

**PRINCE GEORGE'S COUNTY COUNCIL
AGENDA ITEM SUMMARY**

Meeting Date: 7/29/2003 **Reference No.:** CB-19-2003

Proposer: Harrington, Dernoga, Knotts, Peters **Draft No.:** 3

Sponsors: Harrington, Dernoga, Knotts, Peters, Shapiro, Dean

Item Title: An Ordinance amending the powers and duties of the People's Zoning Counsel and amending the Qualifications and term of office

Drafter: Ralph E. Grutzmacher
Legislative Officer

**Resource
Personnel:**

LEGISLATIVE HISTORY:

Date Presented: 3/25/2003 **Executive Action:** ___/___/___

Committee Referral: 3/25/2003 PZED **Effective Date:** 8/29/2003

Committee Action: 6/4/2003 FAV(A)

Date Introduced: 6/17/2003

Public Hearing: 7/29/2003 10:00 A.M.

Council Action: 7/29/2003 ENACTED

Council Votes: PS:A, MB:A, SHD:A, TD:A, CE:-, DCH:A; TH:A, TK:A, DP:A

Pass/Fail: P

Remarks: _____

7/29/2003 – CB-19-2003 (DR-2) was amended on the floor; DR-3 enacted

PLANNING, ZONING & ECONOMIC DEV. COM. REPORT

6/4/03

Committee Vote: Favorable with amendments, 5-0 (In favor: Council Members
Harrington, Dean, Dernoga, Exum and Knotts)

Staff presented a Proposed Draft-2 (DR-2) of the legislation. This draft includes a new section, 27-136, that describes the purpose of the People's Zoning Counsel (PZC). DR-2 also prohibits the PZC from representing any client in any matter involving land use in the County and requires the People's Zoning Counsel to "have substantial experience" in "land use" law. Additional language was added in new Section 27-139.01 concerning the powers and duties of the PZC and existing code language was deleted that required the PZC to appear at all hearings on zoning

cases (before the Council and Zoning Hearing Examiner) and to participate in the review of all Comprehensive Design Plans filed with the Planning Board. DR-2 includes additional language allowing the PZC to “have in each appearance all rights of counsel for a party of record, including, but not limited to the right to file and prosecute an appeal to the courts as an aggrieved party to promote and protect the health, safety, and welfare of the community.”

Additionally, new sections, 27-141 and 27-142 are also contained in DR-2 concerning “Education of the Public” and “Annual Report.”

The committee discussed the issue of the deletion in DR-2 of the requirement that the PZC be a resident of Prince George’s County. Council Member Dernoga explained that this requirement was removed so that the County does not have to reject an individual who may be highly qualified and suitable for the PZC appointment. A motion by Council Member Knotts to leave the residency requirement in the legislation failed due to lack of a second. Council Member Dernoga proposed an alternative to include language that gives preference to individuals who reside in the County. The committee accepted this amendment.

An additional amendment to Proposed DR-2 involves the method of appointment. Council Member Dernoga submitted an amendment that reinstates existing Code language that gives the County Executive appointment authority with confirmation by the Council.

Aisha Braveboy, representing the County Executive’s Office, expressed the Executive’s concurrence with the amendments in DR-2 as well as the additional amendment concerning the method of appointment.

PLANNING, ZONING & ECONOMIC DEV. COM. REPORT

5/14/03

Held in committee.

Staff summarized the provisions of the legislation amending the powers and duties, qualifications, and term of office of the People’s Zoning Counsel. After the staff summary of the purpose of the legislation, presentations were made by Martin Klauber, the Montgomery County People’s Zoning Counsel, and by Peter Max Zimmerman, the Baltimore County People’s Zoning Counsel. Mr. Klauber and Mr. Zimmerman explained the functions of their offices as well as caseload in their respective jurisdictions.

A memorandum dated May 14, 2003 from Council Member Dernoga to the Planning, Zoning and Economic Development Committee members contained comments on the purpose of the People’s Zoning Counsel (PZC) as well as discussion on “protecting the public interest”, “public education” and “appellate power.” The conclusion of Council Member Dernoga’s memorandum states: “In order to promote a fairer land use process, the role of the PZC should be revised in the following ways:

- Allow the PZC to choose, based on set criteria; those cases which are in the public interest for the PZC to actively participate.
- Require the PZC to engage in public education as an integral part of his role.
- Provide the PZC with the power to seek judicial relief.”

The memorandum also contained a chart detailing certain comparisons between Montgomery, Baltimore and Howard County's People's Counsels.

A memorandum dated April 21, 2003, to the Council Administrator from the Office of Law contained detailed comments concerning potential legal impediments to the adoption of CB-19. Potential legal impediments noted by the Office of Law include: (1) the lack of express authority in the Regional District Act for the District Council to establish the position of People's Zoning Counsel; and (2) if a court would recognize that the District Council has implied zoning authority, whether such implied authority would extend to the creation of the People's Zoning Counsel position and matters related to such position such as qualifications, compensation and support and powers and duties of the People's Zoning Counsel.

The Principal Counsel, District Council, provided memoranda dated March 31, 2003 and April 18, 2003, concerning provisions of CB-19 in relation to contrary Charter provisions as well as an inconsistency with Section 8-106(e) of the Regional District Act, Article 28 of the Annotated Code of Maryland.

The Office of Audits and Investigations determined there should be negative fiscal impact on the County as a result of enacting CB-19. The estimated cost per additional case for the People's Zoning Counsel is approximately \$1,800. Based on a caseload of 12 cases per year, the negative fiscal impact would be approximately \$21,600.

Stan Brown, the current People's Zoning Counsel, addressed the committee and provided information concerning his caseload and the types of cases at the Planning Board, Zoning Hearing Examiner and District Council for which he attends hearings. Mr. Brown explained that he reviews every case that comes before the Planning Board, even though he may not appear on every case, only those that are appealed.

Council Member Dernoga indicated that the current process is flawed. Because the PZC is required to appear in so many cases, there is not sufficient time to be involved in certain cases that may also need more detailed involvement by the PZC. Mr. Dernoga explained that the revisions to the current process should be made to allow the PZC to determine what cases in which an appearance should be made.

The following individuals spoke in support of the bill: William Ferguson, Donna Hathaway Beck, Jennifer Topping, Aurelio Nepa, Carmen Anderson, and Paul Fiore. Charles Renninger spoke in support of the intention of the bill, but expressed concern about the language allowing the PZC right of appeal because he believes it raises some question of the Counsel's neutral role in the zoning cases.

BACKGROUND INFORMATION/FISCAL IMPACT

(Includes reason for proposal, as well as any unique statutory requirements)

The office of People's Zoning Counsel was created under Article VII of the County Charter for the purposes of protecting the public interest and insuring the compilation of a full and complete record. Under existing law, the People's Zoning Counsel is appointed for a term of 5 years by the County Executive subject to confirmation of the Council. The proposed legislation will

expand the duties of the People’s Zoning Counsel and will provide for a term of 4 years with appointment by the Council.

The term of the existing People’s Zoning Counsel ends on August 31, 2003. The proposed legislation will not shorten the term of the incumbent. The new term length will apply to the next appointment cycle.

CODE INDEX TOPICS: