

CB-14-2023 – Planning Board Analysis (Attachment 3)

This bill amends the current Zoning Ordinance to repeal the text of CB-77-2022 (DR-2), which added Section 27-1706.

The Planning Board has the following comments for consideration by the District Council:

Background:

Section 27-1706 of the current Zoning Ordinance, created by CB-77-2022 (DR-2), revised the transition and grandfathering provisions to allow any property “developed and constructed pursuant to the prior Ordinance” or that has an application filed and accepted prior to April 1, 2024, to continue to use the prior Zoning Ordinance. Section 27-1706 creates an indefinite entitlement to the procedures, standards, uses, and other provisions applicable to the zone that existed on property before the effective date of the new Zoning Ordinance and Countywide Map Amendment on April 1, 2022. There was no provision in the clause that recognized future Council rezoning actions through the approval of a Sectional Map Amendment or a Zoning Map Amendment. Even if the Council decided to rezone any property in the County in accordance with the new Zoning Ordinance and to implement policy goals of Plan 2035 or future Area Master Plans or Sector Plans, property owners can continue to use the prior Ordinance as if their property still had the zoning that existed before April 1, 2022.

On December 12, 2022, the District Council enacted CR-3-2023, which suspended five legislative zoning amendments from taking effect until associated repeal bills are decided. CB-77-2022 is one of the five bills suspended by CR-3-2023, until such time as action takes place on CB-14-2023. CB-14-2023 would constitute the permanent repeal of CB-77-2022 and Section 27-1706. The effective date of CB-77-2022 (DR-2) was December 12, 2022.

Policy Analysis:

The Planning Board voted to oppose CB-77-2022. CB-77-2022 was a short bill with extremely complex and wide-reaching impacts on the new Zoning Ordinance. It drastically altered the transitional rules that were placed in the new Zoning Ordinance by the Council in 2018 and 2021. The bill gave properties that were developed and constructed under the prior Ordinance or have an application for a building permit, preliminary subdivision plan, or a site plan filed by April 1, 2024, the ability to develop under the prior Zoning and Subdivision Ordinances in perpetuity. Nearly all development in the County and a majority of the County’s 300,000 properties are considered “developed and constructed” pursuant to the prior Zoning Ordinance. In addition, the bill placed the decision of whether to choose the prior Zoning Ordinance in the development or redevelopment of such properties in the hands of applicants. In so doing, it superseded the ability of the local government – including the Council – to require conformance to the new zoning regulations and procedures that resulted from nine years of collaborative effort. In effect, CB-77-2022 created a situation in which two Zoning Ordinances are in effect for Prince George’s County in perpetuity.

Immediate Consequences

CB-77-2022 had a dramatic and immediate impact on planning and potential development. In anticipation of the effective date of CB-77-2022 on December 12, 2022, the Planning Department had no choice but to recommend the remand of the Staff Draft West Hyattsville-Queens Chapel Sector Plan and Proposed Sectional Map Amendment back to Technical Staff. The Planning Board voted to remand the staff draft on Thursday, December 15, 2022.

The memorandum to the Planning Board stated that Plan 2035 and the County's 37 active master, sector and transit district development plans are designed to "guide the orderly growth and development of the County," which is impossible in an environment where two conflicting Zoning Ordinances regulate development.

The Reasons Behind the Transitional and Grandfathering Provisions Adopted by the Council

As reiterated most recently in the Planning Board letter for the Staff Draft West Hyattsville-Queens Chapel Sector Plan and Proposed Sectional Map Amendment, the underlying intent of the development of the County's new Zoning Ordinance was to comprehensively replace the prior Zoning Ordinance, which had not been subject to a systemic update in more than 50 years. When a jurisdiction attempts to replace existing zoning and land use regulations, a central consideration is dealing with projects and development completed or initiated under the prior regulations that may be caught up in a transition to new regulations.

Such consideration was critical in Prince George's County due to the size of the County and the number of affected developments, project proposals, in-process applications, and recently approved applications which may also require subsequent phases or revisions during the project's development. In response the Council approved the transitional provisions of the new Zoning Ordinance and Subdivision Regulations, informally known as "grandfathering provisions."

The development of the transitional and grandfathering provisions involved substantial collaboration among numerous key stakeholders, including the Prince George's County Council, Council staff, the Zoning Hearing Examiners, the Office of the County Executive, the Planning Board, the County Land Use Bar, the Maryland Building Industry Association, numerous developers, and others. The transitional and grandfathering provisions were created during a multi-year process of multiple iterations and revisions. The Council carefully deliberated the transitional provisions in 2018, making numerous revisions, and then further refined the provisions in 2021 in response to stakeholder concerns. The result was the transitional and grandfathering provisions currently found in Sections 27-1700 and 27-1900 of the new Zoning Ordinance and Sections 24-1700 and 24-1900 of the new Subdivision Regulations.

The approved transitional and grandfathering provisions were designed to avoid interference with ongoing projects, including new projects that were about to be submitted or that would be submitted and accepted prior to April 1, 2024.

The enacted transitional provisions cover previously built development, projects that had submitted applications that were not yet decided when the new codes took effect, and future applications that would be part of a "grandfathered" chain of entitlements. To protect projects that were contemplated by property owners and developers but that had not yet filed any application, the Ordinance allowed, at the sole discretion of the applicant, an unrestricted two-year overlap period codified in 27-1900 and 24-1900, wherein the applicant can continue to file its first application under the prior codes until April 1, 2024. A first application, accepted for processing before April 1, 2024, also allows the project to obtain the remainder of its entitlements using the prior codes.

To address Council concerns about the length of time the prior codes could continue to be used, the Council imposed 20-year periods of validity for application case types that previously never expired (e.g., Conceptual Site Plans and Comprehensive Design Plans), and subsequent steps in "grandfathered" entitlement chains remained available to developers for so long as the validity of prior

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approvals remained intact. As a result, projects will be using the prior codes for decades into the future, even under the existing transitional provisions.

Any project built and legal as of April 1, 2022, the effective date of the new codes is deemed legal and not nonconforming until the owner elects to use the new Zoning Ordinance or makes changes to the projects that are not eligible for a modification of the existing approvals. Projects built after April 1, 2022, under a grandfathered chain of approvals, are also deemed legal and nonconforming.

During testimony on CB-77-2022, many developers and land use attorneys provided comments and examples that pointed to potentially valid concerns that primarily speak to how uses are handled by the transitional and grandfathering provisions. In particular, the ability of some property owners to re-tenant vacant nonresidential space is not as robust as may be desired or warranted. However, the best response to this issue is not CB-77-2022. Instead, the best response is targeted transitional language that broadens access to uses formerly available under the prior Zoning Ordinance for a determined – and limited – period of time. Planning Board staff has previously proposed such language, which can be incorporated in the Zoning and Subdivision Ordinances expeditiously. In the meantime, properties retain access to their prior use table for re-tenating purposes until April 1, 2024, providing ample time to address the re-tenating question before any property owner has to re-tenant.

The Planning Board supports the repeal of CB-77-2022.

Impacted Property:

CB-77-2022 affected a majority of properties in Prince George’s County – namely any property that was “developed and constructed pursuant to the prior Ordinance.” CB-14-2023, in repealing CB-77-2022, affects the same number of properties.

Following discussion, the Planning Board voted to support CB-14-2023.