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By: **Charles County Delegation**

Introduced and read first time: February 13, 1998

Assigned to: Commerce and Government Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Zoning - Special Exceptions - County Commissioners**

3 FOR the purpose of authorizing the County Commissioners of Charles County to  
4 adopt procedures to hear and decide certain special exceptions on appeal from  
5 the board of appeal in a certain manner; providing that, under certain  
6 circumstances, certain actions of the County Commissioners shall be final  
7 actions subject to appeal in a certain manner; providing for the effective date of  
8 this Act; and generally relating to the authority of the county commissioners of  
9 Charles County over special exceptions.

10 BY repealing and reenacting, with amendments,  
11 Article 66B - Zoning and Planning  
12 Section 4.07  
13 Annotated Code of Maryland  
14 (1995 Replacement Volume and 1997 Supplement)

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

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

18 4.07.

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

21 (2) The board of appeals consists of three or five members.

22 (3) The terms of office of the members of the board are three years.

23 (4) The members of the board shall be appointed by the local executive,  
24 and confirmed by the local legislative body.

25 (5) A member of the board may be removed for cause, upon written  
26 charges, and after a public hearing.

1           (6)       Vacancies shall be filled for the unexpired terms of any member  
2 whose term becomes vacant.

3           (7)       Members of the board may receive compensation as the local  
4 legislative body deems appropriate.

5       (b)       (1)       The local legislative body shall designate one alternate member for  
6 the board of appeals who may be empowered to sit on the board in the absence of any  
7 member of the board.

8           (2)       When the alternate is absent, the local legislative body may  
9 designate a temporary alternate.

10       (b-1)     Notwithstanding subsection (a) of this section, in Frederick County and St.  
11 Mary's County the board members may be appointed to staggered terms varying from  
12 one to three years.

13       (b-2)     Notwithstanding subsection (a) of this section, in Charles County, board  
14 members shall be appointed to staggered terms of 4 years.

15       (b-3)     (1)       Notwithstanding subsection (a) of this section, in Cecil County, the  
16 board has five regular members and one alternate member.

17           (2)       Board members serve for 3-year staggered terms.

18           (3)       At the end of a term, a member continues to serve until a successor is  
19 appointed and qualifies.

20           (4)       A member who is appointed after a term has begun serves only for  
21 the rest of the term and until a successor is appointed and qualifies.

22       (c)       The board shall adopt rules in accordance with the provisions of any  
23 ordinance adopted pursuant to this article. Meetings of the board shall be held at the  
24 call of the chairman and at such other times as the board may determine. Such  
25 chairman or in his absence, the acting chairman, may administer oaths and compel  
26 the attendance of witnesses. All meetings of the board shall be open to the public. The  
27 board shall make a transcript of all proceedings, showing the vote of each member  
28 upon each question, or, if absent or failing to vote, indicating such fact, which shall be  
29 immediately filed in the office of the board and shall be a public record.

30       (d)       The board of appeals shall have the following powers:

31           (1)       To hear and decide appeals where it is alleged there is error in any  
32 order, requirement, decision, or determination made by an administrative official in  
33 the enforcement of this article or of any ordinance adopted pursuant thereto.

34           (2)       To hear and decide special exceptions to the terms of the ordinance  
35 upon which such board is required to pass under such ordinances.

1 (3) To authorize upon appeal in specific cases a variance from the terms  
2 of the ordinance.

3 (E) (1) THIS SUBSECTION APPLIES ONLY:

4 (I) IN CHARLES COUNTY; AND

5 (II) TO AN APPLICATION FOR A SPECIAL EXCEPTION FOR SURFACE  
6 MINING, AN ASPHALT PLANT, CONCRETE PLANT, OR SAND AND GRAVEL WASHING,  
7 CRUSHING, OR SCREENING.

8 (2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, THE  
9 COUNTY COMMISSIONERS MAY HEAR AND DECIDE A SPECIAL EXCEPTION, ON THE  
10 RECORD, UNDER AN APPEAL FILED BY A PROPERTY OWNER AGGRIEVED BY A  
11 DECISION OF THE BOARD OF APPEALS ON THE SPECIAL EXCEPTION, IN ACCORDANCE  
12 WITH RULES AND PROCEDURES ADOPTED BY THE COUNTY COMMISSIONERS.

13 (3) IF THE COUNTY COMMISSIONERS ADOPT RULES AND PROCEDURES  
14 FOR CONSIDERING A SPECIAL EXCEPTION UNDER THIS SUBSECTION, THE DECISION  
15 OF THE COUNTY COMMISSIONERS TO GRANT, DENY, MODIFY, OR REMAND THE  
16 APPLICATION FOR THE SPECIAL EXCEPTION IS A FINAL DECISION FROM WHICH AN  
17 APPEAL MAY BE TAKEN TO THE CIRCUIT COURT UNDER § 4.08 OF THIS SUBTITLE.

18 [(e)] (F) Appeals to the board of appeals may be taken by any person  
19 aggrieved or by any officer, department, board or bureau of the jurisdiction affected by  
20 any decisions of the administrative officer. Such appeal shall be taken within a  
21 reasonable time, as provided by the rules of the board, by filing with the officer from  
22 whom the appeal is taken and with the board of appeals a notice of appeal specifying  
23 the grounds thereof. The officer from whom the appeal is taken shall forthwith  
24 transmit to the board all the papers constituting the record upon which the action  
25 appealed from was taken.

26 [(f)] (G) An appeal stays all proceedings in furtherance of the action appealed  
27 from, unless the officer from whom the appeal is taken certifies to the board of  
28 appeals after notice of appeal shall have been filed with him that by reason of the  
29 facts stated in the certificate a stay would, in his opinion, cause imminent peril to life  
30 or property. In such case proceedings shall not be stayed otherwise than by a  
31 restraining order which may be granted by the board of appeals or by a court of record  
32 on application on notice to the officer from whom the appeal is taken and on due  
33 cause shown.

34 [(g)] (H) The board of appeals shall fix a reasonable time for the hearing of the  
35 appeal, give public notice thereof, as well as due notice to the parties in interest, and  
36 decide the same within a reasonable time. Upon the hearing any party may appear in  
37 person or by agent or by attorney.

38 [(h)] (I) In exercising the above-mentioned powers such board may, in  
39 conformity with the provisions of this article, reverse or affirm, wholly or partly, or  
40 may modify the order, requirement, decision, or determination appealed from and

1 make such order, requirement, decision or determination as ought to be made, and to  
2 that end shall have all the powers of the officer from whom the appeal is taken.

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
4 December 31, 1998.