

Prince George's County Council

Agenda Item Summary

Meeting Date: 10/26/2010
Reference No.: CB-073-2010
Draft No.: 2
Proposer(s): Dernoga
Sponsor(s): Dernoga
Item Title: An Ordinance concerning Accessory Uses for the purpose of clarifying the definition of Accessory Uses and making associated changes to the Zoning Ordinance related thereto

Drafter: Karen T. Zavakos, Legislative Officer
Resource Personnel: Laura C. Moore, Director of Special Projects

LEGISLATIVE HISTORY:

Date Presented:		Executive Action:
Committee Referral:	7/13/2010 - PZED	Effective Date:
Committee Action:	9/20/2010 - FAV(A)	
Date Introduced:		
Public Hearing:	10/26/2010 - 10:00 AM	
Council Action (1)	10/26/2010 - RECOMMIT	
Council Votes:	MB:A, WC:A, SHD:A, TD:A, CE:A, AH:A, TK:A, EO:A, IT:A	
Pass/Fail:	P	
Remarks:		

AFFECTED CODE SECTIONS:

27-107.07

COMMITTEE REPORTS:

PZED Committee Report

Date 9/20/2010

Committee Vote: Favorable with amendments, 5-0 (In favor: Council Members Dean, Knotts, Bland, Dernoga and Olson)

Staff summarized the purpose of the legislation and informed the committee of referral comments that were received. CB-73-2010 amends the Zoning Ordinance concerning accessory uses to clarify the definition of an accessory use.

Council Member Dernoga, the bill's sponsor, informed the committee that CB-73-2010 is intended to address concerns raised by his constituents associated with institutional uses such as private schools operating with several other incidental uses.

The Office of Law reviewed CB-73-2010 and determined that it is in proper legislative form with no legal impediments to its adoption. The Chief Zoning Hearing Examiner (ZHE) reviewed the legislation and provided the following written comments addressing her concerns:

The current language requires that an accessory use be subordinate to (defined as “secondary”), customarily incidental to, and ordinarily found in association with a principal (defined as “first in rank, authority, importance, degree, etc.) use which it serves. On page 2, lines 6-7, the bill adds that the accessory use must be related to, dependent on and pertaining to the principal use. While this language parallels the definition for such uses found in *County Commissioners of Carroll County v. Zent*, 86 Md. App. 745, 587 A.2d 1205 (1991), I believe it is equivalent to the existing Code language.

The additional language added to p. 2 lines 15-21 raises more concern. First, the accessory use would be one proposed by the owner of the property and it is inconceivable that the owner would seek such a use unless they believed it to contribute to their comfort, convenience, etc.; thus, the language in (C) is unnecessary. There should only be one “principal use”; thus the language in (D) is unnecessary. The language added in (E) is unclear; if the accessory use is customarily incidental, secondary to, and ordinarily found with the principal use it’s not clear how it could alter the character of the area/be detrimental thereto any more than the principal use does/is. The principal use should already be lawfully permitted so there is no need to add the language in (F), and I am not sure what the “nature” of a use would be. The language in (G) should be unnecessary, and it may also be too broad since it bans uses prohibited by any statute or ordinance instead of the Zoning Ordinance.

The Planning Board took no position on CB-73-2010 and offered the following comments regarding the bill:

On page 2, line 17, the language “serves no other principal use” should be clarified. The language is vague and Planning staff is unsure of the County Council’s intent.

On page 2, line 21; delete the word “be”. This change clarifies the sentence. The revised language would read: (G) is not a use expressly prohibited by any statute or ordinance.”

Lastly, the language under “(G)” should be clarified. Planning staff is not clear on the intent of this language because on lines 8 through 9, if the use is permitted, it does not have to be incidental, and any use not listed is prohibited.

The committee voted favorably on the legislation with amendments to address the ZHE and Planning Board comments as follows:

On page 2, in “(C)” delete the words “occupants, business, or industry in” and add “users of”; add the words “during the regular business hours” and delete the words “or structure served” so the new (C) would read: Contributes to the comfort, convenience, or necessity of users of the principal use during the regular business hours of the principal use”.

On page 2, at the end of “(E)”, add the word “and” and at the end of “(F)”, delete the word “and”.
On page 2, delete “(G)”.

BACKGROUND INFORMATION/FISCAL IMPACT:

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

This Ordinance will clarify the definition of Accessory Uses in the Zoning Ordinance to comport with Maryland caselaw.

CODE INDEX TOPICS:

INCLUSION FILES:
