

CB-13-2023 – Planning Board Analysis (Attachment 2)

This bill amends the current Zoning Ordinance to repeal the text that allows certain properties that were in the Mixed Use -Transportation Oriented (M-X-T) Zone prior to the effective date of the new Zoning Ordinance to elect to conform to the requirements of the Commercial General Office (CGO) Zone.

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

Policy Analysis:

The Planning Board voted to oppose CB-69-2022, which added Section 27-1705 to the transitional and grandfathering provisions of the current Zoning Ordinance to permit former M-X-T zoned properties outside a Transit-Oriented/Activity Center or Neighborhood Conservation Overlay Zone to develop as if it had been assigned the CGO Zone instead of whatever zone was assigned to such property by the Countywide Map Amendment (CMA).

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.

The new Zoning Ordinance and Official Zoning Map took effect on April 1, 2022. The Planning Board believes that more than three months is needed to fully evaluate the effectiveness of the new zones, the new Zoning Ordinance, and the zones applied to property through the CMA technical rezoning exercise.

The Planning Board believed it was premature to propose a bill of such significance and broad impact as CB-69-2022, particularly given the generous grandfathering and transitional provisions of the new Zoning Ordinance and Subdivision Regulations which were the result of much collaboration among the Council, development community, and other key stakeholders – including Section 27-1900, which allows all projects to develop as if they had their former zone for a period of two years, until April 1, 2024, and to use the former zone for subsequent approvals in the same entitlement chain.

It should be noted that the County Council spent a long time developing the new Zoning Ordinance policies and debating a potential Legacy M-X-T (LMXT) Zone and that Council concluded that the M-X-T Zone had outlived its utility, had failed to live up to its initial intent and purposes, and such LMXT Zone was unnecessary.

It is also important to remind County stakeholders, including the Council, that the debate informing the creation and approval of the Council's Approved Guide to New Zones, which was used as the framework for all CMA technical rezoning actions, was quite explicit in recognizing there was no one single zone that replaced the M-X-T or M-U-I Zones in the new Zoning Ordinance – meaning there was no one single new zone that was “most similar” to the former M-X-T or M-U-I Zones. Part 2 of the Council's Approved Guide was created and explicitly intended to address this recognition and resulted in seven potential zoning outcomes for former M-X-T or M-U-I properties located outside designated centers.

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.

Impacted Property:

The legislation will affect all former M-X-T Zone properties that were not reclassified to a Transit-Oriented/Activity Center base zone or the Neighborhood Conservation Overlay Zone by the Countywide Map Amendment.

Following discussion, the Planning Board voted to support CB-13-2023.