

# PRINCE GEORGE'S COUNTY COUNCIL

## COMMITTEE REPORT

2023 Legislative Session

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**Reference No.:** CB-017-2023

**Draft No.:** 1

**Committee:** PLANNING, HOUSING AND ECONOMIC DEVELOPMENT

**Date:** 1/9/2023

**Action:** FAV

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### REPORT:

Committee Vote: Favorable, 5-0 (In favor: Council Members Ivey, Blegay, Dernoga, Olson, and Oriadha)

The Planning, Housing and Economic Development (PHED) Committee convened on January 9, 2023, to consider CB-17-2023. The PHED Committee Director summarized the purpose of the legislation and informed the Committee of written comments received on referral. This bill will limit authority for development of certain Townhouse and One-family attached dwelling uses in the R-A (Residential Agricultural) Zone of the County using the prior Ordinance, more specifically, by way of a prior, now-superseded zoning law known as CB-17-2019 (Chapter 29, 2019 Laws of Prince George's County, Maryland).

The Planning Board voted to oppose the bill as drafted with amendments as explained in a January 6, 2023, letter to the Council Chairman as follows:

#### Policy Analysis:

This bill amends Section 27-1903 to prohibit the development of townhouses and one-family attached dwelling units as principal uses in the Residential Agricultural (R-A) under the prior Zoning Ordinance regulations unless an application has already been “filed and accepted and or/constructed.” Future development applications filed under CB-17-2019 (DR-4) would be deemed ineligible for processing under the prior ordinance.

The Planning Board voted to oppose CB-17-2019 (DR-3) because the development of townhouses is not in keeping with the purposes of the former R-A Zone. The purposes of the R-A Zone were to provide large lot one-family detached dwellings while encouraging the retention of agriculture as a primary land use, and to encourage the preservation of trees and open spaces. Permitting townhouses in this zone is not appropriate. However, the Planning Board opposes this bill as drafted because it does not, with clarity, state which types of development applications would be ineligible to proceed under CB-17-2023. In addition, the language within this bill could have been added to CB-12-2023 (DR-2) since they amend the same sections of the code.

On December 12, 2022, the District Council adopted CR-4-2023, which suspended CB-17-2019 (DR-4) until the action takes place on CB-17-2023. CB-17-2023 would constitute the permanent repeal of CB-17-2019 (DR-4).

## 2022 Approved Bowie-Mitchellville and Vicinity Master Plan Concerns:

The District Council should note that the 2022 Approved Bowie-Mitchellville and Vicinity Master Plan recommends that the properties located at 3600, 3702, and 3900 Church Road - Freeway Airport – be redeveloped with medium- density, attached, or detached single-family dwelling units. In addition, Strategy CZ 3.3 in the Zoning Recommendations section of the approved master plan states:

CZ 3.3: Reclassify the properties located at 3600, 3702, and 3900 Church Road (Tax ID 0801258, 0801357, 0801290, 0801340, 0801241, 0801274, 0801233, 0801282, and 0728741) known as Freeway Airport to the RSF-A (Residential, Single-Family-Attached) Zone. (See Table 15. CZ 3.3 Zoning Recommendations—Freeway Airport with Properties Identified and Map F-11. CZ 3.3 Zoning Recommendations.)

This Master Plan language reflected the Council's policy decision to allow townhouses via CB-17-2019. If the District Council intends to prohibit townhouse and one-family attached dwelling units on this property, the Council may consider initiating a minor amendment to the 2022 master plan to revise these recommendations before approving the ongoing sectional map amendment for Bowie-Mitchellville and Vicinity.

The Planning Board notes the adopted master plan also contains the following language for Strategy LU 3.1:

LU 3.1: Should Freeway Airport be unable to redevelop pursuant to Preliminary Plan of Subdivision 4-20006, and should it cease operation as an airport, the properties located at 3600, 3702, and 3900 Church Road (Tax ID 0801258, 0801357, 0801290, 0801340, 0801241, 0801274, 0801233, 0801282, and 0728741) should be redeveloped with single-family housing appropriate for its Agricultural-Residential (AR) zoning at densities not to exceed 0.5 dwelling units per acre. Uses other than aviation, single-family housing, rural, or agricultural uses do not conform with this master plan. Map 16. Future Land Use designates this property in the Rural and Agricultural land use category.

Should the District Council not amend the master plan, it may choose to retain the subject property in its current AR Zone through the current SMA process or rezone back to AR in a future SMA. However, not amending the master plan would create an inconsistency between the applicable master plan recommendations and its zoning.

### Technical Amendments:

Several technical amendments are needed to reflect conventions and correct terminology in the new Zoning Ordinance:

On page 1, line 5, under the purpose clause, add the word "principal" in front of the word "uses" and remove capitalization of the dwelling types. The clause would read "townhouse and one-family attached dwelling principal uses."

On page 4, line 8, add the clause "Development Pursuant to Prior Ordinance" after Section 27-1900.

On page 4, line 9, the title for Section 27-1903 should be amended to read: "Sec.27-1903.

Applicability.” That is the correct title for that Section.

The Chief Zoning Hearing Examiner submitted a January 3, 2023, memorandum to the PHED Committee Director with the following suggested minor revisions:

- (1) Delete “such” on page 2, line 29, since none of the “potential unintended consequences” were discussed in the preceding language.
- (2) On page 4, line 9, revise the language to match that in the Code (“Sec. 27-1903. Applicability”).
- (3) On page 4, lines 25-26 were amended upon the enactment of CB-68-2022. The language now states: “the development project shall be reviewed in accordance with the prior Zoning Ordinance and Subdivision Regulations.” (This change should also be made to CB-12-2023)
- (4) On page 4, line 27, delete the asterisks and insert existing paragraph (e),
- (5) On page 4, line 28, delete “and/or constructed” since anything constructed under the prior Ordinance would not be retroactively affected by this bill. Instead, an actual date such as “prior to the effective date of this bill”, should be inserted after “filed and accepted”.
- (6) On page 4, lines 30-31, it would be more transparent and easily understood if the bill also cited the actual section of the prior Ordinance that is being superseded. The language could be revised to add “(Section 27-441 (b)(7), Footnote 134)” after “Maryland, “ on p. 5 line 1.
- (7) Whether the actual section is inserted or not as suggested above, delete “is” and insert “are” on page 5, line 1, prior to “ineligible for processing”

The City of Bowie submitted a January 4, 2023, letter to PHED Committee Chair Ivey recommending the Committee’s favorable vote with amendments on CB-17-2023. The Town of Riverdale Park submitted a December 29, 2022, letter to Council Chair Dernoga in support of CB-17-2023.

Written testimony in support of CB-17-2023 was received via the eComment portal from the following individuals: Jill Oliver, Tawana Adams, Janet Gingold, Jon Robinson, Linda Watts, Dan Smith, David McClain, and Michael Bridges.

Angie Rodgers, Deputy Chief Administrative Officer for Economic Development, and Jared McCarthy, Deputy Chief Administrative Officer for Government Operations, addressed the Committee explaining the County Executive’s position in opposition to CB-17-2023 as also expressed in the Executive’s January 6, 2023, letter to Council Chairman Dernoga.

During testimony on the legislation, Council Member Dernoga requested that the Council’s Zoning and Legislative Counsel address the premise of “Impermissible Change of Mind” in Maryland caselaw. Counsel explained that Maryland courts do not recognize property interests in a proposal to develop a property in which no vested rights have been established. Counsel continued that “vested rights” are generally understood to mean direct lawful development activity to act in accordance with the authority to develop, or “foundation footings in the ground.” This concept of “vested rights” to develop must also be balanced with constitutional prerogative conferred upon legislative bodies to enact laws appropriate and reasonable during the time that they are considered, which necessarily means that “one legislative body’s enactment may not permanently bind a future legislative body from revisiting it.” As a result, Counsel concluded that the proposed enactment should not be seen as subject to any “impermissible change of mind” restriction within Maryland case law. Lastly, Counsel concluded that the cases in Maryland addressing “impermissible change of mind” revolve largely around individual

applications for zoning entitlements, especially individual zoning map amendment cases. Here, the proposed Council action is exclusively legislative in nature, which means that the “impermissible change of mind” objection is likely inapplicable to this proposed legislative action to amend the Zoning Ordinance of the Prince George’s County Code.

After discussion, the Committee voted favorable on the legislation as drafted.