

INTER-OFFICE MEMORANDUM PRINCE GEORGE'S COUNTY, MARYLAND

TO: Jackie Brown, Director - Planning, Housing, and Economic Development Committee

FROM: Maurene Epps McNeil, Chief Zoning Hearing Examiner

DATE: July 26, 2021

RE: CB-50-2021 and CB-51-2021

CB-50-2021

This bill purports to allow “a mix of residential and commercial/retail uses in the R-E Zone” by right, under specific circumstances.

If the sponsor’s intent is to now permit uses currently prohibited in the R-E Zone the language does so. If the sponsor’s intent is to allow a mix of uses, effectively placing the M-X-T Zone within the R-E Zone, the language may be subject to a challenge that it is illegal spot zoning since it will allow a mix of uses developed in a manner allowed in the M-X-T Zone that will most likely be surrounded by residential uses (except for the proximity on at least some portion of the site to “a mixed-use planned community zone”, which is further addressed below). *See, MBC Realty, LLC v. Mayor of Baltimore*, 192 Md. App. 218, 239-241 (2010) (Although the Court concluded that the reasoning applied by the Supreme Court of Mississippi in *Modak-Truran v. Johnson*, 18 So. 3d 206 (Miss. 2009) was inapplicable its reasoning could be used to support a finding of spot zoning herein).

The bill should be revised on page 3 to clarify subparagraph (a)(3). A review of Section 27-109 (Classes of Zone) reveals that the County does not currently have a “mixed use/planned community zone”. This language should, therefore, be revised to either the M-X-C Zone (Mixed Use Community), the R-P-C Zone (Planned Community), a combination thereof, or not reference an existing zone in the Zoning Ordinance, but rather the Mixed-Use Planned Community as defined in 27-107.01(a)(151.1)(assuming that one is adjacent).

Finally, Footnote 143 (b) notes that the provisions of Section 27-548 shall apply. That Section includes the following Editor's Note:

“By Order of Court dated February 14, 2020, The Circuit Court for Prince George's County, in CAL 19-23357, invalidated the Council's enactment of CB-018-2019 and CB-019-2019. As such, the provisions of this Section are null and void.”

The Legislative Officer should address the intent of this language since its express language seems to void all of Section 27-548. If so, the bill would have to delete reference to that Section and insert in the footnote, or a new section, whatever additional Site Plan considerations the sponsor desires.

CB-51-2021

This legislation will permit certain warehouse/distribution uses in the M-X-T Zone, and certain townhouses in the R-55 Zone. I have no comment on the bill.