

Prince George's County Council Agenda Item Summary

Meeting Date: 5/27/2004
Reference No.: CB-026-2004
Draft No.: 2
Proposer(s): Exum
Sponsor(s): Exum, Knotts, Harrington, Dean, Peters, Dernoga, Shapiro
Item Title: An Ordinance providing that land conveyed to non-governmental persons for certain revitalization projects undertaken in conjunction with the County, the Housing Authority, the Revenue Authority and the Redevelopment Authority be rezoned in certain circumstances

Drafter: Ralph E. Grutzmacher, Legislative Officer
Resource Personnel: Kendal C. Gray, Legislative Aide

LEGISLATIVE HISTORY:

Date Presented:		Executive Action:	
Committee Referral:	4/27/2004 - PZED	Effective Date:	7/12/2004
Committee Action:	5/5/2004 - FAV		
Date Introduced:	4/27/2004		
Public Hearing:	5/18/2004 - 10:00 AM		
Council Action (1)	5/27/2004 - ENACTED		
Council Votes:	MB:A, SHD:A, TD:A, CE:A, DCH:A, TH:A, TK:A, DP:A, PS:A		
Pass/Fail:	P		
Remarks:			

AFFECTED CODE SECTIONS:

27-113.02

COMMITTEE REPORTS:

PLANNING, ZONING & ECONOMIC DEVELOPMENT COMMITTEE

Date 5/5/2004

Committee Vote: Favorable, 5-0 (In favor: Council Members Dernoga, Bland, Dean, Exum, and Harrington)

Staff summarized the purpose of the bill and informed the committee of referral comments that were received. This legislation provides rules for the development or redevelopment of land conveyed by the County Housing Authority, the Revenue Authority, or the Redevelopment Authority. CB-26-2004 provides that land conveyed by one of these entities is subject to District Council review prior to its development or redevelopment. Before the land is conveyed, the District Council shall decide whether the existing zoning is to be retained; if it is not, then the property will be classified O-S, until it is rezoned in an individual map amendment application.

The Office of Law reviewed CB-26-2004 and provided the following comments. The language in subsection (a) on page 2 mentions a review by the District Council but does not describe the scope of the detail nor any process or criteria. Those details should be added to avoid possible legal challenges on constitutional grounds such as due

process. Also, subsections (b) and (c) mention rezoning the authorities' land to the O-S Zone. As the bill is drafted, this rezoning would occur without due process for surrounding landowners who may want to object to the rezoning, as well as without the normal procedures for rezoning. This deviation from the normal rezoning process could lead to legal challenges on constitutional grounds. These concerns may be remedied by providing a review procedure as mentioned above and providing a basis upon which the District Council may deviate from existing rezoning review procedures.

The Chief Zoning Hearing Examiner (ZHE) also submitted comments on this legislation. The ZHE comments indicate that the purpose clause of the bill notes that it is envisioned to govern when land is conveyed by the County, the Housing Authority, the Revenue Authority or the Redevelopment Authority to "non-government persons." However, paragraph (a) on page 2 of the bill addresses a review by the District Council prior to the development or redevelopment of any land owned by the three aforementioned Authorities. This does not meet the purpose clause and should be revised. The ZHE also expressed similar concerns raised by the Office of Law concerning the nature of the "review" by the District Council relating to the due process provisions of the United States Constitution and the parallel provisions of the Maryland Constitution. The ZHE commented that these Constitutional provisions would require some type of hearing mechanism prior to the zoning of land.

In response to the Committee Chair's question concerning the due process issue, the Principal Counsel responded that an interactive hearing is not required, however, some sort of process to allow the District Council to receive comments from interested persons should be provided.

Council Member Exum explained that the bill is intended to provide a mechanism for the District Council to review properties that have been in government ownership in order to determine if the existing zoning is still appropriate prior to the property being conveyed and developed or redeveloped.

Council Member Bland commented that a process should be developed to determine what is best for the County in these situations rather than leaving the decision open to the developer.

The committee discussed the impact that this legislation would have on a pending Request for Proposal (RFP) on several properties released by the Housing Authority and Redevelopment Authority. The Legislative Officer indicated that it is difficult to determine the impact at this point in the process because the types of development proposed on these properties is unknown at this time. The proposals could result in inappropriate low or high intensity use depending upon existing development in the surrounding area of these properties.

Aisha Braveboy, representing the County Executive's Office, indicated that the proposal closing date would be extended to allow time to provide notification of the pending legislation. Ms. Braveboy also informed the committee that in the future, prior to the release of a RFP, the District Council would have the opportunity to review the properties that are the subject of the RFP and would be provided with a copy of the proposals when they are submitted. She commented that this process could be accomplished through Section 27-113.02(a) of CB-26-2004 and that subsections (b) and (c) should be eliminated because of the uncertainty that would result if these provisions were retained in the bill.

The committee noted that since the bill bypassed presentation and was already introduced, amendments could not be made in the form of a Draft-2. Staff was instructed to prepare amendments for possible inclusion in the bill prior to enactment, in consultation with the County Executive's representative, to address concerns raised by the Office of Law and the ZHE.

BACKGROUND INFORMATION/FISCAL IMPACT:

(Includes reason for proposal, as well as any unique statutory requirements)

Under current provisions of the Zoning Ordinance, certain uses are considered “public” in nature and are permitted in virtually all zones without differentiation or distinction. Historically, public uses were individually authorized in connection with the adoption of the Capital Improvement Program. The proposed ordinance provides a mechanism for the District Council to review the current zoning of property in public ownership that is proposed for development to determine whether the existing zoning would remain appropriate for the proposed public or private development.

CODE INDEX TOPICS:

INCLUSION FILES:
