

# PRINCE GEORGE'S COUNTY COUNCIL

## COMMITTEE REPORT

2023 Legislative Session

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**Reference No.:** CB-050-2023

**Draft No.:** 2

**Committee:** COMMITTEE OF THE WHOLE

**Date:** 4/25/2023

**Action:** FAV (A)

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### REPORT:

Committee Vote: Favorable as amended, 8-0-1 (In favor: Council Members Dernoga, Blegay, Burroughs, Hawkins, Ivey, Olson, Oriadha, and Watson. Abstain: Council Member Franklin)

The County Council convened as the Committee of the Whole (COW) on April 25, 2023, to consider CB-50-2023. The Planning, Housing, and Economic Development (PHED) Committee Director summarized the purpose of the bill and informed the Committee of written comments received on referral.

Maurene McNeil, Chief Zoning Hearing Examiner, submitted an April 10, 2023, memorandum to the PHED Committee Director with suggested amendments for clarity as follows:

- “(1) On page 4, lines 1 and 2 appear to be missing language, and additional words should be inserted.
- (2) On page 4, line 8 should be amended to read “be and the same are hereby repealed...” since several sections precede the verb.
- (3) Townhouses are not permitted uses in the AR (Agricultural- Residential) Zone; nor were they permitted uses in the former R-A (Residential- Agricultural) Zone until footnote 136 was inserted. If the sponsors wish to prevent anyone from developing pursuant to footnote 136, it would be less confusing to delete “Except for development applications pursuant to superseded authority under the enactment of CB-17-2019...” on pp.4-5, and amend the language on page 6, lines 8-10 as follows:

The preceding subsections shall not be used to allow the development of townhouses in the R-A or AR(Agricultural-Residential) Zones.

The language on p. 6, lines 11-31 and p.7, lines 1-11, should then be deleted.

- (4) On p. 7, delete the underlined language and insert “and development applications for townhouses in the R-A or AR Zones”. The underlined language on page 7, lines 30-31, should similarly be removed. No new language need be inserted since (b) references those development approvals or permits that are allowed in (a).

- (5) On p. 8, amend lines 14-15 to “Except for development applications for townhouses in the R-A or AR Zones”. The same revision should be made on p. 9, lines 12-13.

- (6) On p. 9, lines 23 – 31, and on p. 10, lines 1-26 should be deleted, as surplusage, since both the R-A and the AR Zones prohibit townhouses, per the language being added to Section 27-1704 concerning the development of townhouses in the R-A/AR Zones.
- (7) The language on p. 11, lines 12-14, should be deleted and “Except for development applications for townhouses in the R-A or AR Zones” inserted. On p. 11, lines 17-31 and on p. 12, lines 1-20 should also be deleted since language is being added to Section 27-1902 to indicate that the grandfathering provisions will no longer be extended to applications seeking the development of townhouses in the R-A/AR Zones.
- (8) On p. 12, delete the underlined language after “development applications” on lines 24 -25 and insert “for townhouses in the R-A or AR Zones”. The underlined language on lines 26-28 should also be deleted.
- (9) On p. 13, the underlined language on lines 8-10 should be deleted as surplusage given the revision in subsection (a).
- (10) On pp. 13-15, delete lines 16-23, 7-31 and 1-10 respectively. The deleted language on p. 14 lines 1-6 should remain as existing (g) but revised to “filed and accepted and construction begun” (since the common law test for vesting does not require completed construction) and to insert been changed to AR as of this date).
- (11) Finally, CB-13-2018 repealed the prior Zoning Ordinance although the Council chose to allow the transitional/grandfathering period under certain circumstances. Accordingly, the language therein is arguably no longer of force and effect except as noted in the transitional/grandfathering language, unless a landowner can show it has vested rights to continue to access the prior code. *Dal Maso v. Bd. Of Commr’s of Prince George’s County*, 182 Md. 200, 34 A. 2d 464 (1943); *Dobbs v. Anne Arundel County*, 458 Md. 331, 182 A. 3d 798 (2018).

It would, therefore, be unnecessary to repeal the language from the prior edition of the Zoning Ordinance within the current Zoning Ordinance. It would also be improper to repeal the language in a prior edition of the Code in the manner set forth on pp. 15-16 of the bill since someone may have vested rights under the prior ordinance, and the prior law remains accessible to them. Moreover, the Department of Permitting, Inspections and Enforcement must be able to utilize the prior law in order to determine the existence of violations by grandfathered properties.”

The Planning Board voted to take no position and encouraged continued conversations. By letter dated April 20, 2023, to Council Chairman Dernoga, the Planning Board noted numerous concerns with CB-50-2023 Draft-1 as follows:

“The WHEREAS clauses on pages 2 through 4 identify the issues with footnote exception uses. The clauses should also explain why the bill seeks to specifically prohibit Footnote 136. Adding language explaining a reasonable basis for adopting the zoning legislation is highly desirable.

Rather than inserting the same provision in every paragraph of the Transitional Provisions, which results in significant added complexity, this bill could be greatly simplified by adding a paragraph similar to 27-1903(f) (which was added by CB-17-2023) at the end of both Sections 27-1703 and 27-1704.

It is not possible to amend the prior Zoning Ordinance after April 1, 2022, because the prior Zoning Ordinance has been repealed in its entirety as of that date. A repealed ordinance cannot be amended because it no longer exists.

Any provisions in the prior Zoning Ordinance currently eligible to be used are only made applicable by authority granted by the current Ordinance. Therefore, limitations of the nature enacted by CB-17-2023 and proposed by CB-50-2023 may only be authorized in the transition and grandfathering Sections of the current Zoning Ordinance.

The Planning Board notes that CB-17-2019 amended the use table for the R-A Zone in the prior Zoning Ordinance but did not confer authority to bring a development application.

Therefore, the bill language referencing “development applications pursuant to superseded authority under the enactment of CB-17-2019” is not accurate. The bill, however, makes such applications impractical since any resulting site plan application will likely be denied for failure to comply with the requirements of the law and the proposed uses the authors of CB-17-2019 were seeking to permit would not be allowed. This language should be deleted from the bill.

If the intent of the Council is to retain the low-density land use character that currently exists around Freeway Airport, the Council should consider a minor plan amendment to appropriately revisit and amend the land use recommendations pertaining to the Freeway Airport area.”

Amanda Denison, County Council’s Chief Legislative Officer, summarized revisions in a Proposed Draft-2 (DR-2) prepared at the bill sponsors’ request to address ZHE and Planning Board comments.

Chad Williams, representing the Planning Board, commented on the collaborative effort with the bill sponsors in developing the improved Draft-2 and suggested an additional amendment to insert “former” on page 1, lines 3 and 6, prior to “R-A (Residential Agricultural) Zone”. Angie Rodgers, Deputy Chief Administrative Officer for Economic Development, informed the Committee of the County Executive’s opposition to CB-50-2023 and providing explanation of the position associated with the policy direction of this bill and package of bills under consideration by the Council discouraging townhouse development. Dinora Hernandez, Associate County Attorney stated that the Office of Law finds CB-50-2023 to be in proper legislative form with no legal impediments to its adoption.

Alyse Prawde, Senior Counsel, Joseph Greenwald & Laake, PA, testified in opposition to the legislation.

After discussion, on a motion by Council Vice Chair Blegay and second by Council Member Burroughs, the Committee of the Whole voted favorable, 8-0-1, on CB-50-2023 Proposed DR-2A including the additional amendment on page 1, lines 3 and 6, recommended by Mr. Williams.