

INTER-OFFICE MEMORANDUM PRINCE GEORGE'S COUNTY, MARYLAND

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

FROM: Maurene Epps McNeil,
Chief Zoning Hearing Examiner

DATE: September 6, 2022

RE: CB-77-2022

Thank you for the opportunity to provide the following comment on the above-referenced bill that amends Section 27-1706 of the Zoning Ordinance to allow certain properties to operate in perpetuity under the Zoning Ordinance in effect prior to the effective date of the Countywide Map Amendment (April 1, 2022) under certain circumstances. As drafted, it raises technical and substantive concerns.

The technical amendments are as follows:

- The title of the bill on p. 1, line 2, should delete "General Provisions" in order to align with past practices in legislative drafting (describing the language to be added or amended in the legislation solely).
- The section title on p. 2, lines 2-3, should be underlined as it is new language being added. The last section number assigned in LZIS is 27-1704; accordingly, this Section should be 27-1705.
- The language should clarify that the prior zoning shall apply as well as the prior Zoning Ordinance.

The substantive issues to address are the continued applicability of the prior Zoning Ordinance and whether the new language would satisfy general legal tenets applicable to zoning legislation.

- It is questionable whether the applicants may legally have access to the prior Zoning Ordinance in perpetuity since Section 27-1701 of the new Zoning

Ordinance repealed the prior one in its entirety. The language on p. 2, lines 9-11, should be removed.

- The law may be subject to challenge as being vague, overbroad and lacking a rational basis. Zoning laws are enforceable if there is a rational basis for their enactment – that is, an argument that they support or further the public health, safety, welfare or convenience – and if the basic substantive due process protections are intact – that is, the language is clear and understandable. There is clearly a rational basis for the District Council's enactment of a law that allows property owners to continue to utilize the prior Zoning Ordinance for some period of time because some owners were already in the process of developing pursuant to the prior Zoning Ordinance and because the District Council recognized the possibility that the new Zoning Ordinance would require some fine tuning in its early days of application. Moreover, this grandfathering was included in the version of the Zoning Ordinance that was enacted and effective as of April 1, 2022, so general tenets of statutory construction may support a finding that the District Council did not repeal the prior Zoning Ordinance for these limited purposes. However, as noted above, the language on p. 2, lines 9-11, will allow indefinite use of the prior Zoning Ordinance, and lines 11-14 will allow this despite changes in use, occupancy or ownership. The language on lines 9-13 can even be interpreted as allowing rezoning of the property to a zone no longer allowed. Given the breadth of the new Section, it may also prove difficult to enforce any zoning violations that may occur, and it will prove difficult to interpret the interrelationship between this new language and the language in Sections 27-1703, 1704 and 1900 (as required on p. 2, lines 14-16).
- Any other uses legally constructed and/or operating prior to April 1, 2022, or approved pursuant to Section 27-1704, may not expand or change to a zone or use not permitted in the current Zoning Ordinance, but those that satisfy the strictures of this bill are allowed to utilize the prior Zoning Ordinance. This may violate the uniformity requirement set forth in the Maryland Annotated Code, Land Use Article that requires a zoning law to treat similarly situated properties equally, absent reasonable justification for the disparate treatment (i.e., furtherance of a public policy).

In conclusion, I would suggest that the language on lines 11-14 be revised to not allow rezoning applications to a zone regulated under the prior Zoning Ordinance. Since the bill provides no reasoning for the disparate choice of law provided for similarly situated properties the language on p. 2, lines 9 to the start of line 13 should be deleted. If the District Council chooses to allow the language to remain the bill should be revised to include the rational basis and public policy that support the disparate treatment of properties. Finally, the language on p. 2, lines 14-16 should be deleted and further review of its impact on Sections 27-1703, 1704 and 1900 conducted since much of the express language in these Sections directly conflict with the language in the bill.