

PRINCE GEORGE'S COUNTY COUNCIL

COMMITTEE REPORT

2021 Legislative Session

Reference No.: CB-023-2021

Draft No.: 2

Committee: COMMITTEE OF THE WHOLE

Date: 04/13/2021

Action: FAV (A)

REPORT:

Committee Vote: Favorable as amended, 10-0-1 (In favor: Council Members Hawkins, Davis, Dernoga, Franklin, Glaros, Harrison, Ivey, Streeter, Taveras and Turner. Abstain: Council Member Anderson-Walker)

The Committee of the Whole convened on April 1, 2021 and April 13, 2021 to consider CB-23-2021. As presented on March 16, 2021, Draft-1 of the legislation amends the Zoning Ordinance industrial zone table of uses to permit, on a limited legislative basis, Moving and Storage, Parking Lot or Garage or Loading Area, Parking of Vehicles to an Allowed Use, and Warehousing uses in the I-3 (Planned Industrial/Employment Park) Zone, under certain circumstances as contained in a new footnote 78 to the use table.

At the April 1, 2021 Committee worksession, the Planning, Housing and Economic Development Committee Director summarized the purpose of the legislation and informed the Committee of written comments received on referral.

The Planning Board opposed CB-23-2021 (DR-1) with amendments and provided the following analysis by letter dated March 25, 2021 to Council Chair Hawkins:

“On page 1, line 4, the words “limited legislative basis” should be clarified. The bill as drafted does not include a sunset provision terminating these uses after a certain date.

On line 4, the use “Motor freight receiving or shipping (loading facilities): (B) All others” should be added to the title of the bill. As drafted the bill proposes to add this use.

On page 2, under the Industrial Table of Uses the bill adds footnote 78 to the use “Motor freight receiving or shipping (loading facilities): (B) All others” but does not properly change the use permission from “X” to “P” in this bill.

It should also be noted that the “Parking of vehicles accessory to an allowed use” and “Parking lot or garage or loading area, in accordance with Part 11” uses are already permitted without a footnote in the Industrial/ Employment Park (I-3) Zone throughout the County. Proposing to include footnote 78 for these two uses could have numerous unintended consequences. The

footnote would severely limit where the uses may exist in the County. For example, there are many I-3 zoned properties in North County along US 1 where these parking uses would be prohibited under footnote 78. The effect of this probation could result in a development moratorium in this zone, as these parking uses are typically necessary to serve the principal use of the I-3 zoned land.

On page 3, the language under footnote 78 (b) should be deleted. Road access is strictly controlled by Section 24-128 (Private roads and easements) of the Subdivision Regulations.

Letter (d) under footnote 78 appears to require the I-3 Zone development standards for green area, building setbacks, and location of parking, but requires the Heavy Industrial (I-2) Zone standards to apply for building coverage and the net lot area. The building coverage is up to 90 percent of the lot in the I-2 Zone compared to 45 percent in the I-3 Zone, which raises concerns of compatibility with adjacent residential properties. Also, the net lot area for the I-3 Zone is 87,120 square feet while the I-2 Zone has no limitation on the net lot area. Outdoor storage is prohibited in the I-3 Zone but permitted in the I-2 Zone if not visible from the street.

If the legislation moves forward it would be clearer to state the “I-2 Zone standards apply, as well as...” and then list the specific sections of the Zoning Ordinance for the I-3 Zone that apply, such as “green area requirements in Section 27-474 (a)(1)(e)”. This amendment would ensure that the intended I-3 Zone standards are applied. Also, the bill should require the building coverage, net lot area, and outdoor storage regulations to be consistent with the I-3 Zone.

The letter (e) should be deleted. Section 27-466.01 requires frontage and access to each lot unless otherwise authorized under Subtitle 24. Adding language stating the provisions of Section 27-466.01 does not exempt the applicant from the Subdivision Regulations requirement of providing adequate access and frontage for a permitted use. Permitting a use without appropriate access and frontage could result in unsafe situations, especially for uses such as warehousing, motor freight, and moving and storage which involve multiple large trucks. Consideration should be given to whether it is adequate for industrial uses, which generally use heavy equipment and large vehicles, to utilize alternate access without minimum road width standards. Further, any proposed standards for access should be addressed in Subtitle 24.

Adopted Zoning Ordinance:

The adopted Zoning Ordinance eliminated the I-3 (Planned Industrial/Employment Park) Zone and replaced it with the IE (Industrial, Employment) Zone. The uses “warehouse showroom,” “storage warehouse,” “outdoor storage (as a principal use),” and “consolidated storage” are permitted in the IE Zone with use-specific standards. The uses “cold storage plant,” “distribution warehouse,” and “motor freight facility” are subject to Special Exception approval in the IE Zone with Special Exception standards. The “parking facility” use is also permitted in the IE Zone with use-specific standards. Site plan requirements would be determined by the square footage of the proposed development, but all developments must meet the pertinent development standards of Part 6: Development Regulations.”

The Zoning Hearing Examiner submitted a March 31, 2021 memorandum to the PHED Committee Director indicating that, as drafted, CB-23-2021 (DR-1) raised the following

substantive concerns:

“(1) Since the bill does not purport to add new uses the purpose clause should be revised to address actual uses in the Use Table (i. e. “Moving and Storage Operation”, “Parking of Vehicles Accessory to an Allowed Use”). Additionally, there is no language elsewhere in the bill that mentions “a limited legislative basis”, so the purpose clause should either be revised to remove that language, or the enacted portion of the bill should have some limited time frame within which the new language is applicable.

(2) The new footnote states that access to the site “must cross property in the I-2 Zone.” I assume the access will be an easement of some sort; perhaps the language should note that. In any event, the footnote also notes that Section 27-466.01 shall not apply. This language provides as follows:

Sec. 27-466.01. Frontage.

Each lot shall have frontage on, and direct vehicular access to, a public street, except lots for which private streets or other access rights-of-way have been authorized pursuant to Subtitle 24 of this Code.

I would note that Section 20-504 of the Land Use Article is the genesis for Section 27-466.01. The footnote should be revised to delete subparagraph (e).

(3) Finally, under current law a warehouse is only permitted in the I-3 Zone if it meets the strictures of Section 27-471 (g):

Sec. 27-471. I-3 Zone (Planned Industrial/Employment Park).

(g) Warehousing.

- (1) Warehousing, wholesaling, distribution, or storage of materials not used, or products not produced, on the premises may be permitted, subject to the following:
 - (A) Not more than twenty percent (20%) of the net tract area of the entire Planned Industrial/Employment Park shall be devoted to these uses (including accessory uses such as off-street parking and loading areas).
 - (B) More than twenty percent (20%), but not more than thirty percent (30%), of the net tract area of the entire Planned Industrial/Employment Park may be devoted to these uses if at least five percent (5%) of the net lot area (of the lot on which the use is proposed) is devoted to green area. This green area shall be in addition to any other green area required by this Part. This additional green area shall either serve to preserve irreplaceable natural features, be designed so that the visual impact of the facility will be relieved (either by natural features or changes in grade), or provide distinctive furnishings (such as sculptures, fountains, and sidewalk furniture).
 - (C) More than thirty percent (30%), but not more than fifty percent (50%), of the net tract area of the entire Planned Industrial/Employment Park may be devoted to these uses if, in addition to meeting the requirements of (B), above, the Planning

Board finds:

- (i) That the tract is suited for these uses because of its accessibility to railways or highways that readily accommodate warehousing;
 - (ii) That the traffic generated by the uses is not directed through residential neighborhoods;
 - (iii) That the use is compatible with surrounding existing land uses and those proposed on the Master Plan. In determining compatibility, the Planning Board shall consider architectural or physical features of the facility and may require that these features be compatible with surrounding land uses.
- (D) The remainder of the park shall be devoted to other uses, in the case of (A), (B), or (C), above.

The bill does not delete this language but allows Warehouses in the I-3 under “all others”. I am sure the intent is to not have warehouses meet the language above. It will be less confusing and subject to interpretation to delete (g) and permit all warehouses in the industrial zones. If the intent is simply to not have this section apply to properties discussed in the bill, I have no problem with the way it is drafted.”

The Office of Law reviewed CB-23-2021 (DR-1) and found a potential impediment to its enactment as detailed in a March 31, 2021 memorandum (Denison to Williams). Ms. Terry Bell, County Executive’s Liaison to the County Council, informed the Committee of the County Executive’s position in opposition to CB-23-2021 based on comments in the Office of Law memorandum.

The Committee reviewed a Proposed Draft-2 (DR-2) containing amendments requested by the bill sponsor to address Planning Board and Zoning Hearing Examiner comments. Proposed DR-2 included amendments to the bill title, to the table of uses to bracket the “X” and insert a “P” for the “Motor freight receiving or shipping (loading) facilities, All others” category, and to strike (e) in footnote 78 as follows:

AN ORDINANCE concerning

I-3 Zone

For the purpose of amending the Industrial Table of Uses in the Zoning Ordinance to permit, on a limited legislative basis, Moving and Storage, Parking Lot or Garage or Loading Area, Parking of Vehicles to an Allowed Use, **MOTOR FREIGHT SHIPPING AND RECEIVING FACILITIES**, and Warehousing uses in the I-3 (Planned Industrial/Employment Park) Zone of Prince George’s County, under certain specified circumstances.

~~(e) Notwithstanding any other requirement of this Subtitle, the provisions of Section 27-466.01 shall not apply~~

Chad Williams of the M-NCPPC Planning Department addressed the Committee regarding additional technical and substantive concerns with certain terminology in Proposed DR-2.

Dan Lynch, of McNamee Hosea, representing ELPPC, testified in support of the legislation.

Council Member Harrison made a motion to hold CB-23-2021 in Committee, seconded by Council Member Davis, to allow time for preparation of additional revisions to address concerns raised during the Committee discussion. The motion passed 11-0.

On April 13, 2021, the Committee continued discussion of CB-23-2021 in the form of a Proposed DR-2A, which contained additional amendments to address comments received during the April 1, 2021 Committee meeting. The Council’s Zoning and Legislative Counsel summarized the revisions in the table of uses to strike “78” next to the “P” for “Parking lot or garage, or loading area, in accordance with Part 11” and “Parking of vehicles accessory to an allowed use” as well as the following revisions to footnote 78:

78 Permitted use without a Conceptual Site Plan or Detailed Site Plan approval process, provided:

(a) The use is located on property that is adjacent to property that is at least 100 acres in size and is located in the I-2 Zone;

~~(b) Access to the property on which the use is located must cross property located in the I-2 Zone;~~

~~(c) The use is located in property that is adjacent to a CSX rail line;~~

(d) (b) Except for green area, building setbacks, and location of parking facilities NET LOT AREA AND OUTDOOR STORAGE, the regulations applicable to development in the I-3 Zone shall not apply. Development of the use shall conform with the regulations for development of property in the I-2 Zone; and

~~(e) Notwithstanding any other requirement of this Subtitle, the provisions of Section 27-466.01 shall not apply.~~

Zoning and Legislative Counsel suggested a further amendment to the bill title to strike “on a limited basis”. After robust discussion of the terms “adjacent” and “adjoining”, their meanings and the impact of each term on the bill’s applicability, the Committee further amended DR-2A to change “adjacent” to “adjoining” in footnote 78 (a). The Committee requested that Planning Department staff provide mapping information for this revision prior to introduction of the legislation.

The Office of Law reviewed Proposed DR-2A and determined that it is in proper legislative form with no legal impediments to its enactment. Ms. Bell informed the Committee that based on revisions in Proposed DR-2A which resolve issues raised during the April 1 COW meeting, the County Executive is in support of the legislation.

On a motion by Council Member Harrison and second by Council Member Davis, the Committee voted favorable, 10-0-1, on CB-23-2021 DR-2A with the additional amendment to the title offered by Zoning and Legislative Counsel and the amendment to replace “adjacent” with “adjoining” in footnote 78(a).