

CB-50-2023 – Planning Board Analysis (Attachment 1)

A bill to prohibit the development of townhouses and one-family detached dwelling units, under certain circumstances in the Residential Agricultural (R-A) Zone, utilizing the prior Zoning Ordinance Table of Uses.

The Planning Board has the following comments for consideration by the District Council:

Background:

CB-17-2019 (DR-4) was enacted by the District Council on November 19, 2019. The bill amended the Residential table of uses to add a footnote permitting one-family detached and townhouse uses provided specific locational and acreage requirements are met and required the development regulations shall be shown and approved at the time of the Detailed Site Plan (DSP). The Planning Board opposed CB-17-2019 (DR-3) on November 7, 2019.

On December 12, 2022, the District Council adopted CR-4-2023, which suspended CB-17-2019 (DR-4). The District Council thereafter enacted CB-17-2023 (DR-4) prohibiting development applications filed under Section 27-1900 (the two-year overlap period wherein the prior Zoning Ordinance may still be used for new development) from using the provisions of CB-17-2019 unless an applicant had secured acceptance of an application and/or already proceeded to construction. The Planning Board also opposed CB-17-2023.

Policy Analysis:

This bill amends Sections 27-1703, 27-1704, 27-1902, and 27-1903 of the new Zoning Ordinance to further prohibit development applications from using the provisions of CB-17-2019 for the development of townhouses and one-family attached dwelling units in the R-A Zone under the prior Zoning Ordinance. This bill also attempts to amend the prior Zoning Ordinance Residential Table of Uses to repeal prior Footnote 136 from superseded Section 27-441 of the prior Zoning Ordinance.

The Planning Board has numerous concerns with CB-50-2023, as drafted.

Legislative Intent

The WHEREAS clauses on pages 2 through 4 identify the issues with footnote exception uses. The clauses should also explain why the bill seeks to specifically prohibit Footnote 136. Adding language explaining a reasonable basis for adopting the zoning legislation is highly desirable.

Drafting Complexity

Rather than inserting the same provision in every paragraph of the Transitional Provisions, which results in significant added complexity, this bill could be greatly simplified by adding a paragraph similar to 27-1903(f) (which was added by CB-17-2023) at the end of both Sections 27-1703 and 27-1704.

There is nothing wrong or unclear about the language the Council added in CB-17-2023 as Section 27-1903(f) except that it was placed in the wrong part of the new Zoning Ordinance if the Council's intent is to have the restrictions of that Section last longer than April 1, 2024. Simply adding the same language to Sections 27-1703 and 27-1704 will meet the apparent intent of CB-50-2023 without adding the level of confusion that would result from carving exemptions into almost every clause in those Sections.

Inability to Amend Prior Zoning Ordinance

Starting on page 15, the bill attempts to amend the Residential table of uses contained in the prior Zoning Ordinance to delete Footnote 136. It is not possible to amend the prior Zoning Ordinance after April 1, 2022, because the prior Zoning Ordinance has been repealed in its entirety as of that date. A repealed ordinance cannot be amended because it no longer exists.

Any provisions in the prior Zoning Ordinance currently eligible to be used are only made applicable by authority granted by the current Ordinance. Therefore, limitations of the nature enacted by CB-17-2023 and proposed by CB-50-2023 may only be authorized in the transition and grandfathering Sections of the current Zoning Ordinance.

Applications in Practice

The Planning Board notes that CB-17-2019 amended the use table for the R-A Zone in the prior Zoning Ordinance but did not confer authority to bring a development application. Therefore, the bill language referencing “development applications pursuant to superseded authority under the enactment of CB-17-2019” is not accurate. The bill, however, makes such applications impractical since any resulting site plan application will likely be denied for failure to comply with the requirements of the law and the proposed uses the authors of CB-17-2019 were seeking to permit would not be allowed. This language should be deleted from the bill.

Master Plan Issues

CB-17-2023 and proposed CB-50-2023 impact the Freeway Airport property located in the Bowie-Mitchellville and Vicinity Master Plan area. On March 8, 2022, the County Council approved this master plan with the adoption of CR-18-2022. Two strategies of the approved master plan have direct bearing on CB-50-2023 and its implementation:

Strategy LU 3.1 of the approved master plan states “Should Freeway Airport be unable to redevelop pursuant to Preliminary Plan of Subdivision 4-20006, and should it cease operation as an airport, the

- a. properties located at 3600, 3702, and 3900 Church Road (Tax ID 0801258, 0801357, 0801290, 0801340, 0801241, 0801274, 0801233, 0801282, and 0728741) should be redeveloped with medium-density single-family, attached or detached housing. Uses other than aviation, single-family attached or detached housing, or rural or agricultural uses do not conform with this master plan, Map 16. Future Land Use designates this property in the Residential Medium land use category. (See Strategy CZ 3.3 and Map F-11. CZ 3.3 Zoning Recommendations.)
- b. Strategy CZ 3.3 of the approved master plan states “Reclassify the properties located at 3600, 3702, and 3900 Church Road (Tax ID 0801258, 0801357, 0801290, 0801340,

0801241, 0801274, 0801233, 0801282, and 0728741) known as Freeway Airport to the RSF-A (Residential, Single-Family-Attached) Zone.”

If the intent of the Council is to retain the low-density land use character that currently exists around Freeway Airport, the Council should consider a minor plan amendment to appropriately revisit and amend the land use recommendations pertaining to the Freeway Airport area. The County Council initiated a sectional map amendment (SMA) for Bowie-Mitchellville and Vicinity to implement the master plan approved on July 12, 2022, with the adoption of CR-89-2022. An SMA should implement the zoning recommended in the master plan.

If the Council does not intend to zone the property as recommended in the March 2022 master plan, then a minor plan amendment would eliminate conflict between the master plan and the zoning map.

Finally, questions arise pertaining to the relationship of CB-17-2023 and CB-50-2023 to the validity of preliminary plan of subdivision 4-20006 and detailed site plan DSP-20015. It is unclear what effect these two Council Bills would have on validly approved development applications.

Impacted Property:

The bill will affect property formerly zoned R-A located at 3600, 3702, and 3900 Church Road (Tax ID 0801258, 0801357, 0801290, 0801340, 0801241, 0801274, 0801233, 0801282, and 0728741) and could affect up to 262 additional properties; however, the Planning Board was unable to identify all properties that may have been affected by CB-17-2019 (DR-4). Only one operating airport, Freeway Airport, contained land formerly zoned R-A and would meet the criteria of CB-17-2019 if the airport ceased to operate.

Following discussion, the Planning Board voted to take no position on CB-50-2023, and encourage continued conversations.