

PRINCE GEORGE'S COUNTY COUNCIL

COMMITTEE REPORT

2023 Legislative Session

Reference No.: CB-040-2023

Draft No.: 2

Committee: PLANNING, HOUSING AND ECONOMIC DEVELOPMENT

Date: 4/6/2023

Action: FAV (A)

REPORT:

Committee Vote: Favorable as amended, 4-0 (In favor: Council Members Ivey, Blegay, Dernoga, and Oriadha)

The Planning, Housing and Economic Development (PHED) Committee convened on April 6, 2023, to consider CB-40-2023. 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 to provide greater flexibility for development of property in the IE Zone by relaxing the lot coverage and green space regulatory requirements, based on location of the uses inside or outside of the Capital Beltway.

Council Chair Dernoga, the bill sponsor, commented that the legislation is intended to address concerns with combining the I-1 and I-3 Zones into the new Zoning Ordinance I-E Zone and green space requirements being too large for distribution type uses inside the Beltway. CB-40-2023 represents a compromise with the Planning Department and County Executive to address these concerns.

The Planning Board voted to support the bill as explained in a March 30, 2023, letter to the Council Chairman with the following analysis:

Policy Analysis:

This bill is the product of a working group including the Planning Department, Office of the County Executive, and County Council in direct response to numerous concerns expressed by the development community and property owners pertaining to the intensity and dimensional standards for the IE (Industrial, Employment) Zone. The Planning Board acknowledges the originally-approved intensity and dimensional standards for this zone missed the mark, particularly with regard to the maximum lot coverage and minimum required green area for development in this zone.

CB-40-2023 is intended to correct these issues and does so by proposing a more nuanced approach to the IE Zone wherein property located inside the Capital Beltway will be allowed to develop with more intensity in terms of lot coverage, and with no net lot area minimum requirement. This approach is consistent with supporting infill development on properties zoned IE that have long been industrial in nature and are often located on small lots. It is also consistent with Plan 2035 and other County policy documents that desire redevelopment and infill in areas where infrastructure already exists to support such development.

A more stringent approach is proposed for property zoned IE located outside the Capital Beltway, where lots tend to be larger and less development in general is desired by the County's policies in order to prevent continued sprawl and reduce development pressure on greenfields and open lands. However, in recognition that development of properties zoned IE outside the Capital Beltway may offer opportunities to creatively address environmental impacts caused by new or prior development, CB-40-2023 allows applicants to propose increased lot coverage and reduced green area minimums in exchange for offsetting development impacts through enhanced environmental benefits. Such flexibility would be subject to the Planning Board as proposed in CB-40-2023.

Implementation Challenges:

As drafted, CB-40-2023 raises implementation challenges in that the criteria for increasing maximum lot coverage to not more than 80 percent and reducing the minimum green area requirement to not less than 20 percent are not very specific. Refer to Table Note 6 on Page 3 of CB-40-2023 (DR-1).

There are a couple of issues with Table Note 6 as drafted:

1. It is not appropriate to include preliminary plans of subdivision (minor or major) because the potential environmental benefits an applicant may propose are not fully vetted and approvable until after the approval of a preliminary plan of subdivision. In addition, a corresponding Subdivision Bill would be necessary should preliminary plans of subdivision remain in CB-40-2023. The Planning Board recommends deleting this procedure from the bill.
2. Special exceptions should be added to Table Note 6 because projects requiring special exception approval will not come before the Planning Board, and there would be similar need for development flexibility for special exceptions.
3. Rather than list multiple review and approval bodies (the Zoning Hearing Examiner would need be added as a decision party with the addition of special exceptions to the note), the Planning Board recommends deleting "the Planning Board" from Table Note 6 and replacing with "the decision-making body or official" to reflect the terminology used by the Zoning Ordinance.

It must be noted the new Zoning Ordinance is intended to provide for certainty of outcome. The terms "reasonably necessary" and "offset," as they appear in Note 6, could prove to be very broad and make it difficult to determine which applicants are entitled to relief. In light of this, the District Council may wish to simply raise the lot coverage minimum to 80 percent and reduce the green area minimum to 20 percent for development in the IE Zone outside the Capital Beltway and eliminate the additional uncertainty inherent in proposed Table Note 6 and the environmental benefits/offset proposal.

Finally, the Planning Board notes that detailed site plan or special exception public hearings occur late in the development review cycle, long after applicants have invested in their development and architectural/engineering work. There may be the potential for lost investment opportunities given the uncertainty inherent in variable lot coverage and green area requirements as it may not be necessarily true in practice or clear during due diligence that an applicant can reasonably expect their petitions to be granted.

Technical Amendments:

There are several technical amendments that should be made to CB-40-2023 prior to possible enactment:

1. The intensity and dimensional standards table is not properly formatted and contains several technical issues such as proposed new language that is not underlined and a legacy hyperlink underline of the term “green area” that should be deleted because the term is not proposed to be added through this bill.
2. Table Note 6 is entirely new to this table, and as such, needs to be underlined per legislative convention to reflect it is new, proposed language.

In conjunction with the substantive amendments covered above, the Planning Board believes it would be clearer to present an alternative Draft 2 of CB-40-2023 that corrects the technical issues and incorporates proposed substantive amendments.

The Planning Board offered an alternative Draft 2 for the use of the District Council should the Council concur with the Planning Board’s recommendations.

Impacted Property:

This bill would affect all property in the IE Zone within Prince George’s County.

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 including the Planning Board recommended amendments in the alternative draft as well as a change in the effective date clause to provide that the bill take effect on the date of its adoption.

The Office of Law finds the bill to be in proper legislative form with no legal impediments to its adoption. The County Executive’s Office supports the legislation.

The Chief Zoning Hearing Examiner (ZHE) addressed the Committee suggesting that with the addition of special exception in Proposed DR-2, language should be included to clarify if variances are allowed to the standards. The Committee accepted the suggestion and agreed to include an additional sentence in Footnote 6 to read “No variance from the requirements of this Subsection shall be permitted.”

Mr. Williams Shipp, representing Muirkirk Enterprises, testified in support of the legislation. Mr. Justin Korenblatt testified that CB-40-2023 does address some of the problems that were identified with the IE Zone; however, he noted remaining concerns with subjectivity of certain language contained in Footnote 6 and projects under 25,000 square feet that do not require a Detailed Site Plan and therefore would not benefit from the standards provided in the bill. Chairman Dernoga requested that Mr. Korenblatt provide examples of the projects to discern potential for revisiting the concern.

Following discussion, the Committee voted favorable on CB-40-2023 Proposed DR-2 including the additional revision recommended by the ZHE.