

PRINCE GEORGE'S COUNTY COUNCIL

COMMITTEE REPORT

2023 Legislative Session

Reference No.: CB-002-2023

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-2-2023. The PHED Committee Director summarized the purpose of the legislation and informed the Committee of written comments received on referral. This bill amends the Zoning Ordinance procedures for public notice, review, consideration, and approval of legislative amendments to the text of the Zoning Ordinance.

The Planning Board voted to support the legislation with amendments as explained in a January 12, 2023, letter to the Council Chairman. The Planning Board strongly supports the underlying intent of CB-2-2023 to provide for Planning Department involvement at the very beginning of the consideration of a possible legislative text amendment of the Zoning Ordinance (and recommend similar consideration for the Subdivision Regulations). The Planning Board also strongly supports the goal of increasing public transparency when the Council considers text amendments. It is essential to the success of these new codes that staff be involved as early in the legislative process as possible.

However, the Planning Board believes the bill should be amended to better distinguish the Planning Department and Planning Board's advisory function from the Council's legislative function. Several proposed amendments are described in the following full analysis:

“Policy Analysis:

Summary

The Planning Board strongly supports the underlying intent of CB-2-2023 to provide for Planning Department involvement at the very beginning of the consideration of a possible legislative text amendment of the Zoning Ordinance (and we recommend similar consideration for the Subdivision Regulations). The Planning Board also strongly supports the goal of increasing public transparency when the Council considers text amendments. It is essential to the success of these new codes that staff be involved as early in the legislative process as possible.

However, the Planning Board believes the bill should be amended to better distinguish the Planning Department and Planning Board's advisory function from the Council's legislative

function. Several proposed amendments are described below.

Amendment #1: (page 5, line 6): Reverse the wording to state "Within twenty-one (21) calendar days, the Council's Legislative Counsel shall prepare the proposed amendment in consultation with the Planning Director." Legislation should be drafted by the Council staff because legislating is a core Council function, and the Planning Department lacks capacity to draft all text amendments.

Amendment #2: (page 5, line 8): Retain the requirement in existing law that the Clerk of the Council transmit proposed text amendments to the Planning Director and require that the Director publish a technical staff report within 21 days (rather than the current 5 days) so that planning staff have adequate time to fully analyze the proposal. Require the Planning Board to hold a public hearing and make comments on the text amendment within 30 days of the date the proposed text amendment was transmitted by the Clerk, excluding days when the Planning Board is in recess.

Amendment #3: Require that the Planning Director's Technical Staff Report certify (or fail to certify if appropriate) the technical sufficiency of the proposed text amendment to ensure consistency with the legislative style and conventions of the current Zoning Ordinance. This proposed step would complement the Office of Law's determination of legal sufficiency of bills. This staff certification would be completely independent of planning staff's view of the merits of the legislation. The new zoning ordinance will quickly become as unworkable, and conflict riven as the prior ordinance if text amendments are not drafted in a way that fits correctly into the structure of the new ordinance. Requiring technical sufficiency of all text amendments is critical.

Amendment #4: Retain language in the current zoning ordinance which states that the PHED Committee may not hold a work session on the text amendment prior to the Planning Board's hearing. Adjust the deadline to acknowledge that the Planning Board now has 30 days from referral to transmit its comments.

Amendment #5: (page 5, line 22): Delete the requirement that the Board's comments be transmitted by a formal resolution. The Board's existing practice of communicating its recommendation via letter is sufficient. Requiring a resolution will add expense and delay without improving the end result.

Amendment #6: (page 5, line 4): Delete the requirement for written authorization by the District Council before the Planning Board may propose a text amendment. The current practice is that text amendments proposed by the Planning Board are presented by the Council Chair "at the request of the Planning Board." This practice is simpler, and the Council still retains the ability to approve presentation.

Finally, the Planning Board notes that lines 10-15 on page 5 require the Technical Staff Report to analyze the proposed amendment with reference to Plan Prince George's 2035, any affected Master Plan or Sector Plan, and the Prince George's County Climate Action Plan. There are many other kinds of analysis required for a legislative amendment, and the legislative history should make clear that the list on lines 10-15 is not exclusive."

The Chief Zoning Hearing Examiner (ZHE) submitted a January 11, 2023, memorandum to the PHED Committee Director with the comments and suggested amendments:

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. Revise the bill 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 do not add the language in Section 22-104 but amend language 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. 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 sometime 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.

Joe Meinert, AICP, City of Bowie Director of Planning and Sustainability, submitted January 19, 2023, electronic mail communication to the PHED Committee Director stating that the following comments on CB-2-2023 approved by the Bowie City Council at their January 3, 2023, meeting:

SUPPORT, with the recommendation that text amendments be processed in cycles, like the County Water and Sewer Plan amendment cycles. Having all legislative amendments batched into discrete time cycles, rather than individual amendments being processed randomly, will enhance the public's awareness of amendments under review.

The Council's Zoning and Legislative Counsel summarized revisions in a Proposed Draft-2 (DR-2) prepared at the bill sponsor's request to address comments received on referral.

Derick Berlage, M-NCPPC Deputy Planning Director, and Chad Williams, M-NCPPC Master Planner, informed the Committee that Planning staff is in support of Proposed DR-2. Maurene McNeil, Chief ZHE, and Joseph Ruddy, Deputy County Attorney, addressed the Committee commenting on concerns with provisions in the bill requiring consistency with certain Plans. Mr. Ruddy reserved final determination of the bill's legal sufficiency until he had the opportunity to review Proposed DR-2.

Jared McCarthy, Deputy Chief Administrative Officer for Government Operations, addressed the Committee indicating the Administration's concerns with provisions in the bill tying legislative amendments to the Prince George's County Climate Action Plan which is still in draft form. Mr. McCarthy also suggested that the provision requiring any amendment or revision to a legislative amendment go back to the Planning Board for review and comment should only apply to substantive amendments. The Administration requested additional time to work with the bill sponsors on the legislation.

Nathaniel Forman, Esq., representing Maryland Building Industry Association (MBIA), and Edward Gibbs, Esq. provided testimony expressing their concerns with the provisions of CB-2-2023. MBIA also submitted written testimony dated January 17, 2023, expressing concern to the proposed changes to the initiation and approval of legislative text amendments to the Zoning Ordinance. Dan Smith testified in support of the bill.

Based on concerns expressed during public testimony and the ensuing discussion, Council Chair Dernoga made a motion, seconded by Council Member Olson, for favorable recommendation on Proposed DR-2 with additional amendments to move considerations that are in subsection (d), Legislative Amendment Decision Standards, for incorporation into the technical staff report, to

clarify in Section 27-3501(c)(4)(C) that referral of substantive amendments shall be re-referred to the Planning Board for review and comment, and to adjust the terminology around the Climate Action Plan to make sure it is completely adopted. The motion passed 5-0.