

### **CB-53-2023 – Planning Board Analysis (Attachment 3)**

A bill to prohibit the development under certain circumstances in commercial, industrial, and residential zones utilizing the prior Zoning Ordinance Table of Uses.

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

#### **Background:**

CB-12-2023 was enacted and took effect January 17, 2023. This bill limited the authority in the Zoning Ordinance for development under the prior Ordinance pursuant to Section 27-1900 of projects that could potentially benefit from development rights previously granted through seven listed legislative zoning amendments approved by prior Councils between 2018 and 2021. CB-53-2023 affects five of the seven prior bills included in CB-12-2023, deleting bills that were vacated by court action (CB-18-2019 and CB-19-2019).

The Planning Board voted to oppose four of the five bills discussed in this proposed bill (CB-50-2021, CB-54-2020, CB-88-2018, and CB-89-2018) when they were originally discussed.

The Planning Board voted to oppose CB-12-2023 as drafted because it lacked clarity on the process used to determine the text amendments included in the legislation, did not state which types of development applications would be ineligible to proceed under the regulations of the prior Zoning Ordinance, and had an impact on in-process development proposals.

#### **Policy Analysis:**

This bill amends Sections 27-1703, 27-1704, 27-1902, and 27-1903 of the new Zoning Ordinance to further prohibit development applications that may have otherwise benefitted from prior amendments to the superseded Zoning Ordinance from being able to use the prior Ordinance, continuing the precedent set by CB-12-2023 to treat certain site-specific text amendments differently than others. This bill also attempts to amend the prior Zoning Ordinance Tables of Uses Permitted to repeal four prior footnotes from superseded Sections 27-441, 27-461, and 27-473 (The Planning Board notes several typos on page 17; one such error is an incorrect reference to Section 27-443 is made; the correct location of the prior Industrial table of uses permitted is 27-473) of the prior Zoning Ordinance.

The Planning Board has numerous concerns with CB-53-2023, as drafted.

#### **Legislative Intent**

The WHEREAS clauses on pages 2 through 4 identify the issues with footnote exception uses. The clauses should also explain why the bill seeks to specifically prohibit footnotes 85 of the Commercial use table, 126 and 143 of the Residential use table, and 75 of the Industrial use table. Adding language explaining a reasonable basis for adopting the zoning legislation is highly desirable.

#### **Drafting Complexity**

Rather than inserting the same provision in every paragraph of the Transitional Provisions, which results in significant added complexity, this bill could be greatly simplified by adding a paragraph similar to 27-1903(f) (which was added by CB-12-2023) at the end of both Sections 27-1703 and 27-1704.

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There is nothing wrong or unclear about the language the Council added in CB-12-2023 as Section 27-1903(f) except that it was placed in the wrong part of the new Zoning Ordinance if the Council's intent is to have the restrictions of that Section last longer than April 1, 2024. Simply adding the same language to Sections 27-1703 and 27-1704 will meet the apparent intent of CB-53-2023 without adding the level of confusion that would result from carving exemptions into almost every clause in those Sections. In fact, proposed Subsection 27-1903(e) in this bill serves as a model for a more appropriate editing approach to Sections 27-1703 and 27-1704 than the one used through the rest of CB-53-2023.

### **Inability to Amend Prior Zoning Ordinance**

As with CB-50-2023, this bill attempts to amend three tables of uses permitted that were contained in the prior Zoning Ordinance to delete four footnotes scattered among those tables. It is not possible to amend the prior Zoning Ordinance after April 1, 2022, because the prior Zoning Ordinance has been repealed in its entirety as of that date. A repealed ordinance cannot be amended because it no longer exists.

Any provisions in the prior Zoning Ordinance currently eligible to be used are only made applicable by authority granted by the current Ordinance. Therefore, limitations of the nature enacted by CB-12-2023 and proposed by CB-53-2023 may only be authorized in the transition and grandfathering Sections of the current Zoning Ordinance.

### **Impacted Property:**

CB-53-2023 would impact the same properties affected by the five prior legislative zoning amendments specifically referenced in the bill. Specifically, CB-8-2021 impacted two properties. One property is located on Lanham Severn Road with the tax identification number of 1588755. The second property is located on Central Avenue with tax identification numbers of 2119303 and 2119295. CB-50-2021 affected two properties located at 12205 Annapolis Road, 12105 Annapolis Road, and 5015 Enterprise Road. CB-54-2020 potentially impacted all I-1 zoned properties in the County. Finally, CB-88-2018 and CB-89-2018 impacted the Robin Dale Golf course 15851 McKendree Rd, Brandywine, MD 20613.

Following discussion, the Planning Board voted to take no position on CB-53-2023, and encourage continued conversations.