

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE

House Bill 34

(Delegate Morhaim, *et al.*)

Judiciary

Planning and Zoning Decisions - Standing to Appeal

This bill expands the classes of persons entitled to appeal local planning and zoning decisions to include a taxpayer, a community association, a homeowners association, or a person aggrieved by a final action or decision, under specified circumstances.

The bill applies prospectively, and it does not affect any right to appeal a planning or zoning decision arising before the bill's October 1, 2007 effective date.

Fiscal Summary

State Effect: The number of community associations and homeowners associations in the State is unknown. Since the number of appeals that might be brought because of the bill cannot be accurately estimated, any effect on the workload of the Judiciary cannot be reliably estimated at this time.

Local Effect: Since the number of appeals that might be brought because of the bill cannot be accurately estimated, any increase in workload or costs attributable to defending appeals cannot be reliably estimated, but could be significant in a particular county. The bill's effect on local planning and zoning cannot be reliably predicted.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill authorizes an appeal to the circuit court of: (1) a decision of a board of appeals or any local unit that performs the same functions; (2) a zoning action of

a local legislative body; (3) any matter arising under the planning and zoning laws of a local jurisdiction; (4) a final action of the district council in Montgomery County or Prince George's County; (5) a decision of the board of appeals in Montgomery County; or (6) the board of zoning appeals in Prince George's County.

In order to exercise standing, an aggrieved person must have a specific interest or property right affected. However, the person does not need to be personally and specifically affected in a way different from the effect on the public generally, nor does the person need to suffer from a wrong differing from that suffered by the general public.

For a community association or a homeowners association to exercise standing, the association must submit to the circuit court an affidavit sworn by the association president that: (1) at least one member has standing under the provision governing the standing of a person aggrieved by a final action or decision; and (2) states that neither the claim asserted nor the relief requested by the association requires the member's participation.

Appeals under the bill must be decided on the basis of the record transmitted to the circuit court and may not be heard *de novo*.

The bill applies the same standard for awarding costs to appeals specifically authorized by the bill in Montgomery County and Prince George's County as are currently applicable to appeals for planning and zoning decisions generally. The circuit court may not award costs unless it appears that the district council or board, in making the decision that is the subject of the appeal, acted with gross negligence, in bad faith, or with malice.

Current Law: Generally, in charter counties, any person aggrieved by the decision of a local board of appeals and who is a party to the proceeding may appeal the board's decision to the circuit for the county in which the board is located. Similarly, a decision by a board of appeals or a zoning action of a local legislative body may be appealed to the local circuit court by: (1) a person aggrieved by the decision or action; (2) a taxpayer; or (3) any of the local jurisdiction's officers, departments, boards, or bureaus. Appeals must be decided on the basis of the record transmitted to the circuit court and may not be heard *de novo*. In an appeal, the court may not award costs unless it appears that the board, in making the decision that is the subject of the appeal, acted with gross negligence, in bad faith, or with malice.

In Montgomery and Prince George's counties, the county councils are designated as district councils for their respective jurisdictions under provisions governing the Maryland-National Capital Park and Planning Commission.

In Montgomery County, a final action of the district council or a decision by the county board of appeals may be appealed by a person aggrieved by the action, or by any person, municipality, corporation, or association that has appeared at the hearing.

In Prince George's County, an incorporated municipality located in the county, any person or taxpayer in the county, a civic or homeowners association representing property owners affected by a final district council decision, and an aggrieved applicant may appeal a final decision of the district council. A person aggrieved by a decision of the board of zoning appeals and a party to the proceeding may appeal the board's decision.

Generally, a party to a civil action must be authorized to participate in the action, either by statute or by having common law "standing." Standing means that a party has a sufficient stake in a controversy to be able to obtain judicial resolution of that controversy. The question is whether the plaintiff is the proper party to the case and not about the merits of the case. The Court of Appeals has held that an association lacks standing to sue where it has no property interest of its own, distinct from that of its individual members. *Citizens Planning & Housing Ass'n. v. County Executive*, 273 Md. 333 (1974). In *Medical Waste Ass'n. v. Maryland Waste Coalition*, 327 Md. 596 (1992), the Court of Appeals stated that if an individual or organization is seeking to redress a public wrong, the individual or organization has no standing unless the wrong suffered is different in character and kind from that suffered by the general public.

By statute, a community association may bring an action to abate a nuisance based on the existence of specified controlled dangerous substances if the nuisance is located within the association's boundaries. In Baltimore City, a community association may bring an action to abate a nuisance based on the existence of specified code violations. The definitions of "community association" differ slightly under these provisions.

Additional Information

Prior Introductions: Bills that would have expanded standing to appeal zoning and/or planning decisions were introduced during the 2006 and 2005 sessions. HB 88 of 2006 was withdrawn after receiving a hearing in the Environmental Matters Committee. HB 155 of 2006 and HB 470 of 2005 received unfavorable reports from Environmental Matters.

Cross File: SB 159 (Senator Brochin, *et al.*) – Judicial Proceedings.

Information Source(s): Maryland Department of Planning, Maryland Department of the Environment, Calvert County, Caroline County, Howard County, Montgomery County, Judiciary (Administrative Office of the Courts), Maryland Association of Counties, Department of Legislative Services

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