

CB-69-2022 – Planning Board Analysis (Attachment 3)

A bill to amend the Zoning Ordinance to enable properties that were formerly in the Mixed Use – Transportation Oriented (M-X-T) Zone prior to the effective date of the new Zoning Ordinance to elect to conform to the requirements of the Commercial, General and Office (CGO) Zone.

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

Policy Analysis:

CB-69-2022 is a proposal that raises substantial policy implications for Prince George’s County and the Planning Board. In summation, it would amount to changes in zoning that were not contemplated in the Countywide Map Amendment (CMA), and which would not be the result of comprehensive or piecemeal rezoning procedures. It is best to address the Planning Board’s concerns in subsections:

Former M-X-T Properties Located Inside Designated Plan 2035 Centers

CB-69-2022 perhaps inadvertently contains a substantial, potentially devastating policy change pertaining to designated Plan 2035 centers. CB-69-2022 is currently broadly drafted and would apply to **any** former M-X-T property regardless of its location in the County.

This would extend to include former M-X-T properties located in Plan 2035 Centers and along US 1/Innovation Corridor and which all received appropriate Transit-Oriented/Activity Center base zones in the CMA.

As the Planning Board reminds, the Transit-Oriented/Activity Center base and Planned Development zones were created with the primary purpose to provide Prince George’s County with the zoning tools necessary to implement Plan 2035 and its emphasis on high-quality, high-density, mixed-use transit-oriented centers at key locations in the County. It is imperative for the success of the new Zoning Ordinance and for the successful implementation of Plan 2035 to ensure that property inside designated centers retains the appropriate zoning tools such property needs to achieve the County’s policy goals.

A key part of the conversation of the Council’s priorities pertaining to the Plan 2035 centers and the Transit-Oriented/Activity Center base zones is to exercise patience in waiting to see the development the County deserves and wants to see at these locations, at the intensity desired, with the mix of uses desired. It should also be noted that Part 4 of the Council’s Approved Guide to New Zones focused on US 1/Innovation Corridor and resulted in the application of Transit-Oriented/Activity Center zones to some former M-X-T properties along this key, vibrant economic corridor.

Properties allowed to develop as if they were CGO in these locations will likely choose to develop with lesser intensity, with less potential for mixed-use development, and with an eye to taking advantage of current market conditions rather than what may be far more favorable market conditions for mixed-use development in the near- or medium-term future.

At absolute minimum to preserve the integrity of policy decisions reached after significant and lengthy debate starting with the development of Plan 2035, CB-69-2022 must be amended to exclude former M-X-T properties located in Plan 2035 centers and along US 1/Innovation Corridor and which were placed in the Transit-Oriented/Activity Center base zones by the CMA from the ability to develop as if these properties were rezoned CGO instead.

If the CGO option remains available to these properties, potentially irreversible damage can be done and some, if not all centers, and US 1/Innovation Corridor may lose their ability to develop to their full potential as property owners may choose the quick approach and develop as if they were zoned CGO. The Planning Board does not currently know how many former M-X-T properties were placed in the Transit-Oriented/Activity Center base zones by the CMA but believe the scale to be in the hundreds. The Planning Board believes the degradation of the Transit-Oriented/Activity Center zones that may result from allowing former M-X-T property to develop as if they were CGO, is a result to be avoided at all costs.

Insufficient Time to Evaluate Impact of CMA Rezoning and Policy Considerations on Former M-X-T Property

The new Zoning Ordinance and Official Zoning Map took effect April 1, 2022. Three months is insufficient time to fully evaluate the effectiveness of the new zones, the new Zoning Ordinance, and the zones applied to property through the CMA technical rezoning exercise. It is premature to propose a bill of such significance and broad impact as CB-69-2022, particularly given the generous grandfathering and transition provisions of the new Zoning Ordinance and Subdivision Regulations which were the result of much collaboration among the Council, development community, and other key stakeholders – including Section 27-1900, which allows all development in the property to develop as if they had their former zone for a period of two years, or until April 1, 2024.

In terms of policy considerations and the former M-X-T Zone, the Council spent much time in the development of the new Zoning Ordinance debating a potential Legacy M-X-T (LMXT) Zone and concluded the M-X-T Zone had outlived its utility, had failed to live up to its initial intent and purposes, and that such LMXT Zone was unnecessary. CB-69-2022 as drafted would serve to make the new CGO Zone the same as LMXT and undermine the policy considerations that led the Council to reject the LMXT Zone in the new Zoning Ordinance.

General Assembly Intent and Community Expectation

In 2021, the Maryland General Assembly amended Sections 5-833 and 5-835 of the General Provisions Article of the Annotated Code of Maryland to implement certain requirements on the 2021 Countywide Sectional Map Amendment (CMA). This law was motivated by significant resident and community organization concern in the County, with dozens of community members and organizations reaching out to the General Assembly with their concerns over how the purely technical CMA could spiral into substantive rezonings.

Under the uncodified Section 2 of this law, the General Assembly specified “Except on a demonstration of error in the public record after a public hearing, the Prince George’s County Planning Board may not recommend, and the District Council may not approve, any request made by or on behalf of any person for zone intensification that differs substantially from the applicable zoning category or classification recommended in the Proposed Guide to New Zones adopted by the District Council on July 16, 2019, under Council Resolution 27-2.”

This Section 2 was a response to the General Assembly’s deliberations of the CMA process as approved by the County Council (codified at Part 19 of the prior Zoning Ordinance and subject to the CMA initiation in CR-27-2019) and suggests the General Assembly concurred with the policy considerations informing the CMA process, including the fact the Council’s Approved Guide to New Zones would control the technical, non-substantive remapping purpose of the CMA.

Although the General Assembly limited this specific requirement to “the period when the District Council of Prince George’s County is adopting and approving a countywide zoning map amendment for Prince George’s County,” and as such this requirement is no longer in effect, there was much discussion at the state and local level pertaining to the intent of the General Assembly to ensure Prince George’s County was adhering to the CMA decision matrix approved by the Council as the Council’s Approved Guide to New Zones. Only a demonstration of error in the public record after a public hearing could result in intensification.

Pursuant to the General Assembly’s passage of this law, the County Council made a policy decision wholeheartedly advocated and supported by the Planning Board and Planning Department to make no technical rezoning decision in the CMA that was not the result of the Council’s Approved Guide to New Zones. This became the determining consideration during staff review and Board and Council analysis of testimony received during the CMA process and was followed by the Board and Council in the approval of the new Official Zoning Map on November 29, 2021.

For the Council to adopt such a broad, impactful bill as CB-69-2022 less than a year after the approval of the CMA, a bill which would have dramatic effect on hundreds of former M-X-T properties including intensification of the zone applied by the Approved Guide to New Zones/CMA remapping for many such properties, would have substantial and long-running repercussions. Among these would be a conscious step away from the policies that had guided the three-year CMA process and the possible erosion of public trust in the technical rezoning process embodied by the CMA. This, in turn, could undermine the success of the Zoning Rewrite itself.

Intensification

Additionally, allowing all former M-X-T properties to develop as if they had been rezoned to the CGO (Commercial, General and Office) Zone in the CMA would constitute de facto rezonings of substantial acreage in the most important locations of the County – transit centers and transit-served locations – through a legislative zoning amendment. Such de facto rezonings would occur outside the normal procedures for rezoning available via Sectional Map Amendment, Zoning Map Amendment or

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Planned Development (PD) Zoning Map Amendment. Although legislation is subject to a public process, the public process associated with legislation does not include the neighborhood notifications or pre-application neighborhood meetings that the community receives during normal rezoning procedures.

In many cases, the de facto rezoning will result in zoning intensification. Former M-X-T zoned property located outside designated Plan 2035 centers were placed in one of seven different zones per Part 2 of the Council’s Approved Guide to New Zones. Planning Board staff count forty-seven M-X- “property groupings” which were identified in the CMA process. These forty-seven “property groupings” were assigned the following zones:

- CGO – 6 groupings
- RMF-48 – 19 groupings
- RMF-12 – 3 groupings
- RMF-20 – 6 groupings
- CS – 4 groupings
- IE – 5 groupings
- CN – 4 groupings

Per Section 27-4102(b) only the IE (Industrial, Employment) Zone is more intense than the CGO Zone. CB-69-2022 would serve to permit development as if property were in the more intense CGO Zone for all former M-X-T properties in the RMF-12, RMF-20, RMF-48, CN, and CS “property groupings.”

Technical Comments

Should the Council proceed with this legislation, Planning Board staff find that the triggering criteria for allowing former M-X-T property to develop as if it had received the CGO Zone are broad and the Council should consider tightening requirements. For example, proposed Section 27-1705(b) on Page 2, Lines 9-10 refer to “subject to an approved site plan or Preliminary Plan of Subdivision” but does not specify if such approved plans also needed to be approved prior to April 1, 2022.

This clause is important to clarify because the implications described above on the overall impacts of CB-69-2022 may be mitigated to some small degree by explicitly precluding the ability of site plan and subdivision approvals after April 1, 2022, to allow former M-X-T property the same access to the standards and uses of the CGO Zone. If such a limitation is incorporated, it would be clear that former M-X-T property had to have either an approved site plan or a Preliminary Plan of Subdivision approved prior to April 1, 2022 to be able to develop as if the property were CGO, and that former M-X-T properties that obtain their approvals after April 1, 2022 do not have the same access to another zone than that originally assigned to their property by the CMA.

Impacted Property:

This bill will affect all properties in the County that were in the M-X-T Zone prior to April 1, 2022. There are approximately 7,093 such properties in the County.

Following discussion, the Planning Board voted to oppose CB-69-2022.