

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL

2006 Legislative Session

Bill No. _____ CB-31-2006

Chapter No. _____ 20

Proposed and Presented by _____ Council Member Dernoga

Introduced by: _____ Council Members Dernoga, Hendershot, Peters, Knotts, Dean, Exum,
_____ Harrington, Campos and Bland

Date of Introduction _____ June 13, 2006

ZONING BILL

1 AN ORDINANCE concerning

2 Use and Occupancy Permits

3 For the purpose of authorizing all immediate reasonable and necessary action to cease and desist
4 the operation of any activity requiring a use and occupancy permit when a use and occupancy
5 permit has not been issued; authorizing all immediate reasonable and necessary action to cease
6 and desist the operation of any activity requiring a use and occupancy permit when a use and
7 occupancy permit has been issued and is not in compliance with the provisions of the Zoning
8 Ordinance; authorizing all immediate reasonable and necessary action to cease and desist the
9 operation of any activity requiring a use and occupancy permit when the activity is found to
10 present an imminent danger and threat to the health, safety, and welfare of the public by not
11 doing so, that there are no other mitigating circumstances to be taken to resolve the imminent
12 danger and threat to the health, safety, and welfare of the public, and that there are no other
13 reasonable means of preventing further danger and threat to the health, safety, and welfare of the
14 public resulting from the continuation of the activity; authorizing all immediate reasonable and
15 necessary action to cease and desist the operation of any activity requiring a temporary use and
16 occupancy permit when a temporary use and occupancy permit has not been issued; authorizing
17 all immediate reasonable and necessary action to cease and desist the operation of any activity
18 requiring a temporary use and occupancy permit when a temporary use and occupancy permit
19 has been issued and is not in compliance with the provisions of the Zoning Ordinance;
20 authorizing all immediate reasonable and necessary action to cease and desist the operation of

any activity requiring a temporary use and occupancy permit when the activity is found to present an imminent danger and threat to the health, safety, and welfare of the public by not doing so, that there are no other mitigating circumstances to be taken to resolve the imminent danger and threat to the health, safety, and welfare of the public, and that there are no other reasonable means of preventing further danger and threat to the health, safety, and welfare of the public resulting from the continuation of the activity; authorizing all immediate reasonable and necessary action to implement this Act for the health, safety and welfare of the public; providing for the designation of certain public officials to enforce this Act; providing for enforcement procedures to implement this Act; providing for establishing policies, rules, and procedures to implement this Act; providing for a hearing before the Zoning Hearing Examiner from a violation of this Act; providing for an appeal from the decision of the Zoning Hearing Examiner to the Circuit Court of Maryland; providing for the computation of time pursuant to this Act; and generally relating to use and occupancy permits.

BY repealing and reenacting with amendments:

Sections 27-253, 27-260, 27-262, 27-263, and 27-264.

The Zoning Ordinance of Prince George's County, Maryland,
being also

SUBTITLE 27. ZONING.

The Prince George's County Code
(2003 Edition, 2004 Supplement).

BY adding:

Section 27-264.01 and Section 27-264.02.

The Zoning Ordinance of Prince George's County, Maryland,
being also

SUBTITLE 27. ZONING.

The Prince George's County Code
(2003 Edition, 2004 Supplement).

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, sitting as the District Council for that part of the Maryland-Washington Regional District in Prince George's County, Maryland, that Sections 27-253, 27-260, 27-262, 27-263, and 27-264 of the Zoning Ordinance of Prince George's County, Maryland, being also Subtitle 27 of

the Prince George's County Code, be and the same are hereby repealed and reenacted with the following amendments:

SUBTITLE 27. ZONING.

PART 3. ADMINISTRATION.

DIVISION 7. BUILDING, GRADING, AND USE AND OCCUPANCY PERMITS.

Subdivision 1. General.

Sec. 27-253. Use and occupancy permits.

(a) None of the following activities shall take place unless a use and occupancy permit certifying compliance with this Subtitle has been issued for the activity by the Building Inspector:

- (1) Use of a building, structure, or land;
- (2) Conversion of a building, structure, or land from one use to another use;
- (3) Medical practitioner's, insurance sales, and real estate sales offices;
- (4) Conversion of a one-family detached dwelling to include additional dwelling units

(by Special Exception).

(b) Use and occupancy permits shall not be required for the following:

- (1) One-family dwelling (other than a new one-family dwelling) used for a single family;
- (2) Agricultural uses;
- (3) Accessory uses (except where a specific use is allowed as accessory to another use); or
- (4) Home occupations for which no permit is specifically required, unless requested by the applicant.

(c) All use of the property shall be in conformance with the use and occupancy permit, including the accompanying plans.

(d) When an occupant vacates premises, and a different occupant assumes possession of such premises, the new occupant is required to obtain a use and occupancy permit, regardless of whether the use has changed.

(e) No use and occupancy permit shall be issued by the Department of Environmental Resources until after the expiration of the specified appeal period from a Planning Board decision concerning the subject property of the permit, unless the right of appeal has been

1 waived; nor shall any permit be issued during the pendency of any appeal to, or review by, the
2 District Council.

3 (f) The Chief of Police and the Fire Chief are authorized to direct the Police Department
4 and the Fire/Emergency Medical Services Department respectively, to take all
5 immediate reasonable and necessary action to cease and desist the operation of any
6 activity requiring a use and occupancy permit when a use and occupancy permit has
7 not been issued.

8 (g) The Chief of Police and the Fire Chief are authorized to direct the Police Department
9 and the Fire/Emergency Medical Services Department respectively, to take all
10 immediate reasonable and necessary action to cease and desist the operation of any
11 activity requiring a use and occupancy permit when a use and occupancy permit has
12 been issued and is not in compliance with the provisions of this Section and all
13 applicable use and occupancy provisions of the Zoning Ordinance.

14 (h) The Chief of Police and the Fire Chief are authorized to direct the Police Department
15 and the Fire/Emergency Medical Services Department respectively, to take all immediate
16 reasonable and necessary action to cease and desist the operation of any activity requiring a use
17 and occupancy permit when the activity is found to present an imminent danger and threat to the
18 health, safety, and welfare of the public by not doing so, that there are no other mitigating actions
19 to be taken to resolve the imminent danger and threat to the health, safety, and welfare of the
20 public, and that there are no other reasonable means of preventing further danger and threat to
21 the health, safety, and welfare of the public resulting from the continuation of the activity.

22 (i) Immediate reasonable and necessary action shall include, but not be limited to:
23 entering the building, structure, and land; securing the building, structure, and land; removing the
24 occupants of the building, structure, and land; padlocking the building, structure, and land; and
25 preventing the use and occupancy of the building, structure, and land.

26 (j) Actions taken pursuant to Sections 27-253 (f), (g), and (h) shall remain in force and
27 effect unless amended or vacated by a decision of the Zoning Hearing Examiner in accordance
28 with Section 27-264.01(g) or by a decision of a court of competent jurisdiction.

29 * * * * *

30 **PART 3. ADMINISTRATION.**

31 **DIVISION 7. BUILDING, GRADING, AND USE AND OCCUPANCY PERMITS.**

Subdivision 3. Temporary Permits.

Sec. 27-260. Authorization.

(a) The Department of Environmental Resources may issue temporary use and occupancy permits (and if necessary, building permits) for the specific temporary structures and uses, and in accordance with the requirements of Section 27-261.

(b) No temporary permit shall be required if the use is allowed by other provisions of this Subtitle as a permanent use.

(c) These temporary uses are only allowed as set forth in the Tables of Uses (for the various zones).

(d) In a Transit Overlay Zone, no temporary use and occupancy permit or building permit shall be issued for any use or activity unless the application for the permit has been reviewed by the Planning Board or its authorized representative for conformance or consistency with the approved Transit District Development Plan and Transit District Site Plan.

(e) The Chief of Police and the Fire Chief are authorized to direct the Police Department and the Fire/Emergency Medical Services Department respectively, to take all immediate reasonable and necessary action to cease and desist the operation of any activity requiring a temporary use and occupancy permit when a temporary use and occupancy permit has not been issued.

(f) The Chief of Police and the Fire Chief are authorized to direct the Police Department and the Fire/Emergency Medical Services Department respectively, to take all immediate reasonable and necessary action to cease and desist the operation of any activity requiring a temporary use and occupancy permit when a temporary use and occupancy permit has been issued and is not in compliance with the provisions of this Section and all applicable use and occupancy provisions of the Zoning Ordinance.

(g) The Chief of Police and the Fire Chief are authorized to direct the Police Department and the Fire/Emergency Medical Services Department respectively, to take all immediate reasonable and necessary action to cease and desist the operation of any activity requiring a temporary use and occupancy permit when the activity is found to present an imminent danger and threat to the health, safety, and welfare of the public by not doing so, that there are no other mitigating actions to be taken to resolve the imminent danger and threat to the health, safety, and welfare of the public, and that there are no other reasonable means of preventing further danger

1 and threat to the health, safety, and welfare of the public resulting from the continuation of the
 2 activity until a hearing is held.

3 (h) Immediate reasonable and necessary action shall include, but not be limited to: entering
 4 the building, structure, and land; securing the building, structure, and land; removing the
 5 occupants of the building, structure, and land; padlocking the building, structure, and land; and
 6 preventing the use and occupancy of the building, structure, and land.

7 (i) Actions taken pursuant to Sections 27-253 (f), (g), and (h) shall remain in force and
 8 effect unless amended or vacated by a decision of the Zoning Hearing Examiner in accordance
 9 with Section 27-264.01(g) or by a decision of a court of competent jurisdiction.

10 * * * * *

11 **PART 3. ADMINISTRATION.**

12 **DIVISION 8. ENFORCEMENT.**

13 **Sec. 27-262. Authorization.**

14 (a) The Department of Environmental Resources and, when specified, the Police
 15 Department, and the Fire/Emergency Medical Services Department shall have the duty of
 16 enforcing the requirements of this Subtitle.

17 (b) The Department of Public Works and Transportation shall also have enforcement
 18 authority to enforce the Sign Ordinance in Part 12 of this Subtitle regarding signs in the County
 19 right-of-way. As used in this Section, right-of-way is defined in Section 23-102 of this Code.

20 **Sec. 27-263. Inspections and complaints.**

21 (a) The Department of Environmental Resources and when specified, pursuant to Section
 22 27-253(f), (g), and (h) and Section 27-260(f), (g), and (h) of the Zoning Ordinance, the Police
 23 Department and the Fire/Emergency Medical Services Department shall conduct a Zoning
 24 Enforcement Program to assure continuing compliance with the Zoning Ordinance.

25 (b) Inspections shall primarily be programmed on an area-by-area basis, but shall also
 26 include the investigation of individual complaints from private sources of alleged zoning
 27 violations. All complaints shall be submitted to the Department, and when specified, to the
 28 Police Department, and the Fire/Emergency Medical Services Department.

29 **Sec. 27-264. Enforcement procedures.**

30 * * * * *

31 (b) Use.

(1) Notwithstanding the provisions of Section 27-264.01 and Section 27-264.02 of the Zoning Ordinance, [When] when it determines that a violation of this Subtitle has occurred with respect to the use of any building, structure, or land, or there is a failure to obtain a use and occupancy permit, with the exception of violations of Section 27-261(b),(c),(d),(h), and (j), the Department shall serve notice (on the form provided) upon the owner, general agent, or lessee of the building, structure, or land, directing that the violation cease. If, at the expiration of five (5) business days of the notice (or another greater period determined by the Department), the violation has not ceased, the Department shall take appropriate action against the violator. If it is not possible to serve the notice, the building, structure, or land shall be posted with the notice.

* * * * *

SECTION 2. BE IT FURTHER ENACTED that Sections 27-264.01 and 27-264.02 of the Zoning Ordinance of Prince George's County, Maryland, being also Subtitle 27 of the Prince George's County Code, be and the same are hereby added:

Sec. 27-264.01. Expedited enforcement procedures.

(a) The Chief of Police and the Fire Chief shall establish policies, rules, and procedures to implement this Division.

(b) Notwithstanding the provisions of Section 27-264, when the Chief of Police or the Fire Chief determine that a violation of Section 27-253 or Section 27-260 has occurred with respect to the use of any building, structure, or land, or there is a failure to obtain a use and occupancy permit, the Chief of Police or the Fire Chief are authorized to direct the Police Department and the Fire/Emergency Medical Services Department respectively, to issue a written violation notice directing that the violation cease and that all activities in the building, structure, and on the land cease pending a hearing before the Zoning Hearing Examiner in accordance with Section 27-264.01(g).

(c) The Chief of Police and the Fire Chief shall provide the written violation notice, issued pursuant to Section 27-264.01, to one of the following: the owner, general agent, or lessee of the building, structure, or land; the person, firm, or corporation conducting the activities; or any person in the building, structure or on the land that directs, manages, or is in control or is in apparent control or management of the activity or activities set forth in Section 27-253 or Section 27-260. In the event that no person or no person representing entities set forth in this Section are present or any person or any person representing entities set forth in this Section flees when the

1 activity or activities take place and the written violation notice is being issued, the written
 2 violation notice shall be posted on the building, structure or on the land in which or upon which
 3 the activity or activities took place, directing that the violation cease and that all activities in the
 4 building, structure, or on the land cease pending a hearing before the Zoning Hearing Examiner
 5 in accordance with Section 27-264.01(g). Posting of the issued written notice shall be deemed to
 6 be constructive notice to the owner, general agent, or lessee of the building, structure, or land;
 7 the person, firm, or corporation conducting the activities; or any person in the building, structure
 8 or on the land that directs, manages, or is in control or is in apparent control or management of
 9 the building, structure or on the land in which or upon which the activity or activities took place,

10 (d) For violations of Section 27-253(f), (g), and (h) or Section 27-260(f), (g), and (h) of the
 11 Zoning Ordinance, the owner, general agent, or lessee of the building, structure, or land, the
 12 person, firm, or corporation conducting the activities; or any person in the building, structure or
 13 on the land that directs, manages, or is in control or is in apparent control or management of the
 14 building, structure or on the land in which or upon which the activity or activities took place may
 15 request a hearing before the Zoning Hearing Examiner. The Zoning Hearing Examiner shall
 16 commence a hearing within four days following receipt of the request for a hearing.

17 (e) The Zoning Hearing Examiner shall provide a hearing on the record.

18 (f) The enforcement action of the Police Department or the Fire/Emergency Medical
 19 Services Department shall not be stayed during the pendency of the hearing.

20 (g) The Zoning Hearing Examiner shall render a decision on the enforcement action within
 21 two days after the conclusion of the hearing on the record. The decision shall include the
 22 following findings of fact: whether a use and occupancy permit has been issued for the use
 23 alleged to be in violation; whether the activity in the building, structure or on the land in which
 24 the activity took place is in compliance with any existing use and occupancy permits; whether
 25 there was an imminent danger and threat to the public health, safety and welfare, and whether the
 26 activity constitutes a continuing threat to the public health, safety and welfare.

27 (h) The Zoning Hearing Examiner may reverse, modify or remand the decision of the
 28 Police Department or the Fire/Emergency Medical Services Department respectively, only if the
 29 decision of the Police Department or the Fire/Emergency Medical Services Department,
 30 respectively, is clearly erroneous, or arbitrary and capricious, or unsupported by any substantial
 31 evidence.

1 (i) The enforcement action of the Police Department or the Fire/Emergency Medical
 2 Services Department, respectively, shall terminate or continue according to the determination of
 3 the Zoning Hearing Examiner.

4 (i) Any party aggrieved by a decision of the Zoning Hearing Examiner may appeal the
 5 decision to the Circuit Court for Prince George's County, Maryland. The appeal shall proceed in
 6 accordance with the provisions of Title 7 of the Maryland Rules of Procedure.

7 **Sec. 27-264.02. Computation of time pursuant to this Act.**

8 For purposes of computing a period of time pursuant to the provisions of this Act, the day
 9 of the act, event, or default, after which the designated period of time begins to run is not to be
 10 included. The last day of the period so computed is to be included unless: (1) It is a Sunday or a
 11 legal holiday, in which event the period runs until the end of the next day, which is neither a
 12 Sunday or a holiday; or, (2) the act to be done is the filing of some paper in court and the office
 13 of the clerk of said court on said last day of the period is not open, or is closed for a part of a day,
 14 in which event, the period runs until the end of the next day which is neither a Sunday, Saturday,
 15 a legal holiday, or a day on which the said office is not open the entire day during ordinary
 16 business hours. When the period of time allowed is more than seven days, intermediate Sundays
 17 and holidays shall be considered as other days; but if the period of time allowed is seven days or
 18 less, intermediate Sundays and holidays shall not be counted in computing the period of time.

19 SECTION 3. BE IT FURTHER ENACTED that the provisions of this Act are hereby
 20 declared to be severable; and, in the event that any section, subsection, paragraph, subparagraph,
 21 sentence, clause, phrase, or word of this Act is declared invalid or unconstitutional by a court of
 22 competent jurisdiction, such invalidity or unconstitutionality shall not affect the remaining
 23 words, phrases, clauses, sentences, subparagraphs, paragraphs, subsections, or sections of this
 24 Act, since the same would have been enacted without the incorporation in this Act of any such
 25 invalid or unconstitutional word, phrase, clause, sentence, subparagraph, subsection, or section.

26 SECTION 4. BE IT FURTHER ENACTED that this Ordinance shall take effect forty-five
 27 (45) calendar days after its adoption.

Adopted this 18th day of July, 2006.

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF
THE MARYLAND-WASHINGTON REGIONAL
DISTRICT IN PRINCE GEORGE'S COUNTY,
MARYLAND

BY: _____
Thomas E. Dernoga
Chairman

ATTEST:

Redis C. Floyd
Clerk of the Council

KEY:

Underscoring indicates language added to existing law.

[Brackets] indicate language deleted from existing law.

Asterisks *** indicate intervening existing Code provisions that remain unchanged.