

HOUSE BILL 246

L6

8lr0991

By: **Delegates Bobo and V. Clagett**

Introduced and read first time: January 23, 2008

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Charter Counties – Land Use Appeals – Standing**

3 FOR the purpose of authorizing certain persons in a charter county to appeal a
4 decision of a board of appeals or a zoning action of a local legislative body to the
5 circuit court of the county; authorizing certain persons in a charter county to
6 make certain appeals to the Court of Special Appeals; providing certain rules
7 and procedures for certain appeals under certain circumstances to apply to
8 certain persons in a charter county; authorizing a local legislative body in a
9 charter county to allow an appeal to the circuit court of any matter arising
10 under the planning and zoning laws of the local jurisdiction; providing for the
11 application of this Act; and generally relating to appeals of a decision of a board
12 of appeals or a zoning action of a local legislative body to courts.

13 BY repealing and reenacting, with amendments,
14 Article 66B – Land Use
15 Section 1.02
16 Annotated Code of Maryland
17 (2003 Replacement Volume and 2007 Supplement)

18 BY repealing and reenacting, without amendments,
19 Article 66B – Land Use
20 Section 4.08
21 Annotated Code of Maryland
22 (2003 Replacement Volume and 2007 Supplement)

23 Preamble

24 WHEREAS, Article 66B, Section 4.08 of the Code states that any person who is
25 aggrieved by a decision of a board of appeals or a zoning action of a local legislative
26 body may appeal that decision or action to the circuit court of the county; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 WHEREAS, Section 4.08 does not apply to charter counties, effectively denying
2 persons in charter counties the same right to appeal a decision of a board of appeals or
3 a zoning action of a local legislative body as those who live in noncharter counties; and

4 WHEREAS, In *Murrell v. Mayor and City Council*, 376 Md. 170, 190 (2003), the
5 Court of Appeals questioned whether, “the availability of a remedy in Maryland’s
6 statewide intermediate appellate court and in its supreme court, for identical causes of
7 action, by persons who are otherwise identically situated, is entirely dependent upon
8 where in Maryland the persons are located,” violates the equal protection component
9 of Article 24 of the Maryland Declaration of Rights; and

10 WHEREAS, Equitable protection of a person’s right to petition its government
11 for the redress of grievances through the court system should not be abridged; and

12 WHEREAS, Adding this provision to the existing list of 12 other items in
13 Section 1.02 of Article 66B that apply to charter counties would provide greater equal
14 protection under the law throughout the State; and

15 WHEREAS, Many of the Court of Special Appeals decisions involving charter
16 county land use matters are unreported and, thus, cannot provide guidance with
17 regard to adjudicating land use disputes in a specific charter county; and

18 WHEREAS, More uniformity in land use appeal procedures would reduce the
19 complexity and cost of land use adjudications; now, therefore,

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

22 **Article 66B – Land Use**

23 1.02.

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

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

27 (1) § 1.00(j) (Definition of “sensitive areas”);

28 (2) § 1.01 (Visions);

29 (3) § 1.03 (Charter county – Comprehensive plans);

30 (4) § 4.01(b)(2) (Regulation of bicycle parking);

31 **(5) § 4.08 (APPEALS TO COURTS);**

32 **[(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);
- 7 [(11)] (12) For Baltimore County only, § 14.02; and
- 8 [(12)] (13) For Howard County only, § 14.06.1.
- 9 (c) This section supersedes any inconsistent provision of Article 28 of the
- 10 Code.
- 11 4.08.
- 12 (a) (1) Any of the following persons may, jointly or severally, appeal a
- 13 decision of a board of appeals or a zoning action of a local legislative body to the circuit
- 14 court of the county:
- 15 (i) A person aggrieved by the decision or action;
- 16 (ii) Any taxpayer; or
- 17 (iii) Any officer, department, board, or bureau of the local
- 18 jurisdiction.
- 19 (2) The appeal shall be taken in accordance with Title 7, Chapter 200
- 20 of the Maryland Rules.
- 21 (3) This subsection does not change the existing standards for the
- 22 review of a zoning action.
- 23 (b) (1) Except as provided in paragraph (2) of this subsection, an appeal to
- 24 a circuit court from the decision of a board of appeals or a hearing examiner under this
- 25 section shall be decided by the circuit court on the record transmitted by the board of
- 26 appeals or hearing examiner, and may not be heard de novo.
- 27 (2) If, after a hearing, the court determines that testimony is
- 28 necessary for the proper disposition of the matter, the court may take evidence or
- 29 appoint a referee to take the required evidence and report the evidence to the court
- 30 with the referee’s findings of fact and conclusions of law.

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

3 (c) The circuit court may not allow costs against the board unless it appears
4 to the court that the board, in making the decision that is the subject of the appeal,
5 acted:

6 (1) With gross negligence;

7 (2) In bad faith; or

8 (3) With malice.

9 (d) All issues in any proceeding under this section shall be scheduled and
10 heard before all other civil actions and proceedings.

11 (e) (1) After deciding an appeal under this section, the circuit court shall
12 file a formal order embodying its final decision.

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

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

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

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

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
24 construed prospectively to apply only to appeals arising out of actions or decisions that
25 occur on or after the effective date of this Act.

26 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
27 June 1, 2008.