

PRINCE GEORGE'S COUNTY COUNCIL

COMMITTEE REPORT

2020 Legislative Session

Reference No.: CB-083-2020

Draft No.: 2

Committee: COMMITTEE OF THE WHOLE

Date: 10/08/2020

Action: FAV (A)

REPORT:

Committee Vote: Favorable as amended, 11-0 (In favor: Council Members Turner, Anderson-Walker, Davis, Dernoga, Franklin, Glaros, Harrison, Hawkins, Ivey, Streeter and Taveras)

The Committee of the Whole convened on October 6, 2020 and October 8, 2020 to consider CB-83-2020. The bill amends the Zoning Ordinance to prohibit fly ash landfills in all zones in Prince George's County.

Council Member Franklin, the bill's sponsor, informed the committee that this legislation is seeking to eliminate an environmentally hazardous byproduct and remove the County as a destination or continuation of the use.

At the October 6, 2020 meeting, the Planning, Housing, and Economic Development (PHED) Committee Director summarized written referral comments received. The Planning Board supported CB-83-2020 with an amendment and submitted an October 5, 2020 letter to Council Chair Turner with a summary of Planning staff analysis and recommendation. The staff recommended that the proposed language under Section 2, on page 2, lines 9-11, be deleted. "The language appears to amend the adopted Zoning Ordinance through a proposed amendment to the Current Zoning Ordinance. Rather than pursuing this alternative, any future prohibition of "fly ash landfills" in the adopted Zoning Ordinance should be done through a separate legislative amendment to the adopted Zoning Ordinance. This will avoid scenarios that may be caused by Section 2 which could include imposing a legislative mandate through a bill that could be later repealed or inadvertently left out of revisions to the adopted Zoning Ordinance.

A legislative amendment package, including revisions to the adopted Zoning Ordinance, has been discussed and is expected to be presented by the District Council in early 2021. If CB-83-2020 is enacted without Section 2, the proposed prohibition on "fly ash landfills" could easily be added as part of comprehensive legislative amendments to the adopted Zoning Ordinance."

Terry Bell, Council Liaison, Office of the County Executive, indicated that the County Executive supports the legislation with amendments recommended by the Department of the Environment (DoE). The DoE recommended an amendment in the definition to use phrase

Coal Combustion Byproducts (CCB) which encompasses fly ash, bottom ash, fluidized-bed ash, ash slurry, and a broad definition of CCB.

The Office of Law reviewed CB-83-2020 and found it to be in proper legislative form with no legal impediments to its enactment.

During the October 6 Committee worksession, Council Member Franklin proffered a Proposed DR-2 that included changes to address the recommendations provided by the Planning Board to remove the language under Proposed Section 2, and to add the CCB language in the definition recommended by DoE.

The bill was held in Committee to allow time for additional review of the amendments proffered by Council Member Franklin.

During the October 8 Committee worksession, discussion resumed on the legislation including a Proposed DR-2B proffered by Council Member Franklin with an additional amendment to include a new Section 2 as follows:

SECTION 2. BE IT FURTHER ENACTED that the Department of Permitting, Inspections, and Enforcement and any other authorized county agency is directed to ensure on an ongoing basis that any existing Fly Ash Landfill is in full compliance with any applicable zoning approvals and any applicable federal, state, and local laws.

The Committee of the Whole also discussed the impact of CB-83-2020 on an existing use in the County and if enactment of the bill would deem the use nonconforming. Guidance from the Principal Counsel to the County Council to the bill sponsor provided that the subject special exception use, described below, cannot become nonconforming.

Prior to the enactment of CB-83-2020, the District Council, pursuant to a Court Order, was directed to reinstate Special Exception (SE) 4765 (NRG MD Ash Management LLC) as “conditionally” approved by the ZHE in 2017, for a period of lesser than 8 years. Therefore, the temporary use approved in SE 4765 is *permitted* for a period of lesser than 8 years and cannot be considered non-conforming pursuant to the enactment CB-83-2020. Upon expiration of the lesser than 8 years as approved in SE 4765, the temporary use will terminate.

Janet Gingold, representing the Prince George’s Sierra Club, testified in support of CB-83-2020.

Council Member Franklin made a motion for favorable recommendation on Proposed DR-2B seconded by Council Member Harrison. The Committee voted for a favorable recommendation, 11-0, as to CB-83-2020, as amended.