

CB-54-2023 and CB-55-2023 – Planning Board Analysis (Attachment 1)

CB-54-2023 is a bill to require a summary of opposition to proposed development applications as expressed through oral or written testimony submitted during consideration of certain development applications pursuant to the Zoning Ordinance. CB-55-2023 requires the same summary for certain development applications pursuant to the Subdivision Regulations.

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

Policy Analysis:

Since CB-54-2023 and CB-55-2023 are essentially the same bill but for different Subtitles; the Planning Board analysis will address both bills.

Although well-intentioned and in accordance with common practice of peer jurisdictions to summarize and address pertinent comments and arguments raised by the opposition to development applications, as drafted CB-54-2023 and CB-55-2023 are overly broad and would result in significant additional work while raising potential concerns as to the relevance of opposition testimony to the review and decision standards of any given development application.

The Planning Board notes that technical staff reports, and Planning Board resolutions already include summaries of opposition and how pertinent comments have been addressed, without the need for codification. All parties agree that such summaries and responses are important. However, should the Council wish to proceed to codify these summaries, the Planning Board recommends several revisions to better clarify the intent of the bills to directly address concerns.

1. The proposed requirement for technical staff reports to summarize the objections and arguments made by the opposition is challenging in practice given that a significant portion of potential opposition is not available to staff prior to the release of the technical staff report.

The Council should narrow proposed provisions pertaining to technical staff reports to clearly indicate any opposition made aware to staff in the preparation of a technical staff report should be (a) relevant to the review standards for the application type, and (b) be received by the Planning Director at least one week prior to the publication of the technical staff report. This will allow sufficient time to address any such opposition before the report is released.

2. Proposed language in Sections 27-3408 and 27-3409 (CB-54-2023) and 24-3310 (CB-55-2023) should be further targeted to clarify that only development applications subject to an evidentiary hearing pursuant to the procedures in Sections 27-3412, 27-3413, or 24-3310 require a summary of oral and written testimony provided by the opposition prior to or during the hearing itself.

Additionally, it should also be made clear that such opposition testimony that may be provided must be relevant to the review standards of the application type.

This will address the Planning Board concerns about (a) the potential of any case, including a Zoning Map Amendment, Sectional Map Amendment, or Comprehensive Plan, where such opposition is already summarized and analyzed, to be associated with a new and separate summary requirement, and (b) potential current or future requirements for opposition summaries by bodies that may make a recommendation or a decision (such as the Planning Director or DPIE Director) when a hearing is not held and such opposition is not presented in a formal hearing setting.

The Planning Board has prepared two proposed Alternate Draft 2 bills that incorporate our recommendations.

Impacted Property:

As drafted, CB-54-2023 will affect all development applications that require the preparation of a technical staff report -by requiring these reports to include summarization of opposition. CB-55-2023 will affect all subdivision applications in which a technical staff report is prepared.

Additional summaries would be required for any development application subject to a recommendation by the Planning Board or Zoning Hearing Examiner, to any development application where the District Council, Planning Board, Board of Appeals, or Zoning Hearing Examiner makes the final decision, and to any subdivision application where the Planning Board makes the final decision.

Following discussion, the Planning Board voted to support CB-54-2023 and CB-55-2023 with amendments and transmit the proposed alternate second drafts of these bills to Council.