



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772
TTY: (301) 952-3796

Office of the Chairman
Prince George's County Planning Board

(301) 952-3561

October 8, 2020

The Honorable Todd M. Turner
Chair
Prince George's County Council
County Administration Building
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772

Re: CB-70-2020, CB-72-2020, CB-73-2020,
CB-74-2020, CB-80-2020 (DR-2), CB-83-2020, and
CB-85-2020


Dear Chairman Turner:

Thank you for providing the Planning Board an opportunity to review and comment on proposed District Council legislation. During the July 9, 2020, Planning Board meeting, the following positions were adopted in accordance with the planning staff's recommendations on the proposed legislation. A **Planning Board Analysis of each bill is attached for your consideration and a brief excerpt from each report is provided below:**

***CB-70-2020** A bill to permit a "food hall" in the Commercial Office (C-O), Commercial Ancillary (C-A), Commercial Shopping Center (C-S-C), Commercial Waterfront (C-W), Commercial Miscellaneous (C-M), Commercial Regional Center (C-R-C), Light Industrial (I-1), Planned Industrial/Employment (I-3), Urban Light Industrial (U-L-I), Mixed Use Transportation-Oriented (M-X-T), and the Mixed Use Community (M-X-C) Zones.*

Planning Board Recommendation: Support with Amendments.
(See Attachment 1 for a full analysis)

This legislation adds and permits a new use entitled "food hall". The "food hall" concept includes individual licensed food vendors, small retail businesses, live entertainment, artistic performances, and instruction. The use would be permitted in most industrial, commercial, and mixed-use zones.

The definition should be amended to clarify whether live entertainment will include music and patron dancing. Also, the definition should state that adult entertainment is prohibited.

The parking and loading regulations under Sections 27-568 and 27-582 should be amended. The use permits commercial, entertainment, cultural, educational, and social uses under one use entitled "food hall".

***CB-72-2020** This legislation amends the requirements for limited "Class 3 fill" uses as a method of reclaiming former sand and gravel mining properties for public use in the Residential Agricultural (R-A) Zone without Special Exception approval.*

Planning Board Recommendation: Support.
(See Attachment 2 for a full analysis)

This bill makes technical amendments to an existing footnote that permits a “Class 3 fill” operation in the Residential Agricultural (R-A) Zone without Special Exception approval. The bill clarifies that the height limitation shall not exceed 60 feet above the ground elevation at the point of road access to the site. Also, there must be a seven percent maximum road grade for any slope.

The Planning Board supports the bill because it makes the existing height and slope development requirements clear and concise.

CB-73-2020 and CB-74-2020 Bills to temporarily extend the validity periods for all approved Detailed Site Plans (DSPs), Specific Design Plans (SDPs), and Preliminary Plans of Subdivisions that were in a valid status as of January 1, 2020.

Planning Board Recommendation: Support with a recommended Amendment.
(See Attachment 3 for a full analysis)

The proposed bills will extend validity periods for DSPs, SDPs, and Preliminary Plans of Subdivisions that were approved before January 1, 2015, until December 31, 2021. Applications that were approved after January 1, 2015, will have their validity extended until December 31, 2022.

The Planning Board understands there is a need to extend the validity periods for development applications because of the Coronavirus pandemic, related economic impacts, and delays in the approval process of the Countywide Map Amendment. The Planning Board would like to recommend one amendment.

Applications that were approved ten or more years ago should expire on December 31, 2020. Per our analysis, 114 development approvals of this type would expire on December 31. Development projects meeting this qualifier have not shown progress to be vested in their development approvals in over ten years. The Planning Board is concerned that these incredibly old projects may not meet the requirements of the current Zoning Ordinance or the goals of Plan 2035. In addition, Preliminary Plans of subdivision in this group are reserving “background traffic” as defined by the Transportation Review Guidelines, and this background traffic must be mitigated by new development projects seeking approval. This means that new, economically viable projects become more expensive to build, or may even be made non-viable because older non-viable projects are holding onto reserved transportation capacity that is unlikely ever to materialize.

CB-80-2020 (DR-2) A bill to permit “contractor’s office” in the Rural Residential (R-R) Zone, under certain circumstances.

Planning Board Recommendation: Support with an Amendment.
(See Attachment 4 for a full analysis)

The Prince George’s County Council Committee of the Whole (COW) met yesterday to discuss CB-80-2020 (DR-1). The Council COW voted 11-0 to accept many of the Planning Board staff’s recommended amendments to the proposed bill.

Some of the Planning Board staff's recommendations were to remove the definition of "contractor's yard" from the bill and use an existing use listed within the commercial or industrial tables of uses. The Council COW added "contractor's office which may include outdoor storage and parking of heavy vehicles and equipment" to the residential table of uses.

Another recommendation was to amend footnote 139 to make it applicable to a property in the county. The footnote will now apply to properties that are less than three acres; the property is adjacent to land zoned Light Industrial (I-1); the property is accessed via a private easement; the property must be recommended for low-density residential within the Westphalia Sector Plan and subject to a Detailed Site Plan (DSP) approval for landscaping and buffering only. The Planning Board staff has conducted a GIS analysis of the revised footnote and determined that there are approximately nine properties that would apply to the footnote.

The Planning Board does not believe that the District Council's requirement of a DSP for landscaping and buffering only is necessary. The Landscape Manual already includes buffering standards for industrial uses, and if this is the only reason a DSP is desired, staff recommends deleting the requirement for a DSP.

The Planning Board appreciates the amendments made to CB-80-2020 (DR-1) during the Council COW meeting yesterday. The Planning Board supports CB-80-2020 (DR-2) with an amendment to remove the DSP requirement.

CB-83-2020 A bill to prohibit "fly ash landfills" in Prince George's County.

Planning Board Recommendation: Support.

(See Attachment 5 for a full analysis)

This bill defines and adds "fly ash landfills" to the list of prohibited uses. CB-83-2020 appears to be a bill of general application impacting the entire county. It is a District Council policy decision and within its purview to permit or prohibit uses which may be an environmental hazard to the health, safety, and welfare of the citizens of this county. This legislation will impact a property located at 11700 North Keys Road, Brandywine, Maryland. After the enactment of this legislation, the existing use would become a nonconforming use, thus requiring the use to apply to become a certified nonconforming use.

The Planning Board recommends the proposed language under Section 2, on page 2, lines 9 through 11, be deleted. It is not clear why the language was added to the bill; it adds unnecessary confusion. The language appears to amend the adopted Zoning Ordinance through a proposed amendment to the current Zoning Ordinance. Rather than pursuing this alternative, any future prohibition of "fly ash landfills" in the adopted Zoning Ordinance should be done through a separate legislative amendment to the adopted Zoning Ordinance.

This will avoid scenarios that may be caused by Section 2 which could include imposing a legislative mandate through a bill that could be later repealed or inadvertently left out of revisions to the adopted Zoning Ordinance.

A legislative amendment package, including revisions to the adopted Zoning Ordinance, has been discussed and is expected to be presented by the District Council in early 2021. If CB-83-2020 is enacted without Section 2, the proposed prohibition on “fly ash landfills” could easily be added as part of comprehensive legislative amendments to the adopted Zoning Ordinance.

CB-85-2020 A bill to add “Industrial Redevelopment Community” in the Zoning Ordinance and permit the use in the Heavy Industrial (I-2) Zone, subject to certain specified criteria.

Planning Board Recommendation: Oppose, pending additional study, but find that a definition submitted orally on the record may address some, but not all, concerns.

(See Attachment 6 for a full analysis)

The legislation proposes to add a new use entitled “Industrial Redevelopment Community” to the Industrial Zones Table of Uses under the Industrial Heavy (I-2) Zone. The bill also adds regulations under additional requirements for specific uses. However, the bill does not define “Industrial Redevelopment Community” which makes the legislation impossible to administer.

Although permitting the development of limited residential uses on I-2 zoned properties can be a helpful economic tool, it could also effectively constitute an additional loss of industrial lands in the County. Large-scale residential development, for example, is incompatible with the heavy industrial nature of the I-2 Zone, where noisy or high-impact uses are often concentrated. As discussed in Plan 2035, the County’s industrial lands are important to the economic future of the County, particularly regarding employment opportunities and a diversified tax base.

The Planning Board has identified approximately 332 I-2 properties that are located within a Revitalization Tax District. Many of the I-2 zoned properties in the County are close to freight, commuter, and passenger rail lines which would require additional mitigation measures on the part of residential development in these locations and contribute to the incompatibility of these lands for large-scale residential development.

The bill does not define the new use that is added to the residential table of uses. In addition, the bill does not specify the exact uses that are permitted inside the “Industrial Redevelopment Community”. There are no development standards for review of the Detailed Site Plan (DSP). The Planning Board is concerned that not adding development standards to the bill defeats the purpose of zoning by preventing the uniform application of objective development standards to all properties in the zone. Development standards are established by the District Council in coordination with its adopted future land use recommendations in master plans.

The Planning Board believes there should be an additional study with a comprehensive review of I-2 zoned properties in the Revitalization Tax Credit District. The study would more appropriately determine which I-2 properties should be identified for redevelopment. Therefore, the Planning Board recommends the District Council delay action on this bill.

Mr. Taub presented a proposed definition to be added to CB-85-2020 during the Planning Board meeting this morning. The definition is as follows:

Section 27-107.01 (122.3) – Industrial Redevelopment Community

The redevelopment of property:

(1) consisting of at least ten contiguous acres;

(2) currently in a heavy industrial zone located adjacent to a rail line, and within a Revitalization Tax Credit District;

(3) recommended for residential redevelopment in the applicable Master Plan or Sector Plan; and

(4) proposed for redevelopment with residential and associated uses, subject to the standards and requirements set forth in Section 27-475.06.10

The Planning Board in response to Mr. Taub's testimony recommends clarification of (4) of the proposed definition to be more precise as to what is meant by "residential and associated uses."

As always, Planning Department staff members are available to work with the Council and your legislative staff on any pertinent legislative matters. Please let us know if we may be of further assistance.

Should you have questions, please do not hesitate to contact the Office of the Planning Director at 301-952-3595. Thank you, again, for your consideration.

Sincerely,


Elizabeth M. Hewlett
Chairman

Attachments

CB-70-2020–Planning Board Analysis (Attachment 1)

A bill to permit a “food hall” in the Commercial Office (C-O), Commercial Ancillary (C-A), Commercial Shopping Center (C-S-C), Commercial Waterfront (C-W), Commercial Miscellaneous (C-M), Commercial Regional Center (C-R-C), Light Industrial (I-1), Planned Industrial/ Employment (I-3), Urban Light Industrial (U-L-I), Mixed Use Transportation-Oriented (M-X-T), and the Mixed Use Community (M-X-C) Zones.

The Planning Board has the following comments and suggestions for consideration by the District Council:

Policy Analysis:

This legislation adds and permits a new use entitled “food hall”. The “food hall” concept includes individual licensed food vendors, small retail businesses, live entertainment, artistic performances, and instruction. The use would be permitted in most industrial, commercial, and mixed-use zones. In addition, a new footnote is created to require the use to adhere to life safety requirements under specific temporary uses for a “farmer’s market” or a “flea market”. Also, the bill adds off-street parking and loading regulations for the industrial and commercial zones. Lastly, the bill adds grandfathering language to permit any business operating on/or before January 1, 2020, as a “food hall” or construed as a “food hall” to continue operations.

The definition should be amended to clarify whether live entertainment will include music and patron dancing. Also, the definition should state that adult entertainment is prohibited.

The parking and loading regulations under Sections 27-568 and 27-582 should be amended. The use permits commercial, entertainment, cultural, educational, and social uses under one use entitled “food hall”. The Planning Board recommends the following parking and loading ratios:

Section 27-568

Type of Use	Number of Spaces	Unit of Measurement
(5) COMMERCIAL TRADE (GENERALLY RETAIL)/SERVICES:		
(D) Miscellaneous:		
<u>Food Hall</u>	<u>1.0</u>	<u>3 seats</u>

Section 27-582

Type of Use	Number of Spaces	Unit of Measurement
<u>Food Hall</u>	<u>None</u>	<u>0 to 10,000 sq. ft of GFA</u>
	<u>1</u>	<u>2,000 to 10,000 sq. ft. of GFA</u>
	<u>+1</u>	<u>10,000 to 100,000 sq. ft. of GFA</u>
	<u>+1</u>	<u>Each additional 100,000 sq. ft. of GFA (or fraction)</u>

CB-70-2020 – Planning Board Analysis (Attachment 1)

Page 2

New Zoning Ordinance:

The adopted Zoning Ordinance does not define the “food hall” use.

Impacted Property:

The bill would impact all properties located in the C-O, C-A, C-S-C, C-W, C-M, C-R-C, I-1, I-3, U-L-I, M-X-T, and M-X-C Zones.

Following discussion, the Planning Board voted to support CB-70-2020 with the above-mentioned amendments.

CB-72-2020–Planning Board Analysis (Attachment 2)

This legislation amends the requirements for limited “Class 3 fill” uses as a method of reclaiming former sand and gravel mining properties for public use in the Residential Agricultural (R-A) Zone without Special Exception approval.

The Planning Board has the following comments and suggestions for consideration by the District Council:

Policy Analysis:

This bill makes technical amendments to an existing footnote that permits a “Class 3 fill” operation in the Residential Agricultural (R-A) Zone without Special Exception approval. The bill clarifies that the height limitation shall not exceed 60 feet above the ground elevation at the point of road access to the site. Also, there must be a seven percent maximum road grade for any slope.

The Planning Board supports the bill because it makes the existing height and slope development requirements clear and concise.

New Zoning Ordinance:

The adopted Zoning Ordinance Agricultural Residential (AR) Zone will replace the R-A Zone. The “Class 3 fill” use will be permitted subject to Special Exception approval with use specific standards.

Impacted Property:

The bill would impact a property located on Accokeek Road identified by tax account number 1180876, Parcel 13.

Following discussion, the Planning Board voted to support CB-72-2020.

CB-73-2020 and CB-74-2020–Planning Board Analysis (Attachment 3)

Bills to temporarily extend the validity periods for all approved Detailed Site Plans (DSPs), Specific Design Plans (SDPs), and Preliminary Plans of Subdivisions that were in a valid status as of January 1, 2020.

The Planning Board has the following comments and suggestions for consideration by the District Council:

Policy Analysis:

The proposed bills will extend validity periods for DSPs, SDPs, and Preliminary Plans of Subdivisions that were approved before January 1, 2015, until December 31, 2021. Applications that were approved after January 1, 2015, will have their validity extended until December 31, 2022.

The Planning Board understands there is a need to extend the validity periods for development applications because of the Coronavirus pandemic, related economic impacts, and delays in the approval process of the Countywide Map Amendment. The Planning Board would like to recommend one amendment.

Applications that were approved 10 or more years ago should expire on December 31, 2020. Per our analysis, 114 development approvals of this type would expire on December 31. Development projects meeting this qualifier have not shown progress to be vested in their development approvals in over ten years. The Planning Board is concerned that these incredibly old projects may not meet the requirements of the current Zoning Ordinance or the goals of Plan 2035. In addition, Preliminary Plans of Subdivisions in this group are reserving “background traffic” as defined by the Transportation Review Guidelines, and this background traffic must be mitigated by new development projects seeking approval. This means that new, economically viable projects become more expensive to build, or may even be made non-viable because older non-viable projects are holding onto reserved transportation capacity that is unlikely ever to materialize.

Impacted Property:

The bill will impact all properties with approved DSPs, SDPs, and Preliminary Plans of Subdivision with a valid status as of January 1, 2020.

Following discussion, the Planning Board voted to support CB-73-2020 and CB-74-2020 with a recommended amendment.

CB-80-2020 (DR-2)–Planning Board Analysis (Attachment 4)

A bill to permit “contractor’s office” in the Rural Residential (R-R) Zone, under certain circumstances.

The Planning Board has the following comments and suggestions for consideration by the District Council:

Policy Analysis:

The Prince George’s County Council Committee of the Whole (COW) met yesterday to discuss CB-80-2020 (DR-1). The Council COW voted 11-0 to accept many of the Planning Board staff’s recommended amendments to the proposed bill.

Some of the Planning Board staff’s recommendations were to remove the definition of “contractor’s yard” from the bill and use an existing use listed within the commercial or industrial tables of uses. The Council COW added “contractor’s office which may include outdoor storage and parking of heavy vehicles and equipment” to the residential table of uses.

Another recommendation was to amend footnote 139 to make it applicable to a property in the county. The footnote will now apply to properties that are less than three acres; the property is adjacent to land zoned Light Industrial (I-1); the property is accessed via a private easement; and the property must be recommended for low-density residential within the Westphalia Sector Plan, and subject to a Detailed Site Plan (DSP) approval for landscaping and buffering only. The Planning Board staff has conducted a GIS analysis of the revised footnote and determined that there are approximately nine properties that would apply to the footnote.

The Planning Board believes that the District Council’s requirement of a DSP for landscaping and buffering only is not necessary. The Landscape Manual already includes buffering standards for industrial uses, and if this is the only reason a DSP is desired, staff recommends deleting the requirement for a DSP.

The Planning Board appreciates the amendments made to CB-80-2020 (DR-1) during the Council COW meeting yesterday. The Planning Board supports CB-80-2020 (DR-2) with an amendment to remove the DSP requirement.

New Zoning Ordinance:

The adopted Zoning Ordinance prohibits a “contractor’s office” in the RR Zone.

Impacted Property:

The bill would impact nine properties in the county.

Following discussion, the Planning Board voted to support CB-80-2020 (DR-2) with an amendment.

CB-83-2020–Planning Board Analysis (Attachment 5)

A bill to prohibit “fly ash landfills” in Prince George’s County.

The Planning Board has the following comments and suggestions for consideration by the District Council:

Policy Analysis:

This bill defines and adds “fly ash landfills” to the list of prohibited uses. CB-83-2020 appears to be a bill of general application impacting the entire county. It is a District Council policy decision and within its purview to permit or prohibit uses which may be an environmental hazard to the health, safety, and welfare of the citizens of this county. This legislation will impact a property located at 11700 North Keys Road, Brandywine, Maryland. After the enactment of this legislation, the existing use would become a nonconforming use, thus requiring the use to apply to become a certified nonconforming use.

The Planning Board recommends the proposed language under Section 2, on page 2, lines 9 through 11, be deleted. It is not clear why the language was added to the bill; it adds unnecessary confusion. The language appears to amend the adopted Zoning Ordinance through a proposed amendment to the current Zoning Ordinance. Rather than pursuing this alternative, any future prohibition of “fly ash landfills” in the adopted Zoning Ordinance should be done through a separate legislative amendment to the adopted Zoning Ordinance. This will avoid scenarios that may be caused by Section 2 which could include imposing a legislative mandate through a bill that could be later repealed or inadvertently left out of revisions to the adopted Zoning Ordinance.

A legislative amendment package, including revisions to the adopted Zoning Ordinance, has been discussed and is expected to be presented by the District Council in early 2021. If CB-83-2020 is enacted without Section 2, the proposed prohibition on “fly ash landfills” could easily be added as part of comprehensive legislative amendments to the adopted Zoning Ordinance.

Impacted Property:

The bill will impact properties countywide by prohibiting ‘fly ash landfills” in any zone. It will also impact an existing fly ash landfill located at 11700 North Keys Road, Brandywine, Maryland.

Following discussion, the Planning Board voted to support CB-83-2020 with an amendment.

CB-85-2020–Planning Board Analysis (Attachment 6)

A bill to add “Industrial Redevelopment Community” in the Zoning Ordinance and permit the use in the Heavy Industrial (I-2) Zone, subject to certain specified criteria.

The Planning Board has the following comments and suggestions for consideration by the District Council:

Policy Analysis:

The legislation proposes to add a new use entitled “Industrial Redevelopment Community” to the Industrial Zones Table of Uses under the Industrial Heavy (I-2) Zone. The bill also adds regulations under additional requirements for specific uses. However, the bill does not define “Industrial Redevelopment Community ” which makes the legislation impossible to administer.

Although permitting the development of limited residential uses on I-2 zoned properties can be a helpful economic tool, it could also effectively constitute an additional loss of industrial lands in the County. Large-scale residential development, for example, is incompatible with the heavy industrial nature of the I-2 Zone, where noisy or high-impact uses are often concentrated. As discussed in Plan 2035, the County’s industrial lands are important to the economic future of the County, particularly regarding employment opportunities and a diversified tax base.

The Planning Board has identified approximately 332 I-2 properties that are located within a Revitalization Tax District. Many of the I-2 zoned properties in the County are close to freight, commuter, and passenger rail lines which would require additional mitigation measures on the part of residential development in these locations and contribute to the incompatibility of these lands for large-scale residential development.

The bill does not define the new use that is added to the residential table of uses. In addition, the bill does not specify the exact uses that are permitted inside the “Industrial Redevelopment Community”. There are no development standards for review of the Detailed Site Plan (DSP). The Planning Board is concerned that not adding development standards to the bill defeats the purpose of zoning by preventing the uniform application of objective development standards to all properties in the zone. Development standards are established by the District Council in coordination with its adopted future land use recommendations in master plans.

The Planning Board believes there should be an additional study with a comprehensive review of I-2 zoned properties in the Revitalization Tax Credit District. The study would more appropriately determine which I-2 properties should be identified for redevelopment. Therefore, the Planning Board recommends the District Council delay action on this bill.

Mr. Taub presented a proposed definition to be added to CB-85-2020 during the Planning Board meeting this morning. The definition is as follows:

Section 27-107.01 (122.3) – Industrial Redevelopment Community

The redevelopment of property:

(1) consisting of at least ten (10) contiguous acres;

(2) currently in a heavy industrial zone located adjacent to a rail line, and within a Revitalization Tax Credit District;

(3) recommended for residential redevelopment in the applicable Master Plan or Sector Plan; and

(4) proposed for redevelopment with residential and associated uses, subject to the standards and requirements set forth in Section 27-475.06.10

The Planning Board in response to Mr. Taub's testimony recommends clarification of (4) of the proposed definition to be more precise as to what is meant by "residential and associated uses."

New Zoning Ordinance:

The adopted Zoning Ordinance pursuant to CB-13-2018 allows limited residential development in the IH (Industrial, Heavy) Zone up to 12 dwelling units per acre with the explicit purpose "to accommodate limited residential uses, particularly as adaptive reuse opportunities" rather than focus on a new development or site redevelopment. Multifamily dwellings, artists' residential studios, live-work dwellings, or planned retirement communities are also allowed with the approval of a special exception.

Impacted Property:

The bill will impact I-2 zoned properties countywide that are in a Revitalization Tax District.

Following discussion, the Planning Board voted to oppose CB-85-2020, pending additional study, but found that a definition submitted orally on the record may address some, but not all, concerns.