

PRINCE GEORGE'S COUNTY COUNCIL

COMMITTEE REPORT

2022 Legislative Session

Reference No.: CB-069-2022

Draft No.: 2

Committee: PLANNING, HOUSING AND ECONOMIC DEVELOPMENT

Date: 9/15/2022

Action: FAV (A)

REPORT:

Committee Vote: Favorable as amended, 4-1 (In favor: Council Members Franklin, Harrison, Hawkins, and Turner. Oppose: Council Member Glaros)

The Planning, Housing and Economic Development (PHED) Committee convened on September 7, 2022, and September 13, 2022, to consider CB-69-2022. At the September 7 Committee worksession, the Planning, Housing and Economic Development (PHED) Committee Director summarized the purpose of the legislation and informed the Committee of written comments received on referral. This bill amends the Zoning Ordinance to allow properties that were in the M-X-T Zone prior to the effective date of the new zoning ordinance, April 1, 2022, to elect to conform to the requirement of the C-G-O (Commercial and General Office) Zone.

The Planning Board opposed the legislation with explanation of their position in a July 21, 2022, letter to the Council Chairman as follows:

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, highdensity, 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 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-T "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 grouping

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.

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.

The Zoning Hearing Examiner submitted a September 6, 2022, memorandum with the following comments:

“This legislation amends the transitional provisions by providing a new Section 27-1705 to allow property that was zoned M-X-T prior to the effective date of the recent Countywide Map Amendment to avail itself of all uses in the CGO (Commercial, General and Office) Zone under certain circumstances.

I suggest technical revisions to the bill, and I also have substantive concerns. The technical issues are as follows:

- The purpose clause on page 1, lines 3-4, should be revised to expressly note that the properties have been rezoned to certain zones (and the new zones should be identified) but may develop with uses allowed in the CGO Zone. This revision would be more transparent than the current language.
- The new subparagraph (a) on page 2, lines 2-8 should be revised as follows, for clarity: “At the time of Site Plan or Preliminary Plan of Subdivision review, a property that was in the M-X-T (Mixed Use -Transportation Oriented) Zone, but rezoned to the [insert zones] may elect to develop in accordance with the uses, regulations and other requirements of the CGO (Commercial, General and Office) Zone rather than the uses, regulations and requirements of its current zoning.”

The substantive issues are that the bill, as drafted, could be subject to a legal challenge that the bill is attempting to rezone property legislatively and/or that the language violates the basic tenets of due process which hold that the law be rational and understandable. The new subparagraph (b) language appears to allow any property that has an approved Site Plan or Preliminary Plan of subdivision prior to the effective date of the Countywide Map Amendment to develop with uses in the CGO Zone and to also be able to operate under the regulations and other requirements of its prior M-X-T zoning.

The language used is unclear since the current zoning of the property is unknown, as is the reason why the CGO Zone uses may be a better fit. All properties had to have been M-X-T prior to the effective date of the Countywide Map Amendment but may be any other zone afterwards, yet owners of these properties will be allowed to ignore their current zoning, and take advantage of the uses available to properties in the new CGO Zone while conforming to the regulations and other requirements of the MX-T Zone found in the prior Zoning Ordinance (which has been repealed pursuant to the express language found in Section 27-1701).

Is there a specific reason why the CGO Zone uses would be a better fit, and why the grandfathering provisions found elsewhere in Part 1 of the new Zoning Ordinance cannot address the issue(s) that led to the bill? Legal challenges might be avoided if the issues were addressed in the bill and limiting criteria (such as the nature of adjacent uses, and size of the properties, and impact on the applicable Master or General Plan, etc.) included to govern the application of this transitional language.”

After public testimony and discussion by Council Members, the bill was held in Committee to allow time for the bill sponsor to consider suggested amendments from the Planning Board and other amendments to address concerns raised during Committee discussion.

On September 12, 2022, the Planning Director submitted a memorandum to Council Chair Hawkins with supplemental analysis concerning pending legislation (CB-69-2022 and CB-77-2022) and proposed expansion of grandfathering and transitional provisions.

During the September 13 meeting, the Committee reviewed a Proposed DR-2 including additional language and amendments as follows:

WHEREAS the County Council of Prince George's County, Maryland, sitting as the District Council for that part of the Maryland-Washington Regional District in Prince George's County, Maryland, ("District Council") enacted Council Bill 13 2018 (CB-13-2018), a rewrite of Prince George's County's Zoning Ordinance, which included transitional provisions affecting properties zoned Mixed Use Transportation (M-X-T);

WHEREAS the District Council adopted a Countywide Map Amendment in 2021, which implemented the new zones established by CB-13-2018;

WHEREAS the District Council's intent in enacting and adopting, respectively, CB-13-2018 and the Countywide Map Amendment was to transition properties in the County to new zones that were most comparable to their pre-existing zoning categories, as known as a "one to one transition;"

WHEREAS numerous properties not located in Plan 2035 Centers that were zoned M-X-T before April 1, 2022, were not transitioned to comparable new zones, including being transitioned to less intensive industrial and residential base zones;

WHEREAS the Commercial General Office (C-G-O) Zone is the base zone established by CB-13-2022 that is most comparable zone to the M-X-T zone due to the similar uses and regulations applicable to both zones;

WHEREAS enabling previously zoned M-X-T properties to utilize the uses and regulations of the C-G-O zone would satisfy the District Council's intent in CB-13-2018 of transitioning properties to a zone that is most comparable to their applicable zone under the previous zoning ordinance; now, therefore,

Sec. 27-1700. Transitional Provisions.

* * * * *

Sec. 27-1705. M-X-T Zone Transition

(a) At the time of site plan or Preliminary Plan of Subdivision, through a new plan or an amendment to an existing plan, a property that was zoned in the Mixed Use-Transportation Oriented (M-X-T) Zone prior to April 1, 2022 on March 31, 2022 may elect to conform to the

uses, regulations, and other requirements of the Commercial, General and Office (C-G-O) Zone for the property that is subject to that site plan or Preliminary Plan of Subdivision. Once this election is made, the property shall conform to the uses, regulations, and other requirements of the C-G-O Zone for development on that property rather than its current zone.

(b) For a property that was zoned in the M-X-T Zone ~~prior to April 1, 2022~~, on March 31, 2022, and is subject to an approved site plan or Preliminary Plan of Subdivision, such a property is entitled to

(1) the uses available to properties in the C-G-O Zone and

(2) conform to the regulations and other requirements applicable to the property ~~prior to April 1, 2022~~, on March 31, 2022.

(c) This section does not preclude an applicant from applying for a zoning map amendment or requesting a zoning change by sectional map amendment for a property in accordance with the requirements of this Subtitle. Such a change in zoning would render Subsections (a) and (b), above, no longer applicable to such a property.

(d) The provisions of Section 27-1705(a) through (c) shall not apply to properties in the following zones:

(1) Residential Planned Development (RPD)

(2) Mixed-Use Planned Development (MUPD)

(3) Neighborhood Activity Center (NAC)

(4) Neighborhood Activity Center-Planned Development (NAC-PD)

(5) Town Activity Center, Edge (TAC-E)

(6) Town Activity Center, Core (TAC-C)

(7) Town Activity Center, Planned Development (TAC-PD)

(8) Local Transit-Oriented, Edge (LTO-E)

(9) Local Transit-Oriented, Core (LTO-C)

(10) Local Transit-Oriented, Planned Development (LTO-PD)

(11) Regional Transit-Oriented, Low Intensity, Edge (RTO-L-E)

(12) Regional Transit-Oriented, Low Intensity, Core (RTO-L-C)

(13) Regional Transit-Oriented, High Intensity, Edge (RTO-H-E)

(14) Regional Transit Oriented, High Intensity, Core (RTO-H-C)

(15) Regional Transit-Oriented, Planned Development (RTO-PD)

(16) Neighborhood Conservation Overlay Zone (NCOZ)

PHED Committee Chair Franklin, the bill sponsor, followed up on initial comments he provided during the September 7 Committee meeting indicating that the purpose of the bill is to address active projects affected by how M-X-T zone properties were handled in the zoning ordinance rewrite, and allowing use of the new CGO Zone as the most similar and comparable to the M-X-T Zone. Mr. Franklin explained that based on comments and discussion during the September 7 Committee worksession, the revisions in Proposed DR-2 exclude Centers from the provisions of the legislation given that higher intense zones should not convert to the CGO Zone.

After discussion, on a motion by Committee Chair Franklin and second by Council Chair Hawkins, the Committee voted favorable, 4-1, on CB-69-2022 Proposed DR-2.