

PRINCE GEORGE'S COUNTY COUNCIL

COMMITTEE REPORT

2021 Legislative Session

Reference No.: CB-063-2021

Draft No.: 2

Committee: COMMITTEE OF THE WHOLE

Date: 10/14/2021

Action: FAV(A)

REPORT:

Committee Vote: Favorable as amended, 9-0 (In favor: Council Members Hawkins, Anderson-Walker, Davis, Dernoga, Franklin, Harrison, Ivey, Taveras and Turner)

The Committee of the Whole convened on September 30, 2021 and October 14, 2021 to consider CB-63-2021. This legislation was transmitted by the County Executive for the Council's consideration. As presented on September 14, 2021, Draft-1 of the legislation amends the Building Code to provide property owners with a certification regarding zoning compliance. The proposed fee for the issuance of the Zoning Compliance Letter supports the staff time to research the use of the property to determine if it is in compliance with Subtitle 27.

At the September 30, 2021 Committee worksession, the Planning, Housing and Economic Development Committee (PHED) Director summarized the purpose of the legislation and informed the Committee of written comments received on referral. Department of Permitting, Inspections and Enforcement Deputy Director Gary Cunningham and Senior Advisor Lori Parris provided additional background on the legislation and responded to Council Members' questions.

The Zoning Hearing Examiner (ZHE) submitted a September 29, 2021 memorandum to the PHED Committee Director with the following comments:

“The bill will amend the Building Code to allow the imposition of a \$250 fee for the issuance of a Letter of Zoning Compliance to individuals seeking such information. However, Section 27-125.02 (k) of the Zoning Ordinance allows the Planning Board to impose “a fee to help defray the costs related to processing” the request for a zoning certification or buildable lot letter. Moreover, the Regional District Act, found in the Maryland Annotated Code Land Use Article allows the County Council to provide for the referral of some or all building permit applications to the Commission for review and recommendation as to zoning requirements, but does not allow the Commission to approve the permit. *See*, Land Use Article, Sections 20-502 and 20-503.

If all of these provisions are read together, as required by general tenets of statutory construction, the fee imposed in the bill does not appear necessary and may be considered unjustifiable since a fee is supposed to relate to the work done and if the work is done under the provisions of the Zoning Ordinance (and a fee imposed for said work) there is no justification to also impose a fee

under the Building Code for the same review.

I therefore recommend that the language on p. 3. line 75 be amended to delete Zoning and any reference to Subtitle 27 and only allow the issuance of a reasonable fee for a letter as to compliance with the provisions of the Building Code or other related provisions of State or local law.”

Rana Hightower, representing the Planning Board, stated that the Planning staff agrees with the Zoning Hearing Examiner comments and there appears to be some overlap of efforts between DPIE and the Planning Department providing the compliance letters.

Council Member Turner requested confirmation of authority provided by the County Charter for establishing the new fee without being subject to referendum. On a motion by Council Chairman Hawkins and second by Council Member Davis, the Committee voted to hold the legislation for further discussion to address comments raised by the ZHE and Planning Department staff.

At the October 14, 2021 Committee meeting, Ms. Parris summarized revisions in a Proposed Draft-2 (DR-2) that she prepared in consultation with the ZHE and Planning staff to address their comments. The revisions in Proposed DR-2 are as follows:

AN ACT concerning

Building Code of Prince George’s County

For the purpose of creating a ~~Use and Occupancy Verification Letter Zoning Compliance Letter~~, adopting an additional fee for the investigation and issuance of the ~~Use and Occupancy Verification Letter Zoning Compliance Letter~~, and clarifying the different Site Development Concept Plan fees.

(1) A Use and Occupancy Verification Letter Zoning Compliance Letter shall be issued in compliance with the provisions of this Division and other provisions of State or local laws, ordinances, and regulations. Such Verification Letter of Compliance shall certify to the owner of any building or structure that the current use of building is compliant with applicable parts of this Subtitle, Subtitle 27, and other applicable State or local laws, ordinances, and regulations.

**ATTACHMENT A
TABLE OF FEES**

Fees	Minimum Fee	Industry Fee Calculation (if higher than minimum)
Use and Occupancy Verification Letter Zoning Compliance Letter	\$250	-

The ZHE and Planning staff concurred with the revisions in Proposed DR-2. The Office of Law reviewed CB-63-2021 and found it to be in proper legislative form with no legal impediment to its adoption. The Office of Audits and Investigations Legislative and Policy Analyst submitted a September 28, 2021 Fiscal Impact Statement indicating enactment of CB-63-2021 should require no new expenditures. Revenue should increase as the Bill provides for a \$250 fee associated with the issuance of the Letter. DPIE would best be able to provide the aggregate

amount anticipated to be generated annually as they may have a firmer understanding of how many Letters would be issued. This proposed fee is intended to cover the cost of staff time to research the use of the property to determine if it is in compliance with applicable laws, ordinances, and regulations.

The Committee Director stated that the Council’s Zoning and Legislative Counsel determined the new fee is not subject to referendum as contained in Section 813 of the County Charter. On a motion by Council Member Turner and second by Council Member Davis, the Committee voted favorable, 9-0, on CB-63-2021 Proposed DR-2.