



Prince George's County Planning Department
Office of the Planning Director


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September 12, 2022

MEMORANDUM

TO: Honorable Calvin S. Hawkins, County Council Chair

FROM: Andree Green Checkley, Esquire
Prince George's County Planning Director 

SUBJECT: Supplemental Planning Department Comments on CB-69 and CB-77

Although the County Council has already received the Planning Board's comments on these two zoning bills, the Planning Department wishes to provide you with the following supplemental analysis that may be of value to the Council.

During the PHED Committee held on September 7, it became obvious to our staff that neither Councilmembers nor the witnesses possessed a clear enough understanding of what the grandfather and transitional provisions already provide in the way of protection for pending and future development projects that wish to use the prior zoning ordinance. We attach a summary of "Current Grandfather and Transitional Provisions" to clarify current law. This summary explains that pending development projects, including projects that become pending projects between now and April 1, 2024, *will* have access to the prior use tables along with other provisions of the prior ordinances.

Should it be the will of the Council to expand the grandfather and transitional provisions, we suggest three principles for your consideration:

1. *The TOD/Activity Centers Zones the Council applied to the Plan 2035 Centers and the U.S. 1 Innovation Corridor should not be compromised.* These zones are the core of the new zoning ordinance, critical to achieve the County's economic development objectives, and give property owners significant density and a very broad range of uses. Although a TOD/Activity Center Zone may not give a property owner exactly what the prior zone allowed, there is no credible argument that these zones represent downzoning.

2. *All properties should come into compliance with the new zones eventually.* The transitional provisions already mean that projects using the prior ordinances will be opening for business two decades from now, with tenants and site features that their new zone does not allow. However, it should be the goal that slowly but surely new development will meet the rules of the new zone and ordinance.

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3. *The use table concern can be addressed more narrowly.* Existing buildings do not have unlimited access to their prior use tables after April 1, 2024. CB-77 provides them with indefinite access, and we believe this goes too far, as it will condemn the County to administering two different zoning maps and two different zoning ordinances in perpetuity. A more narrow solution, employing a longer window to use the prior use table, is proposed in the attachment.

Current Grandfather and Transitional Provisions

1. Under Section 27-1703, owners/developers of property with development applications of any kind pending as of April 1, 2022 are permitted to:
 - a. proceed through the entitlement process under the prior Zoning and Subdivision laws;
 - b. upon approval of a Final Plat, pull building permits and complete construction of the project under current County Building Codes; and
 - c. obtain use and occupancy permits based on the use tables applicable to the zone in which the property was located prior to April 1, 2022.

If the property, or portion thereof, is subject to a CSP or CDP, the right to make use of the prior Zoning Ordinance or Subdivision Regulations terminates upon expiration of the CSP or CDP for any portion of the property for which a Final Plat has not been recorded. CSPs and CDPs are valid for 20 years from the date of adoption.

The right to make use of the prior Zoning Ordinance also terminates if a completed project is required or elects to file a site plan or other development application. (Applications for use and occupancy permits are not considered development applications for this purpose).

Upon approval of a PPS, the project will be issued a 12-year Certificate of Adequacy.

2. Under 27-1704, owners/developers of projects who received an initial development approval (Basic Plan, CSP, or PPS as applicable) but did not complete their projects prior to April 1, 2022 are permitted to:
 - a. proceed through the entitlement process under the prior Zoning and Subdivision laws;
 - b. upon approval of a Final Plat, pull building permits and complete construction of the project under current County Building Codes; and
 - c. obtain use and occupancy permits based on the use tables applicable to the zone in which the property was located prior to April 1, 2022.

If the property, or portion thereof, is subject to a CSP or CDP, the right to make use of the prior Zoning Ordinance or Subdivision Regulations terminates upon expiration of the CSP or CDP for any portion of the property for which a Final Plat has not been recorded. Valid CSPs and CDPs as of April 1, 2022 were granted a 20-year validity period.

The right to make use of the prior Zoning Ordinance also terminates if a completed project is required or elects to file a site plan or other development application. (Applications for use and occupancy permits are not considered development applications for this purpose).

Upon approval of a PPS, the project will be issued a 12-year Certificate of Adequacy.

3. Under 27-1900, owners/developers may file new applications on or before April 1, 2024 and have those applications reviewed under the prior Zoning and Subdivision laws. Upon approval of the application, the owners/developers are permitted to proceed as provided under Paragraph 2 above and are subject to the same rights and limitations.
4. For projects that were constructed and in use prior to April 1, 2022, the goal of the 2021 text amendments was to deem those buildings, and the uses in existence on that date, as legal and not nonconforming. In addition, uses in a Commercial Zone, Industrial Zone, M-X-T Zone, or M-U-I Zone as of April 1, 2022 were granted a longer period of time to go dark (36 months) before losing their nonconforming status.

Clarifying the Ability of Existing Development to Access the Prior Use Tables

As we understand it, the concern now being raised by certain members of the development community is whether projects in existence and in use prior to April 1, 2022, can access the use tables in the prior Zoning Ordinance when they need to apply for a use and occupancy permit because of a change in tenant or desire to use the property for a different purpose. The current law does not definitively address that, and this is the policy decision the Council should be considering instead of the sweeping changes suggested by CB-077-2022.

CB-077-2022 goes beyond just allowing owners the right to indefinitely access the use tables applicable to the zone in which the property was located prior to April 1, 2022; it also allows owners/developers the right to:

- a. proceed through the entitlement process under the prior Zoning and Subdivision laws *forever*; and
- b. upon approval of a Final Plat, pull building permits and complete construction of entirely brand-new projects that may not otherwise be permitted in their current Zone.

CB-077-2022, for example, will render the Planning Department's suggested amendments to CB-69-2022 irrelevant because owners/developers of properties in former M-X-T Zones will be allowed to develop under the prior Zoning Ordinance even if they are currently located in Plan 2035 Centers, along the US 1/Innovation Corridor, or in Transit-Oriented/Activity Center base zones.

A more limited approach to address the use issue would be to amend the Zoning Ordinance to grant owners of existing developments a period of time, for example ten years, to continue to access the use tables in the prior Zoning Ordinance when applying for new use and occupancy permits. Conversely, the Council could also consider amending the current use tables to add uses that were eliminated or are no longer available in new zones, such as uses that were formerly in the I-1 that are missing in the IE.

These changes would ensure that owners and leaseholders can continue to operate their businesses as they had prior to the adoption of the new Zoning Ordinance, while establishing a period long enough in the future to allow them time to plan for the changes the Council intended when it approved the rezoning of their properties.

At the same time, limiting the amendments to addressing just the prior use tables will ensure that the future physical development of existing developed properties, while still being able to make modifications to existing approvals under the prior Zoning Ordinance, will proceed with securing entitlements under the new Zoning and Subdivision laws which is the goal of any comprehensive rezoning.