



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

Office of the Chairman
Prince George's County Planning Board

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October 3, 2019

The Honorable Todd M. Turner
Chair
Prince George's County Council
County Administration Building
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772

Re: CB-34-2019 (DR-3), CB-55-2019, CB-57-2019,
CB-59-2019, CB-60-2019, CB-61-2019 and
CB-63-2019

Dear Chairman ^{Todd} Turner:

Thank you for providing the Planning Board an opportunity to review and comment on proposed District Council legislation. During the October 3, 2019 Planning Board meeting, the following positions were adopted in accordance with the planning staff's recommendations on the proposed legislation. **A Planning Board Analysis of each bill is attached for your consideration and a brief excerpt from each report is below:**

CB-34-2019(DR-3) provides additional regulations for fences and walls in industrial zones.

Planning Board Recommendation: Support with amendments.
(See Attachment 1 for full analysis)

The Planning Board recommends that the language on page 2 lines 24 through 26 be amended. The bill does not make clear under what zoning circumstances the twelve-foot fence requirement would apply. On line 25 the word "variance" should be deleted, or a different word be used to describe in detail how or when the Chief Electrical Inspector could approve a fence charged with more than 12 volts. There is no variance process in Subtitle 9 (Electricity). A variance has a particular legal meaning (along with a legal standard) applicable to zoning, but Subtitle 9 is not the Zoning Ordinance.

CB-55-2019 amends Section 27-230 (Criteria for granting appeals involving variances.) by adding language to exempt a variance from the finding requirements when the variance is for a ten percent reduction to the building setback and lot coverage requirements if the property is within a Historic District and the variance is needed to be consistent with Historic District Guidelines.

Planning Board Recommendation: Support with amendments.
(See Attachment 2 for full analysis)

The Planning Board believes the proposed language is misplaced in the Zoning Ordinance. It seems more appropriate to place the language in Section 27-430 (One-Family Detached Residential) under regulations for the One-Family Detached (R-55) Zone. Many of the properties in the Old

Town College Park Historic District are residential properties. Placing the clause into the section under the criteria for granting variance appeals is awkward, while the proposed language discusses exempting a variance under certain circumstances.

The Planning Board recommends that the proposed language be placed under 27-430 (c) and add a new number two under the section. In addition, make technical amendments to clarify the proposed language.

CB-57-2019 provides additional criteria for approval of Special Exceptions for "Apartment housing for elderly or physically handicapped families" in the Residential-Estate (R-E) Zone under certain circumstances.

Planning Board Recommendation: Oppose with stated reasons. This use is incompatible with the R-E Zone

(See Attachment 3 for full analysis)

This bill replaces CB-31-2019 and CB-32-2019. CB-57-2019 amends Sections 27-441 (Uses Permitted in Residential Zones.) and 27-337 (Additional Requirements for Specific Special Exceptions.) by permitting and adding additional specific requirements for "Apartment housing for elderly or handicapped families in a building other than a surplus public-school building (with provisions for increased density and reduced lot size in Multifamily Zones)" in the Residential Estate (R-E) Zone. The property is composed of at least fifteen gross acres of land improved with a structure used as a church with an enclosed building area of at least 150,000 gross square feet.

The R-E Zone permits low-density, single-family detached dwelling units on lots at least 40,000 square feet in size. The zone encourages a variation in the size, shape, and width of single-family detached residential subdivision, large lot development and an estate like atmosphere. Apartment housing of any type in the R-E Zone is contrary to the stated purposes of this zone. Although housing for elderly and handicapped families is certainly needed in the County, this type of housing should be directed to more appropriate zones. This type of use is too dense and incompatible with a large-estate zone. The existing or planned infrastructure (especially transportation infrastructure) in the R-E Zone is not adequate to support the higher density associated with this use. Currently, the use is not permitted in the R-E Zone. It is significant that the new Zoning Ordinance approved by the County Council in October prohibits housing of this type in the new Residential Estate (RE) Zone, which is the successor to the current R-E Zone.

The new Zoning Ordinance allows apartment housing as a Special Exception (SE) use in more dense residential zones, but not in the RE Zone.

CB-59-2019 amends Section 27-107.01 (Definitions.) to amend the definition for "public utility" and add a definition for "small wireless facility".

Planning Board Recommendation: Support.

(See Attachment 4 for full analysis)

Planning Department staff has worked with the Office of Law to draft the proposed legislation.

The Council's adopted Zoning Ordinance does not speak to certain small wireless telecommunications facilities; as the adopted Zoning Ordinance was developed, the project team participated in County coordination meetings focused on this use and understood that the adopted Zoning Ordinance would need to be amended to track with any zoning bills that may emerge from the committee's work. Should the Council adopt CB-59-2019, the language of this bill will need to be added to the adopted Zoning Ordinance in a future corrective text amendment.

***CB-60-2019** amends 27-441 (Uses Permitted in Residential Zones.) by amending an existing footnote which permits single-family, single-family attached and townhouse dwelling units in the Open Space (O-S) Zone to allow rough grading of land under certain circumstances.*

Planning Board Recommendation: Oppose. The issuance of a rough grading permit after Preliminary Plan of Subdivision approval or acceptance of a Detailed Site Plan still is inconsistent with the correct order of approvals.

(See Attachment 5 for full analysis)

The Planning Board believes this bill will permit rough grading of the Glenn Dale Golf Course. At the writing of this analysis, a Preliminary Plan of Subdivision application has not been formally accepted for this site. This bill proposes to limit grading to utilities, streets and land bays for development shown on the approved Preliminary Plan of Subdivision. Rough grading of a site even when limited could result in unnecessary disturbance of land. The grading results in significant removal of woodlands and other features causing impacts to stormwater and ecosystems. Section 27-270 (Orders of Approvals.) delays grading of a site until after the approval of a Detailed Site Plan (DSP) and Final Plat where conservation easements can be put in place to ensure perpetual protection of sensitive environmental features and woodland prior to grading, building and issuance of the use and occupancy permit.

The Zoning Ordinance currently requires, at a minimum, an Infrastructure DSP and Final Plat before a rough grading permit can be issued. CB-97-2018 (DR-2), enacted last year, provides that the development regulations are established at the time of DSP in limited circumstances. This bill will permit a site to be graded before the development regulations are established on the DSP, including regulations that will inform the spatial relationships between on-site improvements for buildings, roads and recreational areas which impact areas of preservation and conservation.

The actual development of a site, including grading of the site occurs subsequent to most major approvals, toward the end of the planning cycle to ensure that the development proposed is feasible. Grading a site prior to the completion of the planning process can result in unnecessary disturbance and clearing that can result in graded sites being left cleared for years before development occurs. There are instances where projects are left graded but not developed due to financial or other unforeseen reasons. The added amendment to permit issuance of the rough grading permit after acceptance of the Detailed Site Plan still is inconsistent with the correct order of approvals. The Planning Board believes that the Order of Approvals currently found in Section 27-270, as enacted by the District Council, is appropriate and should be followed to ensure adequate site planning prior to grading and development.

***CB-61-2019** amends 27-441 (Uses Permitted in Residential Zones.) by adding a new use definition for "Aquaponics" and amends Section 27-325 (Minor Changes.) the regulations for changes to golf course Special Exception site plans to include the "aquaponics" use.*

Planning Board Recommendation: Support with amendments.

(See Attachment 6 for full analysis)

The proposed bill exempts golf courses from the minor amendments to golf course site plan regulations if a subsequent Detailed Site Plan (DSP) is approved for an aquaponics use on property owned by a non-profit organization. The DSP must be submitted to the Clerk of the Council for inclusion in the record of the Special Exception (SE). The aquaponics use must comply with certain conditions.

The Planning Board believes this legislation is for inactive golf courses. This bill will impact approximately two properties in the County. Those properties are Lake Arbor Golf Course and Cross Creek Golf Course. It is believed that this bill was drafted for the Lake Arbor Golf Course.

It should be noted that CB-14-2019 (DR-3) amended the definition for "Urban Farm" to include the "Aquaponics" use. The Lake Arbor and Cross Creek Golf courses are zoned Rural Residential (R-R). The R-R Zone currently allows urban farming as a permitted use by a non-profit organization or a for-profit business; therefore, if the golf course ceases to operate and the SE use is no longer active, then the property owner may establish a urban farm with aquaponics as a permitted use on the property.

In addition, the bill postpones the determination of development standards until the time of DSP review. This process defeats the entire purpose of zoning by preventing the uniform application of objective development standards to all properties established by the District Council in coordination with its adopted future land use recommendations in master plans.

CB-63-2019 amends the Zoning Ordinance to permit general commercial uses in the Residential Townhouse (R-T) and Multifamily Medium Density Residential-Condominium (R-18C) Zones under certain circumstances.

Planning Board Recommendation: Oppose. Permitting commercial uses in the residential zones is incompatible with the stated purposes of those zones.

(See Attachment 7 for full analysis)

This bill amends Section 27-441 (Uses Permitted in Residential Zones) by adding a new use entitled "Where not otherwise specifically permitted, any use allowed in the Commercial Shopping Center (C-S-C) Zone (including uses allowed by Special Exception.)" in the Residential Townhouse (R-T) and Multifamily Medium Density Residential-Condominium (R-18C) Zones subject to a new created footnote.


Footnote 135 permits the use by right without Special Exception if the property fronts on a roadway with a functional transportation classification of arterial or higher and collector or higher; the property is zoned R-T and R-18C and the regulations of the zones shall not apply. All regulations shall be established and showed on the Detailed Site Plan (DSP) approved by the Planning Board and/or District Council.

The Planning Board believes this bill was drafted for a specific property. It is not clear if the term "site" refers to a property. The Planning Board could not determine if the proposed site is split zoned. This bill permits regulations to be developed during DSP review. This process defeats the entire purpose of zoning by preventing the uniform application of objective development standards to all properties in these zones. Development standards are established by the District Council in coordination with its adopted future land use recommendations in master plans. If development standards are not established until DSP, there is a strong possibility that a development may exceed the recommended land use designation which would conflict with the District Council's approved master plans. Furthermore, it is within the District Council's authority to establish development standards including density and not the Planning Board.

As always, Planning Department staff members are available to work with the Council and your legislative staff on any pertinent legislative matters. Please let us know if we may be of further assistance.

Should you have questions, please do not hesitate to contact the Office of the Planning Director at 301-952-3595. Thank you, again, for your consideration.

Sincerely,


Elizabeth M. Hewlett
Chairman

CB-34-2019 (DR-3)– Planning Board Analysis (Attachment 1)

CB-34-2019 (DR-3) provides additional regulations for fences and walls in industrial zones.

The Planning Board has the following comments, suggestions and amendments for consideration by the District Council:

Policy Analysis:

The bill amends Section 27-456, a section of the ordinance that establishes regulations for fences and walls in the industrial zones. There has been a public hearing on this bill. During the public hearing the sponsor of the bill requested an amendment to the bill. The amendment was to require setback requirement along any lot line shared with a property that is residentially or commercially zoned unless a variance is approved by the Board of Appeals.

The Planning Board recommends that the language on page 2 lines 24 through 26 be amended. The bill does not make clear under what zoning circumstances the twelve-foot fence requirement would apply. On line 25 the word "variance" should be deleted, or a different word be used to describe in detail how or when the Chief Electrical Inspector could approve a fence charged with more than 12 volts. There is no variance process in Subtitle 9 (Electricity.). A variance has a particular legal meaning (along with a legal standard) applicable to zoning, but Subtitle 9 is not the Zoning Ordinance.

Proposed Amendment(s):

The Planning Board recommends that the word "variance" be deleted, or a different word be used to describe in detail how or when the Chief Electrical Inspector could approve a fence charged with more than 12 volts. In addition, the bill should make clear under what zoning circumstances the twelve-foot fence requirement would apply.

Following discussion, the Planning Board voted to support CB-34-2019 (DR-3) with the above-mentioned amendments.

CB-55-2019– Planning Board Analysis (Attachment 2)

CB-55-2019 amends Section 27-230 (Criteria for granting appeals involving variances.) by adding language to exempt a variance from the finding requirements when the variance is for a ten percent reduction to the building setback and lot coverage requirements if the property is within a Historic District and the variance is needed to be consistent with Historic District Guidelines.

The Planning Board has the following comments, suggestions and amendments for consideration by the District Council:

Policy Analysis:

The Planning Board believes the proposed language is misplaced in the Zoning Ordinance. It seems more appropriate to place the language in Section 27-430 (One-Family Detached Residential.) under regulations for the One-Family Detached (R-55) Zone. Many of the properties in the Old Town College Park Historic District are residential properties. Placing the clause into the section under the criteria for granting variance appeals is awkward, while the proposed language discusses exempting a variance under certain circumstances.

New Zoning Ordinance:

The Council's adopted Zoning Ordinance includes new provisions in Section 27-2202, Exceptions, that permit reductions from the minimum front setback of buildings to reflect the average front setback on improved lots on the same block face and in the same zone. This regulation should address the building setback component of proposed CB-55-2019.

Impacted Property:

The legislation would impact all properties located in a County-designated Historic District with approved design guidelines.

Proposed Amendments:

The Planning Board recommends that the proposed language be placed under 27-430 (c) and add a new number two under the section. In addition, make technical amendments to clarify the proposed language. On page 3, lines 17 through 18 be clarified. Add the words "reduction of up to" in front of the words "ten (10) percent".

Next, delete the word "reduction" in front of the word "to". Delete the word "an" in front of the word "Historic" and replace with the words "a County-designated". Delete "the" behind the words "consistent with". Add the word "Design" in front of the word "Guidelines".

The revised language reads: "(2) A variance is not required for a reduction of up to ten percent to the building setback and lot coverage requirements if the subject property is within a County-designated Historic District and the variance is needed to be consistent with Historic District Design Guidelines."

Following discussion, the Planning Board voted to support CB-55-2019 with the above-mentioned amendments.

CB-57-2019– Planning Board Analysis (Attachment 3)

CB-57-2019 provides additional criteria for approval of Special Exceptions for "Apartment housing for elderly or physically handicapped families" in the Residential-Estate (R-E) Zone under certain circumstances.

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

Policy Analysis:

This bill replaces CB-31-2019 and CB-32-2019. CB-57-2019 amends Sections 27-441 (Uses Permitted in Residential Zones.) and 27-337 (Additional Requirements for Specific Special Exceptions.) by permitting and adding additional specific requirements for "Apartment housing for elderly or handicapped families in a building other than a surplus public-school building (with provisions for increased density and reduced lot size in Multifamily Zones)" in the Residential Estate (R-E) Zone. The property is composed of at least fifteen gross acres of land improved with a structure used as a church with an enclosed building area of at least 150,000 gross square feet.

The R-E Zone permits low-density, single-family detached dwelling units on lots at least 40,000 square feet in size. The zone encourages a variation in the size, shape, and width of single-family detached residential subdivision, large lot development and an estate like atmosphere. Apartment housing of any type in the R-E Zone is contrary to the stated purposes of this zone. Although housing for elderly and handicapped families is certainly needed in the County, this type of housing should be directed to more appropriate zones. This type of use is too dense and incompatible with a large-estate zone. The existing or planned infrastructure (especially transportation infrastructure) in the R-E Zone is not adequate to support the higher density associated with this use. It is significant that the new Zoning Ordinance approved by the County Council in October prohibits housing of this type in the new Residential Estate (RE) Zone, which is the successor to the current R-E Zone. The new Zoning Ordinance allows apartment housing as a Special Exception (SE) use in more dense residential zones, but not in the RE Zone.

New Zoning Ordinance:

The RE Zone will replace the R-E Zone. The use is not permitted in the RE Zone.

Impacted Property:

The property that would benefit from this proposed legislation is located at 600 Watkins Park Drive (First Baptist Church of Glenarden).

Following discussion, the Planning Board voted to oppose CB-57-2019, with stated reasons.

CB-59-2019– Planning Board Analysis (Attachment 4)

CB-59-2019 is a bill for the purpose of defining a small wireless facility and modifying the definition of public utility to include a small wireless facility in the Zoning Ordinance.

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

Policy Analysis:

This amends Section 27-107.01 (Definitions.) to amend the definition for "public utility" and add a definition for "small wireless facility".

Planning Department staff has worked with the Office of Law to draft the proposed legislation.

New Zoning Ordinance:

The Council's adopted Zoning Ordinance does not speak to certain small wireless telecommunications facilities; as the adopted Zoning Ordinance was developed, the project team participated in County coordination meetings focused on this use and understood that the adopted Zoning Ordinance would need to be amended to track with any zoning bills that may emerge from the committee's work. Should the Council adopt CB-59-2019, the language of this bill will need to be added to the adopted Zoning Ordinance in a future corrective text amendment.

Following discussion, the Planning Board voted to support CB-59-2019.

CB-60-2019– Planning Board Analysis (Attachment 5)

CB-60-2019 amends 27-441 (Uses Permitted in Residential Zones) by amending an existing footnote which permits single-family, single-family attached and townhouse dwelling units in the Open Space (O-S) Zone to allow rough grading of land under certain circumstances.

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

Policy Analysis:

The Planning Board believes this bill will permit rough grading of the Glenn Dale Golf Course. At the writing of this analysis, a Preliminary Plan of Subdivision application has not been formally accepted for this site. This bill proposes to limit grading to utilities, streets and land bays for development shown on the approved Preliminary Plan of Subdivision. Rough grading of a site even when limited could result in unnecessary disturbance of land. The grading results in significant removal of woodlands and other features, causing impacts to stormwater and ecosystems. Section 27-270 (Orders of Approvals) delays grading of a site until after the approval of a Detailed Site Plan (DSP) and Final Plat where conservation easements can be put in place to ensure perpetual protection of sensitive environmental features and woodland, prior to grading, building and issuance of the use and occupancy permit.

The Zoning Ordinance currently requires, at a minimum, an Infrastructure DSP and Final Plat before a rough grading permit can be issued. CB-97-2018 (DR-2), enacted last year, provides that the development regulations are established at the time of DSP in limited circumstances. This bill will permit a site to be graded before the development regulations are established on the DSP, including regulations that will inform the spatial relationships between on-site improvements for buildings, roads and recreational areas which impact areas of preservation and conservation.

The actual development of a site, including grading of the site occurs subsequent to most major approvals, toward the end of the planning cycle to ensure that the development proposed is feasible. Grading a site prior to the completion of the planning process can result in unnecessary disturbance and clearing that can result in graded sites being left cleared for years before development occurs. There are instances where projects are left graded but not developed due to financial or other unforeseen reasons. The added amendment to permit issuance of the rough grading permit after acceptance of the DSP is still inconsistent with the order of approvals. The Planning Board believes that the Order of Approvals currently found in Section 27-270, as enacted by the District Council, is appropriate and should be followed to ensure adequate site planning prior to grading and development.

The added amendment to permit issuance of the rough grading permit after acceptance of the Detailed Site Plan still is inconsistent with the correct order of approvals.

Impacted Property:

The property that would benefit from this proposed legislation is located at 11501 Old Prospect Hill Road (Glenn Dale Golf Course).

Following discussion, the Planning Board voted to oppose CB-60-2019.

CB-61-2019– Planning Board Analysis (Attachment 6)

CB-61-2019 amends 27-441 (Uses Permitted in Residential Zones.) by adding a new use definition for "Aquaponics" and amends Section 27-325 (Minor Changes.) the regulations for changes to golf course Special Exception site plans to include the "aquaponics" use.

The Planning Board has the following comments, suggestions and amendments for consideration by the District Council:

Policy Analysis:

The proposed bill exempts golf courses from the minor amendments to golf course site plan regulations if a subsequent Detailed Site Plan (DSP) is approved for an aquaponics use on property owned by a non-profit organization. The DSP must be submitted to the Clerk of the Council for inclusion in the record of the Special Exception (SE). The aquaponics use must comply with certain conditions.

The Planning Board believes this legislation is for inactive golf courses. This bill will impact approximately two properties in the County. Those properties are Lake Arbor Golf Course and Cross Creek Golf Course. It is believed that this bill was drafted for the Lake Arbor Golf Course. It should be noted that CB-14-2019 (DR-3) amended the definition for "Urban Farm" to include the "Aquaponics" use. The Lake Arbor and Cross Creek Golf courses are zoned Rural Residential (R-R). The R-R Zone currently allows urban farming as a permitted use by a non-profit organization or a for-profit business; therefore, if the golf course ceases to operate and the SE use is no longer active, then the property owner may establish a urban farm with aquaponics as a permitted use on the property.

In addition, the bill postpones the determination of development standards until the time of DSP review. This process defeats the entire purpose of zoning by preventing the uniform application of objective development standards to all properties established by the District Council in coordination with its adopted future land use recommendations in master plans.

New Zoning Ordinance:

The Council's adopted Zoning Ordinance includes aquaponics in the definition of the uses "agriculture" and "urban agriculture" as a permitted form of agricultural activity within these uses. There is no separate definition of aquaponics in the adopted Zoning Ordinance. Current Sections 27-325(d) through (n), regarding minor revisions to certain Special Exception uses including golf courses, were not carried forward into the adopted Zoning Ordinance. Given the nature of CB-61-2019 and golf course operation in general, the Planning Board assumes CB-61-2019 is intended to apply to inactive golf courses.

Impacted Property:

The property that would benefit from this proposed legislation is located at 1401 Golf Course Drive (Lake Arbor Golf Course).

Proposed Amendments:

If the bill moves forward the Planning Board recommends that the bill be amended to add required DSP findings. The bill should clarify whether the intent is to impact only inactive golf courses in the County.

Following discussion, the Planning Board voted to support CB-61-2019 with the above-mentioned amendments.

CB-63-2019– Planning Board Analysis (Attachment 7)

CB-63-2019 amends the Zoning Ordinance to permit general commercial uses in the Residential Townhouse (R-T) and Multifamily Medium Density Residential-Condominium (R-18C) Zones under certain circumstances.

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

Policy Analysis:

This bill amends Section 27-441 (Uses Permitted in Residential Zones.) by adding a new use entitled "Where not otherwise specifically permitted, any use allowed in the Commercial Shopping Center (C-S-C) Zone (including uses allowed by Special Exception.)" in the Residential Townhouse (R-T) and Multifamily Medium Density Residential-Condominium (R-18C) Zones subject to a new created footnote.

Footnote 135 permits the use by right without Special Exception if the property fronts on a roadway with a functional transportation classification of arterial or higher and collector or higher; the property is zoned R-T and R-18C and the regulations of the zones shall not apply. All regulations shall be established and showed on the Detailed Site Plan (DSP) approved by the Planning Board and/or District Council.

The Planning Board believes this bill was drafted for a specific property. It is not clear if the term "site" refers to a property. The Planning Board could not determine if the proposed site is split zoned. This bill permits regulations to be developed during DSP review. This process defeats the entire purpose of zoning by preventing the uniform application of objective development standards to all properties in these zones. Development standards are established by the District Council in coordination with its adopted future land use recommendations in master plans. If development standards are not established until DSP, there is a strong possibility that a development may exceed the recommended land use designation which would conflict with the District Council's approved master plans. Furthermore, it is within the District Council's authority to establish development standards including density and not the Planning Board.

New Zoning Ordinance:

The Council spent significant time reviewing the new Zoning Ordinance before its adoption on October 23, 2019. As part of this review, certain commercial uses were proposed and adopted for the RMF-20 (Residential, Multifamily-20) Zone after due consideration; this zone replaces the R-18 Zone. A significantly smaller selection of commercial uses were considered and adopted for the RSF-A (Residential, Single-Family – Attached) Zone, which replaces the R-T Zone. CB-63-2019 is contrary to the Council's adopted Zoning Ordinance in that it permits a substantially increased number of commercial uses in Residential zones that may not be appropriate for such uses.

Following discussion, the Planning Board voted to oppose CB-63-2019.