

PRINCE GEORGE'S COUNTY COUNCIL

COMMITTEE REPORT

2019 Legislative Session

Reference No.: CB-47-2019

Draft No.: 2

Committee: PLANNING, HOUSING AND ECONOMIC DEVELOPMENT

Date: 10/17/2019

Action: FAV (A)

REPORT:

Committee Vote: Favorable as amended, 5-0 (In favor: Council Members Glaros, Davis, Dernoga, Hawkins, and Ivey)

The Planning, Housing, and Economic Development (PHED) Committee convened on October 3 and October 17 to consider CB-47-2019. CB-47, transmitted by the County Executive for the County Council's consideration, amends and adopts certain provisions of the International Building Code related to unpermitted construction to provide the authority for the Director of the Department of Permitting, Inspections, and Enforcement (DPIE) to impose civil penalties and fines for violations of the Building Code, including for unpermitted work and unlawful continuance of work after posting a Stop Work Order. Additionally, this proposed legislation adds a disclosure requirement once a notice of violation has been issued, as well as allowing the Director to record notices of violations in land records to warn subsequent purchasers of a property.

Melinda Bolling, DPIE Director, and Gary Cunningham, DPIE Deputy Director, were present for both meetings informing the Committee that this legislation authorizes DPIE inspectors to write fines for unpermitted construction against the contractor and not the property owner.

At the October 3 meeting, the Committee Director summarized written referral comments received. The Chief Zoning Hearing Examiner (ZHE) submitted an October 2, 2019 memorandum to the Committee commenting on the following concerns:

- 1) The bill is imposing "civil fines" and "civil penalties" for the same action, with the former noted in Subtitle 28, and the latter set forth in Subtitle 4 of the County Code. It appears that civil penalty and civil fine are terms used interchangeably. If so, it would be prohibitive to impose both for the same action, and it might prove confusing to enforce if both terms are used.
- 2) The bill does not seem to clarify between an owner who constructs in violation of the law, or ignores a stop work order, and a subsequent owner who is unaware of the unlawful activity. This disparity could be rectified by amending Section 114.5 on page 4 to add language concerning subsequent purchasers.
- 3) The bill is halving the time to appeal the Director's decision and notes that any appeal

must occur after the decision is rendered by the Director or the Director's designee. To satisfy due process protections the law should make it clear that the 15 days runs from the time the decision is mailed, or some other concrete measurement. The 15 days may be further shortened under the language on page 6, line 25 (language that is not being amended). The Board of Appeals is addressing the appeal period; it could be detrimental to some applicants to reduce the time, especially where exigent circumstances are not involved.

- 4) Finally, as a technical note, the introductory language on p. 2, Line 13-14, and page 4, line 21, may have to change slightly since the bill is not only amending sections; it is also adding others.

The Board of Appeals Administrator reviewed the legislation and offered the following comments in an October 1, 2019 memorandum to the Committee Director:

Sec. 4-119. - Section 113, Board of Appeals.

- Currently the Board of Appeals requests that any party who wishes to file an appeal must submit the postmarked envelope in which the violation notice was mailed. The time frame of 15 days would begin on the date of the postmarked envelope. Page 6, line 19 and 20 specifically states "within 15 days after the decision is rendered by the Director or Designee". It would be preferred if the postmark date would be included in the new language as many homeowners do not receive the written mailed notice until the [30] 15 days have passed and would have to request an extension.
- Page 6, line 25- In the event the Director or Designee limits the time for an appeal to a shorter period; how will the Board of Appeals be notified of the shorter timeframe?
- Page 4, line 6 - 114.5.1 Disclosure Statement -
 - Who will enforce the disclosure and how will it be enforced? The Board of Appeal finds that countless new home owners are put in the position of purchasing a home which unbeknownst to them, has unauthorized construction, which was constructed many years ago and/or multiple purchasers prior. Even though there is the adage of "Buyer Beware", the burden of the added expense to the unsuspecting new home buyer of having to pay for violation fines, site and engineering plans, variances and permits is unfair, as they did not perform the work or much less know that there was unauthorized construction on the property. Should there be relief of fines or variances for new home owners who purchase property with unauthorized construction? Will there be any type of grandfathering or exemptions?

The Office of Law reviewed the legislation and determined that it is in proper legislative form

with no legal impediments to its enactment.

The Committee reviewed a Proposed Draft-2 (DR-2) on October 17 containing amendments prepared by DPIE to address the ZHE and Board of Appeals Administrator comments. The bill was amended to change the term “penalty” to “fine” in the “Civil Penalties” section, and to change “fine” to “citation” in the “Civil Citation” section. The Associate County Attorney explained that a fine is monetary, and citation is criminal.

The ZHE was present on October 17 to suggest that in addition to amending and adopting certain provisions of the International Building Code (IBC), the legislation should also reference the International Residential Code (IRC).

The Committee requested that the legislative history reflect that currently, penalties for unpermitted construction are imposed solely on the homeowner, and the intent of this legislation is to impose penalties on persons who performed the unpermitted construction.

Council Member Ivey made a motion for favorable recommendation on Proposed DR-2 as amended by additional suggestions received from the ZHE concerning the IRC, seconded by Council Member Davis. The Committee voted for a favorable recommendation, 5-0, as to CB-47-2019, as amended, including appropriate bill title and purpose clause changes as needed to reflect the amendments.