
In The
COURT OF APPEALS OF MARYLAND

No. 29, September Term 2014

ANNE ARUNDEL COUNTY, MARYLAND, *et al.*,

Appellants,

v.

STEPHEN BELL, *et al.*,

Appellees.

Appeal from the Court of Special Appeals of Maryland

BRIEF OF *AMICUS CURIAE*
THE CHESAPEAKE BAY FOUNDATION, INC.

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INTRODUCTION

Amicus curiae, the Chesapeake Bay Foundation, Inc. (CBF), hereby submits the following memorandum of law pursuant to Maryland Rule 8-511(b). CBF supports the arguments of Appellees and urges this Court to affirm the decision of the Maryland Court of Special Appeals.

PROCEDURAL BACKGROUND

On March 21, 2014, the Court granted Anne Arundel County's petition for Writ of Certiorari. BBSS, Inc., Towser Developers, WACH, LLC and South Shores Development Company, Inc., owners of the re-zoned parcels at issue, joined in the appeal.

Appellants are challenging a decision of the Court of Special Appeals holding that Appellees Bell, Chapin, and Shorter are sufficiently aggrieved to support their standing to appeal a legislative zoning decision of the Anne Arundel County Council. *Bell v. Anne Arundel County*, 215 Md. App. 161, 79 A.3d 976 (2013). The Court of Special Appeals' decision follows this Court's opinions in *Bryniarski v. Montgomery County Bd. of Appeals*, 247 Md. 137 (1967) and *Ray v. Mayor and City Council of Baltimore*, 430 Md. 74, 59 A.3d 545 (2013). Thus, this Court should affirm the Court of Special Appeals' decision.

QUESTION PRESENTED BY *AMICUS CURIAE*

Did the Court of Special Appeals properly decide that adjacent and neighboring property owners adversely affected by a county legislative rezoning decision have standing to challenge that decision?

BACKGROUND

CBF is the largest conservation organization dedicated solely to protecting the Chesapeake Bay and its rivers and streams. CBF has sought leave to file an *amicus curiae* brief on behalf of citizens Bell, Chapin, and Shorter because the preservation and restoration of the Bay depends largely on the ability of aggrieved citizens and organizations to challenge land use decisions that affect their aesthetic, environmental, recreational, and property rights. To further that mission, CBF has brought several legal challenges in Maryland seeking to protect those rights. Several of these challenges have required CBF to respond to motions to dismiss for lack of standing brought by Anne Arundel County. *See Chesapeake Bay Found., Inc. v. Clickner*, 192 Md. App. 172, 993 A.2d 1163 (2010); *Chesapeake Bay Found., Inc. v. DCW Dutchship Island, LLC*, Sept. Term 2013, No. 77 (pending before this Court). Thus, CBF is in a unique position to address the standing issues raised in this matter.

CBF is a nonstock Maryland corporation with offices in Richmond and Norfolk, Virginia, Annapolis, Maryland, and Harrisburg, Pennsylvania. CBF is the largest conservation organization dedicated to protecting the Chesapeake Bay and its tributaries, including those in Anne Arundel County. CBF has approximately 228,000 members, with over 87,000 members in Maryland. CBF operates fourteen (14) educational programs as well as an Environmental Protection and Restoration department that undertakes land restoration projects throughout Maryland and the Bay watershed including Anne Arundel County.

For more than 20 years, CBF has provided strong advocacy and education programs that promote conservation-oriented land use planning and zoning, and innovative polluted stormwater runoff management practices. CBF funds and operates environmental education and volunteer programs designed to improve the water quality of the Bay and its tributaries.

CBF supports judicial decisions that uphold the right of citizens and organizations to challenge government actions that adversely affect their personal and property rights. Judicial standing for these entities allows organizations like CBF to defend interests and programs vital to the protection and restoration of the Chesapeake Bay.

STATEMENT OF FACTS

CBF adopts the statement of facts submitted by Appellees Bell, Chapin, and Shorter and highlights the following facts.

Appellees seek to challenge the re-zoning of parcels 69, 114, 141, and 200. *Bell, supra*, 215 Md. App. at 167. BBSS, Inc., the owner and operator of a sand and gravel pit on nearby Brickhead Road, owns parcels 69 and 200. *Id.*¹ Baldwin Enterprises, a commercial and residential development firm, owns parcel 114. *Bell, supra*, 215 Md. App. at 167. South Shores Development Company owns parcel 141. *Id.* BBSS, Baldwin Enterprises, Towser Developers, and South Shores Development Company are related companies sharing the same mailing address; 1 Churchview Rd., Millersville, MD. E. 165, 203, 180, and 183.

¹

http://iaspub.epa.gov/enviro/fii_query_detail_disp_program_facility?p_registry_id=110008486478

Parcel 69 was re-zoned from OS, Open Space, to MXD-R, mixed commercial and residential. E. 52 and 206. Parcel 200 was re-zoned from R-1 residential to MXD-R. E. 52, 206.

“Open Space” is defined as “a separate lot that serves to protect natural features and provide for recreational activities.” Anne Arundel County Code (AACC) § 17-1-101(68). R-1 zoning allows only one dwelling unit per 40,000 sq. ft. AACC § 18-4-501.

Half of the land zoned MXD-R may be developed as residential, 25% as retail and service, and 25% as offices. AACC § 18-8-302(e). Up to seven residential units may be constructed per acre, AACC § 18-8-303, and numerous commercial uses are permitted within such zones including billiard and pool halls, commercial recreational facilities, tanning salons, and theaters, AACC § 18-8-301(b).

Rosie Shorter owns land abutting parcels 69 and 200. She has owned her property since 1969. E. 209-11, 223-24. Ms. Shorter’s property is surrounded by forest and adjoins open space land. *Id.* The rezoning will destroy the forest by allowing land previously designated as protected Open Space and low density residential to become developed as higher density residential and commercial land. E. 210.

The Open Space adjoining Ms. Shorter’s property follows Towsers Branch, a tributary of the Little Patuxent River which flows into the Patuxent River and eventually into the Chesapeake Bay. E. 223, 225. New development within the Towsers Branch watershed will cause additional polluted stormwater runoff to flow into the Little Patuxent River, the Patuxent River and the Chesapeake Bay.

Parcel 114 was re-zoned from R-1 residential to C2, Commercial Office District. E. 243, 253. It is forested. E. 253. Parcel 141, a farm field, was re-zoned from RLD, Residential Low Density, to C2. E. 243, 253.

Residential Low Density zoning allows only one dwelling for every five acres. AACC § 18-4-401. Commercial Office District zoning allows a lot of 20,000 sq. ft. and permits 80% of the lot to be covered by structures and parking. AACC § 18-5-301.

William Chapin owns land within 100 feet of parcel 141 and 500 feet from parcel 114. He bought the property in 1998. Mr. Chapin and his family can see parcel 141, a farm field, from their backyard and home. Parcel 114 is across Rt. 3 from his home which is near the corner of Rt. 3 Crain Highway and St. Stephens Church Road. E. 242-7, 253, 256, 259-62. An adjacent property, parcel 56 lot 6, is presently forested, but has been re-zoned from residential (R2) to intense commercial (C1) so any buffering effect of the trees will be lost once that lot is developed.

Mr. Chapin believes that the development of those parcels as re-zoned will decrease his property's value. E. 246-7. The new development will increase traffic on St. Stephens Church Road directly behind his home and on Rt. 3 to the side of his home. E. 253, 256. The increased traffic will increase the level of noise he and his family will hear and make driving unsafe. E 245-6.

Stephen Bell owns land within 80 feet of parcel 141 and 500 feet of parcel 114. He and his family can see parcel 141 from their home and backyard. *Id.*; E. 263-8, 277, 280. Like Mr. Chapin's property, Mr. Bell's property is adjacent to parcel 56 lot 6 which has been re-zoned from R2 to C1. E. 277, 280.

Mr. Bell believes that development of those parcels as re-zoned will decrease his property's value, increase traffic on the road behind his house, St. Stephens Church Road, and will increase the level of noise he and his family hear on their property and in their home. E. 265-7.

ARGUMENT

I. Prior Decisions Of This Court Establish That The Appellees Are Specially Aggrieved And Have Standing.

The determination of whether Appellees Bell, Chapin and Shorter have standing is controlled by this Court's decisions in *Bryniarski v. Montgomery County Board of Appeals*, 247 Md. 137, 145 (1967); and *Ray v. Mayor and City Council of Baltimore*, 430 Md. 74 (2013). *Bryniarski* provides that in equity matters such as this a plaintiff must show by competent evidence how he is specially affected by the zoning action. *Id.*, 247 Md. at 144.

In *Ray*, the Court reviewed *Bryniarski* and other case law holding that the "specially affected" standard is a flexible, fact-intensive, case-by-case analysis borne from the tort action of public nuisance. *Ray, supra*, 430 Md. at 81-2. The preeminent fact to be considered is the proximity of the plaintiff's property to the re-zoned land. *Id.* at 82-3. However, there is no "bright-line rule for exactly how close a property must be." *Id.* at 83. If the plaintiff's property abuts or adjoins the re-zoned land, the plaintiff is *prima facie* specially affected and has standing. *Id.* If the plaintiff's land is not "adjoining, confronting, or nearby" the rezoned land, but is close enough to be "almost

prima facie aggrieved” the plaintiff must provide “plus factors” to establish injury. *Id.* at 83 and 85.

A. The Proximity of Ms. Shorter’s Property to The Re-zoned Parcels Provides Prima Facie Aggrievement.

As the Court of Special Appeals determined, Ms. Shorter’s land abuts parcels 69 and 200. *Bell, supra*, 215 Md. App. at 167. *See also*, E. 209. Thus, she is *prima facie* specially affected by the re-zoning and should be found to have standing. Messrs. Bell and Chapin also have standing to challenge the re-zoning of those lots because Ms. Shorter has standing. *Brynarski, supra*, 247 Md. at 145; *Board of License Comm’rs v. Haberin*, 320 Md. 399, 404, 578 A.2d 215 (1990); *Sugarloaf Citizens’ Assoc., et al. v. Dept. of Environment*, 344 Md. 271, 297 (1996).

B. Appellants Bell and Chapin Are Within Close Proximity of Parcels 114 And 141 And Have Proven “Plus Factors” Establishing They Are Special Affected By The Re-zoning.

Mr. Bell’s property is 80 ft. from parcel 141 and 500 ft. from parcel 114. Mr. Chapin’s property is within 100 ft. from parcel 141 and also 500 ft. from parcel 114. Both men can see parcel 141 from their homes and backyards. E. 244, 265. They believe the increased development engendered by the re-zoning will decrease the value of their property. E. 246-7, 267. They have alleged that new development will increase the amount of traffic on Rt. 3 and St. Stephens Church Road. The increased traffic will make these roads and the roads near their homes unsafe and will increase the level of noise around and in their homes. E. 244-6, 265-67.

This Court has recognized that an “owner’s lay opinion of decreasing property values and increasing traffic” and noise can establish special aggrievement “when combined with proximity that is almost as great as in cases where properties are ‘adjoining, confronting, or nearby.’” *Ray*, 430 Md. at 83-4, citing *Habliston v. Salisbury*, 258 Md. 350, 352, 354-55, 265 A.2d 885, 885-7 (1970) (protestant 200 to 500 ft. away was specially aggrieved); *Chatham Corp. v. Beltram*, 252 Md. 578, 579-80, 584, 251 A.2d 1, 2, 4 (1969) (protestants were in sight of re-zoned land within 1000 ft. and felt the increased density would depreciate their property). *See also, Alvey v. Hedin*, 243 Md. 334, 337, 339, 221 A.2d 62, 63-4 (1966) (protestants 250 ft. away complained of lights, noise, and refuse); *Bryniarski, supra*, 247 Md. at 138, 146-8 (increased traffic, changed nature of land and noise were sufficient to establish special aggrievement).

The Bell and Chapin properties are within close proximity to parcels 114 and 141 as defined by prior rulings of this Court. Their properties are within sight and sound of the re-zoned parcels. Because the Bell and Chapin properties are within close proximity of the re-zoned parcels and the Plaintiffs have alleged additional “plus factors” establishing their special aggrievement, they should be found to have standing. *See Ray, supra*, 430 Md. at 83, 85.

II. The Argument That Only Re-zoned Property Owners Have Standing Should Be Rejected as Inequitable and a Deprivation of Property Rights.

The County argues that the Court of Special Appeals’ decision “dramatically alters” the law of standing, will allow thousands of law suits, and will “freeze” development for years. County Brief at 6-7. Such fears are misplaced.

First, as discussed above, the Court of Special Appeals decision is consistent with prior precedent of this Court. This is a declaratory judgment action in equity and principles of special aggrievement apply. That the challenged action is a legislative decision of a local government is not dispositive. *See Ray, supra*, 430 Md. 74 (standing aggrievement factors considered in citizens challenge of a legislative decision of Baltimore City Council). *See also, 120 West Fayette St., LLP v. Mayor and City Council of Baltimore*, 407 Md. 253, 270-72, 964 A.2d 662 (2009) (proximity considerations conferring standing apply in challenge of illegal government avoidance of urban renewal and procurement ordinances).

Second, while many citizens may be eligible to challenge this re-zoning, the number of possible plaintiffs is simply a factor of the number of parcels re-zoned, not a change in the law of standing. Though “thousands” of adjacent and neighboring property owners could have challenged the re-zoning, only thirteen (13) did in a single law suit concerning four parcels. *Bell, supra*, 215 Md. App. at fn 1. Also, such a re-zoning will only happen once every ten (10) years, *id.* at fn4. Thus, the likelihood of hundreds of future lawsuits is improbable.

Third, that re-zoned property owners may not know until the conclusion of the applicable limitations period whether suit will be filed is no different than any other cause of action. The County declares without citation that the applicable statute of limitations is three years and property owners whose land is re-zoned might wait the entire limitations period before developing. County Brief at 7. The County “predicts” that the right of aggrieved citizens to challenge re-zoning would cause the loss of development

financing which will “freeze up’ development.” *Id.* The County’s parade of horrors is unlikely and ignores the rights of abutting and neighboring property owners.

The long history of land use cases presented to this Court proves that land owners, especially seasoned developers, routinely choose to develop their land in the face of on-going or potential litigation. These are typically calculated business decisions.

Banks are keenly aware of the vagaries of land development; poor markets, bad weather, permitting delays, and litigation. Again, their decisions to lend money are business decisions in which the relative risks are calculated. The potential risk of litigation in the future is just another factor to be considered and provided for in the terms of the loan.

The County’s argument ignores the paramount right of adjoining and neighboring property owners to protect the enjoyment and value of their land. According to the County, the “thousands” of property owners who may be affected by bad decisions of government have no judicial recourse, they must accept the decision even though they may have owned their property for decades and relied on pre-existing zoning. Such a lopsided result is inequitable and guts the legitimate property rights of other county residents.

Adoption of the County’s argument would deny groups like the Chesapeake Bay Foundation the ability to challenge improvident local land use decisions. Pollution from development activities harms the quality of the water in adjacent streams, rivers, and the Bay. Such pollution harms crabs, fish, and oysters and destroys underwater grasses essential for Bay health. CBF has expended hundreds of thousands of dollars on its

stream restoration program, aquatic grass replenishment program and its oyster restoration program, along with hundreds of hours of volunteer time. Moreover, many of CBF's members use the water resources of Anne Arundel County and the Bay for boating, fishing, swimming and other aesthetic and recreational pursuits. The County's rule would block CBF and similar organizations from protecting their and their members' interests and property rights from pollution caused by development resulting from bad re-zoning decisions.

Acceptance of the County's position would lead to an unjust result. Like Appellees, CBF and other citizen organizations are property owners. The denial of the right to establish standing to legally challenge legislative re-zoning decisions would deny citizen organizations the Constitutional right to protect their property interests. Thus, the County's argument should be rejected.

CONCLUSION

The decision of the Court of Special Appeals was a correct interpretation of this Court's earlier opinions. Standing principles are based on Maryland common law and apply in declaratory judgment actions concerning legislative decisions of government. Standing is based upon the principle that aggrieved citizens have the right to challenge decisions that affect their personal and property rights.

Amicus curiae, Chesapeake Bay Foundation, Inc., respectfully requests that this Court affirm the decision of the Maryland Court of Special Appeals.

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Respectfully Submitted,



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Dated: August 4, 2014

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on August 4, 2014, two (2) copies of the foregoing *Amicus Curiae* Brief of the Chesapeake Bay Foundation were sent by mail, postage prepaid, to:

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STATEMENT OF FONT TYPE USED AND TYPE SIZE

Pursuant to Maryland Rules 8-112 and 8-504(a)(8), this brief has been prepared using Times New Roman, 13 point type.

A handwritten signature in black ink, appearing to read "Jon Mueller". The signature is written in a cursive style with a horizontal line above the name.

Jon A. Mueller

CITATIONS AND TEXT OF PERTINENT STATUTES AND REGULATIONS

Anne Arundel County Code

TITLE 1. DEFINITIONS

§ 17-1-101. Definitions.

Unless defined in this article, the Natural Resources Article of the State Code, or COMAR, the definitions of words defined elsewhere in this Code apply in this article. The following words have the meanings indicated:

(1) “ADA accessible” means accessible to persons with disabilities as required by the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101, et seq.

(2) “Afforestation” has the meaning stated in Natural Resources Article, § 5-1601, of the State Code, for land outside the critical area, and the meaning stated in COMAR, Title 27 for land inside the critical area.

(3) “Agricultural and resource area” has the meaning stated in Natural Resources Article, § 5-1601, of the State Code.

(4) “Agricultural preservation subdivision” means a subdivision of land in a State agricultural preservation program for which an agricultural preservation easement has been acquired pursuant to the Agriculture Article, Title 2, Subtitle 5, of the State Code, and a subdivision of land in a County agricultural preservation program for which an agricultural easement has been acquired pursuant to this Code, including a subdivision under an easement that permits subdivision of “family conveyance lots.”

(5) “Board of Education” means the Board of Education of Anne Arundel County.

(6) “Bog protection plan” means a plan that:

(i) delineates the bog, the contributing streams, the 100-foot upland buffer, the limited activity area, and the contributing drainage area;

(ii) identifies natural features and rare, threatened, or endangered species; and

(iii) demonstrates how a proposed development will comply with the requirements of this Code.

(7) “Buffer management plan” means a plan approved by the Office of Planning and Zoning that governs development in the critical area buffer, in accordance with COMAR Title 27, including the re-establishment of a buffer.

(8) “Bulk parcel” means a non-buildable lot remaining after subdivision that has a potential for future development with the density that remains within the subdivision as a whole, on which all environmentally sensitive areas existing at the time of creation of the subdivision have been identified, that was not tested for adequacy of public facilities during subdivision, and that may not be further subdivided or otherwise developed without first passing the tests for adequacy of public facilities and complying with all applicable environmental regulations.

(9) “Bus or rail transit” means regularly operated public transit services using either motor buses under contract to the City of Annapolis, Anne Arundel County, or the State, or operated by the City of Annapolis, Anne Arundel County, or the State, or their successors or assigns, or light rail transit under the auspices of the State.

(10) “Capital Improvement Program” means an annual document prepared by the County indicating County capital projects that have an authorization for the current fiscal year or that are currently planned for the following five-year period.

(11) “Champion tree” has the meaning stated in Natural Resources Article, § 5-1601, of the State Code.

(12) “Clear sight triangle” means an area of unobstructed vision at a road intersection.

(13) “Clearing” is a form of development that means the process of cutting or removing trees, woody vegetation, ground cover, stumps, or roots, and does not include gardening or maintenance of an existing grass lawn or removal of hazardous trees as defined in COMAR, Title 27.

(14) “Condominium” has the meaning stated in Real Property Article, Title 11, of the State Code.

(15) “Contract school” means a school facility operated as a public school under contract with the Board of Education, located in privately owned facilities, and operated by Board of Education staff.

(16) “County” means Anne Arundel County, Maryland.

(17) “County Inventory of Historic Resources” means properties listed on the Maryland Inventory of Historic Properties, the National Register of Historic Places or the National Register of Historic Landmarks. Historic resources consist of properties, buildings, structures, districts, and archaeological sites that represent County history, that are associated with the lives of historically significant persons, that have historically significant architectural value, or that are capable of yielding information important to the County’s history or prehistory.

(18) “County Pedestrian and Bicycle Master Plan” means a plan adopted by the County Council which identifies alignments for pedestrian and bicycle facilities and sidewalks throughout the County.

(19) “County Procedures Manual” has the meaning stated in [Article 16](#) of this Code.

(20) “Declaration of intent” means a document required under COMAR, Title 08, that is a notarized statement signed by a landowner certifying that the activity on the landowner’s property is exempted from and does not conflict with the forest conservation provisions of this article and does not conflict with the purposes of any other declaration of intent.

(21) “Dedicate” or “dedication” as used in this article means a grant of real property by its owner to the County for a public use.

(22) “Design Manual” has the meaning stated in [Article 16](#) of this Code.

(23) “Developable area” means the area of a lot in which the principal and accessory structures may be located.

(24) “Developed woodlands” has the meaning stated in COMAR, Title 27.

(25) “Developer” means a person who engages in development.

(26) “Development” means the subdivision of property or any activity other than farming, gardening, or yard maintenance that results in a change in existing site conditions, including the establishment of a use; the change of a use; the improvement of property through construction, alteration, or relocation of a structure; the provision of stormwater management or roads; grading; and clearing.

(27) “Disturbance” is a form of development that means cutting or removing vegetation or grading or filling activities, including any alteration or change to the land, including any amount of clearing, grading, or construction activity, but not including gardening or maintenance of an existing grass lawn.

(28) “DPW Design Manual” has the meaning stated in [Article 16](#) of this Code.

(29) “Easement” means a non-possessory interest in land that creates the right to use the property of another for a specific purpose or that imposes limitations upon use or obligations to preserve or maintain all or a specified portion of the property.

(30) “Environmental site design (ESD)” means:

(i) using small-scale stormwater management practices, nonstructural techniques, and better site planning to mimic natural hydrologic runoff characteristics and minimize the impact of land development on water resources; and

(ii) using design methods specified in the State Stormwater Management Design Manual.

(31) “Environmentally sensitive areas” means the area of a site which contains tidal and nontidal wetlands, bogs, 100-year floodplains, streams, steep slopes, and all associated buffers, and, in the critical area, also includes habitat protection areas. These areas may also include future overlay zones designated by the County Council as environmentally sensitive areas.

(32) “Facade” means the exterior walls on an enclosed or covered portion of a structure.

(33) “Final plan” means the application and materials submitted with an application for final plan review.

(34) “Flag lot” means a lot with two distinct parts: the flag, which is the portion of the lot that is buildable, and the pole, which connects the flag to the road.

(35) “Floodplain” has the meaning stated in [Article 16](#) of this Code.

(36) “Forest” has the meaning stated in Natural Resources Article, § 5-1601, of the State Code.

(37) “Forest conservation” has the meaning stated in Natural Resources Article, § 5-1601, of the State Code.

(38) “Forest conservation plan” means a document prepared by a qualified professional under COMAR, Title 08, that demonstrates a priority for the retention of existing onsite forest and that provides for any required afforestation and reforestation.

(39) “Forest management” means the protection, manipulation, and utilization of the forest to provide multiple benefits, including timber harvesting, water transpiration, and wildlife habitat.

(40) “Forest management plan” means a document prepared by a registered professional forester that gives direction for the management of forests for purposes of sustainability, recreation, wildlife enhancement, planting and regeneration, or regeneration or disturbance activities, such as harvesting, thinning, or cutting of a forest.

(41) “Forest stand delineation” has the meaning stated in Natural Resources Article, § 5-1601, of the State Code.

(42) “Forestation agreement” means a contract that requires the property owner and developer to plant, replant, reforest, or afforest in accordance with an approved forest conservation plan, buffer management plan, or bog protection plan and to maintain the planting, replanting, reforestation, or afforestation for a period of two years.

(43) “Frontage” means that portion of a lot that adjoins a road and provides access to the lot, except on waterfront lots where it is that portion of a lot abutting the mean high-water line, or abutting platted land owned by a homeowner’s association or the County that abuts the mean high-water line.

(44) “General Development Plan” means the plan adopted by the County Council in accordance with [Article 18](#) of this Code.

(45) “Geographical attendance area” has the meaning stated in Education Article, § 4-109, of the State Code.

(46) “Growing season” means the period of time during which consecutive frost-free days occur.

(47) “Habitat protection area” means an area that is designated for protection under Natural Resources Article, § 8-1806, of the State Code, or by the Secretary of Natural Resources.

“Habitat protection area” includes:

- (i) the buffer as defined in COMAR, Title 27;
- (ii) a nontidal wetland as defined in COMAR, Title 26;
- (iii) a habitat of a threatened species as defined in COMAR, Title 27;
- (iv) a habitat of an endangered species as defined in COMAR, Title 27;
- (v) a habitat of a species in need of conservation as defined in COMAR, Title 27;
- (vi) a plant habitat as defined in COMAR, Title 27;
- (vii) a wildlife habitat as defined in COMAR, Title 27; and
- (viii) anadromous fish propagation waters as defined in COMAR, Title 27.

(48) “High density residential use” for purposes of afforestation and reforestation means a use located in a zoning district with an allowed density of greater than one dwelling unit per acre.

(49) “Highly erodible soils” means those soils with a K value greater than .35 and with slopes greater than 5%, and for land within the critical area, slopes greater than 15%.

(50) “Highway traffic sound level” means the peak-notice-hour average sound level for the road with level of service (“LOS”) D traffic in the current roadway configuration or with approved future improvements.

(51) “Historic waterfowl staging and concentration area” has the meaning stated in COMAR, Title 27.

(52) “Hydric soil” means soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition or growth, or both, of plants on those soils.

(53) “Hydrophytic vegetation” has the meaning stated in COMAR, Title 27.

(54) “In-kind replacement” means removal of a permanent structure and the construction of another permanent structure that is smaller than or identical to the original structure in use, footprint, area, width and length.

(55) “Institutional development use” for purposes of afforestation and reforestation means a school, college or university, military installation, transportation facility, utility or sewer project, government office or facility, golf course, recreation area, park, or cemetery.

(56) “K value” means the soil erodibility factor in the universal soil loss equation.

(57) “Landscape Manual” means the Anne Arundel County Landscape Manual.

(58) “Linear project” has the meaning stated in Natural Resources Article, § 5-1601, of the State Code.

(59) “Lot” means land depicted and shown on a recorded plat that was approved in accordance with the subdivision laws in effect at the time of plat recordation, land described in a recorded deed that was subdivided in accordance with the subdivision laws in effect at the time of deed recordation, land located entirely outside the critical area that is described in a deed that was recorded in the land records before September 7, 2004, and land for which a court order has established a new boundary line or lines. This definition does not include land platted as a road that is owned pursuant to Real Property Article, § 2-114, of the State Code.

(60) “Lot coverage” has the meaning stated in Natural Resources Article, § 8-1802, of the State Code.

(61) “Medium density residential use” for purposes of afforestation and reforestation means a use located within a zoning district with an allowed density greater than one dwelling unit per five acres but no more than one dwelling unit per acre.

- (62) “Minor subdivision” means:
- (i) an agricultural preservation subdivision; or
 - (ii) a subdivision not previously shown on a record plat approved by the County and involving no more than five lots for single-family detached dwellings for which the extension of public roads, water, or sewer is not required.
- (63) “Natural features” means floodplains, slopes of 15% or greater, soil types, streams, tidal and nontidal wetlands, and vegetation.
- (64) “Natural runoff conveyance system” means a system that is designed to provide (i) shallow aquatic pools, riffle grade controls, and native vegetation in order to restore the natural stream characteristics of a conveyance channel such as a regenerative step pool storm conveyance (SPSC) system, and (ii) the minimization of impacts to or enhancements of the conveyance channel buffer or any associated wetlands to ensure certain flood conveyance and attenuation.
- (65) “Nontidal wetland” has the meaning stated in COMAR, Title 26.
- (66) “Office” means the Office of Planning and Zoning.
- (67) “Open area” means that portion of a lot that protects natural features and provides for recreational activities and that is required only when an open space lot is not created under § 17-6-111.
- (68) “Open space” means a separate lot that serves to protect natural features and provide for recreational activities.
- (69) “Outdoor activity area” means outdoor areas for common and extended human use that is more than transient in nature. Outdoor activity areas include patios, decks, balconies, swimming pools, gazebos, playgrounds, and related outdoor amenities. Outdoor activity area does not include front and side yards of single-family detached dwellings and all yards of multifamily dwelling units that are not occupied by an approved patio, deck, or balcony.
- (70) “Owner” means a person who holds fee simple title.
- (71) “Pervious manmade surface” means any surface or lot coverage that does not meet the definition of “impervious surface” as defined in Article 16 of this Code and is installed in accordance with manufacturer’s specifications.
- (72) “Preliminary plan” means the application and materials submitted with an application for preliminary plan review.
- (73) “Public works agreement” means a contract between a developer and the County that requires the developer to install public improvements, including public improvements relating to roads, storm drains, water, and sewer.
- (74) “Reforestation” has the meaning stated in Natural Resources Article, § 5-1601, of the State Code, for land outside the critical area and, for land in the critical area means the establishment of a forest through artificial reproduction or natural regeneration.
- (75) “Reservation” means the identification and setting aside of an area of land in a subdivision for future acquisition for public use that subjects the land reserved to use limitations for a specified period of time and that may be designated on the General Development Plan or in the County or State Capital Improvement Program or the State highway needs inventory.
- (76) “Reviewing agencies” means an advisory group of federal, State, or County agencies designated by the Office of Planning and Zoning to provide comments on applications.
- (77) “Scenic or historic road” means a road shown on the official map entitled “Scenic and Historic Roads, 2006 adopted by the County Council.

(78) “Scheduled completion year” means three years after approval of the first sketch, final, preliminary, or site development plan that has been approved for adequacy of public facilities.

(79) “School year” means the one-year period of time beginning on September 30th and ending on September 29th of the following calendar year.

(80) “Sketch plan” means the application and materials submitted with an application for sketch plan review.

(81) “Slope” means a natural incline for land outside the critical area. For land inside the critical area, “slope” means any incline whether natural or manmade.

(82) “Soil conservation and water quality plan” means a farm plan approved by a local soil conservation district to minimize soil erosion, and to minimize the movement of sediment, animal waste, nutrients, or agricultural chemicals into the waters of the State.

(83) “Steep slope” means a 25% or greater slope that has an onsite and offsite contiguous area that is greater than 5,000 square feet over 10 feet vertical as measured before development. In the critical area, “steep slope” means a 15% or greater slope that is over six feet vertically as measured before development.

(84) “Subdivision” means the division of land so as to create two or more lots, the revision of a record plat previously approved by the County, or the establishment of a record plat for land not shown on a record plat previously approved by the County.

(85) “Tidal wetlands” means “private wetlands” or “State wetlands” as defined in the Environment Article, § 16-101, of the State Code.

(86) “Tree” has the meaning stated in Natural Resources Article, § 5-1601, of the State Code.

(87) “Tree of significant size” means a tree that, in accordance with Natural Resources Article, Title 5, of the State Code, has a diameter measured at 4.5 feet above the ground of 30 inches or more or that is 75% or more of the diameter of the current State champion tree of that species.

(88) “Tributary stream” has the meaning stated in Natural Resources Article, § 8-1802, of the State Code.

(89) “Waterfowl” has the meaning stated in COMAR, Title 27.

(90) “Whip” has the meaning stated in Natural Resources Article, § 5-1601, of the State Code.

(91) “Wildlife corridor” has the meaning stated in COMAR, Title 27.

(Bill No. 3-05; Bill No. 77-05; Bill No. 4-06; Bill No. 21-06; Bill No. 59-10; Bill No. 47-12; Bill No. 93-12; Bill No. 76-13)

Anne Arundel County Code

TITLE 4. RESIDENTIAL DISTRICTS

§ 18-4-501. Bulk regulations.

Except as provided otherwise in this article, the following bulk regulations are applicable in an R1 District:

Minimum lot size	40,000 square feet
Maximum coverage by structures	25% of gross area
Minimum width at front building restriction line; for waterfront lots the building restriction line is measured from the rear lot line	125 feet
Minimum setbacks for principal structures:	
Front lot line	40 feet
Rear lot line	35 feet
Side lot line	15 feet
Combined side lot lines	40 feet
Corner side lot line	40 feet
Principal arterial or higher classification road	50 feet
Minimum setbacks for accessory structures other than sheds that do not exceed 64 square feet in area and eight feet in height:	
Front lot line	50 feet
Side and rear lot lines	15 feet or, for structures less than 8 feet in height (other than swimming pools, tennis courts, basketball courts, and similar private recreational facilities accessory to single-family detached, duplex, or semi-detached dwellings), 10 feet
Corner side lot line	40 feet
Maximum height limitations:	
Principal structures	45 feet
Accessory structures	45 feet if all setbacks are increased by one foot for each foot of height in excess of 25 feet
Maximum net density	One dwelling unit per 40, 000 square feet
Cluster development:	
Minimum lot size	None, except for adult independent dwelling unit developments served by public sewer with a minimum

	net area of 50 acres, each of which units shall be on a lot not less than 10,000 square feet
Maximum individual lot coverage by structures	Determined by setbacks and constraints imposed by characteristics of lot, coverage not to exceed 50%
Minimum width at front building restriction line	80 feet or, for adult independent dwelling unit developments served by public sewer with a minimum net area of 50 acres, 60 feet
Minimum setbacks for principal structures:	
Front lot line	5 feet, but if parking is located in the front yard, 18 feet
Rear lot line	10 feet
Side lot lines	7 feet
Boundary line of the cluster development site	50 feet from adjacent residentially zoned and developed property, except that the setback may be reduced by the Planning and Zoning Officer to preserve environmental features and the setback may be reduced to 25 feet if the adjoining lot is an open space lot created under § 17-6-111 of this Code
Minimum setbacks from side and rear lot lines for accessory structures other than sheds that do not exceed 64 square feet in area and eight feet in height	7 feet or, for structures less than 8 feet in height (other than swimming pools, tennis courts, basketball courts, and similar private recreational facilities accessory to single-family detached, duplex, or semi-detached dwellings), 5 feet

(Bill No. 4-05; Bill No. 78-05; Bill No. 60-10; Bill No. 93-12)

Anne Arundel County Code

SUBTITLE 3. USES UNDER THE OPTIONAL METHOD OF DEVELOPMENT

§ 18-8-301. Permitted uses; conditional uses.

(a) **Uses allowed.** The permitted and conditional uses under the optional method of development are listed in the chart in this section using the following key: P = permitted use; C = conditional use. A blank space means that the use is not allowed in the district. Uses and structures customarily accessory to the listed uses also are allowed, except that outside storage as an accessory use is not allowed.

(b) **Categories in chart.** The chart in this section divides the permitted and conditional uses allowed under the optional method of development into the categories of residential, retail and service, office, and industrial, and the uses are subject to the percentage limitations on those categories described in § [18-8-302](#).

MXD-R	MXD-C	MXD-E	MXD-T	
Residential				
BRAC Mixed Use Development			C	C
Dwellings, adult independent units			P	P
Dwellings, multifamily			P	P
Dwellings, single-family detached			P	P
Dwellings, townhouses			P	P
Group homes			P	P
Home occupations			C	C
Rooming houses			P	P
Retail and Service				
Adult day care centers			P	P
Alcoholic beverage sales and uses			C	C
Antique shops			P	P
Appliance sales and service facilities				P
Arcades				P
Art galleries			P	P
Art and craft shops			P	P
Artisans' and craft work			P	P
Assisted living facilities			P	P
Automobile gasoline stations				P
Automobile parts and supply stores				P
Automobile and truck rental establishments				P
Bakery or donut shops			P	P

Banks	P	P	P	P
Banquet halls		P	P	P
Barbershops	P	P	P	P
Bicycle, motor scooter, moped sales and service	P	P	P	P
Billiard and pool halls	P	P	P	P
Bookstores, except adult bookstores	P	P	P	P
Candy stores	P	P	P	P
Carwashes accessory to automobile gasoline stations		P	P	P
Carpet and vinyl flooring stores		P	P	P
Catering establishments		P	P	P
Child care centers	P	P	P	P
Civic facilities, community centers, libraries, and museums	P	P	P	P
Clock shops for sale or repair	P	P	P	P
Clothing stores	P	P	P	P
Commercial recreational facilities, including miniature golf; driving ranges; tennis, racquet, and handball barns or courts; artificial ski slopes; indoor soccer; bowling alleys; BMX bike, skateboard or roller blade parks; go-carting; and skating rinks	P	P	P	P
Commercial telecommunication facilities for testing purposes or emergency services for a period not exceeding 30 days if the facility is a monopole not exceeding 100 feet in height and is located at least 300 feet from any dwelling	P	P	P	P
Computer goods, sales and service	P	P	P	P
Consignment shops, except pawn shops	P	P		P
Construction or sales trailers, temporary, in an approved development actively under construction	P	P	P	P
Convenience stores, gift shops, and newsstands	P	P	P	P
Country clubs, private clubs, service, nonprofit, and charitable or philanthropic organizations	P	P	P	P
Delicatessens and snack bars	P	P	P	P
Department stores		P	P	P
Dog grooming and day care facilities		P		P
Dry cleaning and laundry establishments, including pickup stations, package plants, and coin-operated facilities, limited to establishments with less than 4,000 square feet of floor area	P	P	P	P
Dry cleaning operations and laundry establishments, including pickup stations, package plants, and coin-operated facilities		P	P	P
Entertainment complexes, including multi-screen complexes		P	P	P
Florist shops	P	P	P	P
Food wholesaling		P	P	P
Funeral establishments		P	P	P

Furniture, appliance, and carpet stores and showrooms		P	P	P
Golf courses	P	P	P	
Grocery stores	P	P	P	P
Hair and nail salons	P	P	P	P
Hardware stores	P	P	P	P
Health clubs, spas, and gymnasiums	P	P	P	P
Heliports		P	P	P
Home centers and building supply stores		P	P	
Hospice facilities	P	P	P	P
Hospitals		P	P	P
Hotels and motels		P	P	P
Ice cream stores	P	P	P	P
Interior decorating establishments	P	P	P	P
Janitorial supply stores		P	P	P
Jewelry stores	P	P	P	P
Linen supply establishments		P	P	P
Linens, bath, and curtain stores		P	P	P
Locksmiths	P	P	P	P
Luggage or leather goods stores		P	P	P
Mailing and shipping services	P	P	P	P
Meat, seafood, and poultry markets	P	P	P	P
Nightclubs and comedy clubs		P	P	P
Novelty shops	P	P	P	P
Nursing homes	P	P	P	P
Office supply stores and business service establishments	P	P	P	P
Opticians or optometrical establishments	P	P	P	P
Parking lots or garages		P	P	P
Parks, private	P	P	P	P
Pet shops	P	P	P	P
Pharmacies	P	P	P	P
Photographic stores and studios	P	P	P	P
Picture framing establishments	P	P	P	P
Produce markets	P	P	P	P
Piers, recreational	P	P	P	P
Public utility essential services	P	P	P	P
Public utility uses	SE	SE	SE	SE

Religious facilities	P	P	P	P
Rental establishments		P	P	
Restaurants	P	P	P	P
Schools, public charter, and schools, private: academic, arts, business, technical, or trade	P	P	P	P
Showrooms and sales of specialty building products		P	P	
Sporting goods stores	P	P	P	P
Sporting and athletic goods manufacturing			P	
Staging areas for County capital projects	P	P	P	P
Swimming pools and recreational facilities, community, if located at least 50 feet from each lot line and dwelling unit	P	P	P	P
Tanning salons	P	P	P	P
Tattoo parlors and body piercing salons		P	P	P
Taverns	P	P	P	P
Taxicab stands and services	P	P	P	P
Telecommuting centers	P	P	P	P
Telephone exchanges	P	P	P	P
Television stations, radio broadcasting stations, and recording studios		P	P	P
Theaters, except adult movie theaters	P	P	P	P
Toy shops	P	P	P	P
Trade expositions		P	P	P
Travel agencies	P	P	P	P
Upholstering shops, including sailmaking shops	P	P		P
Variety stores	P	P	P	P
Veterinary clinics, if over-night stays are limited to those necessary for medical treatment, without outside runs or pens	P	P	P	P
Video sales and rental establishments with less than 1,500 square feet of floor area	P			
Video sales and rental establishments		P	P	P
Volunteer fire stations	P	P	P	P
Wallpaper and paint stores	P	P	P	P
Office				
Offices, professional and general	P	P	P	P
Industrial				
Building material storage, including sales and yards			P	
Cabinetry and specialty lumber mill working and sales			P	
Laboratories, research and development or testing			P	

Fabrication and assembly uses			P	
Photoengraving			P	
Printing and publishing establishments			P	
Specialty building products, sales and showrooms			P	
Wholesale trade, warehousing, and storage establishments			P	
Other				
Solar energy systems--accessory	C	C	C	C

(Bill No. 4-05; Bill No. 54-05; Bill No. 78-05; Bill No. 60-10; Bill No. 13-11; Bill No. 14-11; Bill No. 68-13)

Anne Arundel County Code

SUBTITLE 3. USES UNDER THE OPTIONAL METHOD OF DEVELOPMENT

§ 18-8-302. Combination of uses.

(a) **Use combination required.** Uses shall be combined in the manner described in the chart in this section.

(b) **Percentages.** Except as provided in subsection (c), the percentages listed in the chart in this section represent the proportion of the floor area of the category of use to the floor area of the development. If the percentages are expressed as a range, the first number is the minimum percentage and the second number is the maximum percentage.

(c) **Open area and public activity areas.** The percentages listed for open area represent the proportion of the area of the open area to the gross area of the site, and the percentages listed for public activity area represent the proportion of the public activity area to the usable floor area of the nonresidential uses in the development.

(d) **When percentages may be modified.** The Office of Planning and Zoning may modify the percentages listed in the chart if the site is affected by the airport noise zone, environmental remediation requirements, or is part of or an addition to an office complex that was in existence as September 14, 2008 and is occupied primarily by tenants engaged in the national security industry.

(e) **Chart.**

MXD-R	MXD-C	MXD-E	MXD-T	
Category of Use				
Residential	50 - 80%	15 - 45%	10 - 40%	30 - 70%
Retail and service	5 - 25%	40 - 60%	10 - 25%	10 - 35%
Office	10 - 25%	10 - 40%	15 - 60%	10 - 40%
Industrial	0	0	15 - 65%	0
Open area (% of gross area of site)	20% minimum	20% minimum	20% minimum	20% minimum
Public activity area (% of nonresidential gross floor area)	20% minimum	10% minimum	10% minimum	20% minimum

(Bill No. 4-05; Bill No. 69-07; Bill No. 52-08)

Anne Arundel County Code

SUBTITLE 3. USES UNDER THE OPTIONAL METHOD OF DEVELOPMENT

§ 18-8-303. Densities; floor area ratios; building heights.

The maximum residential densities, maximum floor area ratios, and maximum building heights are described in the following chart.

	MXD-R	MXD-C	MXD-E	MXD-T	
Maximum residential net density		7 units/acre	15 units/acre	15 units/acre	22 units/acre
Maximum FAR		0.5	1.0	1.0	2.0
Maximum building height		90 feet. Height may exceed 90 feet if all setback requirements are increased by one foot for each two feet in excess of 90 feet and if more than 50% of allowable lot coverage consists of environmental design features approved by the Planning and Zoning Officer.	150 feet	150 feet	150 feet

(Bill No. 4-05; Bill No. 69-07; Bill No. 52-08; Bill No. 60-10)

Anne Arundel County Code

SUBTITLE 3. C2 – COMMERCIAL OFFICE DISTRICTS

§ 18-5-301. Bulk regulations.

Except as provided otherwise in this article, the following bulk regulations are applicable in a C2 District:

Minimum lot size	20,000 square feet
Maximum coverage by structures and parking	80% of gross area
Minimum setbacks for principal structures:	
Rear lot line	25 feet
All lot lines	60 feet from right-of-way line of a divided principal arterial road
Minimum setbacks for accessory structures in the side or rear yard:	
Side lot line	10 feet
Rear lot line	10 feet
Minimum lot depth	100 feet
Maximum floor area ratio:	
Generally	1.0
a mix of office, retail, and residential uses with at least 30% of the total floor area devoted to residential uses and for hospitals	2.0
Maximum height limitations:	
If two or more lot lines abut a residential district	60 feet or to a maximum of 72 feet for development in which more than 50% of allowable lot coverage consists of environmental site design features approved by

	the Planning and Zoning Officer and all setbacks are increased by one foot for each foot of height in excess of 60 feet
If one lot line abuts a residential district	60 feet except that there shall be no maximum for development in which more than 50% of allowable lot coverage consists of environmental site design features approved by the Planning and Zoning Officer and all setbacks are increased by one foot for each three feet of height in excess of 60 feet
Rear service area	Accessible by a 15-foot wide unobstructed right-of-way

(Bill No. 4-05; Bill No. 60-10)

Md. Rule 8-511

Michie's Annotated Code of Maryland
Maryland Rules
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*** State and Federal Rules are current through July 1, 2014 ***
*** Annotations are through May 1, 2014 ***

MARYLAND RULES
TITLE 8. APPELLATE REVIEW IN THE COURT OF APPEALS AND COURT OF SPECIAL
APPEALS
CHAPTER 500. RECORD EXTRACT, BRIEFS, AND ARGUMENT

Md. Rule 8-511 (2014)

Review Court Orders which may amend this Rule.

Rule 8-511. Amicus curiae

(a) Authorization to File Amicus Curiae Brief. An amicus curiae brief may be filed only:

- (1) upon written consent of all parties to the appeal;
- (2) by the Attorney General in any appeal in which the State of Maryland may have an interest;
- (3) upon request by the Court; or
- (4) upon the Court's grant of a motion filed under section (b) of this Rule.

(b) Motion and Brief.

(1) Content of Motion. A motion requesting permission to file an amicus curiae brief shall:

- (A) identify the interest of the movant;
- (B) state the reasons why the amicus curiae brief is desirable;
- (C) state whether the movant requested of the parties their consent to the filing of the amicus curiae brief and, if not, why not;
- (D) state the issues that the movant intends to raise;

(E) identify every person, other than the movant, its members, or its attorneys, who made a monetary or other contribution to the preparation or submission of the brief, and identify the nature of the contribution; and

(F) if filed in the Court of Appeals to seek leave to file an amicus curiae brief supporting or opposing a petition for writ of certiorari or other extraordinary writ, state whether, if the writ is issued, the movant intends to seek consent of the parties or move for permission to file an amicus curiae brief on the issues before the Court.

(2) Attachment of Brief. Copies of the proposed amicus curiae brief shall be attached to two of the copies of the motion filed with the Court.

Cross references. -- See Rule 8-431 (e) for the total number of copies of a motion required when the motion is filed in an appellate court.

(3) Service. The movant shall serve a copy of the motion and proposed brief on each party.

(4) If Motion Granted. If the motion is granted, the brief shall be regarded as having been filed when the motion was filed. Within ten days after the order granting the motion is filed, the amicus curiae shall file the additional number of briefs required by Rule 8-502 (c).

(c) Time for filing.

(1) Generally. Except as required by subsection (c)(2) of this Rule and unless the Court orders otherwise, an amicus curiae brief shall be filed at or before the time specified for the filing of the principal brief of the appellee.

(2) Time for Filing in Court of Appeals.

(A) An amicus curiae brief may be filed pursuant to section (a) of this Rule in the Court of Appeals on the question of whether the Court should issue a writ of certiorari or other extraordinary writ to hear the appeal as well as, if such a writ is issued, on the issues before the Court.

(B) An amicus curiae brief or a motion for leave to file an amicus curiae brief supporting or opposing a petition for writ of certiorari or other extraordinary writ shall be filed at or before the time any answer to the petition is due.

(C) Unless the Court orders otherwise, an amicus curiae brief on the issues before the Court if the writ is granted shall be filed at the applicable time specified in subsection (c)(1) of this Rule.

(d) Compliance with Rules 8-503 and 8-504. An amicus curiae brief shall comply with the applicable provisions of Rules 8-503 and 8-504.

(e) Reply brief; Oral argument; Brief supporting or opposing motion for reconsideration. Without permission of the Court, an amicus curiae may not (1) file a reply brief, (2) participate in oral argument, or (3) file a brief in support of, or in opposition to, a motion for reconsideration. Permission may be granted only for extraordinary reasons.

(f) Appellee's reply brief. Within ten days after the filing of an amicus curiae brief that is not substantially in support of the position of the appellee, the appellee may file a reply brief limited to the issues in the amicus curiae brief that are not substantially in support of the appellee's position and are not fairly covered in the appellant's principal brief. Any such reply brief shall not exceed 15 pages.

HISTORY: (Amended Nov. 8, 2005, effective Jan. 1, 2006; Nov. 21, 2013, effective Jan. 1, 2014.)

NOTES: Source. -- This Rule is derived in part from Fed.R.App.P. 29 and Sup.Ct.R. 37 and is in part new.

Effects of Amendments. -- The 2005 amendment, effective January 1, 2006, added (b)(4) with related changes and substituted "Fed.R.App.P. 29 and Sup.Ct.R. 37 (b)6" for "FRAP 29" in the Source note.

The 2013 amendment rewrote the section.

Applied in *Surland v. State*, 392 Md. 17, 895 A.2d 1034 (2006).

Stated in *State v. Rodriguez*, 125 Md. App. 428, 725 A.2d 635 (1999), cert. denied, 354 Md. 573, 731 A.2d 971 (1999).