

Prince George's County Council Agenda Item Summary

Meeting Date: 11/1/2004
Reference No.: CB-072-2004
Draft No.: 2
Proposer(s): Shapiro
Sponsor(s): Knotts
Item Title: An Ordinance to permit a Commercial Revitalization use within the C-S-C and C-M Zones, and to set standards and requirements for the use

Drafter: Steven M. Gilbert, Principal Counsel
Resource Personnel: Cheryl C. Harrington, Legislative Aide

LEGISLATIVE HISTORY:

Date Presented:	7/13/2004	Executive Action:
Committee Referral:	7/13/2004 - PZED	Effective Date:

Committee Action: 9/29/2004 - HELD
10/26/2004 - FAV(A)

Date Introduced: 11/1/2004
Public Hearing: 11/30/2004 - 10:00 AM

Council Action:
Council Votes:
Pass/Fail:
Remarks:

AFFECTED CODE SECTIONS:
27-461

COMMITTEE REPORTS:

PLANNING, ZONING & ECONOMIC DEVELOPMENT COMMITTEE

Date 10/26/2004

Committee Vote: Favorable, with amendments, 3-0 (In favor: Council Members Harrington, Bland, and Exum)

Council Member Peters informed the committee that a Proposed Draft-2 (DR-2) was prepared to address issues discussed at the September 29 meeting. He indicated that once adopted, the Sector Plan and Sectional Map Amendment would take precedence, and move the proposed revitalization project forward in an effort to remove the blight in this area of Hyattsville.

The amendments in DR-2 are as follows:

On page 4, in Section 27-464.06(a): after the words "Town Center", the words "within a Development District Overlay Zone" were added; "preliminary" was changed to "Adopted" prior to "Sector Plan" and "Endorsed" was added prior to "Sectional Map Amendment." The last line of this section which read "and (iv) proposed to be rezoned (or abutting property proposed to be rezoned) to the M-U-I Zone in a proposed Sectional Map Amendment

accompanying a preliminary Sector or Master Plan” was removed.

On page 4, in Section 27-464.06(b), after the words “Uses permitted shall be those designated as,” the following language was removed: “permitted in the Table of Uses for a Town Center in a proposed Sectional Map Amendment accompanying an applicable preliminary Sector or Master Plan.” In lieu of this, the following language was added: “P”, indicating the use is permitted by right; “SP”, indicating the use is permitted subject to approval of a Special Permit, in accordance with Section 27-239.02; or “X”, indicating the use is prohibited; within the following table of uses.” The Table of Uses for the Proposed Gateway Arts District Sector Plan was then added to DR-2.

On page 29, Sections 27-464.06(b)(2) and (3) were revised to remove all language referring to a “proposed Sectional Map Amendment accompanying a preliminary Sector or Master Plan.” Subsection (3) also provides that this new Section becomes null and void if a Sectional Map Amendment affecting the properties to which this Section applies is subsequently adopted by the District Council, and if said SMA results in the M-U-I Zone upon said properties, with uses and development standards substantially similar to those set forth in this Section.

Larry Taub addressed the committee in support of DR-2 and indicated that if both the Sector Plan and SMA are before the Council in November, there would be no problem with the project moving forward; if not, CB-72-2004 would allow it to move forward.

The Legislative Officer suggested an amendment to the effective date clause in Section 3, page 29, after “forty-five calendar days after its adoption” to state that the Ordinance “will be abrogated and of no further effect upon the adoption of the Gateway Arts District Sector Plan.”

Council Member Harrington requested that the Clerk of the Council schedule the Council worksession on the Gateway Arts District Sector Plan on November 9, 2004 and final approval of the Plan and SMA on November 23, 2004. He noted that this schedule provides the opportunity for the new Council Member for District 2 to participate in the discussions concerning the Plan. Based on the schedule of introduction for CB-72-2004, the public hearing on the legislation would be November 30, 2004, at which time the Council would have taken action on the Sector Plan.

The committee voted favorably on the amendments in Proposed DR-2 as well as the amendment to the effective date clause suggested by the Legislative Officer.

PLANNING, ZONING & ECONOMIC DEVELOPMENT COMMITTEE

Date 9/29/2004

Held in committee.

Staff summarized the purpose of the legislation and informed the committee of referral comments that were received. The bill permits a Commercial Revitalization use within the C-S-C and C-M Zones provided the property is located within the Developed Tier, as shown in the General Plan, and is located in an area designated as a Town Center within a Development District Overlay Zone (D-D-O-Z). The bill allows development under proposed Town Center regulations if such development is recommended in a preliminary master plan or sector plan, a plan which the District Council will not approve until months later. CB-72-2004 also grandfathers the Town Center development, even if the sector plan finally adopted and approved does not recommend or allow the Town Center regulations under which the development was permitted and constructed.

Council Member Peters informed the committee that former Council Member Shapiro requested his assistance in supporting CB-72-2004 in an effort to revitalize the Lustine property located in Hyattsville. Council Member Peters indicated that the City of Hyattsville supports the legislation. Council Member Hendershot commented that the Town of Riverdale Park is also in support of this bill.

The Principal Counsel reviewed the bill and submitted the following comments for the committee’s consideration. The bill raises an issue of legislative delegation, whether the District Council may delegate to Planning Board, or Planning Commission staff, the authority to change zoning regulations under the circumstances stated in the bill. It may be argued that Article 28 of the Annotated Code of Maryland does not permit that. In other

words, it would appear that this bill gives legislative power to agents not authorized by Article 28.

The bill appears intended for application in a particular development district currently in process. As policy, the general rule approved in the bill, even if valid, may not be appropriate generally, for future development districts. Also, approving a property's zoning regulations months before completion of conventional hearing and approval procedures may tend to undermine the master plan, or sector plan, process. Giving the force of law to preliminary plan recommendations which the District Council has not even seen, let alone approved, may not be good legislative policy, even if it is otherwise permitted by State law.

The use and development district for which the bill is intended may be appropriate for this treatment, though its validity under State law is very questionable. Council must consider whether this rule of legislative delegation, even if valid, should apply anywhere, as to any development.

The Zoning Hearing Examiner submitted the following written comments. It is beyond cavil that the District Council exercises all zoning authority within Prince George's County. It clearly may not contract away its zoning power. *Mayor & Council of Rockville v. Rylins Enterprise*, 372 Md. 514 (2004). It follows that the District Council may not give its powers away either.

CB-72-2004 authorizes the Planning Board to approve a Detailed Site Plan and approve a new use, "commercial revitalization", based on its conformance with provisions within a proposed Sectional Map Amendment (SMA), Sector Plan, or Master Plan. This is, arguably, an impermissible delegation of the District Council's zoning powers since the SMA and plans have not been adopted and approved by the District Council. The Zoning Hearing Examiner, therefore, urged that the bill not be approved in its present form.

The Planning Board opposes CB-72-2004 indicating that the bill would have the effect of delegating to the Planning Board the authority of the District Council under Article 28 to amend the zoning map. The rezoning of property is considered to be a legislative act. The Planning Board does not believe that this authority can be delegated in this manner.

The Office of Law reviewed CB-72-2004 and recommended that Section 27-464.06 be amended to include a purpose and definition. Otherwise, the bill was found to be in proper legislative form.

The Office of Audits and Investigations determined there should be no negative fiscal impact on the County as a result of enacting CB-72-2004.

Larry Taub of O'Malley, Miles, Nysten & Gilmore, P.A., representing Eakin Youngentob, spoke in support of the bill. Mr. Taub requested the committee's favorable recommendation on CB-72-2004 which would allow the revitalization project to move forward in the event of a delay in the adoption of the Gateway Arts District Sector Plan.

Mr. Youngentob also addressed the committee indicating that this legislation will provide some level of assurance that the appropriate zoning will be in place within a certain timeframe.

The City of Hyattsville and Dematha Catholic High School submitted letters in support of CB-72-2004.

Chairman Dernoga inquired of Planning staff if there was some concern of delay in the Sector Plan adoption. Joseph Chang of the Community Planning Division responded that the Council worksession on the Plan would not be held until after the new Council Member for District 2 is sworn into office.

The committee agreed that the bill should be held for further discussion and possible amendments to address the concerns raised by the Principal Counsel, Zoning Hearing Examiner, and the Office of Law.

BACKGROUND INFORMATION/FISCAL IMPACT:

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

This bill provides for a new use, "Commercial Revitalization," in the C-S-C and C-M Zones, with the same permitted uses as those in a Town Center.

CODE INDEX TOPICS:

INCLUSION FILES:
