

HOUSE BILL 938

L5

5lR0450
CF SB 564

By: **Montgomery County Delegation and Prince George's County Delegation**

Introduced and read first time: February 13, 2015

Assigned to: Environment and Transportation

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 21, 2015

CHAPTER _____

1 AN ACT concerning

2 **Prince George's County – Maryland–Washington Regional District – Fairness in**
3 **Zoning**

4 **MC/PG 112–15**

5 FOR the purpose of ~~providing that, in Prince George's County, the planning board's~~
6 ~~authority is not exclusive and may be subject to review by the district council under~~
7 ~~certain circumstances; providing that the district council is not authorized to review~~
8 ~~certain matters beyond its jurisdiction as provided in a certain article; authorizing~~
9 ~~the district council in Prince George's County by local law to adopt and amend zoning~~
10 ~~law procedures for zoning decisions by the planning board and the district council;~~
11 ~~providing that within the regional district in Prince George's County, certain zoning~~
12 ~~powers granted to a planning commission or board of appeals under certain~~
13 ~~provisions shall be construed as vested exclusively in and may be exercised only by~~
14 ~~the district council;~~ requiring that, in Prince George's County, the zoning hearing
15 examiner shall issue a certain decision not less than a certain time after the date of
16 a certain hearing; altering the circumstances under which a certain person or entity
17 aggrieved by a certain decision of the district council may request judicial review of
18 any final decision of the district council; repealing the authority of a certain person
19 to request judicial review of a decision of the county planning board; providing that,
20 in Prince George's County, a person may file make a request for judicial to the district
21 council for the review of a decision of a board of appeals to the circuit court zoning
22 hearing examiner or the planning board only under certain circumstances; providing
23 that, in Prince George's County, when the district council is hearing a zoning matter
24 that has been appealed from a zoning hearing examiner, the district council may

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 remand the zoning matter back to the zoning hearing examiner only one time and is
 2 required to specify that the zoning hearing examiner take action within a certain
 3 time frame after the matter is remanded and relevant information is received from
 4 the applicant or the district council; and generally relating to zoning and planning
 5 powers in the Maryland–Washington Regional District in Prince George’s County.

6 BY repealing and reenacting, with amendments,

7 Article – Land Use

8 Section ~~20–202, 22–104, 22–120, and 22–206, 22–407(a)(1), and 23–401~~

9 Annotated Code of Maryland

10 (2012 Volume and 2014 Supplement)

11 BY adding to

12 Article – Land Use

13 Section 25–212 and 25–213

14 Annotated Code of Maryland

15 (2012 Volume and 2014 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

17 That the Laws of Maryland read as follows:

18 **Article – Land Use**

19 ~~20–202.~~

20 ~~(a) (1) (I) Subject to SUBPARAGRAPH (II) OF THIS PARAGRAPH AND~~
 21 ~~paragraph (2) of this subsection, a county planning board:~~

22 ~~[(i)] 1. is responsible for planning, subdivision, and zoning~~
 23 ~~functions that are primarily local in scope; and~~

24 ~~[(ii)] 2. shall exercise, within the county planning board’s~~
 25 ~~jurisdiction, the following powers:~~

26 ~~[1.] A. planning;~~

27 ~~[2.] B. zoning;~~

28 ~~[3.] C. subdivision;~~

29 ~~[4.] D. assignment of street names and house numbers;~~

30 ~~and~~

31 ~~[5.] E. any related matter.~~

32 ~~(II) 1. IN PRINCE GEORGE’S COUNTY;~~

~~A. THE AUTHORITY OF THE COUNTY PLANNING BOARD OVER ZONING AND SUBDIVISION MATTERS, BOTH LOCAL AND GENERAL, IS NOT EXCLUSIVE AND SHALL BE SUBJECT TO REVIEW BY THE DISTRICT COUNCIL; BUT~~

~~B. ANY REVIEW IS LIMITED TO THE MATTER THAT IS BROUGHT BEFORE THE DISTRICT COUNCIL.~~

~~2. NOTHING IN THIS SUBPARAGRAPH AUTHORIZES THE DISTRICT COUNCIL TO REVIEW MATTERS THAT ARE OTHERWISE BEYOND ITS JURISDICTION AS PROVIDED IN THIS ARTICLE.~~

~~(2) The functions under paragraph (1) of this subsection do not include the regional planning functions of the Commission relating to or affecting the regional district as a planning unit.~~

~~(b) (1) A county planning board has exclusive jurisdiction over:~~

~~(i) local functions, including:~~

~~1. the administration of subdivision regulations;~~

~~2. the preparation and adoption of recommendations to the district council with respect to zoning map amendments; and~~

~~3. the assignment of street names and house numbers in the regional district; and~~

~~(ii) mandatory referrals made in accordance with Subtitle 3, Part I of this title by the county planning board's respective county government or any unit of the county government.~~

~~(2) The Montgomery County Planning Board has exclusive jurisdiction over a mandatory referral made in accordance with Subtitle 3, Part I of this title by the County Board of Education, a municipal corporation or special taxing district, or a publicly owned or privately owned public utility.~~

~~(c) (1) Subject to paragraph (2) of this subsection, the Montgomery County Planning Board shall:~~

~~(i) review the annual capital budgets of the county and future capital budget projections; and~~

~~(ii) submit recommendations to the county council.~~

~~(2) The county government shall have sole responsibility for the preparation of the capital budgets and programs of public works.~~

~~(d) Each county planning board shall:~~

~~(1) meet from time to time with its respective county council; and~~

~~(2) perform surveys, studies, and other planning duties the county council assigns to the county planning board.~~

~~22-104.~~

~~(a) The Montgomery County district council or the Prince George's County district council, in accordance with the requirements of this division as to the portion of the regional district located in the respective county, may:~~

~~(1) by local law adopt and amend the text of the zoning law for that county; and~~

~~(2) by local law adopt and amend any map accompanying the text of the zoning law for that county.~~

~~(b) **IN PRINCE GEORGE'S COUNTY, THE DISTRICT COUNCIL MAY BY LOCAL LAW ADOPT AND AMEND ZONING LAW PROCEDURES FOR ZONING DECISIONS BY THE PLANNING BOARD AND THE DISTRICT COUNCIL.**~~

~~(c) The local law may regulate:~~

~~(1) (i) the location, height, bulk, and size of each building or other structure, and any unit in the building or structure;~~

~~(ii) building lines;~~

~~(iii) minimum frontage;~~

~~(iv) the depth and area of each lot; and~~

~~(v) the percentage of a lot that may be occupied;~~

~~(2) the size of lots, yards, courts, and other open spaces;~~

~~(3) the construction of temporary stands and structures;~~

~~(4) the density and distribution of population;~~

~~(5) the location and uses of buildings and structures and any units in those buildings and structures for:~~

- 1 ~~(i) trade;~~
- 2 ~~(ii) industry;~~
- 3 ~~(iii) residential purposes;~~
- 4 ~~(iv) recreation;~~
- 5 ~~(v) agriculture;~~
- 6 ~~(vi) public activities; and~~
- 7 ~~(vii) other purposes; and~~

8 ~~(6) the uses of land, including surface, subsurface, and air rights for the~~
 9 ~~land, for building or for any of the purposes described in item (5) of this subsection.~~

10 ~~[(c)] (D) The exercise of authority by a district council under this section is~~
 11 ~~limited by §§ 17-402 and 25-211 of this article.~~

12 ~~22-120.~~

13 ~~(A) Within the regional district IN MONTGOMERY COUNTY, any power granted~~
 14 ~~to a planning commission or board of appeals under Division I of this article shall be~~
 15 ~~construed as vested exclusively in and may be exercised only by:~~

- 16 ~~(1) the Commission; or~~
- 17 ~~(2) the board of appeals created or authorized by this title.~~

18 ~~(B) WITHIN THE REGIONAL DISTRICT IN PRINCE GEORGE'S COUNTY, ANY~~
 19 ~~ZONING POWER GRANTED TO A PLANNING COMMISSION OR BOARD OF APPEALS~~
 20 ~~UNDER DIVISION I OF THIS ARTICLE SHALL BE CONSTRUED AS VESTED~~
 21 ~~EXCLUSIVELY IN AND MAY BE EXERCISED ONLY BY THE DISTRICT COUNCIL.~~

22 22-206.

- 23 (a) A district council may amend its zoning laws, including any maps:
 - 24 (1) in accordance with procedures established in its zoning laws; and
 - 25 (2) after holding an advertised public hearing.
- 26 (b) The procedures and zoning laws may include:

1 (1) procedures limiting the times when amendments may be adopted;

2 (2) provisions for hearings and preliminary determinations by an
3 examiner, a board, or any other unit;

4 (3) procedures for quorums, number of votes required to enact
5 amendments, and variations or increases based on factors such as master plans,
6 recommendations of the hearing examiner, county planning board, municipal corporation,
7 governed special taxing district, or other body, and petitions of abutting property owners,
8 and the evidentiary value that may be accorded to any of these factors; and

9 (4) procedures for hearings, notice, costs, fees, amendment of applications,
10 recordings, reverter, lapse, and reconsideration de novo of undeveloped zoning
11 amendments.

12 (c) (1) In Prince George's County, the district council may provide for notice of
13 the public hearing on a proposed amendment to its zoning plan or zoning laws to be given
14 to the owners of properties, as they appear on the assessment rolls of the county, adjoining,
15 across the road from, on the same block as, or in the general vicinity of the property that
16 is the subject of the proposed amendment.

17 (2) A zoning law adopted under this subsection may require notice to be
18 given by mail or by posting the notice on or in the vicinity of the property involved in the
19 proposed amendment or both.

20 (d) **IN PRINCE GEORGE'S COUNTY, THE ZONING HEARING EXAMINER**
21 **SHALL ISSUE A DECISION ON A ZONING MATTER NOT MORE THAN 100 DAYS AFTER**
22 **THE DATE OF THE LAST HEARING HELD BY THE HEARING EXAMINER.**

23 (E) In a year in which a district council is elected, the district council may not
24 amend a zoning law from November 1 and until the newly elected district council has taken
25 office.

26 22-407.

27 (a) (1) Judicial review of [a] ANY final decision of the district council, including
28 an individual map amendment or a sectional map amendment, may be requested by ANY
29 PERSON OR ENTITY THAT IS AGGRIEVED BY THE DECISION OF THE DISTRICT
30 COUNCIL AND IS:

31 (i) [any] A municipal corporation, governed special taxing district,
32 or person in the county;

33 (ii) [any] A civic or homeowners association representing property
34 owners affected by the final decision; [or]

1 (iii) THE OWNER OF THE PROPERTY THAT IS THE SUBJECT OF
2 THE DECISION; OR

3 (IV) [if aggrieved,] the applicant.

4 23-401.

5 (a) (1) Within 30 days after the county planning board takes final action on an
6 application for subdivision approval, judicial review may be requested by:

7 (i) a person aggrieved by the action; or

8 (ii) a [person or] municipal corporation that appeared at the hearing
9 in person, by attorney, or in writing.

10 (2) A petition for judicial review filed under this section may be made to
11 the circuit court for the appropriate county.

12 (3) The court may:

13 (i) affirm or reverse the action; or

14 (ii) remand the action to the county planning board for further
15 consideration.

16 (b) (1) If a petition for judicial review is filed under this section, a copy of the
17 petition shall be served on the county planning board in accordance with Maryland Rule
18 7-202(d).

19 (2) On receiving a copy of the petition, the county planning board shall:

20 (i) promptly give notice of the petition to all parties to the
21 proceeding before it; and

22 (ii) within 30 days after the filing of the petition, file with the circuit
23 court:

24 1. the originals or certified copies of all papers and evidence
25 presented to the county planning board in the proceeding before it; and

26 2. a copy of its opinion and resolution deciding the
27 application.

28 (3) Any party to the proceeding in the circuit court aggrieved by the
29 judgment of the court may appeal from the judgment to the Court of Special Appeals.

30 (4) The review proceedings provided by this section are exclusive.

1 25-212.

2 NOTWITHSTANDING ANY OTHER LAW, IN PRINCE GEORGE'S COUNTY A
 3 PERSON MAY ~~FILE~~ MAKE A REQUEST FOR ~~JUDICIAL REVIEW TO THE DISTRICT~~
 4 ~~COUNCIL FOR THE REVIEW OF A DECISION OF A BOARD OF APPEALS TO THE CIRCUIT~~
 5 ~~COURT~~ THE ZONING HEARING EXAMINER OR THE PLANNING BOARD ONLY IF:

6 ~~(1) THE PERSON IS A PARTY TO, OR DIRECTLY AFFECTED BY THE~~
 7 ~~DECISION OF THE BOARD OF APPEALS;~~

8 ~~(2) THE PERSON RESIDES WITHIN ONE MILE OF THE PROPERTY THAT~~
 9 ~~IS THE SUBJECT OF THE DECISION; OR~~

10 ~~(3) THE PERSON RESIDES IN THE MUNICIPAL CORPORATION WHERE~~
 11 ~~THE PROPERTY THAT IS THE SUBJECT OF THE DECISION IS LOCATED~~ THE PERSON IS
 12 AN AGGRIEVED PERSON THAT APPEARED AT THE HEARING BEFORE THE ZONING
 13 HEARING EXAMINER OR PLANNING BOARD IN PERSON, BY AN ATTORNEY, OR IN
 14 WRITING.

15 25-213.

16 IN PRINCE GEORGE'S COUNTY, WHEN THE DISTRICT COUNCIL IS HEARING A
 17 ZONING MATTER THAT HAS BEEN APPEALED FROM A DECISION OF A ZONING
 18 HEARING EXAMINER, THE DISTRICT COUNCIL:

19 (1) MAY REMAND THE ZONING MATTER BACK TO THE ZONING
 20 HEARING EXAMINER ONLY ONE TIME; AND

21 (2) SHALL SPECIFY THAT THE ZONING HEARING EXAMINER TAKE
 22 ACTION WITHIN ~~100~~ 30 DAYS AFTER THE MATTER IS REMANDED AND RELEVANT
 23 INFORMATION IS RECEIVED FROM THE APPLICANT OR THE DISTRICT COUNCIL.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
 25 October 1, 2015.