

TO: Jacqueline Brown, Committee Director, PHED Committee

FROM: Maurene Epps McNeil, Chief Zoning Hearing Examiner

RE: CB-72-2020

The above-referenced bill will allow a Class 3 fill by right in the R-A Zone, under certain circumstances. The use is currently permitted by SE, or by right in accordance with Section 27-441(b) footnote 133. In order to provide context to my comments, I have attached both the Special Exception regulations for the use and the current footnote.

**Sec. 27-405.01. - Class 3 fills:**

- (a) A Class 3 fill may be permitted as a temporary Special Exception, subject to the following:
- (1) Within one hundred and twenty (120) days after an application for a Class 3 fill is accepted by the Planning Board, the Zoning Hearing Examiner shall conduct a public hearing. The Zoning Hearing Examiner's written decision on an application shall be issued within thirty (30) days after the public hearing. Where the District Council makes the final decision, the Council's final order shall be issued within sixty (60) days of the Examiner's decision.
  - (2) Initially, a Special Exception for a new Class 3 fill shall be valid for five (5) years, unless the District Council grants some lesser time period. Extensions of specific periods may be granted not to exceed five (5) years. At least one calendar year prior to the expiration of a Special Exception for a Class 3 fill, a request for an extension shall be filed with the Zoning Hearing Examiner. The applicant shall also send a copy of the request, in accordance with the informational mailing requirements of Section 27-125.01, to all adjoining property owners and civic associations. The Examiner shall conduct a public hearing in accordance with all requirements and procedures for the initial application. The filing fee for the extension shall be one-half the amount of the fee for a new application.
  - (3) If a proposed Class 3 fill includes a rock crusher or other processing equipment, its location shall be shown on the site plan.
  - (4) A traffic report, prepared in accordance with the Planning Board's "Guidelines for the Analysis of the Traffic Impact of Development Proposals," shall be submitted with the application and shall include an analysis of haul routes for the truck traffic generated by the use.
  - (5) The subject property shall not be located within a three (3) mile radius of properties containing an active or pre-existing approved or non-conforming Class 3 fill, sanitary landfill, transfer station, rubble fill, recycling facility, mining facility, sludge facility, processing facility, sand and gravel operation, or wash plant.
  - (6) Fill operations shall not be located within five hundred (500) feet of an existing residence, school, day care center, church, hospital, nursing home/assisted living facility or community center.
  - (7) A Class 3 fill shall meet the buffering and screening requirements of the Landscape Manual, shall have a one hundred (100) foot non-disturbance buffer from all property lines, and shall include landscaping or berms sufficient to screen fill operations from adjoining residentially-zoned property, property containing a use listed in Subsection (a)(6), and public streets or highways. All berms and landscaping shall be installed in the initial phase of development, before fill is placed on site.

- (8) The height limitations for the fill operation shall be determined during Special Exception review. No slope grade may exceed 3:1.
- (9) The fill operation shall have a staging area with equipment for cleaning truck wheels and a minimum twenty-two (22) foot paved access road designed to accommodate no more than twenty-five (25) trucks.
- (10) The site entrance shall have a gate which is locked when the fill is not in operation. Hours and days of operation shall be limited as part of the Special Exception review.
- (11) Site or operational personnel shall be on site during hours of operation.
- (12) The site shall have proper signage showing the name of the operator, the permit number, hours of operation, telephone number of the operator, as well as provide directional signs for internal truck traffic and haul routes. The site plan shall also provide for final reclamation and stabilization of the site at the cessation of the fill operation.
- (13) The Department of Permitting, Inspections, and Enforcement shall conduct semi-annual site inspections for Class 3 fill sites and prepare a written report on the evaluation of the operations on the site, which shall include all indications of noncompliance with all County and State regulations. A copy of the report shall be provided to the County Council and shall also be available for review by the public.
- (14) A haul road permit shall be obtained from the County Department of Permitting, Inspections, and Enforcement prior to issuance of any grading or building permits related to proposed Class 3 fill sites.
- (15) A street construction permit shall be obtained from the County Department of Permitting, Inspections, and Enforcement prior to issuance of any grading or building permits related to proposed Class 3 fill sites.

**Section 27-441(b), footnote 133:**

A special exception is not required for a Class 3 fill provided the property was zoned R-A through a Sectional Map Amendment approved after July 1, 2013, and if the fill operation would fill its materials on property previously mined for sand and gravel in order to reclaim such property for public use as prescribed in this footnote. Notwithstanding any other provisions of this Subtitle, a Class 3 fill is permitted in accordance with the reclamation activities prescribed in this footnote for a maximum of ten (10) years after the date fill operations are permitted, subject to conforming to the following:

(a) If the use of Class 3 fill materials on site include a rock crusher or other processing equipment, its location shall be shown on the site plan;

(b) A traffic study, prepared in accordance with the Planning Board's "Guidelines for the Analysis of the Traffic Impact of Development Proposals," shall be submitted with the reclamation permit application and shall include haul routes for the truck traffic generated by the use, with any required mitigation made a condition of permit approval;

(c) The Class 3 fill material reclamation shall meet the buffering and screening requirements of the Landscape Manual, shall maintain a 100-foot non-disturbance buffer from all property lines, and shall include landscaping or berms sufficient to screen fill operations from adjoining residentially-zoned property, property containing a use listed in subsection (a)(6), and public streets or highways. All berms and landscaping shall be installed in the initial phase of development, before Class 3 fill is placed on site;

(d) The height limitations for the Class 3 fill reclamation operation shall not exceed:

(i) 60 feet more than the ground elevation at the point of public road access to the site or road; and
(ii) seven (7) percent grade for any slope.
(e) The Class 3 fill operation shall have a staging area with equipment for cleaning truck wheels and a minimum 22-foot paved access road designed to accommodate no less than 25 trucks;
(f) The site entrance shall have a gate which is locked when the fill is not in operation. Hours and days of Class 3 fill operation shall be limited to Monday through Friday, 7:00 am to 5:00 pm, and 8:00 am to 3:00 pm on Saturday. Site or operational personnel shall be on site during hours of Class 3 fill operation;
(g) The site shall have proper signage showing the name of the operator, the permit number, hours of operation, telephone number of the operator, as well as provide directional signs for internal truck traffic and haul routes. The site plan shall also provide for final reclamation and stabilization of the site at the cessation of the fill operation in accordance with an approved Prince George's County Soil Conservation Plan;
(h) The site and Class 3 fill material reclamation operation shall be subject to inspection by the Department of Permitting, Inspections, and Enforcement (DPIE) for compliance with county or state laws or regulations at the agency's discretion.
(i) A haul road permit shall be obtained from the County Department of Public Works and Transportation (DPW&T) prior to issuance of any grading or building permits related to the Class 3 fill site. A street construction permit for access may be required from the County Department of Public Works and Transportation (DPW&T) prior to issuance of any grading or building permits related to the Class 3 fill site;
(j) Upon completion of the reclamation using Class 3 fill materials or the expiration of the permit, whichever is earlier, and within two years after the cessation of Class 3 fill operations, the Class 3 fill applicant and/or operator, including any successors or assigns, shall, as a condition of any permit approval, shall stabilize the site in accordance with an approved Prince George's County Soil Conservation Plan. The applicant shall also construct a 24-foot wide site access road and minimum 100-space onsite parking lot(s) to a subbase grade with recycled concrete and construct, for outdoor public use, multi-purpose competition-size playing fields containing a minimum of three multi-purpose fields, two full professional size basketball courts, a tot-lot playground, and supporting recreational uses deemed appropriate in accordance with this plan and submitted to and approved by DPIE, after consultation with Maryland-National Capitol Park and Planning Commission (M-NCPPC) staff, as a condition of permit approval of the Class 3 fill operation. All field and recreational use areas shall have a minimum of 2-feet of Class 2 or better cover material. Upon completion of the above defined improvements said multi-purpose fields and recreational facilities, the property shall be dedicated to the M-NCPPC - Prince George's County Department of Parks and Recreation for public use; and
(k) Fill operations shall not be located within five hundred (500) feet of an existing residence, school, day care center, church, hospital, nursing home/assisted living facility or community center. (CB-89-2018)

I am not sure what the intent of the language on Page 2 of the bill is, given the existing footnote 133. To complicate matters further, the existing footnote mistakenly references a "site plan" in paragraph (a) and "subsection (a)(6)" in paragraph (c) that have been included in the footnote on p. 2 of the bill. I

think these mistakes were made, and are being mirrored, because Section 27-405.01 concerning special exception requirements included an (a)(6) and referenced a “site plan”.

I suggest the following revisions for the Committee’s consideration:

1. On page 2, the footnote should either be current footnote 133, as revised, or the next footnote number in the Table. If it’s the Council’s intent to revise current footnote 133 I am not sure what revision is preferred so I await a new version to provide comment. If the language on page 2 is a totally new footnote it should reference Section 27-405.01 (a)(6), and it should insert “detailed” in front of the reference to “site plan” in paragraph (a). The former is in order to actually see the uses from which increased setbacks are required, and the latter is needed as a mechanism to review all of the proposed conditions.
2. On page 2, revise (d)(ii) to as follows: “ seven (7) percent grade for any slope as measured from the nearest public road” to avoid misinterpretations.
3. Finally, I would urge the Council not to remove the remaining requirements found in the existing footnote 133. As stated earlier, this use generally requires approval of a Special Exception and is allowed for a period of 5 years or less with the possibility of one extension of 5 years or less. The use is now permitted solely because the property was placed in the R-A Zone in a fairly recent Sectional Map Amendment. At a minimum, those who live or travel in the area will still want to know whom to contact if something is awry, would like to know which roads will be traversed by trucks entering the site, would like assurance that the roads will be kept clean, would appreciate review by DPIE and the Soil Conservation District, and would want the property stabilized once the fill operation is completed.

Thank you for the opportunity to provide comments on the bill.