

PRINCE GEORGE'S COUNTY COUNCIL

COMMITTEE REPORT

2022 Legislative Session

Reference No.: CB-079-2022

Draft No.: 2

Committee: PLANNING, HOUSING AND ECONOMIC DEVELOPMENT

Date: 9/15/2022

Action: FAV (A)

REPORT:

Committee Vote: Favorable as amended, 4-1 (In favor: Council Members Franklin, Harrison, Hawkins, and Turner. Oppose: Council Member Glaros)

The Planning, Housing and Economic Development (PHED) Committee convened on September 15, 2022, to consider CB-79-2022. The Planning, Housing and Economic Development (PHED) Committee Director summarized the purpose of the legislation and informed the Committee of written comments received on referral. This bill amends the Zoning Ordinance to modify the lot coverage and green area requirements for previously I-1 zoned properties and permit distribution warehouses in the IE Zone. The bill provides that for properties zoned Light Industrial (I-1) prior to April 1, 2022, and which were not developed on that date, the green area, minimum (% of net lot area) shall be 10 percent and there shall be no lot coverage maximum (% of net lot area).

PHED Committee Chair Franklin commented that this legislation is intended to address challenges with industrially zoned properties, more specifically the IE Zone which is not similar to the prior I-1 Zone. Mr. Franklin explained that in the Planning Department's attempt to consolidate industrial zones as part of the zoning ordinance rewrite, properties did not necessarily receive a comparable zone and CB-79-2022 seeks to address those situations.

The Planning Board opposed the legislation and provided explanation of their position in a September 8, 2022, letter to the Council Chairman as follows:

“The Planning Board has serious concerns regarding uniformity and fairness. In the development and approval of the new Zoning Ordinance the Council was very consistent in ensuring that vacant properties that had no prior entitlements or approvals and had no pending applications would use the regulations and procedures of the new Zoning Ordinance.

The new Zoning Ordinance and Subdivision Regulations took effect April 1, 2022. Five months is insufficient time to fully evaluate the effectiveness of the new zones, the new Zoning Ordinance and Subdivision Regulations, and the zones applied to property through the CMA technical rezoning exercise. It is premature to propose a bill that would result in significant changes to the County's zoning as applied to real property.

Policy Analysis:

This bill would amend the lot coverage and green area requirements of a subset of the new Industrial, Employment (IE) Zone, namely to properties that were formerly zoned Light Industrial (I-1) prior to the effective date of the new Zoning Ordinance and the Countywide Sectional Map Amendment (CMA) on April 1, 2022. It will also allow distribution warehouses to be built on properties zoned I-1 prior to April 1, 2022, by right, and without special exception approval otherwise required for distribution warehouses in the IE Zone. Both proposed provisions would only apply to properties that were vacant on April 1, 2022.

As it pertains to the lot coverage and green area requirements, this bill would reduce the minimum green area requirement for properties meeting the criteria from 25 percent of the property to 10 percent and would waive the lot coverage maximum of 45 percent, potentially allowing up to 90 percent of the property to be covered.

The Planning Board has serious concerns regarding uniformity and fairness. In the development and approval of the new Zoning Ordinance the Council was very consistent in ensuring that vacant properties that had no prior entitlements or approvals and had no pending applications would use the regulations and procedures of the new Zoning Ordinance. CB-79-2022 contradicts that consistent Council approach and provides carve-outs for a subset of the new IE Zone that would pertain only to properties that a) used to be in the I-1 Zone, and b) were vacant as of April 1, 2022. This creates a large inequity among owners of IE properties, and greatly erodes zoning principles of uniform application of zoning laws within zoning classifications.

Bill Formatting

Should CB-79-2022 proceed, a new draft should be produced that incorporates Table 27-4203(e)(2), the Intensity and Dimensional Standards of the IE Zone, in its entirety. It is not sufficient to list the proposed exemptions from the IE Zone lot coverage and green area regulations for former I-1 property as a proposed table Note 6 without also showing where the note applies. The Planning Board initially reviewed this bill and thought proposed Note 6 was contained in a different part of the Ordinance due to the lack of key context present in Table (e)(2). If the Planning Board were confused, lay readers interested in CB-79-2022 would also be confused.

As currently drafted proposed Note 6 would seem to be applicable to lot coverage and green area regardless of the proposed use. However, Table (e)(2) makes distinction between the residential uses now permitted in the IE Zone and all other uses permitted in the IE Zone.

It may be appropriate to consider reductions to lot coverage and green area for nonresidential/industrial uses (more on this below), but the Council may wish to retain a larger green area requirement and a smaller maximum lot coverage for proposed residential development in former vacant I-1 properties, for example, in which case proposed Note 6 would be appropriate to add to specific cells in the "Other Uses" column. Should Council wish proposed Note 6 to be generally applicable to lot coverage and green area, then the note should be added to the rows for these regulations in the "Standard (1)" column.

Insufficient Time to Evaluate the Impact of the New Zoning Ordinance and Subdivision Regulations

The new Zoning Ordinance and Subdivision Regulations took effect April 1, 2022. Five months is insufficient time to fully evaluate the effectiveness of the new zones, the new Zoning Ordinance and Subdivision Regulations, and the zones applied to property through the CMA

technical rezoning exercise. It is premature to propose a bill that would result in significant changes to the County's zoning as applied to real property.

Of particular note, the IE Zone was the topic of much discussion in 2021 leading to the approval of CB-98-2021 on November 29, 2021. During these discussions, the Planning Board staff made a commitment to the Council to revisit the table of uses permitted in the IE Zone. As part of this more comprehensive review of the IE Zone, the Planning Department is willing and able to review the "bulk regulations" of the IE Zone including lot coverage and green area to determine if changes should be proposed for Council's review and consideration in a future substantive bill – it may well be that the current green area minimum and lot coverage maximum are not quite appropriate or yet correctly calibrated for industrial, commercial, and other nonresidential uses in the IE Zone. This approach would allow for a complete consideration of multiple factors and would be preferable to a piecemeal legislative solution oriented to a subset of the IE Zone.

Impacted Property

This bill will affect all properties in the County which were a) formerly zoned I-1, and b) vacant, as of April 1, 2022. There are 1,234 such properties according to the Planning Department's Geographic Information Systems analysis using a baseline improvement value not to exceed \$15,000 as a definition for "undeveloped" property.

The Chief Zoning Hearing Examiner submitted a September 9, 2022, memorandum with the following comments:

Thank you for the opportunity to review the above referenced legislation. As drafted, it raises the following concerns:

(1) There are currently no specific special exception requirements for a distribution warehouse. It would, therefore, make more sense to simply note in the use table that the use is permitted under these circumstances.

(2) If the sponsor does not choose to place the language in the use table, Section 27-5402 should be amended to mention the zone, or it would apply to a distribution warehouse permitted by Special Exception in any zone.

(3) Other properties placed in the IE Zone on April 1, 2022, are allowed a maximum of 45% in lot coverage, and a minimum of 25% in green area. The bill should provide some basis for permitting the use by right simply because it had been in the I-1 Zone prior to April 1, 2022, allowing a reduction in green area, and waiving the maximum lot cover percentage, in order to avoid a challenge that there is no rational basis for the law or that similarly zoned properties are being treated dissimilarly with no rational justification for such treatment.

(4) Finally, on page 2, lines 10 and 21, delete "and" after "April 1, 2022."

After public testimony, the Committee discussed agency comments and recommended technical amendments. Maurene McNeil, Chief ZHE, suggested that the legislative history include reference to individuals' testimony in support of this bill due to the differences between the prior I-1 Zone and the new IE Zone including comments that their properties were not given the closest zone to the prior industrial zone.

On a motion by PHED Chair Franklin and second by Council Vice Chair Harrison, the Committee voted favorable, 4-1, on CB-79-2022 with the technical amendments recommended by the Planning Board and the ZHE.