

INTER-OFFICE MEMORANDUM PRINCE GEORGE'S COUNTY, MARYLAND

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

FROM: Maurene Epps McNeil
Chief Zoning Hearing Examiner

DATE: September 20, 2023

RE: CB-68-2023 (DR-2)

This bill is intended to limit the development of certain multifamily dwelling units in the RMF-48 (Residential, Multifamily-48) Zone under certain circumstances. As drafted, it raises due process and uniformity concerns.

Due Process

On page 2 of the bill, Section 27-1704 precludes subdivision approval of multifamily dwellings in the Zone

“within a Master Plan approved prior to 2007 on an area consisting of less than six acres of land and adjacent on three sides by proposed Residential, Medium Density Land Uses which shall not be entitled to proceed to the next steps in the approval process (including any zoning steps that may be necessary) under the prior subdivision regulations and Zoning Ordinance.”

In evaluating whether a law satisfies the constitutional tenets of due process one first asks whether the language used is both understandable and reasonable. The phrase highlighted above is subject to varying interpretations since it is not clear if the multifamily dwellings are supposed to be referenced in a Master Plan adopted prior to 2007, and whether such Master Plans actually define “Residential, Medium Density Land Uses.”

I would recommend additional language to state that the subject property proposed for development is governed by a Master Plan approved prior to 2007 – if that is indeed what is meant. I would also suggest that the disqualifier not be the existence of “proposed” uses on the three sides since it might be considered an impermissible taking to preclude the construction of a use permitted in a zone because adjacent uses are “proposed.” The law would be less subject to challenge if it were amended to preclude the multifamily dwellings due to their being surrounded by existing uses, or uses under construction, that the sponsor believes to be incompatible with multifamily dwellings. Finally, the uses in the draft that must surround the multifamily dwellings on three sides are described as “Residential Medium Density Land Uses.” It appears that these uses are undefined in the current Ordinance and in the prior one, and unless a definition exists, the legislation does not put a landowner on notice as to what they can/cannot do. I would urge that a better description of the uses surrounding the multifamily dwellings be provided, or that a reference to the Section defining such uses be included in the bill. ¹

Uniformity

The legislation in its current form might also raise issues that it violates the uniformity requirement of Section 22-201 of the Maryland Land Use Article. The Supreme Court of Maryland recently issued a decision that offered further guidance as to when this Section may be violated:

[Z]oning regulations have been held invalid when they lack a public purpose....The requirement that there be a public purpose promotes uniformity by protecting against mere favoritism....

We do not think that a regulation’s ‘site-specific’ intent or effect alone sustains a uniformity violation. That a regulation affects only one or a

¹ Similar wording is used in Sections 27-1903 (f) concerning use of the prior Zoning Ordinance and 27-5102 concerning requirements for multifamily dwelling units in the RMF-48 Zone, and my comment would apply to those Sections as well.

few properties, though relevant to our uniformity analysis, is not dispositive....

That a legislature may contemplate a specific property does not prove the absence of a public purpose, or arbitrary or invidious discrimination; we do not require legislatures to conceive of legislation 'as an abstraction' without any actual properties in mind....And though [the Appellant] portrays the Council's 'site-specific' efforts as alarming, such amendments are not unusual and are often initiated by private interests....

A finding that a regulation furthers a public purpose does not mark the end of our uniformity analysis. We also examine how the regulation operates, specifically whether it discriminates between properties in a reasonable manner....

It is worth repeating that discrimination between properties within a zone...is not per se prohibited....[However a] regulation that discriminates between similarly situated properties is invalid....

Just because properties are within the same zone...does not make them similarly situated; zoning categories are not determinative.... Properties are similarly situated when there is no reasonable basis to treat them differently; regulations thus violate uniformity when they discriminate between properties unreasonably....

(Prince George's County Council v. Concerned Citizens of Prince George's County, 2023 Md. LEXIS 378, 30, 41-42, 44-46)

In summary, the instant draft is more likely to meet the test of uniformity if the language is amended (as noted above) to clearly advise which types of multifamily dwellings cannot take advantage of the prior Zoning Ordinance, and are prohibited in the present Zoning Ordinance supplement since that will show whether similarly situated properties are being treated similarly, and if the legislative history is revised to discuss the purpose(s) being furthered by the bill and the relevance of relying on language in an older Master Plan.

Thank you for the opportunity to comment on the revised bill.

