PRINCE GEORGE'S COUNTY COUNCIL

Thomas E. Dernoga
Chair
District 1

"Effective. Responsive. Committed."

January 9, 2023

Angela Alsobrooks
County Executive
1301 McCormick Drive
Largo, Maryland 20774

Re: January 6, 2023, Letter Regarding Zoning Repeal Bills

Dear County Executive Alsobrooks,

Thank you for your letter dated January 6, 2023, regarding zoning repeal bills. I and Councilmember Jolene Ivey (Chair, Planning, Housing & Economic Development Committee ("PHED")) believe that the County Council and County Executive are generally in alignment on supporting critical economic development projects, especially those in Plan 2035 Centers and revitalization areas. Shortly before receiving your letter, we had a very productive meeting with Tara Jackson, Angie Rogers, and Jared McCarthy regarding these issues.

In terms of the specific bills, CB-13-2023, CB-14-2023, CB-15-2023, CB-16-2023 and CB-18-2023 relate to last-minute revisions to the recently enacted Zoning Ordinance. CB-12-2023 and CB-17-2023 involve repeal of site-specific text amendment bills adopted under the prior Zoning Ordinance.

New Zoning Ordinance Bills

The new Zoning Ordinance is a critical tool prescribed by Plan 2035 that looks at years of effort by hundreds of people at great expense. It became effective on April 1, 2022, and provides generous grandfather provisions. We were aware that some members of the development community believed that the Matrix for implementing the Countywide Map Amendment ("CMA") placed their properties in an improper zone, and that they advocated for relief. At the same time, many civic and environmental activists also had serious dissatisfaction about key provisions in the new Zoning Ordinance. In spite of all of the self-serving platitudes about the success of the new Zoning Ordinance, the current state of affairs highlights that the product is imperfect and needs to be rectified.

The problem is that a fair and just solution is not to have the development industry ram broad and ill-considered amendments through a pliant, lame-duck Council on its last day over the objections of the Maryland-National Capital Park and Planning Commission ("MNCPPC") and civic and environmental activists. That is what occurred with CB-69-2022, CB-77-2022, CB-78-2022, CB-79-2022 and CB-97-2022.

On July 21, 2022, MNCPPC issued its letter of Opposition to CB-69-2022. On January 6, 2023, MNCPPC issued its letter of Support for CB-13-2023. This letter states:

> The legislation raised substantial policy implications and amounted to de facto changes in zoning that were not contemplated in the CMA and did not result from comprehensive or piecemeal rezoning procedures. These de facto rezonings occurred outside the normal procedures for rezoning available via the procedures of a Sectional Map Amendment, Zoning Map Amendment, or Planned Development (PD) Zoning Map Amendment.

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CB-13-2023 allows properties to develop as recommended by the CMA, or to use the transitional provisions to develop under their prior zone, if applicable.

On September 8, 2022, MNCPPC issued its letter of Opposition to CB-77-2022, CB-78-2022 and CB-79-2022. On January 6, 2023, MNCPPC issued its letter of Support for CB-14-2023, CB-15-2023 and CB-16-2023. This letter states, among other things:

1. That CB-77-2022 "placed the decision of whether to choose the prior Zoning Ordinance in the development or redevelopment of such properties in the hands of applicants. In so doing, it superseded the ability of the local government – including the Council – to require conformance to the new zoning regulations and procedures that resulted from nine years of collaborative effort. In effect, CB-77-2022 created a situation in which two Zoning Ordinances are in effect for Prince George's County in perpetuity."

2. That CB-78-2022 affects a very small number of properties and that the CMA "did not so much result in split-zoned property as it resulted in different zones on different record lots owned by the same party."

3. That CB-79-2022 reduces "reduced the minimum green area requirement for properties meeting the criteria from 25 percent of the property to 10 percent and waived the lot coverage maximum of 45 percent, potentially allowing up to 90 percent of the property to be covered. . . . This bill created a considerable inequity among owners of IE properties and significantly eroded zoning principles of uniform application of zoning laws within zoning classifications.

On September 22, 2022, MNCPPC issued its letter of Opposition to CB-97-2022. On January 6, 2023, MNCPPC issued its letter of Support for CB-18-2023. This letter states CB-97-2022 "undermined critical goals of the County's Zoning Rewrite project and the new Zoning Ordinance. The bill carved out a class of development and exempted that development from the regulations normally applicable in the LTO zone. These are the type of special carve-outs that rendered the prior zoning ordinance challenging to administer." CB-97-2022 allows an applicant to make its own zoning standards and to avoid the neighborhood compatibility provisions of the new Ordinance that are critical for community buy-in.

We agree with you that there are key development projects that have been disadvantaged by the new Zoning Ordinance and that remedial action is necessary. We also agree that this remedial action should not wait for a comprehensive bill at the end of the year. To this end, Angie Rogers is taking the lead on organizing a work group comprised of County Administration officials, MNCPPC staff and County Council representatives to develop workable solutions in the near future.

Prior Zoning Ordinance Bills

CB-12-2023 and CB-17-2023 involve repeal of site-specific text amendment bills. First, the underlying prior bills were advanced by property owners and their zoning attorneys with the full knowledge that they were at risk due to conflict with Maryland zoning law. For most of these bills, MNCPPC and the Office of Law, along with Council members and the public, objected that these bills were in violation of law.

Last January, in *Howard County, Maryland v. Russell A. McClain, et al.*, the Court of Special Appeals ruled that a site-specific text amendment enacted solely to benefit one property owner, that had the practical effect of doing just that, was an illegal special law. In June, the Court of Special Appeals ruled that CB-17-

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2019 "unlawfully violates the statutorily prescribed uniformity requirement, and therefore is illegal and unenforceable." *In re Concerned Citizens of Prince George's County District 4.* In December, the Circuit Court for Prince George's County ruled that CB-88-2018 and CB-89-2018 were invalid because the "the actions by the District Council were tantamount to direct and intentional site-specific zoning maneuvers." *Petition Of Accokeek, Mattawoman Piscataway Creeks Communities Council, et al. v. County Council Of Prince George's County, Maryland, Sitting As The District Council.*

Naturally, the development community wants stability; however, the public also expects stability. Stealth rezoning through vague amendments to the Zoning Ordinance are unfair and create instability for communities. Five of the bills on the list have already been rejected by the Courts and CB-12-2023 and CB-17-2023 serve to clean up the County Code.

Second, CB-12-2023 recognizes that many of the projects that have taken advantage of the loose text amendment process may have proceeded to a point that it would be unfair to stop them. For this reason, CB-12-2023 has a generous grandfather provision that will enable such projects to move forward. And the Council will be receiving public comments in the PHED Committee and at the Public Hearing so that we may consider deleting unnecessary provisions from CB-12-2023. We have already identified a number of deletions and will likely identify more.

As you have requested, we have taken your well-stated concerns into consideration. As stated, we expect CB-12-2023 to be scaled back. With regard to the bills concerning the new Zoning Ordinance, we have been in discussion with MNCPPC regarding solutions that may be implemented quickly to address unintended impacts on critical economic development projects. Based on our meeting Friday, Angie Rogers and other members of your team will be directly involved in addressing significant concerns.

Speaking for Councilmember Ivey and myself, we look forward to resolving all matters of concern expeditiously.

Sincerely,

Thomas E. Dernoga, Chair

CC: County Council Members
Tara H. Jackson, Chief Administrative Officer
Joy Russell, Chief of Staff
Angie Rodgers, Deputy Chief Administrative Officer for Economic Development
John Erzen, Deputy Chief of Staff
Jennifer Jenkins, Council Administrator
Peter A. Shapiro, Chair, MNCPPC

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