INTER-OFFICE MEMORANDUM
PRINCE GEORGE'S COUNTY, MARYLAND
ZONING HEARING EXAMINER OFFICE

TO: Karen Zavakos, Acting Committee Director
Planning, Housing, and Economic Development Committee

FROM: Maurene Epps McNeil
Chief Zoning Hearing Examiner

DATE: October 8, 2023

RE: CB-73-2023- Drafts 1 and 2

I would recommend the following revisions to the legislation:

(1) On page 3, Section 27-1602(c) (concerning the zoning of annexed lands) is being revised to require the District Council to utilize the zoning map amendment procedures for piecemeal zoning requests found in Sections 27-3601(d)(8)-(11). These sections require the District Council to conduct a public hearing, after receipt of the ZHE's recommendation, in accordance with its oral argument procedures, and allow the District Council to impose conditions that can be accepted/rejected by an applicant. The District Council will also be required to utilize the decision-making standards in Section 27-3601 (e) (i.e., change or mistake standards).

Section 27-112 of the prior edition/supplement of the Zoning Ordinance was silent as to how the District Council would adopt a zoning map for newly annexed land, and only required the Planning Board to make a zoning recommendation within six months of the annexation. Section 27-1602 is similar to the prior edition/supplement and, notably, does not require the Planning Board to follow the procedures in Section 27-3601(d)(1)-(7).

Annexation is more akin to original zoning. Accordingly, I would recommend the removal of the new language in Section 27-1602 (c) and the addition of clarifying language, if the sponsors wish, to note that a public hearing will be held and notice given by the Clerk in the same manner prescribed in Section 27-3407 (b)(1) pertaining to Sectional Map Amendment. If the Council wishes it could require the Planning Board

to hold its hearing on the annexation utilizing the same Section of the Zoning Ordinance.

(2) On page 15 a new definition for “adaptive reuse of a surplus public school” is being added. Although the use was not defined in the prior ordinance, a definition was included in the special exception requirements for the use. The language on page 15 mirrors that language but deletes “and not prohibited in all zones” following “within the existing zone.” I would recommend that the phrase be reinserted to avoid any unintended consequences.

(3) On page 16, “Area Master Plan” is redefined to note that it addresses “the physical development of … planning areas, showing in detail **planning features** such as the type, density and intensity of land uses….” (Emphasis supplied) This new language would further blur the distinction between planning and zoning. I would recommend that this language be deleted and that the current language of combining “policy statements, goals, strategies, …” etc., be retained, or that some version of the Land Use Article Section 21-104 verbiage be used. The State language provides in pertinent part as follows:

(b)

(1) In accordance with the procedure set forth in this subtitle, the appropriate district council may require the Commission to prepare the general plan, or any amendment to the plan, considering elements such as:

(i) existing and forecasted:

1. population, including population distribution and other appropriate characteristics;

2. amount, type, intensity, general location, and characteristics of commercial, industrial, and public sector facilities and related employment;

3. amount, type, need, and location of major public services, facilities, and utilities;

4. transportation needs, facilities, routes, and systems; and

5. housing demand and needs, and the amount, type, quality, and general location of housing;

(ii) existing land uses, forecasts of land absorption rates or markets, and analyses of the amount, general location, and interrelationships among different categories of land use;

(iii) staging or scheduling of development and capital improvements, and the fiscal or economic impact of those improvements;

(iv) physical resources and conditions, including topography, soils, geology and mineral deposits, hydrology and waterways, wetlands and shorelines, water and air quality, climate, noise, open spaces, scenic areas, vegetation, forests, agricultural lands, fisheries, wildlife and wildlife habitats, and other areas of environmental or ecological importance or sensitivity;

(v) sites, structures, areas, or settings of archaeological, historical, architectural, cultural, or

scenic value or significance;

(vi) extent and general location of physically blighted or deteriorated areas and related factors;

(vii) evaluation of the probable consequences of major recommendations of the general plan on the general physical and social environment and population of the regional district;

(viii) estimates of the probable consequences on public revenues and expenditures of major recommendations of the general plan; and

(ix) any other matter that the appropriate district council or the Commission determines to be necessary and feasible to the preparation or presentation of the general plan.

(2) The appropriate district council may provide, to the extent necessary and feasible, that:

(i) the Commission shall:

1. consider various alternative concepts of growth or development in preparing the general plan; and

2. appropriately describe the alternative concepts considered by the Commission; and

(ii) the general plan shall include material to contain and explain the appropriate district council's recommendations with respect to any matter in this subsection.[1]

(4) On page 21 "major plan amendment" and "minor plan amendment" have been added as new definitions. On page 51 of the bill, Section 27-3502 is being revised to allow the District Council to approve Sectional Map Amendments associated with these new "major" and "minor" plan amendments. I would, therefore, urge the Council to clarify the new definitions further since they are currently very broad and subject to interpretation (i.e., a minor amendment is defined as one adopted using the minor plan process which is defined as only addressing an area up to 50% of the master plan area and addressing more than a single parcel; a major amendment is defined as one exceeding the scope of a minor one but does not necessitate approval of a new plan) and may not qualify as a vehicle to approve comprehensive rezoning since (i) Section 27-3502 is also being revised to delete any requirement that plans correspond to approved planning areas and (ii) allowing SMAs to cover some smaller portion of an Area Master Plan/Sector Plan may not result in the zoning of a substantial area/substantial number of parcels to qualify as comprehensive rezoning. (These sections are discussed further below.)

(5) On page 25, Section 27-3200's summary of Development Review Responsibilities notes that the District Council makes the decision on revocation of certification of nonconforming use applications. However, Section 27-3618(c)(7)(not included in the draft) states that the Planning Board makes the decision to revoke a nonconforming use, but that decision may be appealed to the District Council. One of these sections should be revised accordingly.

[1] The next paragraph in Section 21-104 notes that the quoted language may also serve as guidelines for the basis, content, and consideration of a master plan and any amendment thereto.

(6) On page 27, insert a “the” prior to “ZHE” in Section 27-3304(a)(3).

(7) On page 29, the powers and duties of the Planning Director are expanded to allow the Planning Director to determine the amount of required parking spaces for uses not expressly listed in Table 27-6305(a). How will the applicant, the public, and the District Council have the opportunity to review the decision? Language should be added to clarify that these parking space determinations are also subject to the appeal procedures in 27-3612(c)(b), or another appeal procedure should be provided. Also, delete the “and” at the end of 27-3305(a)(2)(I).

(8) On page 41, add Planning Director in the box labeled “Minor Changes to Approved Special Exception” to make it clear who is responsible.

(9) On page 44, Section 27-3407 concerning the posting of property prior to the ZHE hearing on a nonconforming use should be changed to “30 days prior to the hearing” as is done for all applications heard by the ZHE.

(10) On page 46, Section 27-3407(b)(6) is being amended to increase the number of posted notice signs from one for every 1,000 feet of frontage to one for every 500 feet of frontage and to require that all signs have a minimum ground clearance of three feet. On page 258 of the bill, Section 27-8301(o)(l) is being revised to delete the filing fee for signs and require that all applicants “be responsible for all costs associated with the sign posting requirements of this Ordinance.” I believe the new language on page 258 is being added to allow the applicant to go to a vendor and pay for their own signs. The ZHE would like to continue the current practice of having the applicant pay a fee and retrieve the signs from the office since we do fewer signs. Additionally, some of our applicants are small businesses or property owners not used to posting requirements, and we believe there will be fewer mistakes if we prepare them. Accordingly, we would like the current language to stay but have no opposition to the additional language posed by the Planning Board.

The ZHE would also recommend deletion of the mandatory ground clearance on page 45 since we have hearings where the applicant is pro se and may not be able to comply, and we don’t believe the requirement will easily be enforced. We prefer that the mandatory “shall” be deleted and replaced with “should, where possible” be inserted.

(11) On page 47 of the bill current Section 27-3412(h) is being removed. All hearing bodies are required to make decisions based on the record. When other departments or officials weigh in on an application regarding the merits thereof, it must be made part of the record. I would urge that the current language not be removed. If the sponsors agree the other changes to the numbering of that Section should be removed.

(12) On pages 48- 49, Section 27-3412(l) is being revised to delete the Planning Board from the reconsideration criteria and a new subsection (6) is being added to allow the Planning Board to reconsider a matter in accordance with its rules of procedures. The District Council's procedures for reconsideration are set forth in Section 27-3407(b)(7).

The Planning Board's procedures should also be provided in the law for transparency and consistency.

(13) The Maryland Land Use Article requires that the District Council shall approve a map that shows the entire area of the County that lies within the Regional District divided into local planning areas, and in accordance with the work plan and budget for the Commission, master plans be adopted for each planning area, any part of a planning area, or any combination of contiguous planning areas. (Land Use Article, Section 21-105) On page 51 of the bill, Section 27-3502(c)(2)(A) is being revised to delete reference to planning areas. Section 27-3503, (concerning SMAs) on page 60 is not. I recommend that reference to planning areas remain. I would also note that Section 21-216 of the Land Use Article requires notice of the public hearing considering an amendment to the procedures for the initiation, adoption, amendment, etc. of the plan to occur 30 days before the hearing in a newspaper of record. It may be preferable to carve out all of the sections pertaining to the master plan and put it in a separate bill since other legislative amendments only require 14 days' notice prior to the public hearing.

(14) On pages 60-65 of the bill Section 27-3503 concerning the adoption of SMAs is being amended. On page 61 Section (b)(1)(A) could more simply be revised to add "or Planning Board" after "Planning Director." On page 61, lines 27-30 (under the Initiation section of the SMA procedures) a landowner's request for the consideration of a specific zone is required to be sent to the Clerk. Since there are other opportunities to submit testimony after the SMA has been prepared and hearings set, I think the current language that allows a landowner's request to be considered before the SMA is prepared set forth in (C) on line 21 should remain. On page 62, Section (b)(1)(C) is being revised to delete language that allows requested zoning changes to address compliance with any adopted County staging policy or economic development program. Since these are matters that could be considered in adopting the general plan, and the master plan/sector plan and amendments thereto, the current language should remain. Similarly, the language on page 64 in existing vii should remain.

(15) On page 66, the PD ZMA procedures are being revised in Section 27-3602(b)(7)(A) to "After holding a public hearing, the Planning Board shall make a recommendation …." A table not in the bill, found in Section 27-3602(a), notes that the Planning Board holds a public hearing, the ZHE holds a hearing, and the District Council holds a public hearing on the application. I think "public" should be deleted from this table (and anywhere else that references an evidentiary hearing) and not added to the section on page 66 since the Planning Board and the ZHE are holding evidentiary hearings (a defined term in Part 2) and the District Council is not holding a public hearing in the sense that everyone can come and discuss their views but is holding an oral argument.

(16) On pages 68-69, (G) Minor Deviations is being revised to include the criteria that were missing from the Ordinance. I would recommend that (ii) be revised to "(ii) an increase in residential density for any specific parcel of ten (10) percent or less, if the total

allowed density with the PD zone does not increase and continues to conform with the General Plan or the applicable Area Master Plan, Sector Plan or amendments thereof." Subsection (i) on page 69 does not appear to be in the correct place since it is discussing the District Council's actions and not the Planning Director's. It is currently in Section 27-3602 (b)(11)(D), but it, and the paragraph that follows it, should be justified to the left as separate sentences and not as "i" and "ii". That Section (below) should be revised to delete (i)-(ix) :

(D) Resubmitting Application

If the District Council wholly or partly denies an application for a Planned Development (PD) Zoning Map amendment, the following limitations apply instead of those in Section 27-3418(d), Resubmitting Application:

(i) Changes that result in a decrease in the density or intensity of development approved for a specific parcel;

(ii) An increase in residential density for any specific parcel of ten (10) percent or less, if the total allowed density with the PD zone does not increase;

(iii) A decrease in height;

(iv) A reduction of off-street parking spaces by up to ten (10) percent if it can be demonstrated by a parking study that the parking spaces are not needed because of the unique features of the site;

(v) A reduction of off-street loading spaces by up to twenty (20) percent if it can be demonstrated that the off-street loading spaces are not needed because of the unique features of the site;

(vi) Minor modification to the parking lot design and circulation where it can be demonstrated that such minor adjustments will result in a more efficient and pedestrian-friendly parking lot design;

(vii) Minor modification to the off-street loading design where it can be demonstrated that such minor modifications will result in a more efficient off-street loading design;

(viii) A modification of design of facilities for amenities such as parks, gardens, or open spaces; or

(ix) A deviation specifically listed in the approved PD Conditions of Approval as a minor deviation not materially affecting the PD zone's basic concept or the designated general use of the land within the zone.

(i) The District Council shall not act on a subsequent application for any portion of the same land within eighteen (18) months after the date of the first denial and within twenty-four (24) months after the date of any subsequent denial.

(ii) In any subsequent application for any portion of the same land and for the same zone classification, by the same applicant, the District Council may not base its findings solely on any fact or circumstance that was presented at the hearing on the prior application.

(iii) For purposes of this Subsection, "date of denial" means the date of the District Council's decision or, in the case of judicial review, the date of the final judgment of the Circuit Court.

(17) On page 71, Section 27-3604(e) is revised to add a new finding for SEs that "the proposed Site Plan represents a reasonable alternative for satisfying the applicable standards of this subtitle without requiring unreasonable costs and without detracting substantially from the utility of the proposed development for the proposed use." I would recommend deletion of this phrase because:

- The ZHE is only allowed to impose reasonable conditions in its approval of a Special Exception application and we are always cognizant of this requirement in the imposition of conditions of approval; accordingly, the language is unnecessary.
- Cost is a subjective matter, as is whether something detracts substantially from the utility of the development for the proposed use, and decisions should be as objective as possible.
- A decision was made to not allow variances from the Special Exception requirements and this new finding appears to be reinstating the possibility of variance from the strictures of the law.

Without further information as to the genesis of this finding, I can't suggest substitute language to address the impetus for its inclusion.

Similar language was added in Section 27-3605 concerning Detailed Site Plan standards. Since this approval is basically one addressing the layout and design, and not the use of the property, the language raises less concern.

(18) Section 27-3604(j) should be added to the bill to revise the initiation requirement for revocation/modification of approved Special Exceptions to allow the DPIE Director to file a petition to revoke, etc., on his own behalf since (i) the Department may see reasons for the petition before a person of record would and (ii) persons of record may move away and no longer live near or travel past the special exception site.

(19) On page 80, insert Section 3617(b) and revise to have the Clerk notify Persons of Record of the District Council's decision concerning the Authorization to build within a Right-of-Way and delete the Planning Director.

(20) On page 88, the new (2) should be moved to page 94 just above Section 27-4205. Since this subsection is discussing restrictions to rezoning via SMA or ZMA to certain Transit-Oriented Zones reference to this language should be inserted in Section 27-3503 (a)(SMA restrictions) and 27-3600 (ZMA restrictions).

(21) On page 102, new general purposes are being added for PD Zones. New paragraph (8) states that a purpose is the offering of "a commendable number or quality of meaningful public benefits" and is vague since a commendable number or quality is not easy to discern. New paragraph (9) is merely a restatement of a purpose for *all* of the Zoning Ordinance found in Section 27-1300. I am not sure new purposes are required for the imposition of public benefits. If the sponsor disagrees, I would suggest

a new (8)- “offering public benefits to further protect and advance the public health, safety, welfare and convenience.”

(22) On page 104 revise (3)(A) to “Public benefits are superior features that may be offered by an applicant requesting a Planned Development Zone to benefit the surrounding neighborhood, or the public in general, to a significantly greater extent than would likely result from development of the site under a base zone. Paragraph (B)(iv) states that the public benefits must significantly exceed applicable standards in Part 6, but (iii) notes that benefits must primarily benefit the surrounding neighborhood or service a critical Countywide need.” It would be helpful if (B)(iv) is revised to note some of the standards in Part 6 that primarily benefit the surrounding neighborhood or serves critical Countywide needs to assist the reviewers of the application. It is also arguable whether all of the items set forth in paragraph (C) primarily benefit the surrounding neighborhood or service Countywide needs. It may be less subject to interpretation to keep the listing in (C) and delete(B)(iii).

I would also suggest that a qualifier such as “if permissible in the requested PD Zone” at the end of (C) on page 104, line 23, since some of the listed public benefits may not work in an R-PD Zone.

(23) On page 106, line 17, add the following phrase to the end of (B) – “except those proffered and accepted as Public Benefits.”

(24) On page 188, if the “Restaurant, Quick Service (with drive-through) use does not require a special exception in the Table of Uses why is this language being inserted on lines 25-27? I would recommend that it be removed and the new (ii) simply state that “A “Restaurant, Quick Service (with drive-through) shall comply with the accessory use standards in Section 27-5203(b)(4), Drive-through Service.”

(25) On page 253, insert Section 27-8100 (d) and add “the Board of Appeals or” in front of the District Council since the Board also hears appeals concerning use and occupancy permits.

(26) As noted above, the Office of the ZHE prefers to maintain the current practice of providing the signs for posting since we find fewer mistakes when doing so, and we believe it’s the best practice for the small homeowner seeking to add a use that requires approval of a special exception, etc. Accordingly, we ask that page 258 (o)(1)(A) be revised to increase the sign fee to cover the actual cost of providing the signs, and not to delete the existing language. The new language should be revised to “The Planning Board may require an applicant to pay the designated vendor directly for all costs associated with the sign posting requirements of this Ordinance.”