

## **INTER-OFFICE MEMORANDUM PRINCE GEORGE’S COUNTY, MARYLAND**

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

FROM: Maurene Epps McNeil  
Chief Zoning Hearing Examiner

DATE: April 10, 2023

RE: CB-50-2023

The legislation’s intent is to ensure that townhouses are not allowed in the R-A (Residential-Agricultural)/AR (Agricultural-Residential) Zones pursuant to the provisions of the prior Zoning Ordinance, by amending the transitional/grandfathering provisions in the current Zoning Ordinance. Thank you for the opportunity to suggest the following amendments for clarity.

- (1) On page 4, lines 1 and 2 appear to be missing language, and additional words should be inserted.
- (2) On page 4, line 8 should be amended to read “be and the same are hereby repealed...” since several sections precede the verb.
- (3) Townhouses are not permitted uses in the AR (Agricultural-Residential) Zone; nor were they permitted uses in the former R-A (Residential- Agricultural) Zone until footnote 136 was inserted. If the sponsors wish to prevent anyone from developing pursuant to footnote 136, it would be less confusing to delete “Except for development applications pursuant to superseded authority under the enactment of CB-17-2019...” on pp.4-5, and amend the language on page 6, lines 8-10 as follows:

The preceding subsections shall not be used to allow the development of townhouses in the R-A or AR(Agricultural-Residential) Zones.

The language on p. 6, lines 11-31 and p.7, lines 1-11, should then be deleted.

(4) On p. 7, delete the underlined language and insert “and development applications for townhouses in the R-A or AR Zones”. The underlined language on page 7, lines 30-31, should similarly be removed. No new language need be inserted since (b) references those development approvals or permits that are allowed in (a).

(5) On p. 8, amend lines 14-15 to “Except for development applications for townhouses in the R-A or AR Zones”. The same revision should be made on p. 9, lines 12-13.

(6) On p. 9, lines 23 – 31, and on p. 10, lines 1-26 should be deleted, as surplusage, since both the R-A and the AR Zones prohibit townhouses, per the language being added to Section 27-1704 concerning the development of townhouses in the R-A/AR Zones.

(7) The language on p. 11, lines 12-14, should be deleted and “Except for development applications for townhouses in the R-A or AR Zones” inserted. On p. 11, lines 17-31 and on p. 12, lines 1-20 should also be deleted since language is being added to Section 27-1902 to indicate that the grandfathering provisions will no longer be extended to applications seeking the development of townhouses in the R-A/AR Zones.

(8) On p. 12, delete the underlined language after “development applications” on lines 24 -25 and insert “for townhouses in the R-A or AR Zones”. The underlined language on lines 26-28 should also be deleted.

(9) On p. 13, the underlined language on lines 8-10 should be deleted as surplusage given the revision in subsection (a).

(10) On pp. 13-15, delete lines 16-23, 7-31 and 1-10 respectively. The deleted language on p. 14 lines 1-6 should remain as existing (g) but revised to “filed and accepted and construction begun” (since the common law test for vesting does not require completed construction) and to insert

“AR (Agricultural-Residential) Zone” (since all R-A properties should have been changed to AR as of this date).

(11) Finally, CB-13-2018 repealed the prior Zoning Ordinance although the Council chose to allow the transitional/grandfathering period under certain circumstances. Accordingly, the language therein is arguably no longer of force and effect except as noted in the transitional/grandfathering language, unless a landowner can show it has vested rights to continue to access the prior code. Dal Maso v. Bd. Of Commr's of Prince George's County, 182 Md. 200, 34 A. 2d 464 (1943); Dobbs v. Anne Arundel County, 458 Md. 331, 182 A. 3d 798 (2018).

It would, therefore, be unnecessary to repeal the language from the prior edition of the Zoning Ordinance within the current Zoning Ordinance. It would also be improper to repeal the language in a prior edition of the Code in the manner set forth on pp. 15-16 of the bill since someone may have vested rights under the prior ordinance, and the prior law remains accessible to them. Moreover, the Department of Permitting, Inspections and Enforcement must be able to utilize the prior law in order to determine the existence of violations by grandfathered properties.