

PRINCE GEORGE'S COUNTY COUNCIL

COMMITTEE REPORT

2023 Legislative Session

Reference No.: CB-003-2023

Draft No.: 2

Committee: PLANNING, HOUSING AND ECONOMIC DEVELOPMENT

Date: 1/19/2023

Action: FAV (A)

REPORT:

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

The Planning, Housing and Economic Development (PHED) Committee convened on January 19, 2023, to consider CB-3-2023. The PHED Committee Director summarized the purpose of the legislation and informed the Committee of written comments received on referral. As presented on December 12, 2022, Draft-1 of the bill amends the Zoning Ordinance approval findings for detailed site plan and special exception applications to require findings based on the property's applicable comprehensive plan, functional master plan or, in the absence of such plan, the current General Plan for the County.

The Planning Board voted to oppose the bill unless amended as explained in a January 12, 2023, letter to the Council Chairman:

“The Planning Board supports the general purpose of CB-3-2023 to make comprehensive plans an important consideration in the development and redevelopment of the County, there are numerous challenges involved in applying comprehensive plan recommendations to a detailed site plan (DSP), because DSPs represent a very late stage in the development process, and because DSPs regulate technical site design elements that are far removed from the more general recommendations found in a comprehensive plan.

The term “substantial conformance” is not defined in the bill, and we do not know what this means. The Planning Board, Planning Department, and Legal Department are all very familiar with the conformance requirement of the prior and current Subdivision Regulations and can potentially work with this general level and expectation if applied to detailed site plans and/or special exceptions, but the phrase “substantial conformance” implies a higher bar. What level that bar sets is unknown.

A detailed site plan is a development procedure that occurs very late in the land development process and is intended for the approval of the location and design of buildings and site features (e.g., parking, loading, access, open spaces, signage, and landscaping). Comprehensive Plans, by contrast, focus on big picture issues that are already determined before a detailed site plan or special exception application is submitted and reviewed, such as land uses, zoning recommendations, and functional area considerations including environmental impacts (most of

which are addressed through other parts of the County Code), transportation facilities, public facilities, and economic development recommendations oriented to the entirety of a plan area rather than specific sites.

Because of these facts and the point in time when a detailed site plan may be required, Planning staff is not sure how to evaluate whether a detailed site plan conforms to the high-level recommendations of a Comprehensive Plan because most of these recommendations are moot to a property-specific, physical development-oriented development application wherein the impactful decisions (e.g. zoning and permissible land use) have already been made.

The Planning Board notes that the key purpose of most Comprehensive Plans is to recommend appropriate zoning for specific properties or groups of properties. The best way for the Council to ensure that detailed site plans conform to the Comprehensive Plan is to always implement the zoning recommended in the Council's Comprehensive Plans, and to avoid text amendments that allow development to occur in ways that contradict the applied zone. This approach will be far more effective in advancing the goals of Comprehensive Plans than CB-3-2023. When the zoning is correct, and the standards of the zone remain in force, a detailed site plan will nearly always conform the Comprehensive Plan.”

The Chief Zoning Hearing Examiner (ZHE) submitted a January 10, 2023, memorandum to the PHED Committee Director with the following comments:

This legislation will amend Section 27-3604 of the Zoning Ordinance to delete the requirement that a Special Exception Use not “substantially impair the integrity of any validly approved” Area Master Plan, Sector Plan, Functional Master Plan, or General Plan (where applicable) and insert the requirement that the Special Exception Use be “in substantial conformance with the relevant goals, policies, and strategies of the applicable” Master, Sector, Functional, or General Plan .

“Conformance” is not defined in the Zoning Ordinance. Words that are not defined “shall be construed according to the common and generally recognized usage of the language” unless it is a technical term or other that has “acquired a peculiar and appropriate meaning in the law.” “Conformance” is defined in Dictionary.com as “in conformity with” and “conformity” is defined as “similarity in form or type; agreement in character.” Thus, the new language will require the proposed Special Exception to align with the relevant plan whereas the current language only proscribes a use that would substantially impair such plan. I believe the new language would prevent the District Council from approving a Special Exception Use (one that it has already ordained in the Use Tables to be permitted in a particular zone under certain circumstances) even when the applicable Plan is outdated and no longer reflects the Council’s/County’s goals for an area.

More importantly, caselaw recognizes a distinction between planning and zoning, with the former being “a broader term [that] indicates the development of a community, ... with respect to streets, parks, civic beauty, industrial and commercial undertaking, residential development and such other matter affecting the public convenience and welfare as may be properly embraced within the police power” while zoning “is essentially limited to the establishment of land use districts through the imposition of zoning classifications.” (Baltimore County v. Wesley Chapel Bluemount Ass’n, 110 Md. App. 585, 605 (1996) In short, planning involves setting future goals at a point static in time that furthers the police powers while zoning must consider, in real time,

whether a particular zone or use should be granted. This new language ties the two closer, ignoring the fact that they are not synonymous.

The development will also impose a new requirement in Section 27-3605 of the Zoning Ordinance that requires the reviewing body find that a Detailed Site Plan “is in substantial conformance with the relevant goals, policies, and strategies of the applicable area master plan, or sector plan, applicable functional master plans, and the Growth Policy Map as it relates to centers as approved in the General Plan in effect on April 1, 2022; or, in the absence of an area master plan or sector plan, the current approved General Plan for the County.” Again, I would urge that the new standard for review of a Detailed Site Plan on page 3, lines 19-23 be removed for the reasons noted above (concerning Special Exceptions). I also believe the language is unnecessary since Section 27-2500 of the Zoning Ordinance defines “Detailed Site Plan” as “[a] development application for review of proposed project elements such as building design, site layout, and landscaping”. Accordingly, a decision has already been made that the uses are allowed and the Master Plans and the Growth Policy Map in the 2014 General Plan would have already been reviewed. If the sponsors determine that the language should remain, I recommend the following technical changes to this Section:

1. The plan terms on lines 20-21 should be capitalized in order to be uniform with the those used in Section 27-3604.
2. On page 3, line 19 should add “proposed “prior to “development” for consistency with the remainder of Section (e).
3. On page 3, line 22 should delete “as approved in the General Plan in effect on April 1, 2022” and insert “as approved in the 2014 General Plan (“Plan Prince George’s 2035”).
4. On page 3, line 23 simply reference the General Plan and delete “the current approved” and “for the County”.

Derick Berlage, M-NCPPC Deputy Planning Director, addressed the Committee requesting an amendment to change “in substantial conformance with” to “consistent with” and to clarify that a master plan cannot override the Zoning Ordinance. Council Chair Dernoga agreed to consider alternative language for inclusion in the final draft for introduction.

Angie Rodgers, Deputy Chief Administrative Officer for Economic Development, addressed the Committee indicating that the Administration has concerns with the “substantial conformance” language and appreciates the additional suggestions to modify in a revised draft. Joseph Ruddy, Deputy County Attorney, stated that the CB-3-2023 is in proper legislative form with no legal impediments to its enactment.

Letters in opposition to the legislation were submitted by the Maryland Building Industry Association, Matthew Tedesco, Esq., and Nathaniel Forman, Esq, Attorney for Land Development Investors II, LLC. Joe Meinert, AICP, City of Bowie Director of Planning and Sustainability, submitted electronic mail communication to the PHED Committee Director stating the following comments approved by the Bowie City Council at their January 3, 2023, meeting:

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SUPPORT, with the recommendation that the decision criterion not apply in instances where the same use was already reviewed and the Master Plan conformance finding made during review of a Preliminary Plan of subdivision.

Dan Smith, resident of Cheverly, testified in support of CB-3-2023. Edward Gibbs, Esq., Justin Korenblatt, Esq., Nathaniel Forman, Esq., and Robert Antonetti Esq. provided testimony expressing their concerns with provisions of the bill. Based on Mr. Forman's testimony, Council Chair Dernoga requested that the legislative history reflect that a change or mistake rezoning case will be taken into consideration in the findings for detailed site plans and special exceptions master plan consistency. Chair Dernoga also suggested adding language on page 3, line 22, addressing the situation in which a property has been rezoned.

On a motion by Council Chair Dernoga and second by Council Member Olson, the Committee voted favorable on CB-3-2023 with amendments to include his suggested language and to address comments offered by the Planning Board and ZHE.