

HOUSE BILL 1390

L6

8lr3040

By: **Delegate Lafferty**

Introduced and read first time: February 9, 2018

Assigned to: Environment and Transportation

A BILL ENTITLED

1 AN ACT concerning

2 **Land Use – Development Rights and Responsibilities Agreements**

3 FOR the purpose of requiring a certain development rights and responsibilities agreement
4 to include the zoning standards applicable to the real property subject to the
5 agreement and a description of a certain enhanced public benefit; clarifying that,
6 with a certain exception, the local zoning laws, rules, regulations, and policies in
7 force at a certain time govern the use, density, or intensity of the real property
8 subject to the agreement; authorizing the local jurisdiction to require compliance
9 with other local laws, rules, regulations, and policies enacted or adopted after the
10 effective date of an agreement; limiting the maximum length of the initial term of an
11 agreement to a certain number of years; limiting the extension of an agreement to
12 one additional period not exceeding a certain number of years; prohibiting the parties
13 from amending an agreement unless the planning commission of the local
14 jurisdiction considers and makes a recommendation regarding the effect of a certain
15 change in local laws, rules, regulations, or policies; defining a certain term; making
16 conforming changes; and generally relating to development rights and
17 responsibilities agreements.

18 BY repealing and reenacting, with amendments,
19 Article – Land Use
20 Section 7–301 and 7–303 through 7–305
21 Annotated Code of Maryland
22 (2012 Volume and 2017 Supplement)

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

25 **Article – Land Use**

26 7–301.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) In this subtitle the following words have the meanings indicated.

2 (b) “Development rights and responsibilities agreement” or “agreement” means
3 an agreement between a local governing body and a person having a legal or equitable
4 interest in real property to establish conditions under which development may proceed for
5 a specified time.

6 (c) (1) **“ENHANCED PUBLIC BENEFIT” MEANS AN IMPROVEMENT THAT**
7 **BENEFITS THE PUBLIC AND EXCEEDS THE IMPROVEMENTS A PERSON WOULD BE**
8 **REQUIRED TO PROVIDE UNDER LOCAL PLANNING, ZONING, AND ENVIRONMENTAL**
9 **LAWS.**

10 (2) **“ENHANCED PUBLIC BENEFIT” INCLUDES:**

11 (I) **PARKLANDS, OPEN SPACE, AND AFFORESTATION;**

12 (II) **MULTIMODAL TRANSPORTATION FACILITIES;**

13 (III) **TRAFFIC SAFETY IMPROVEMENTS;**

14 (IV) **INFRASTRUCTURE;**

15 (V) **STORMWATER MANAGEMENT; AND**

16 (VI) **STREAM RESTORATION.**

17 [(c)] (D) “Local governing body” means the legislative body, the local executive,
18 or other elected governmental body that has zoning powers under this division.

19 [(d)] (E) “Public principal” means the governmental entity of a local jurisdiction
20 that has been granted the authority to enter agreements under § 7–302(a) of this subtitle.

21 7–303.

22 (a) A development rights and responsibilities agreement shall include:

23 (1) a legal description of the real property subject to the agreement;

24 (2) the names of the persons having a legal or equitable interest in the real
25 property subject to the agreement;

26 (3) the duration of the agreement;

27 (4) the **APPLICABLE ZONING STANDARDS, INCLUDING THE** permissible
28 uses of the real property;

1 (5) the density or intensity of use of the real property;

2 (6) the maximum height and size of structures to be located on the real
3 property;

4 (7) A DESCRIPTION OF THE ENHANCED PUBLIC BENEFIT THAT:

5 (I) SUPPORTS THE AGREEMENT AND THE PROPOSED
6 DEVELOPMENT OF THE REAL PROPERTY; AND

7 (II) SHALL BE BONDED AT THE TIME OF FINAL DEVELOPMENT
8 APPROVAL;

9 [(7)] (8) a description of the permits required or already approved for the
10 development of the real property;

11 [(8)] (9) a statement that the proposed development is consistent with the
12 comprehensive plan and development regulations of the local jurisdiction;

13 [(9)] (10) a description of the conditions, terms, restrictions, or other
14 requirements determined by the local governing body of the local jurisdiction to be
15 necessary to ensure the public health, safety, or welfare; and

16 [(10)] (11) to the extent applicable, provisions for the:

17 (i) dedication of a portion of the real property for public use;

18 (ii) protection of sensitive areas;

19 (iii) preservation and restoration of historic structures; and

20 (iv) construction or financing of public facilities.

21 (b) An agreement may:

22 (1) set the time frame and terms for development and construction on the
23 real property; and

24 (2) provide for other matters consistent with this division.

25 7-304.

26 (a) Except as provided in subsection (b) of this section, the local ZONING laws,
27 rules, regulations, and policies governing the use, density, or intensity of the real property

1 subject to an agreement shall be the local **ZONING** laws, rules, regulations, and policies in
2 force at the time the parties execute the agreement.

3 (b) If the local jurisdiction determines that compliance with local **ZONING** laws,
4 rules, regulations, and policies enacted or adopted after the effective date of an agreement
5 is essential to ensure the public health, safety, or welfare, an agreement may not prevent
6 a local government from requiring a person to comply with those local laws, rules,
7 regulations, and policies.

8 (c) **EXCEPT AS PROVIDED IN SUBSECTIONS (A) AND (B) OF THIS SECTION,**
9 **THE LOCAL JURISDICTION MAY REQUIRE COMPLIANCE WITH LOCAL LAWS, RULES,**
10 **REGULATIONS, OR POLICIES ENACTED OR ADOPTED AFTER THE EFFECTIVE DATE OF**
11 **THE AGREEMENT.**

12 7-305.

13 (a) Before entering into an agreement, a person having a legal or equitable
14 interest in real property or the person's representative shall petition the public principal of
15 the local jurisdiction in which the property is located.

16 (b) (1) After receiving a petition and before entering into an agreement, the
17 public principal shall conduct a public hearing.

18 (2) A public hearing that is required for approval of the development
19 satisfies the public hearing requirement.

20 (c) The public principal of a local jurisdiction may not enter into an agreement
21 unless the planning commission of the local jurisdiction determines whether the proposed
22 agreement is consistent with the comprehensive plan of the local jurisdiction.

23 (d) (1) If an agreement is not recorded in the land records of the local
24 jurisdiction within 20 days after the date on which the parties execute the agreement, the
25 agreement is void.

26 (2) The parties to an agreement and their successors in interest are bound
27 to the agreement after the agreement is recorded.

28 (e) An agreement shall be void 5 years after the date on which the parties execute
29 the agreement unless:

30 (1) [otherwise] **A SHORTER TERM IS** established under § 7-303 of this
31 subtitle; or

32 (2) extended **FOR ONE ADDITIONAL PERIOD NOT EXCEEDING 5 YEARS**
33 by amendment under subsection (f) of this section.

1 (f) (1) Subject to paragraph (2) of this subsection and after a public hearing,
2 the parties to an agreement may amend the agreement by mutual consent.

3 (2) (I) [Unless] **THE PARTIES MAY NOT AMEND AN AGREEMENT**
4 **UNLESS** the planning commission of the local jurisdiction:

5 1. determines whether the proposed amendment is
6 consistent with the comprehensive plan of the local jurisdiction[, the parties may not
7 amend an agreement]; **AND**

8 2. **CONSIDERS AND MAKES A RECOMMENDATION**
9 **REGARDING THE EFFECT OF ANY CHANGE IN LOCAL LAWS, RULES, REGULATIONS,**
10 **OR POLICIES, INCLUDING THE ADEQUATE PUBLIC FACILITIES LAW, SCHOOL**
11 **CAPACITY, STORMWATER MANAGEMENT REQUIREMENTS, AND FOREST**
12 **CONSERVATION REQUIREMENTS.**

13 (II) **EXCEPT AS PROVIDED IN § 7-304 OF THIS SUBTITLE, THE**
14 **LOCAL JURISDICTION MAY REQUIRE COMPLIANCE WITH LOCAL LAWS, RULES,**
15 **REGULATIONS, OR POLICIES ENACTED OR ADOPTED AFTER THE EFFECTIVE DATE OF**
16 **THE AGREEMENT.**

17 (g) (1) The parties to an agreement may terminate the agreement by mutual
18 consent.

19 (2) If the public principal or the local governing body determines that
20 suspension or termination is essential to ensure the public health, safety, or welfare, the
21 public principal or the local governing body may suspend or terminate an agreement after
22 a public hearing.

23 (h) Unless the agreement is terminated under subsection (g) of this section, the
24 parties to an agreement or their successors in interest may enforce the agreement.

25 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
26 October 1, 2018.