

INTER-OFFICE MEMORANDUM
PRINCE GEORGE'S COUNTY, MARYLAND
ZONING HEARING EXAMINER OFFICE

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

FROM: Maurene Epps McNeil
Chief Zoning Hearing Examiner

DATE: January 11, 2023

RE: CB-2-2023

This legislation will amend Sections 27-3407 and 3501 of the Zoning Ordinance to delete several provisions concerning the advertisement and review of legislative amendments, to add additional requirements for the amendment of the Zoning Ordinance, and to require the Planning Board to initiate zoning legislative amendments and hold hearings thereon, under certain circumstances. The draft raises the following concerns.

(1) Section 27-3407 is being amended to include notice provisions for the public hearing on proposed legislative amendments to be held by the Planning Board. All other public hearing procedures are included in a table under Section 27-3407 (b)(1). This table should be amended to include the notice for legislative amendment hearings by the Planning Board, as well.

(2) Section 27-3407 requires the Planning Board to schedule a public hearing within 30 calendar days but there is no triggering language for the notice, such as "upon release of the Technical Staff Report". Some triggering language should be added on page 2, line 27.

(3) Section 27-3501 is being revised by removing the language on pages 3 and 4, lines 10-28 and 1-20, respectively, but this language is needed and does not appear to be located elsewhere in the recently revised Zoning Ordinance. I suggest that the bill be revised to reinsert the language concerning its rules, whether non-substantive changes to the legislation by the Council will require re-advertising, the notice of public hearing provisions for the Council hearing on the legislative amendment, adoption requirements, and reconsideration requirements for legislative amendments.

(4) On page 5, lines 1-4 note that a legislative amendment "shall only be initiated" in one of two ways, both requiring participation by the Planning Board. The bill does not define "initiation" but use of the mandatory "shall only" would appear to preclude the

District Council from initiating a bill sua sponte. On page 5, lines 19-23 require the Planning Board to utilize the standards that the District Council must consider in adopting the legislative amendment and forward its recommendation on the legislation. Finally, if the District Council considers making any revisions to the legislative amendment after its public hearing it "shall" transmit the changes to the Planning Board for review and comment prior to making a final decision. These provisions could be read to grant unintended legislative authority to the Planning Board. While the Land Use Article clearly allows the Council to adopt procedures that allow review and recommendations from the Planning Board and others it may not delegate all of its authority since the General Assembly clearly intends that the Council be the repository of zoning authority in the County. Accordingly, the law should be revised to make it clear that **the Council may initiate text amendments but may also review recommendations for legislation or proposed legislation initiated by the Planning Board, or forwarded to the Planning Board by the Council.** If the Planning Board chooses to forward recommended legislation or if it reviews legislation forwarded by the Council it would then follow the process set forth in the bill, and it would apply the standards on page 6 of the bill.

(5) On page 6, lines 8-12 discuss the types of legislative amendments that can be enacted by the District Council, and the language almost mirrors that used in Section 22-201 of the Land Use Article. However, Section 22-104 of that Article provides broader language concerning what may be regulated via legislative amendment:

§ 22-104. Authority to adopt and amend zoning law.

(a) The Montgomery County district council or the Prince George's County district council, in accordance

with the requirements of this division as to the portion of the regional district located in the respective county, may:

- (1) by local law adopt and amend the text of the zoning law for that county; and
- (2) by local law adopt and amend any map accompanying the text of the zoning law for that county.

(b) The local law may regulate:

(1)

(i) the location, height, bulk, and size of each building or other structure, and any unit in the building or structure;

(ii) building lines;

(iii) minimum frontage;

(iv) the depth and area of each lot; and

(v) the percentage of a lot that may be occupied;

(2) the size of lots, yards, courts, and other open spaces;

(3) the construction of temporary stands and structures;

(4) the density and distribution of population;

(5) the location and uses of buildings and structures and any units in those buildings and structures for:

(i) trade;

(ii) industry;

(iii) residential purposes;

(iv) recreation;

- (v) agriculture;
- (vi) public activities; and
- (vii) other purposes; and
- (6) the uses of land, including surface, subsurface, and air rights for the land, for building or for any of the purposes described in item (5) of this subsection.
- (c) The exercise of authority by a district council under this section is limited by §§ 17-402 and 25-211 of this article.

Since a goal of the zoning rewrite was to shorten the number of pages in the ordinance I would not recommend adding the language in Section 22-104 but would suggest that the language be amended on page 6, line 10 by adding “or for any purpose permitted in the Maryland Land Use Article” after “and air rights”.

(6) On page 6, lines 11-12 preclude creating different standards for a subset of properties within a zone. There is caselaw that might allow what appears to be non-uniformity between uses. Including this language might have prevented enactment of the requirement that smaller churches in structures formerly used as a residence be approved via special exception while those on larger lots could operate by right – legislation that was very important to past Councilmembers and their constituents. I believe this sentence should be removed and further researched to avoid any unintended consequences.

(7) On page 6, lines 16-17 and 21-22 suggest that the District Council should consider whether the legislative amendment is consistent with the goals and policies of various approved Plans or is consistent with the strategies and priority recommendations of the County’s Climate Action Plan. “Consistency” is not defined in the Zoning Ordinance. It is however defined in the Maryland Land Use Article in Title 1, Subtitle 3. This Title applies to charter counties and notes that when the term is used in a statute concerning special exceptions, comprehensive plan review, and water and sewer plan review “the term shall mean an action taken that will further, and not be contrary to” the policies, timing of development, timing of rezoning, development patterns, land uses, and densities or intensities in the comprehensive plan. The District Council is not required to use this strict standard, and since plans become outdated, or other factors may cause the Council to desire a slight variance from the plans, I urge the deletion of “is consistent with”, and the insertion of “or does not substantially impair” on lines 16, and 21. If the sponsors choose not to delete “consistent with” the Land Use provision will be applied in the review of special exceptions. Again, that would appear to be a very strict standard, especially since the 2022 Supplement to the Zoning Ordinance no longer allows an applicant to request a variance from any specific standards for special exceptions found in the Use Tables. Council legislation must be consistent with other related laws, so there is no need to remove the term on p. 6, line 23.

(8) On page 6, lines 24-26 include a standard that would usually only come into play at the time of special exception or site plan review. In lieu of this finding the Council

could insert the finding applicable to all legislation – that is, that it be “in furtherance of the public health, welfare and safety.

(9) The Council is not required to apply the legislative amendment decision standards when it is considering enactment since it is exercising its legislative authority and is presumed to always have considered the public health, safety and welfare when doing so. However, if these procedures remain within the bill the Council will be required to follow them, yet the bill is silent as to how the Council will demonstrate compliance. Will the bill at final reading include a whereas clause that includes the decision standards followed? Or, will the bill not be enacted until some time after the third reading in order that comments from the public be taken into consideration, or to ensure that the Planning Board’s comments on any amendment are taken into consideration? Accordingly, I would suggest that the language on page 6 be amended to include the process that the Council will follow to show that it has applied the criteria, if it is the sponsors’ intent to apply these decision standards to the Council.