

# HOUSE BILL 246

L6

8lr0991

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

Introduced and read first time: January 23, 2008

Assigned to: Environmental Matters

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 11, 2008

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## CHAPTER \_\_\_\_\_

1 AN ACT concerning

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

3 FOR the purpose of ~~authorizing certain persons in a charter county~~ authorizing a  
4 charter county to enact a local law to include among those persons authorized to  
5 appeal a decision of a board of appeals or a zoning action of a local legislative or  
6 quasi-legislative body to the circuit court of the county; authorizing certain  
7 ~~persons in a charter county to make certain appeals to the Court of Special~~  
8 ~~Appeals; providing certain rules and procedures for certain appeals under~~  
9 ~~certain circumstances to apply to certain persons in a charter county;~~  
10 ~~authorizing a local legislative body in a charter county to allow an appeal to the~~  
11 ~~circuit court of any matter arising under the planning and zoning laws of the~~  
12 ~~local jurisdiction; providing for the application of this Act; and generally~~  
13 ~~relating to appeals of a decision of a board of appeals or a zoning action of a~~  
14 ~~local legislative body to courts~~ a person who is not aggrieved by the decision or  
15 action; authorizing the local law to establish the terms and conditions under  
16 which the person may appeal and procedures for taking an appeal; and  
17 generally relating to the authority to appeal a decision of a board of appeals or a  
18 zoning action of a local legislative or quasi-legislative body in a charter county.

19 BY repealing and reenacting, with amendments,  
20 Article 66B – Land Use  
21 Section 1.02  
22 Annotated Code of Maryland  
23 (2003 Replacement Volume and 2007 Supplement)

24 BY adding to

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**EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article 66B – Land Use  
 2 Section 14.10  
 3 Annotated Code of Maryland  
 4 (2003 Replacement Volume and 2007 Supplement)

5 ~~BY repealing and reenacting, without amendments,~~  
 6 ~~Article 66B – Land Use~~  
 7 ~~Section 4.08~~  
 8 ~~Annotated Code of Maryland~~  
 9 ~~(2003 Replacement Volume and 2007 Supplement)~~

10 **Preamble**

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

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

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

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

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

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

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

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

35 **Article 66B – Land Use**

36 1.02.

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

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

4 (1) § 1.00(j) (Definition of “sensitive areas”);

5 (2) § 1.01 (Visions);

6 (3) § 1.03 (Charter county – Comprehensive plans);

7 (4) § 4.01(b)(2) (Regulation of bicycle parking);

8 ~~(5) § 4.08 (APPEALS TO COURTS);~~

9 ~~[(5)] (6) § 5.03(d) (Easements for burial sites);~~

10 ~~[(6)] (7) § 7.02 (Civil penalty for zoning violation);~~

11 ~~[(7)] (8) § 10.01 (Adequate Public Facilities Ordinances);~~

12 ~~[(8)] (9) § 11.01 (Transfer of Development Rights);~~

13 ~~[(9)] (10) § 12.01 (Inclusionary Zoning);~~

14 ~~[(10)] (11) Except in Montgomery County or Prince George’s County, §~~  
15 ~~13.01 (Development rights and responsibilities agreements);~~

16 ~~[(11)] (12) For Baltimore County only, § 14.02; and~~

17 ~~[(12)] (13) For Howard County only, § 14.06.1; AND~~

18 ~~(13) § 14.10 (APPEALS).~~

19 (c) This section supersedes any inconsistent provision of Article 28 of the  
20 Code.

21 **14.10.**

22 **IN ADDITION TO THE POWERS GRANTED BY ARTICLE 25A, § 5(U) AND (X)**  
23 **OF THE CODE, A CHARTER COUNTY MAY ENACT A LOCAL LAW TO:**

24 **(1) INCLUDE AMONG THOSE PERSONS AUTHORIZED TO APPEAL A**  
25 **DECISION OF A BOARD OF APPEALS OR A ZONING ACTION OF A LOCAL**

1 LEGISLATIVE OR QUASI-LEGISLATIVE BODY A PERSON NOT AGGRIEVED BY THE  
2 DECISION OR ACTION;

3 (2) ESTABLISH THE TERMS AND CONDITIONS UNDER WHICH THE  
4 PERSON MAY APPEAL; AND

5 (3) ESTABLISH PROCEDURES FOR TAKING AN APPEAL.

6 ~~4.08.~~

7 ~~(a) (1) Any of the following persons may, jointly or severally, appeal a~~  
8 ~~decision of a board of appeals or a zoning action of a local legislative body to the circuit~~  
9 ~~court of the county:~~

10 ~~(i) A person aggrieved by the decision or action;~~

11 ~~(ii) Any taxpayer; or~~

12 ~~(iii) Any officer, department, board, or bureau of the local~~  
13 ~~jurisdiction.~~

14 ~~(2) The appeal shall be taken in accordance with Title 7, Chapter 200~~  
15 ~~of the Maryland Rules.~~

16 ~~(3) This subsection does not change the existing standards for the~~  
17 ~~review of a zoning action.~~

18 ~~(b) (1) Except as provided in paragraph (2) of this subsection, an appeal to~~  
19 ~~a circuit court from the decision of a board of appeals or a hearing examiner under this~~  
20 ~~section shall be decided by the circuit court on the record transmitted by the board of~~  
21 ~~appeals or hearing examiner, and may not be heard de novo.~~

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

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

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

31 ~~(1) With gross negligence;~~

32 ~~(2) In bad faith; or~~

1           ~~(3) With malice.~~

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

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

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

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

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

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

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

19           ~~SECTION 2.~~ 2. AND BE IT FURTHER ENACTED, That this Act shall take  
20 effect June 1, 2008.

Approved:

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Governor.

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Speaker of the House of Delegates.

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President of the Senate.