



April 23, 2024

MEMORANDUM

TO: Prince George's County Council Planning, Housing, and Economic Development Committee

FROM: Lakisha Hull, AICP, LEED AP BD+C, Planning Director
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SUBJECT: **Response to Request to Amend Proposed Section 27-1707(b)**

The purpose of this memorandum is to offer the Planning Department's comments on testimony offered by stakeholders speaking during the PHED Committee work-session held on Thursday, April 18, 2024. During their testimony, several speakers generally supported the revised transition provisions the Committee then adopted as amendments to CB-15-2024 in a 5-0 vote.

Planning Department Recommendation

Because the proposed additional amendment to Section 27-1707(b) has the effect of circumventing authority long-held by the District Council for a significant timeframe, the Planning Department recommends the PHED Committee not adopt the recommendation of the speakers and retain the April 1, 2022 date in Section 27-1707(b) with the understanding that rezoning to a less intense zone that may result in a nonconforming use remains subject to the finding of significant public benefit to be served by that action.

Proposed Amendment to Section 27-1707(b)

Numerous stakeholders who spoke during the PHED Committee session on April 18, 2024 sought an additional revision that the PHED Committee indicated would need additional review. Namely, these speakers sought a revision in the language of new Section 27-1704(b). That Section as adopted by the PHED Committee reads:

- (b) A legal conforming building, structure, site feature, or use in existence under the prior Zoning Ordinance on March 31, 2022, which is not in conformance with the requirements of the zone in which it is located under this Ordinance on April 1, 2022, or a building or structure constructed pursuant to development applications approved under Sections 27-1703, 27-1704, or 27-1900 of this Ordinance which is not in conformance with the requirements of the zone in which it is located at the time the building or structure is entitled to issuance of a use and occupancy permit, shall be a legal conforming building, structure, site feature, or use under this Ordinance until and unless the District Council approves a new zone for the property after April 1, 2022 that would create a new nonconforming use.

The speakers request the following language in place of “April 1, 2022” in the last sentence of Section 27-1704(b):

... shall be a legal conforming building, structure, site feature, or use under this Ordinance until and unless the District Council approves a new zone for the property after ~~April 1, 2022~~ THE EXPIRATION OF ANY GRANDFATHERING PROVISIONS PROVIDED IN SECTIONS 27-1704(A) AND (D) (AS APPLICABLE) that would create a new nonconforming use.

Explanation

Before making a decision on this proposed additional amendment, the Council should be aware of what it would mean and how it would impact the long-standing powers of the District Council to rezone properties in the County. For decades, the District Council has self-imposed boundaries pertaining to the rezoning of land in the County through a Sectional Map Amendment process. And most pertinent to the request for further amendments to Section 27-1707(b), the District Council has limited its own authority to rezone property to a less intense zone if the zoning would create a nonconforming use, unless this zoning would serve a significant public benefit. The prior Zoning Ordinance contained this limitation in Section 27-223(g)(2):

- (2) Based on existing physical development at the time of adoption of the Sectional Map Amendment, the zoning would create a nonconforming use. This zoning may be approved, however, if there is a significant public benefit to be served by the zoning based on facts peculiar to the subject property and the immediate neighborhood. In recommending the zoning, the Planning Board shall identify these properties and provide written justification supporting the zoning at the time of transmittal. The failure of either the Planning Board or property owner to identify these properties, or a failure of the Planning Board to provide the written justification, shall not invalidate any Council action in the approval of the Sectional Map Amendment.

This exact same limitation was carried to the current Ordinance as Section 27-3503(a)(5)(B):

- (B) Based on existing physical development at the time of adoption of the sectional map amendment, the zoning would create a nonconforming use. This zoning may be approved, however, if there is a significant public benefit to be served by the zoning based on facts peculiar to the subject property and the immediate neighborhood. In recommending the zoning, the Planning Board shall identify these properties and provide written justification supporting the zoning at the time of transmittal. The failure of either the Planning Board or property owner to identify these properties, or a failure of the Planning Board to provide the written justification, shall not invalidate any District Council action in the approval of the sectional map amendment.

What this means is that the District Council may not create a nonconforming use in the review and approval of proposed rezoning to a less intense zone in a comprehensive rezoning process (a Sectional Map Amendment, or SMA) unless the Planning Board first identifies properties that may result in a nonconforming use based on the existing physical development at the time the SMA is endorsed, and the District Council determines there is a significant public benefit to be served by placing the property in a less intense zone.

There was, and remains, no limitation on the District Council’s authority to place property in a more intense zone where an existing use may not be permitted and in which a nonconforming use may be

created.

Therefore, the District Council has long had the authority and discretion to rezone property in the full knowledge a nonconforming use may be created if the District Council either decided a more intense zone was more appropriate for that property or if the Council found a less intense zone served a significant public benefit; both approaches may well be necessary from time to time in order for the Council to better position the associated Area Master Plan or Sector Plan for success by applying the zoning necessary to achieve the plan's land use goals.

It is also important to understand that such rezoning through a SMA resulting in a potential nonconforming use has no limitation regarding the status of existing development or development approvals that may impact the subject property. Nonconforming uses may – and have – been created even if existing development or approved development applications were based upon uses that would no longer be permitted on that rezoned property.

Effect of Proposed Amendment to Section 27-1707(b)

Although the recommended additional amendment to Section 27-1707(b) seems relatively innocuous, it has substantial impact on this decades-long authority of the District Council to knowingly rezone property to a zone that would result in a nonconforming use. The proposed language is restated:

... shall be a legal conforming building, structure, site feature, or use under this Ordinance until and unless the District Council approves a new zone for the property after ~~April 1, 2022~~ THE EXPIRATION OF ANY GRANDFATHERING PROVISIONS PROVIDED IN SECTIONS 27-1704(A) AND (D) (AS APPLICABLE) that would create a new nonconforming use.

In short, what this proposal would do is grant property owners authority they never had in the past that effectively supersedes the District Council's zoning authority for an extensive period of time.

The April 1, 2022 language already adopted by the PHED Committee is intended to allow the District Council to knowingly rezone property in a SMA after the current Ordinance took effect pursuant to the District Council's long-standing authority in this regard, and subject to the same limitations that already exist in the event the District Council were to consider a less intense zone. Since this authority has existed for decades, the Planning Department supports retaining this authority and allowing it to supersede any grandfathering or transition protections that may otherwise apply.

This is because a SMA is the result of a lengthy public engagement process often lasting two or more years, where property owners are involved throughout the process, multiple public meetings and several public hearings are held, and there is substantial opportunity for active engagement where property owners and attorneys may argue that proposed rezonings are not appropriate for their unique situations. It is the view of the Planning Department that rezoning lands protected by the grandfathering provisions of the current Ordinance to knowingly create nonconforming uses during any future SMA will be a rare outcome and will almost always be the result of the District Council deciding that the recommendations of a new Area Master Plan or Sector Plan dictate a change in the character of the affected area.

By introducing a change to Section 27-1707(b) linked to the 10- or 20-year (and beyond or indefinite, in some situations) grandfathering protection periods established in Sections 27-1704(a) and (d), this proposed amendment would grant property owners a new power – the ability to supersede any authority of the Council to rezone property to create a nonconforming use (as otherwise authorized by Section 27-3503(a)(5)(B), for example) for a significant time.

This means that if, someday in the future, the District Council may wish to rezone property to a different (often less intense) zone for the purpose of creating a nonconforming use to discourage that use in order to better implement an Area Master Plan or Sector Plan – which again is a power long held by the District Council – the District Council can rezone the land, but the uses that exist on that property will be allowed to continue as legal and not nonconforming uses because they would be covered by grandfathering up to and sometimes beyond April 1, 2042. The District Council effectively loses the ability to create nonconforming uses through rezoning of land for any purpose in this timeframe.