

SENATE BILL 523

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2000 Regular Session
0lr1820
CF 0lr1821

By: **Senator Frosh (Article 66B Study Commission)**
Introduced and read first time: February 4, 2000
Assigned to: Economic and Environmental Affairs

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 17, 2000

CHAPTER _____

1 AN ACT concerning

2 **Land Use**

3 FOR the purpose of making certain changes to the State law on land use; authorizing
4 a local legislative body to grant an adaptive reuse that allows a change of use
5 restrictions in a zoning classification for a particular improved property in a
6 certain type of neighborhood under certain conditions; authorizing a local
7 legislative body to authorize a planning director or other designee to grant
8 certain administrative adjustments; providing for the criteria and procedures
9 for administrative adjustments and the processes for adopting those criteria and
10 procedures; allowing for an appeal of a decision on an administrative
11 adjustment; providing for the interpretation of certain provisions relating to
12 administrative adjustments; clarifying certain scope provisions relating to
13 Baltimore City; requiring a hearing examiner and a member of a board of
14 appeals to take a recusal where there may be a conflict of interest or an
15 appearance of a conflict of interest; altering the number of members of a board of
16 appeals; authorizing a board of appeals to require a person requesting a
17 recording or transcript of a recording to pay the costs; providing that, with a
18 certain exception, an appeal to a circuit court of a decision of a hearing examiner
19 or a board of appeals is to be on the record transmitted to the court; altering the
20 authority of a planning commission with regard to regulations governing the
21 subdivision of land and providing a standard for that authority; authorizing a
22 local jurisdiction to take certain forms of security to secure the construction and
23 installation of certain required improvements or utilities; clarifying a provision
24 relating to historic district commissions and historic preservation commissions;
25 repealing certain duplicative provisions relating to specific counties; authorizing
26 the Frederick County Board of Commissioners to overrule an action of the
27 Frederick County planning commission under certain circumstances; defining a
28 certain term; making this Act contingent on the taking effect of another act; and

1 generally relating to land use authority in the State and the authority and
2 duties of local jurisdictions, local legislative bodies, planning commissions,
3 hearing examiners, and boards of appeals.

4 BY renumbering

5 Article 66B - Zoning and Planning
6 Section 1.00(b) through (k), respectively
7 to be Section 1.00(c) through (l), respectively
8 Annotated Code of Maryland
9 (1998 Replacement Volume and 1999 Supplement)
10 (As enacted by Chapter ___ (~~S.B. _____ (01r1823)~~)/~~H.B. _____ (01r0484)~~) (S.B.
11 624/H.B. 889) of the Acts of the General Assembly of 2000)

12 BY adding to

13 Article 66B - Zoning and Planning
14 Section 1.00(b), 4.05(d) and (e), 4.06(a)(3), and 4.07(a)(8) and (9) and (c)(6)
15 Annotated Code of Maryland
16 (1998 Replacement Volume and 1999 Supplement)
17 (As enacted by Chapter ___ (~~S.B. _____ (01r1823)~~)/~~H.B. _____ (01r0484)~~) (S.B.
18 624/H.B. 889) of the Acts of the General Assembly of 2000)

19 BY repealing and reenacting, with amendments,

20 Article 66B - Zoning and Planning
21 Section 2.13, 4.07(a)(2), 4.08(b), 5.03(a)(1) and (b)(3), ~~and~~ 8.05(d), and 14-06(b)
22 Annotated Code of Maryland
23 (1998 Replacement Volume and 1999 Supplement)
24 (As enacted by Chapter ___ (~~S.B. _____ (01r1823)~~)/~~H.B. _____ (01r0484)~~) (S.B.
25 624/H.B. 889) of the Acts of the General Assembly of 2000)

26 BY repealing

27 Article 66B - Zoning and Planning
28 Section 14.05(c) and 14.08
29 Annotated Code of Maryland
30 (1998 Replacement Volume and 1999 Supplement)
31 (As enacted by Chapter ___ (~~S.B. _____ (01r1823)~~)/~~H.B. _____ (01r0484)~~) (S.B.
32 624/H.B. 889) of the Acts of the General Assembly of 2000)

33 BY renumbering

34 Article 66B - Zoning and Planning
35 Section 14.05(d) through (g), respectively
36 to be Section 14.05(c) through (f), respectively
37 Annotated Code of Maryland
38 (1998 Replacement Volume and 1999 Supplement)

1 (As enacted by Chapter ____ (~~S.B. _____ (01r1823)~~)/H.B. _____ (01r0484)) (S.B.
2 624/H.B. 889) of the Acts of the General Assembly of 2000)

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
4 MARYLAND, That Section(s) 1.00(b) through (k), respectively, of Article 66B - Zoning
5 and Planning of the Annotated Code of Maryland (as enacted by Chapter ____ (~~S.B.~~
6 ~~_____ (01r1823)~~)/H.B. _____ (01r0484)) (S.B. 624/H.B. 889) of the General
7 Assembly of 2000) be renumbered to be Section(s) 1.00(c) through (l), respectively.

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

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

11 1.00.

12 (B) "ADAPTIVE REUSE" MEANS A CHANGE GRANTED BY A LOCAL LEGISLATIVE
13 BODY, UNDER § 4.05 OF THIS ARTICLE, TO THE USE RESTRICTIONS IN A ZONING
14 CLASSIFICATION, AS THOSE RESTRICTIONS ARE APPLIED TO A PARTICULAR
15 IMPROVED PROPERTY.

16 2.13.

17 (a) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, Sections 3.01
18 through 8.15 of this article do not apply in Baltimore City.

19 (b) [~~(1) Sections 2.01 through 2.11 of this article and all laws and ordinances~~
20 ~~passed under those sections are not affected by the remaining provisions of this~~
21 ~~article~~ THE FOLLOWING SECTIONS OF THIS ARTICLE APPLY TO BALTIMORE CITY:

- 22 (1) § 1.00(I) (DEFINITION OF "SENSITIVE AREAS");
23 (2) § 1.01 (VISIONS);
24 (3) § 1.03 (CHARTER COUNTY - COMPREHENSIVE PLANS);
25 (4) § 4.01(B)(2) (REGULATION OF BICYCLE PARKING);
26 (5) § 5.03(D) (EASEMENTS FOR BURIAL SITES);
27 (6) § 7.02 (CIVIL PENALTY FOR ZONING VIOLATION);
28 (7) § 10.01 (ADEQUATE PUBLIC FACILITIES ORDINANCES);
29 (8) § 11.01 (TRANSFER OF DEVELOPMENT RIGHTS);
30 (9) § 12.01 (INCLUSIONARY ZONING); AND
31 (10) § 13.01 (DEVELOPMENT RIGHTS AND RESPONSIBILITIES
32 AGREEMENTS).

1 [(2) In Baltimore City, the provisions of this article other than §§ 2.01
2 through 2.11 of this article are intended to supplement §§ 2.01 through 2.11 of this
3 article.]

4 4.05.

5 (D) (1) A LOCAL LEGISLATIVE BODY MAY AUTHORIZE THE PLANNING
6 DIRECTOR OR ANOTHER DESIGNEE TO GRANT ADMINISTRATIVE ADJUSTMENTS
7 FROM THE FOLLOWING REQUIREMENTS IN A ZONING ORDINANCE ENACTED BY THE
8 LOCAL LEGISLATIVE BODY:

- 9 (I) LOCAL HEIGHT REQUIREMENTS;
- 10 (II) LOCAL SETBACK REQUIREMENTS;
- 11 (III) LOCAL BULK REQUIREMENTS;
- 12 (IV) LOCAL PARKING REQUIREMENTS;
- 13 (V) LOCAL LOADING, DIMENSIONAL, OR AREA REQUIREMENTS; OR
- 14 (VI) SIMILAR LOCAL REQUIREMENTS.

15 (2) BEFORE DEVELOPING CRITERIA AND PROCEDURES FOR
16 ADMINISTRATIVE ADJUSTMENTS UNDER THIS SUBSECTION, THE LOCAL
17 LEGISLATIVE BODY SHALL:

18 (I) CONSULT WITH THE PLANNING COMMISSION AND THE BOARD
19 OF APPEALS; AND

20 (II) PROVIDE:

- 21 1. REASONABLE PUBLIC NOTICE OF THE PROPOSED
22 CRITERIA AND PROCEDURES;
- 23 2. AN OPPORTUNITY FOR PUBLIC HEARING; AND
- 24 3. AN OPPORTUNITY FOR PUBLIC REVIEW AND COMMENT.

25 (3) THE CRITERIA FOR AN ADMINISTRATIVE ADJUSTMENT SHALL
26 INCLUDE:

27 (I) STANDARDS FOR ACTIONS ON REQUESTS;

28 (II) STANDARDS FOR THE CLASSES OF DEVELOPMENT THAT ARE
29 ELIGIBLE FOR AN ADMINISTRATIVE ADJUSTMENT; AND

30 (III) THE MAXIMUM VARIATION FROM A ZONING REQUIREMENT
31 THAT IS ALLOWED UNDER AN ADMINISTRATIVE ADJUSTMENT.

32 (4) PROCEDURES FOR ADMINISTRATIVE ADJUSTMENTS MAY INCLUDE:

- 1 (I) APPLICATIONS;
- 2 (II) NOTICE TO THE PUBLIC AND TO THE PARTIES IN INTEREST;
- 3 (III) AN OPPORTUNITY FOR PUBLIC HEARING;
- 4 (IV) AN OPPORTUNITY FOR THE TAKING OF TESTIMONY AND
5 EVIDENCE; AND
- 6 (V) DECISION MAKING.

7 (5) A DECISION ON AN APPLICATION FOR AN ADMINISTRATIVE
8 ADJUSTMENT SHALL INCLUDE WRITTEN FINDINGS OF FACT.

9 (6) BY THE ENACTMENT OF AN ORDINANCE OR THE ADOPTION OF A
10 PROCEDURE, A LOCAL LEGISLATIVE BODY MAY AUTHORIZE THE APPEAL TO THE
11 BOARD OF APPEALS OF A DECISION TO APPROVE OR DENY AN ADMINISTRATIVE
12 ADJUSTMENT.

13 (7) NOTHING IN THIS SUBSECTION IS INTENDED TO AUTHORIZE A
14 LOCAL GOVERNMENT TO ~~ABROGATE STATE MANDATED CRITICAL AREA OR~~
15 ~~SENSITIVE AREA REQUIREMENTS~~ PERMIT AN ADMINISTRATIVE ADJUSTMENT TO
16 STATE OR LOCAL REQUIREMENTS THAT ARE INTENDED TO PROTECT
17 ENVIRONMENTALLY SENSITIVE AREAS, SUCH AS STREAMS, SLOPES, WETLANDS,
18 NATURAL HERITAGE AREAS, OR CRITICAL AREAS.

19 (E) (1) A LOCAL LEGISLATIVE BODY MAY AUTHORIZE, ON APPLICATION BY A
20 PROPERTY OWNER, HOW THE USES ALLOWED IN A ZONING CLASSIFICATION ARE TO
21 BE APPLIED TO A PARTICULAR IMPROVED PROPERTY BY GRANTING AN ADAPTIVE
22 REUSE.

23 (2) BEFORE GRANTING AN ADAPTIVE REUSE, THE LOCAL LEGISLATIVE
24 BODY SHALL DETERMINE THAT:

25 (I) THE CHANGE IS CONSISTENT WITH THE PLAN FOR THE LOCAL
26 JURISDICTION;

27 (II) THE CHANGE IS IN THE PUBLIC INTEREST AND PROVIDES A
28 POSITIVE BENEFIT TO THE COMMUNITY; AND

29 (III) LITERAL ENFORCEMENT OF THE ZONING CLASSIFICATION
30 WOULD DEPRIVE THE OWNER OF ALL REASONABLE ECONOMICALLY VIABLE USE OF
31 THE PROPERTY.

32 4.06.

33 (a) (3) A HEARING EXAMINER SHALL RECUSE HIMSELF OR HERSELF FROM
34 PARTICIPATING IN A MATTER IN WHICH THE HEARING EXAMINER MAY HAVE A
35 CONFLICT OF INTEREST OR THE APPEARANCE OF A CONFLICT OF INTEREST.

1 4.07.

2 (a) (2) A board of appeals consists of [either] AT LEAST three [or five]
3 members.

4 (8) A LOCAL LEGISLATIVE BODY MAY NOT SERVE AS A BOARD OF
5 APPEALS.

6 (9) A MEMBER OF THE BOARD OF APPEALS SHALL RECUSE HIMSELF OR
7 HERSELF FROM PARTICIPATING IN A MATTER IN WHICH THE MEMBER MAY HAVE A
8 CONFLICT OF INTEREST OR AN APPEARANCE OF A CONFLICT OF INTEREST.

9 (C) (6) IF A RECORDING OR A TRANSCRIPT OF A RECORDING IS NOT
10 PREPARED IN THE NORMAL COURSE OF THE BOARD'S PROCEEDINGS, THE PARTY
11 WHO REQUESTS A COPY OF THE RECORDING OR ITS TRANSCRIPT SHALL PAY THE
12 COST OF PREPARING THE RECORDING OR TRANSCRIPT.

13 4.08.

14 (b) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN
15 APPEAL TO A CIRCUIT COURT FROM THE DECISION OF A BOARD OF APPEALS OR A
16 HEARING EXAMINER UNDER THIS SECTION SHALL BE DECIDED BY THE CIRCUIT
17 COURT ON THE RECORD TRANSMITTED BY THE BOARD OF APPEALS OR HEARING
18 EXAMINER, AND MAY NOT BE HEARD DE NOVO.

19 (2) If, after a hearing, the court determines that testimony is necessary
20 for the proper disposition of the matter, the court may take evidence or appoint a
21 referee to take the required evidence and report the evidence to the court with the
22 referee's findings of fact and conclusions of law.

23 [(2)] (3) The referee's evidence, findings, and conclusions shall
24 constitute a part of the proceedings on which the determination of the court shall be
25 made.

26 5.03.

27 (a) (1) Before exercising the powers granted in § 5.02 of this subtitle, the
28 planning commission shall [prepare] RECOMMEND regulations TO THE LOCAL
29 LEGISLATIVE BODY governing the subdivision of land within the local jurisdiction,
30 FOR THE HEALTH, SAFETY, WELFARE, AND COMMON INTEREST OF THE CITIZENS OF
31 THE LOCAL JURISDICTION.

32 (b) (3) (i) Instead of requiring the completion of improvements and
33 utilities before the final approval of a plat, a planning commission may accept a bond
34 with surety, AN IRREVOCABLE LETTER OF CREDIT, OR ANY OTHER FORM OF
35 SECURITY ACCEPTABLE TO AND APPROVED BY THE LOCAL JURISDICTION, to secure
36 to the local jurisdiction the actual construction and installation of the improvements
37 or utilities.

1 (ii) The bond SECURITY shall specify the time for completion and
2 specifications fixed by or in accordance with the regulations of the planning
3 commission.

4 (iii) The local jurisdiction may enforce the bond SECURITY by any
5 appropriate legal or equitable remedy.

6 8.05.

7 (d) The local jurisdiction may not grant a permit for a change [under this
8 section] TO A SITE OR STRUCTURE OR TO A SITE OR STRUCTURE LOCATED IN A
9 DISTRICT until the historic district commission or historic preservation commission
10 has acted on the application as provided under § 8.06 of this subtitle.

11 14.06.

12 (b) Notwithstanding any other provision of this article, the Board of County
13 Commissioners may overrule an action of the Frederick County planning commission
14 UNDER §§ 3.05, 3.06, 3.07, AND 3.08 OF THIS ARTICLE by a majority vote of the
15 membership of the Board of County Commissioners.

16 SECTION 3. AND BE IT FURTHER ENACTED, That Section(s) 14.05(c) and
17 14.08 of Article 66B - Zoning and Planning of the Annotated Code of Maryland (as
18 enacted by Chapter ___ (~~S.B. _____ (01r1823)/H.B. _____ (01r0484)~~) (S.B. 624/H.B. 889) of
19 the Acts of the General Assembly of 2000) be repealed.

20 SECTION 4. AND BE IT FURTHER ENACTED, That Section(s) 14.05(d)
21 through (g), respectively, of Article 66B - Zoning and Planning of the Annotated Code
22 of Maryland (as enacted by Chapter ___ (~~S.B. _____ (01r1823)/H.B. _____ (01r0484)~~) (S.B.
23 624/H.B. 889) of the Acts of the General Assembly of 2000) be renumbered to be
24 Section(s) 14.05(c) through (f), respectively.

25 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2000, contingent on the taking effect of Chapter ___ (~~S.B. _____~~
27 (~~01r1823)/H.B. _____ (01r0484)~~) (S.B. 624/H.B. 889) of the Acts of the General Assembly
28 of 2000, and if Chapter ___ does not become effective, this Act shall be null and void
29 without the necessity of further action by the General Assembly.