authorize a variance from, the terms of a local law.

Pursuant to § 4-401 of the Land Use Article (which the bill’s provisions alter), the following persons may file a request for judicial review, by the circuit court of the county, of a decision of a board of appeals or a zoning action of a legislative body:

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

The statute establishes that § 4-401 does not change the existing standards for judicial review of a zoning action.

Title 10 of the Land Use Article governs zoning in Baltimore City. A request for judicial review by the circuit court may be filed by any person, taxpayer, or officer or unit of Baltimore City aggrieved by a decision of the board of municipal and zoning appeals, or a zoning action by the city council.

Under Division II of the Land Use Article, the Maryland-Washington Regional District consists of (1) the entire area of Montgomery County, subject to certain limitations (relating to certain municipalities not subject to the planning and zoning authority of the county, unless by agreement, and other municipalities that have certain, limited planning and zoning authority) and (2) the entire area of Prince George's County, except for the City of Laurel as it existed on July 1, 2013.

The county councils of Montgomery and Prince George's counties are the district councils for that portion of the regional district located within the respective counties. The district councils have the authority to adopt and amend the zoning law and any map for the portion of the regional district within the counties. The district councils may authorize the board of appeals, which they appoint, to grant special exceptions and variances to the zoning laws, and interpret zoning maps or decide questions that arise in the administration of zoning laws.

Petitions for judicial review of a final action or decision of the district council or decision by the board of appeals are filed in the circuit courts of Montgomery and Prince George's counties, respectively.

- *In Montgomery County*, judicial review of a final action of the district council on an application for an individual map amendment or a sectional map amendment may be requested by (1) a person aggrieved by the action or (2) a person or municipal corporation that appeared at the hearing in person, by attorney, or in writing. Judicial review of a decision by the board of appeals on an application for a zoning variance or special exception may be requested by any person or municipal corporation that appeared at the hearing in person, by attorney, or in writing.
- *In Prince George's County*, judicial review of any final decision of the district council, including an individual map amendment or a sectional map amendment, may be requested by any person or entity that is aggrieved by the decision of the district council and is (1) a municipal corporation, governed special taxing district, or person in the county; (2) a civic or homeowners association representing property owners affected by the final decision; (3) the owner of the property that is the subject of the decision; or (4) the applicant. The Maryland Supreme Court notes that judicial review in Prince George's County is not limited to zoning actions, but includes all planning and zoning decisions of the district council. *County Council of Prince George's County v. Chaney Enters. L.P.*, 454 Md. 514, 531 (2017). Any party to a proceeding before the board of appeals aggrieved by the decision of the board may request judicial review.

Decisions Subject to Judicial Review – Comprehensive Planning or Rezoning Action

Comprehensive Planning

Under the Land Use Article, local jurisdictions are required to enact, adopt, amend, and execute a comprehensive plan that includes specified visions and elements. At least once every 10 years, each local jurisdiction must review its comprehensive plan and, if necessary, revise or amend the plan.

Maryland courts have held that comprehensive plans are advisory in nature, and not subject to judicial review, unless a statute or local ordinance links planning and zoning. For example, when development regulations require master plan compliance, the master plan becomes a regulatory device, rather than a mere guide and recommendation. The link between planning and zoning in local law elevates the comprehensive plan to the level of a regulatory device, subject to judicial review. *Chaney*, 454 Md. at 532 (quoting *HNS Dev., LLC v. People’s Counsel*, 425 Md. 436, 457 (2012)).

Comprehensive Rezoning

After an analysis of the land use and development activity in a local jurisdiction, a legislative body may take a comprehensive rezoning action, among other reasons, to ensure that the zoning is consistent with an update of a comprehensive plan.

Comprehensive zoning differs from piecemeal zoning, because comprehensive zoning encompasses a large geographic area, and is designed to affect numerous property owners within the local jurisdiction. By contrast, piecemeal zoning is a zoning action related to a single property and owner accomplished through a quasi-judicial process, which results in written findings of fact and conclusions of law. The Maryland Supreme Court held that property owner standing is appropriate for quasi-judicial land use proceedings, and comprehensive zoning or rezoning decisions (a legislative act) require taxpayer standing to maintain a judicial challenge. Thus, “amendments to the text of zoning regulations, comprehensive zonings, and other acts that are legislative in nature do not qualify for judicial review as a ‘zoning action.’” *Anderson House, LLC v. Mayor of Rockville*, 402 Md. 689, 705 (2008).

Taxpayer standing in comprehensive zoning or rezoning cases requires the plaintiff, as a taxpayer, to bring a lawsuit on behalf of all other taxpayers, and allege a “special injury” distinct from the general public regarding a governmental action that is illegal or *ultra vires*, that reasonably may result in a pecuniary loss to the taxpayer or an increase in taxes. *Anne Arundel County. v. Bell*, 442 Md. 539, 577-578 (2015).

Aggrievement Standard – Property Owner Standing

Generally, to have property owner standing to challenge planning and zoning decisions made in a quasi-judicial proceeding, the petitioner must be (1) a party to the proceeding, and (2) specially aggrieved. The Maryland Supreme Court has held that a “person aggrieved” is one whose personal or property rights are adversely and specially affected by a decision in a way different from that suffered by the public generally. Generally, to be a person aggrieved, and have standing for judicial review, the petitioner must show:

- *prima facie* aggrievement, which requires a person to be “an adjoining, confronting or nearby property owner,” or live within 200 feet of the subject property; or
- almost *prima facie* aggrievement, which requires some proximity (200 feet to 1,000 feet) to the subject property and “plus factors” to support the injury, such as decreasing property values, increasing traffic, or other types of special injury.

Bryniarski v. Montgomery County Bd. of Appeals, 247 Md. 137, 143 (1967); *Ray v. Mayor & City Council of Baltimore*, 430 Md. 74, 81-86, 91-92 (2013).

Local Fiscal Effect: Local government finances may be affected to the extent the bill results in more individuals or entities (including corporations, associations, or other organizations) seeking judicial review of local legislative body zoning actions and decisions of boards of appeals. 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 zoning actions of a legislative body or decisions of boards of appeals, such as small business developers, builders, and subcontractors, may be meaningfully impacted by changes in the timing and outcome of zoning actions or decisions of boards of appeals, and any increased legal costs resulting from additional judicial review under the bill. Other small businesses that are adversely affected by a zoning action or a decision of a board of appeals, however, presumably could meaningfully benefit from additional judicial review of the action.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 1045 (Senator Gile) - Education, Energy, and the Environment.

Information Source(s): Anne Arundel, Baltimore, Frederick, Montgomery, and Prince George's counties; Maryland-National Capital Park and Planning Commission; Maryland Association of Counties; Maryland Municipal League; Judiciary (Administrative Office of the Courts); Maryland Department of Planning; Department of Legislative Services

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Analysis by: Joanne E. Tetlow

Direct Inquiries to:
(410) 946-5510
(301) 970-5510