

SENATE BILL 159

D3, L6

71r1508
CF HB 34

By: **Senators Brochin, Della, Klausmeier, Pugh, and Stone**

Introduced and read first time: January 25, 2007

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Planning and Zoning Decisions – Standing to Appeal**

3 FOR the purpose of altering the standing requirements for a party to a proceeding
4 before a county board of appeals to appeal the decision of the county board of
5 appeals to the circuit court under certain circumstances; altering the standing
6 requirements for a party to a proceeding in a circuit court regarding a decision
7 of a county board of appeals to appeal the decision of the circuit court under
8 certain circumstances; altering the standing requirements for an aggrieved
9 person, a community association, and a homeowners association to appeal to the
10 circuit court a final action of the district council in Montgomery County or
11 Prince George's County, a decision of the board of appeals in Montgomery
12 County, or a decision of the board of zoning appeals in Prince George's County
13 under certain circumstances; imposing certain requirements on an appeal heard
14 by the circuit court in Montgomery County or Prince George's County under
15 certain circumstances; altering the standing requirements for an aggrieved
16 person, a community association, and a homeowners association to appeal to the
17 circuit court a decision of a local board of appeals, a zoning action of a local
18 legislative body, or any matter arising under the planning and zoning laws of a
19 local jurisdiction under certain circumstances; imposing certain requirements
20 on an appeal heard by the circuit court on certain planning and zoning matters
21 under certain circumstances; repealing the authority of a local legislative body
22 to allow an appeal to the circuit court of any matter arising under the planning
23 and zoning laws of the local jurisdiction under certain circumstances; providing
24 for the construction of this Act; defining certain terms; providing for the
25 application of this Act; and generally relating to standing to appeal planning
26 and zoning decisions.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article 25A – Chartered Counties of Maryland
3 Section 5(U)
4 Annotated Code of Maryland
5 (2005 Replacement Volume and 2006 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article 28 – Maryland–National Capital Park and Planning Commission
8 Section 8–105(a), 8–106(e), 8–110(b), and 8–111.1(a)
9 Annotated Code of Maryland
10 (2003 Replacement Volume and 2006 Supplement)

11 BY adding to
12 Article 28 – Maryland–National Capital Park and Planning Commission
13 Section 8–111.2
14 Annotated Code of Maryland
15 (2003 Replacement Volume and 2006 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article 66B – Land Use
18 Section 1.02, 2.13, and 4.08
19 Annotated Code of Maryland
20 (2003 Replacement Volume and 2006 Supplement)

21 Preamble

22 WHEREAS, In 2003 the Falls Road Community Association of Baltimore
23 County (“FRCA”), acting on behalf of its members and pursuant to Baltimore County
24 Code § 32–4–231, became a party in the Custom Builders Syndicate, LLC zoning
25 hearing, Case VIII–795, involving a 44–house development located within the
26 geographic limits of the FRCA, and the FRCA and adjacent landowners filed a timely
27 appeal to the County Board of Appeals; and

28 WHEREAS, On March 29, 2004, the County Board of Appeals of Baltimore
29 County issued an Order in Falls Road Community Association v. Custom Builders
30 Syndicate, LLC, Case No. CBA–03–152, and the FRCA and adjacent landowners filed
31 a timely appeal to the Circuit Court for Baltimore County; and

32 WHEREAS, On August 30, 2004 the Circuit Court for Baltimore County
33 entered a Memorandum Opinion and Order in FRCA v. Custom Builders Syndicate,
34 LLC, Case No. 03–C–04–003421, and the FRCA and adjacent landowners filed a
35 timely appeal to the Court of Special Appeals; and

1 WHEREAS, Prior to the filing of appellants' brief in the FRCA v. Custom
2 Builders Syndicate, LLC, appeal, the adjacent landowners, in response to settlement
3 offers or threatened legal action, dismissed their appeals, leaving the FRCA the sole
4 appellant; and

5 WHEREAS, The appellee immediately moved for a dismissal of the FRCA's
6 appeal for lack of common law standing and the Court of Special Appeals granted the
7 appellee's motion; and

8 WHEREAS, The FRCA sought certiorari from the Court of Appeals but it was
9 not granted; and

10 WHEREAS, The case law applied by the Court of Special Appeals in FRCA v.
11 Custom Builders Syndicate, LLC, provides that an association does not have common
12 law standing unless it has a "property interest of its own – separate and distinct from
13 that of its individual members." Medical Waste Association v. Maryland Waste
14 Coalition, 327 Md. 596, 612 (1992). Moreover, the Court of Appeals has held that
15 under Maryland common law, an organization cannot acquire standing to appeal
16 simply because one or more of its members has standing. Citizens Planning & Housing
17 Association v. County Executive, 273 Md. 333, 345 (1974); and

18 WHEREAS, Even if an association has a specific interest or property right
19 affected by a land use decision, Maryland courts interpret "aggrieved" to require the
20 suffering of a wrong different in character and kind than the general public. Medical
21 Waste Association v. Maryland Waste Coalition, 327 Md. 596, 613 (1992); and

22 WHEREAS, Even if the law of the political subdivision grants associations the
23 right to be a party in land use disputes, whenever an association obtains a favorable
24 ruling, the developer can win by default simply by filing an appeal to the circuit court
25 since the association ordinarily has no common law standing; and

26 WHEREAS, The Maryland Court of Appeals has explicitly rejected any
27 expansion of common law standing in areas, such as land use, where the General
28 Assembly has modified standing requirements. See, e.g., Medical Waste Assoc., 327
29 Md. at 623 ("common law principles should not be changed contrary to the public
30 policy of the State set forth by the General Assembly of Maryland") and Article 66B, §
31 4.08 ("any taxpayer" standing) of the Code; and

32 WHEREAS, In light of Maryland's case law, if all parties, including
33 associations, are to have the same right to seek judicial review of the land use
34 decisions of local boards of appeals, the General Assembly must expressly provide for
35 those rights; now, therefore,

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

3 **Article 25A – Chartered Counties of Maryland**

4 5.

5 The following enumerated express powers are granted to and conferred upon
 6 any county or counties which hereafter form a charter under the provisions of Article
 7 XI–A of the Constitution, that is to say:

8 (U)

9 To enact local laws providing (1) for the establishment of a county board of
 10 appeals whose members shall be appointed by the county council; (2) for the number,
 11 qualifications, terms, and compensation of the members; (3) for the adoption by the
 12 board of rules of practice governing its proceedings; and (4) for the decision by the
 13 board on petition by any interested person and after notice and opportunity for
 14 hearing and on the basis of the record before the board, of such of the following
 15 matters arising (either originally or on review of the action of an administrative officer
 16 or agency) under any law, ordinance, or regulation of, or subject to amendment or
 17 repeal by, the county council, as shall be specified from time to time by such local laws
 18 enacted under this subsection: An application for a zoning variation or exception or
 19 amendment of a zoning ordinance map; the issuance, renewal, denial, revocation,
 20 suspension, annulment, or modification of any license, permit, approval, exemption,
 21 waiver, certificate, registration, or other form of permission or of any adjudicatory
 22 order; and the assessment of any special benefit tax: Provided, that upon any decision
 23 by a county board of appeals it shall file an opinion which shall include a statement of
 24 the facts found and the grounds for its decision. Any [person aggrieved by the decision
 25 of the board and a] party to the proceeding before [it] **THE BOARD** may appeal to the
 26 circuit court for the county which shall have power to affirm the decision of the board,
 27 or if such decision is not in accordance with law, to modify or reverse such decision,
 28 with or without remanding the case for rehearing as justice may require. Any party to
 29 the proceeding in the circuit court [aggrieved by the decision of the court] may appeal
 30 from the decision to the Court of Special Appeals in the same manner as provided for
 31 in civil cases.

32 **Article 28 – Maryland–National Capital Park and Planning Commission**

33 8–105.

1 (a) [In] **EXCEPT AS PROVIDED IN § 8-111.2 OF THIS TITLE, IN**
2 Montgomery County, a final action of the district council on any application for a map
3 amendment, within 30 days after the action is taken by the council, may be appealed
4 by any person aggrieved by the action, or by any person, municipality, corporation, or
5 association, whether or not incorporated, which has appeared at the hearing in person,
6 by attorney or in writing to the circuit court for the county which has the power to
7 affirm or reverse the action appealed from, or remand the same to the district council
8 for further consideration for any reason, or dismiss the appeal as now or hereafter
9 provided by law.

10 8-106.

11 (e) [In] **EXCEPT AS PROVIDED IN § 8-111.2 OF THIS TITLE, IN** Prince
12 George's County, any incorporated municipality located in Prince George's County,
13 any person or taxpayer in Prince George's County, any civic or homeowners
14 association representing property owners affected by a final district council decision,
15 and, if aggrieved, the applicant may have judicial review of any final decision of the
16 district council. Proceedings for review shall be instituted by filing a petition in the
17 Circuit Court of Prince George's County within 30 days after service of the final
18 decision of the district council, which may be served upon all persons of record at the
19 district council's hearing. Copies of the petition shall be served on the district council
20 and all other persons of record in the manner provided by the rules of court. The filing
21 of the petition does not stay enforcement of the district council's decision; but the
22 district council may do so, or the reviewing court may order a stay upon terms it
23 deems proper.

24 8-110.

25 (b) [In] **EXCEPT AS PROVIDED IN § 8-111.2 OF THIS TITLE, IN**
26 Montgomery County, notwithstanding any provision in Article 25A, § 5(U), of the
27 Annotated Code to the contrary, a decision by the county board of appeals on
28 applications for zoning variations or exceptions may be appealed within 30 days by
29 any person, municipality, corporation, or association, whether or not incorporated,
30 which has appeared at the hearing in person, by attorney, or in writing, to the circuit
31 court for the county, which may affirm or reverse the decision appealed from or
32 remand it to the board for further consideration for any reason, or dismiss the appeal
33 as provided by law. Any party to the proceedings in the circuit court may appeal from
34 such decision to the Court of Special Appeals. The review proceedings provided by this
35 section are exclusive.

36 8-111.1.

1 (a) (1) [Any] **EXCEPT AS PROVIDED IN § 8-111.2 OF THIS TITLE, ANY**
2 person aggrieved by the decision of the board of zoning appeals of Prince George's
3 County and a party to the proceeding before it may appeal to the circuit court for the
4 county which shall have power to affirm the decision of the board, or if the decision is
5 not in accordance with law, to modify or reverse the decision, with or without
6 remanding the case for rehearing as justice may require.

7 (2) Any party to the proceeding in the circuit court aggrieved by the
8 decision of the court may appeal from the decision to the Court of Special Appeals.

9 **8-111.2.**

10 (A) (1) **IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
11 **MEANINGS INDICATED.**

12 (2) **"COMMUNITY ASSOCIATION" MEANS A NONPROFIT**
13 **ASSOCIATION, CORPORATION, OR OTHER ORGANIZATION THAT REGISTERS WITH**
14 **THE SECRETARY OF STATE UNDER § 7-108 OF THE STATE GOVERNMENT**
15 **ARTICLE AND:**

16 (I) 1. **IS COMPOSED OF AT LEAST 25% OF THE ADULT**
17 **RESIDENTS OF A LOCAL COMMUNITY THAT:**

18 **A. CONSISTS OF AT LEAST 40 HOUSEHOLDS; AND**

19 **B. IS DEFINED BY SPECIFIC GEOGRAPHIC**
20 **BOUNDARIES IN THE BYLAWS OR CHARTER OF THE ORGANIZATION;**

21 **2. AT LEAST ANNUALLY, REQUIRES THE PAYMENT**
22 **OF DUES;**

23 **3. PROMOTES SOCIAL WELFARE AND GENERAL**
24 **CIVIC IMPROVEMENT; AND**

25 **4. IN THE CASE OF A CORPORATION, IS IN GOOD**
26 **STANDING;**

27 (II) 1. **IS COMPOSED OF AT LEAST 100 ADULT**
28 **RESIDENTS, BUT LESS THAN 25% OF THE ADULT RESIDENTS OF A LOCAL**
29 **COMMUNITY THAT:**

1 **A. CONSISTS OF AT LEAST 40 HOUSEHOLDS; AND**

2 **B. IS DEFINED BY SPECIFIC GEOGRAPHIC**
3 **BOUNDARIES IN THE BYLAWS OR CHARTER OF THE ORGANIZATION;**

4 **2. WAS ORGANIZED ON OR BEFORE JANUARY 1,**
5 **2000, AND HAS BEEN IN CONTINUOUS OPERATION SINCE THAT DATE; AND**

6 **3. MEETS THE REQUIREMENTS OF ITEM (I)2, 3, AND**
7 **4 OF THIS PARAGRAPH; OR**

8 **(III) 1. IS COMPOSED OF MORE THAN ONE OF THE**
9 **ORGANIZATIONS DESCRIBED IN ITEM (I) OR ITEM (II) OF THIS PARAGRAPH; AND**

10 **2. EACH OF THOSE ORGANIZATIONS MEETS THE**
11 **REQUIREMENTS OF ITEM (I) OR ITEM (II) OF THIS PARAGRAPH.**

12 **(3) “HOMEOWNERS ASSOCIATION” MEANS A NONPROFIT**
13 **ASSOCIATION, CORPORATION, OR OTHER ORGANIZATION COMPRISED OF**
14 **PROPERTY OWNERS IN A SUBDIVISION OR GROUP OF SUBDIVISIONS WHOSE**
15 **PURPOSE IS TO REPRESENT THE MUTUAL INTERESTS OF THE PROPERTY**
16 **OWNERS REGARDING THE CONSTRUCTION, PROTECTION, AND MAINTENANCE OF**
17 **THE COMMONLY OWNED OR USED PROPERTY AND IMPROVEMENTS.**

18 **(B) (1) IN ADDITION TO ANY OTHER STANDING GRANTED BY LAW, ANY**
19 **OF THE PERSONS LISTED IN PARAGRAPH (2) OF THIS SUBSECTION MAY, JOINTLY**
20 **OR SEVERALLY, APPEAL TO THE CIRCUIT COURT OF THE COUNTY:**

21 **(I) A FINAL ACTION OF THE DISTRICT COUNCIL IN**
22 **MONTGOMERY COUNTY OR PRINCE GEORGE’S COUNTY;**

23 **(II) A DECISION OF THE BOARD OF APPEALS IN**
24 **MONTGOMERY COUNTY; OR**

25 **(III) A DECISION OF THE BOARD OF ZONING APPEALS IN**
26 **PRINCE GEORGE’S COUNTY.**

1 **(2) THE FOLLOWING PERSONS MAY MAKE AN APPEAL UNDER**
2 **THIS SECTION:**

3 **(I) SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, A**
4 **PERSON AGGRIEVED BY A FINAL ACTION OR DECISION IDENTIFIED UNDER**
5 **PARAGRAPH (1) OF THIS SUBSECTION;**

6 **(II) ANY TAXPAYER; OR**

7 **(III) SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, A**
8 **COMMUNITY ASSOCIATION OR A HOMEOWNERS ASSOCIATION.**

9 **(3) TO EXERCISE STANDING UNDER PARAGRAPH (2)(I) OF THIS**
10 **SUBSECTION, A PERSON:**

11 **(I) SHALL HAVE A SPECIFIC INTEREST OR PROPERTY**
12 **RIGHT AFFECTED;**

13 **(II) DOES NOT NEED TO BE PERSONALLY AND**
14 **SPECIFICALLY AFFECTED IN A WAY DIFFERENT FROM THE EFFECT ON THE**
15 **PUBLIC GENERALLY; AND**

16 **(III) DOES NOT NEED TO SUFFER FROM A WRONG DIFFERING**
17 **IN CHARACTER AND KIND FROM THAT SUFFERED BY THE GENERAL PUBLIC.**

18 **(4) TO EXERCISE STANDING UNDER PARAGRAPH (2)(III) OF THIS**
19 **SUBSECTION, A COMMUNITY ASSOCIATION OR A HOMEOWNERS ASSOCIATION**
20 **SHALL SUBMIT TO THE CIRCUIT COURT AN AFFIDAVIT SWORN BY THE**
21 **PRESIDENT OF THE COMMUNITY ASSOCIATION OR THE HOMEOWNERS**
22 **ASSOCIATION THAT:**

23 **(I) IDENTIFIES AT LEAST ONE MEMBER OF THE**
24 **COMMUNITY ASSOCIATION OR HOMEOWNERS ASSOCIATION WHO, AS OF THE**
25 **TIME OF THE FILING OF THE APPEAL, HAS STANDING UNDER PARAGRAPH (2)(I)**
26 **OF THIS SUBSECTION; AND**

27 **(II) STATES THAT NEITHER THE CLAIM ASSERTED NOR THE**
28 **RELIEF REQUESTED BY THE COMMUNITY ASSOCIATION OR THE HOMEOWNERS**
29 **ASSOCIATION REQUIRES THE PARTICIPATION OF THE MEMBER.**

1 **(5) THE APPEAL SHALL BE TAKEN IN ACCORDANCE WITH TITLE 7,**
2 **CHAPTER 200 OF THE MARYLAND RULES.**

3 **(6) THIS SECTION DOES NOT CHANGE THE EXISTING STANDARDS**
4 **FOR THE REVIEW OF A ZONING ACTION.**

5 **(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**
6 **SUBSECTION, AN APPEAL TO A CIRCUIT COURT UNDER THIS SECTION SHALL BE**
7 **DECIDED BY THE CIRCUIT COURT ON THE RECORD TRANSMITTED BY THE**
8 **DISTRICT COUNCIL OR BOARD, AND MAY NOT BE HEARD DE NOVO.**

9 **(2) IF, AFTER A HEARING, THE COURT DETERMINES THAT**
10 **TESTIMONY IS NECESSARY FOR THE PROPER DISPOSITION OF THE MATTER, THE**
11 **COURT MAY TAKE EVIDENCE OR APPOINT A REFEREE TO TAKE THE REQUIRED**
12 **EVIDENCE AND REPORT THE EVIDENCE TO THE COURT WITH THE REFEREE'S**
13 **FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

14 **(3) THE REFEREE'S EVIDENCE, FINDINGS, AND CONCLUSIONS**
15 **SHALL CONSTITUTE A PART OF THE PROCEEDINGS ON WHICH THE COURT SHALL**
16 **MAKE ITS DETERMINATION.**

17 **(D) THE CIRCUIT COURT MAY NOT ALLOW COSTS AGAINST THE**
18 **DISTRICT COUNCIL OR BOARD UNLESS IT APPEARS TO THE COURT THAT THE**
19 **DISTRICT COUNCIL OR BOARD, IN MAKING THE DECISION THAT IS THE SUBJECT**
20 **OF THE APPEAL, ACTED:**

21 **(1) WITH GROSS NEGLIGENCE;**

22 **(2) IN BAD FAITH; OR**

23 **(3) WITH MALICE.**

24 **(E) ALL ISSUES IN ANY PROCEEDING UNDER THIS SECTION SHALL BE**
25 **SCHEDULED AND HEARD BEFORE ALL OTHER CIVIL ACTIONS AND**
26 **PROCEEDINGS.**

1 **(F) (1) AFTER DECIDING AN APPEAL UNDER THIS SECTION, THE**
2 **CIRCUIT COURT SHALL FILE A FORMAL ORDER EMBODYING ITS FINAL**
3 **DECISION.**

4 **(2) (I) A PARTY MAY FILE AN APPEAL FROM A DECISION OF**
5 **THE CIRCUIT COURT WITH THE COURT OF SPECIAL APPEALS, DURING THE**
6 **PERIOD AND IN THE MANNER PRESCRIBED BY THE MARYLAND RULES.**

7 **(II) THE COURT OF SPECIAL APPEALS MAY AWARD COSTS**
8 **IN ANY APPEAL TO THAT COURT UNDER THIS PARAGRAPH.**

9 **(G) THIS SECTION SHALL BE LIBERALLY CONSTRUED TO PROVIDE**
10 **BROAD ACCESS TO THE COURTS FOR TAXPAYERS, COMMUNITY ASSOCIATIONS,**
11 **AND HOMEOWNERS ASSOCIATIONS IN LAND USE OR ZONING MATTERS.**

12 **(H) THIS SECTION MAY NOT BE CONSTRUED TO GRANT STANDING FOR**
13 **AN ACTION LIMITED TO MATTERS IN WHICH A CERTIFICATE, LICENSE, PERMIT,**
14 **OR REGISTRATION IS REQUIRED OR ALLOWED UNDER THE ENVIRONMENT**
15 **ARTICLE.**

16 **Article 66B – Land Use**

17 1.02.

18 (a) Except as provided in this section, this article does not apply to charter
19 counties.

20 (b) The following sections of this article apply to a charter county:

21 (1) § 1.00(j) (Definition of “sensitive areas”);

22 (2) § 1.01 (Visions);

23 (3) § 1.03 (Charter county – Comprehensive plans);

24 (4) § 4.01(b)(2) (Regulation of bicycle parking);

25 **(5) § 4.08 (APPEALS TO COURTS);**

26 **[(5)] (6) § 5.03(d) (Easements for burial sites);**

- 1 [[6]] (7) § 7.02 (Civil penalty for zoning violation);
- 2 [[7]] (8) § 10.01 (Adequate Public Facilities Ordinances);
- 3 [[8]] (9) § 11.01 (Transfer of Development Rights);
- 4 [[9]] (10) § 12.01 (Inclusionary Zoning);
- 5 [[10]] (11) Except in Montgomery County or Prince George’s County, §
- 6 13.01 (Development rights and responsibilities agreements); and
- 7 [[11]] (12) For Baltimore County only, § 14.02.

8 (c) This section supersedes any inconsistent provision of Article 28 of the

9 Code.

10 2.13.

11 (a) Except as provided in subsection (b) of this section, §§ 3.01 through 8.15

12 of this article do not apply in Baltimore City.

13 (b) The following sections of this article apply to Baltimore City:

- 14 (1) § 1.00(j) (Definition of “sensitive areas”);
- 15 (2) § 1.01 (Visions);
- 16 (3) § 1.03 (Charter county – Comprehensive plans);
- 17 (4) § 4.01(b)(2) (Regulation of bicycle parking);
- 18 (5) § 4.08 (APPEALS TO COURTS);
- 19 [[5]] (6) § 5.03(d) (Easements for burial sites);
- 20 [[6]] (7) § 7.02 (Civil penalty for zoning violation);
- 21 [[7]] (8) § 10.01 (Adequate Public Facilities Ordinances);
- 22 [[8]] (9) § 11.01 (Transfer of Development Rights);

1 ~~[(9)]~~ **(10)** § 12.01 (Inclusionary Zoning); and

2 ~~[(10)]~~ **(11)** §13.01 (Development rights and responsibilities
3 agreements).

4 4.08.

5 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
6 **MEANINGS INDICATED.**

7 **(2) “COMMUNITY ASSOCIATION” MEANS A NONPROFIT**
8 **ASSOCIATION, CORPORATION, OR OTHER ORGANIZATION THAT REGISTERS WITH**
9 **THE SECRETARY OF STATE UNDER § 7-108 OF THE STATE GOVERNMENT**
10 **ARTICLE AND:**

11 **(I) 1. IS COMPOSED OF AT LEAST 25% OF THE ADULT**
12 **RESIDENTS OF A LOCAL COMMUNITY THAT:**

13 **A. CONSISTS OF AT LEAST 40 HOUSEHOLDS; AND**

14 **B. IS DEFINED BY SPECIFIC GEOGRAPHIC**
15 **BOUNDARIES IN THE BYLAWS OR CHARTER OF THE ORGANIZATION;**

16 **2. AT LEAST ANNUALLY, REQUIRES THE PAYMENT**
17 **OF DUES;**

18 **3. PROMOTES SOCIAL WELFARE AND GENERAL**
19 **CIVIC IMPROVEMENT; AND**

20 **4. IN THE CASE OF A CORPORATION, IS IN GOOD**
21 **STANDING;**

22 **(II) 1. IS COMPOSED OF AT LEAST 100 ADULT**
23 **RESIDENTS, BUT LESS THAN 25% OF THE ADULT RESIDENTS OF A LOCAL**
24 **COMMUNITY THAT:**

25 **A. CONSISTS OF AT LEAST 40 HOUSEHOLDS; AND**

26 **B. IS DEFINED BY SPECIFIC GEOGRAPHIC**
27 **BOUNDARIES IN THE BYLAWS OR CHARTER OF THE ORGANIZATION;**

1 **2. WAS ORGANIZED ON OR BEFORE JANUARY 1,**
2 **2000, AND HAS BEEN IN CONTINUOUS OPERATION SINCE THAT DATE; AND**

3 **3. MEETS THE REQUIREMENTS OF ITEM (I) 2, 3, AND**
4 **4 OF THIS PARAGRAPH; OR**

5 **(III) 1. IS COMPOSED OF MORE THAN ONE OF THE**
6 **ORGANIZATIONS DESCRIBED IN ITEM (I) OR ITEM (II) OF THIS PARAGRAPH; AND**

7 **2. EACH OF THOSE ORGANIZATIONS MEETS THE**
8 **REQUIREMENTS OF ITEM (I) OR ITEM (II) OF THIS PARAGRAPH.**

9 **(3) “HOMEOWNERS ASSOCIATION” MEANS A NONPROFIT**
10 **ASSOCIATION, CORPORATION, OR OTHER ORGANIZATION COMPRISED OF**
11 **PROPERTY OWNERS IN A SUBDIVISION OR GROUP OF SUBDIVISIONS WHOSE**
12 **PURPOSE IS TO REPRESENT THE MUTUAL INTERESTS OF THE PROPERTY**
13 **OWNERS REGARDING THE CONSTRUCTION, PROTECTION, AND MAINTENANCE OF**
14 **THE COMMONLY OWNED OR USED PROPERTY AND IMPROVEMENTS.**

15 **[(a)](B) (1) [Any] IN ADDITION TO ANY OTHER STANDING GRANTED**
16 **BY LAW, ANY of the [following] persons LISTED IN PARAGRAPH (2) OF THIS**
17 **SUBSECTION may, jointly or severally, appeal [a decision of a board of appeals or a**
18 **zoning action of a local legislative body] to the circuit court of the county:**

19 **(I) A DECISION OF A BOARD OF APPEALS OR ANY LOCAL**
20 **UNIT THAT PERFORMS THE SAME FUNCTIONS AS A BOARD OF APPEALS;**

21 **(II) A ZONING ACTION OF A LOCAL LEGISLATIVE BODY; OR**

22 **(III) ANY MATTER ARISING UNDER THE PLANNING AND**
23 **ZONING LAWS OF A LOCAL JURISDICTION.**

24 **(2) THE FOLLOWING PERSONS MAY MAKE AN APPEAL UNDER**
25 **THIS SECTION:**

26 **(i) [A] SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION,**
27 **A person aggrieved by [the] A decision, [or] action, OR MATTER IDENTIFIED UNDER**
28 **PARAGRAPH (1) OF THIS SUBSECTION;**

1 (ii) Any taxpayer;

2 (iii) **SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, A**
3 **COMMUNITY ASSOCIATION OR A HOMEOWNERS ASSOCIATION; or**

4 [(iii)] (iv) Any officer, department, board, or bureau of the local
5 jurisdiction.

6 (3) **TO EXERCISE STANDING UNDER PARAGRAPH (2)(I) OF THIS**
7 **SUBSECTION, A PERSON:**

8 (i) **SHALL HAVE A SPECIFIC INTEREST OR PROPERTY**
9 **RIGHT AFFECTED;**

10 (ii) **DOES NOT NEED TO BE PERSONALLY AND**
11 **SPECIFICALLY AFFECTED IN A WAY DIFFERENT FROM THE EFFECT ON THE**
12 **PUBLIC GENERALLY; AND**

13 (iii) **DOES NOT NEED TO SUFFER FROM A WRONG DIFFERING**
14 **IN CHARACTER AND KIND FROM THAT SUFFERED BY THE GENERAL PUBLIC.**

15 (4) **TO EXERCISE STANDING UNDER PARAGRAPH (2)(III) OF THIS**
16 **SUBSECTION, A COMMUNITY ASSOCIATION OR A HOMEOWNERS ASSOCIATION**
17 **SHALL SUBMIT TO THE CIRCUIT COURT AN AFFIDAVIT SWORN BY THE**
18 **PRESIDENT OF THE COMMUNITY ASSOCIATION OR THE HOMEOWNERS**
19 **ASSOCIATION THAT:**

20 (i) **IDENTIFIES AT LEAST ONE MEMBER OF THE**
21 **COMMUNITY ASSOCIATION OR THE HOMEOWNERS ASSOCIATION WHO, AS OF THE**
22 **TIME OF THE FILING OF THE APPEAL, HAS STANDING UNDER PARAGRAPH (2)(I)**
23 **OF THIS SUBSECTION; AND**

24 (ii) **STATES THAT NEITHER THE CLAIM ASSERTED NOR THE**
25 **RELIEF REQUESTED BY THE COMMUNITY ASSOCIATION OR THE HOMEOWNERS**
26 **ASSOCIATION REQUIRES THE PARTICIPATION OF THE MEMBER.**

27 [(2)] (5) The appeal shall be taken in accordance with Title 7,
28 Chapter 200 of the Maryland Rules.

1 [(3)] (6) This subsection does not change the existing standards for
2 the review of a zoning action.

3 [(b)] (C) (1) Except as provided in paragraph (2) of this subsection, an
4 appeal to a circuit court from the decision of a board of appeals or a hearing examiner
5 under this section shall be decided by the circuit court on the record transmitted by
6 the board of appeals or hearing examiner, and may not be heard de novo.

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

11 (3) The referee's evidence, findings, and conclusions shall constitute a
12 part of the proceedings on which the [determination of the] court shall [be made]
13 **MAKE ITS DETERMINATION.**

14 [(c)] (D) The circuit court may not allow costs against the board unless it
15 appears to the court that the board, in making the decision that is the subject of the
16 appeal, acted:

17 (1) With gross negligence;

18 (2) In bad faith; or

19 (3) With malice.

20 [(d)] (E) All issues in any proceeding under this section shall be scheduled
21 and heard before all other civil actions and proceedings.

22 [(e)] (F) (1) After deciding an appeal under this section, the circuit court
23 shall file a formal order embodying its final decision.

24 (2) (i) A party may file an appeal from a decision of the circuit
25 court with the Court of Special Appeals, during the period and in the manner
26 prescribed by the Maryland Rules.

27 (ii) The Court of Special Appeals may award costs in any appeal
28 to that court under this paragraph.

1 [(f) (1) In addition to the appeal provided in this section, a local legislative
2 body may allow an appeal to the circuit court of any matter arising under the planning
3 and zoning laws of the local jurisdiction.

4 (2) A decision of the circuit court under this subsection may be
5 appealed to the Court of Special Appeals.]

6 **(G) THIS SECTION SHALL BE LIBERALLY CONSTRUED TO PROVIDE**
7 **BROAD ACCESS TO THE COURTS FOR TAXPAYERS, COMMUNITY ASSOCIATIONS,**
8 **AND HOMEOWNERS ASSOCIATIONS IN LAND USE OR ZONING MATTERS.**

9 **(H) THIS SECTION MAY NOT BE CONSTRUED TO GRANT STANDING FOR**
10 **AN ACTION LIMITED TO MATTERS IN WHICH A CERTIFICATE, LICENSE, PERMIT,**
11 **OR REGISTRATION IS REQUIRED OR ALLOWED UNDER THE ENVIRONMENT**
12 **ARTICLE.**

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
14 construed to apply only prospectively and may not be applied or interpreted to have
15 any effect on or application to any right to appeal a planning or zoning decision arising
16 before the effective date of this Act.

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2007.