

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1266 (Montgomery County Delegation and Prince George's
County Delegation)

Environment and Transportation

Montgomery County and Prince George's County - Zoning and Land Use -
Fairness in Zoning
MC/PG 117-25

This bill makes changes related to development and subdivision approvals in Prince George's County by (1) expanding the district council's jurisdiction and decision-making authority with respect to development and subdivision approvals; (2) expanding access to judicial review of district council decisions; (3) requiring that development and subdivision approvals last for a period of at least 10 years; and (4) prohibiting the district council from taking specified action in order to permit the construction of multifamily residential dwellings on specified airport property. The bill's prohibition applies only prospectively and may not be applied or interpreted to have any effect on or application to any property for which a building permit to construct multifamily residential dwellings has been issued before the effective date of the bill. **The bill takes effect July 1, 2025.**

Fiscal Summary

State Effect: The bill does not directly affect State finances.

Local Effect: Maryland-National Capital Park and Planning Commission (M-NCPPC) expenditures may increase, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Jurisdiction/Authority of the Planning Board and District Council

The bill, under Division II of the Land Use Article, alters provisions relating to the jurisdiction and authority of the Prince George's County planning board and district council as follows:

- *Zoning and Subdivision Matters* – The bill establishes that (1) the planning board's authority over zoning and subdivision matters, both local and general, is not exclusive and must be subject to review and final action by the district council; (2) any review and final action is limited to the matter brought before the district council; and (3) these provisions do not authorize the district council to review matters that are otherwise beyond its jurisdiction as provided in the Land Use Article.
- *Local Functions and Mandatory Referrals* – The bill removes references to the planning board's jurisdiction over local functions and specified mandatory referrals as being "exclusive" and establishes that the local functions over which the planning board has jurisdiction include the preparation and adoption of recommendations to the district council with respect to detailed site plans, comprehensive design plans, and specific design plans. The bill specifies that it is the intent of the General Assembly that these provisions abrogate the holding of the Supreme Court of Maryland in *County Council of Prince George's County v. Zimmer Development Company*, 444 Md. 490 (2015).
- *Review of Planning Board or Zoning Hearing Examiner Decision* – The bill repeals provisions that allow a person to make a request to the district council for the review of a decision of the zoning hearing examiner or the planning board only if (1) the person is an aggrieved person that appeared at the hearing before the zoning hearing examiner or planning board in person, by an attorney, or in writing and (2) the review is expressly authorized under Division II.
- *District Council Remand to the Zoning Hearing Examiner* – The bill (1) allows the district council, when hearing a zoning matter appealed from a decision of a zoning hearing examiner, to remand the matter back to the zoning hearing examiner more than one time and (2) increases the time within which the zoning hearing examiner must take action after the matter is remanded. Instead of taking action within 30 days after the matter is remanded and relevant information is received from the applicant or the district council, the zoning hearing examiner must take action within 100 days after the matter is remanded.

Judicial Review of District Council Decisions

The bill alters provisions governing who may request judicial review of district council decisions by the Circuit Court of Prince George’s County, and who may request appellate review of the circuit court judgment, as follows:

- *Review by the Circuit Court* – The bill modifies an existing provision that allows for judicial review (by the circuit court) of any final decision of the district council to be requested by a person or entity that is aggrieved by the final decision of the district council and is (1) a municipality, a governed special taxing district, or a person in the county; (2) a civic or homeowners association representing property owners affected by the final decision; (3) the owner of the property that is the subject of the decision; or (4) the applicant. The bill modifies the provision so that instead judicial review may be requested by (1) a person or municipality that appeared at the hearing in person, by attorney, or in writing; (2) a person who resides within one mile of the property that is the subject of the decision, or in the municipality where the property is located; or (3) a civic or homeowners association representing property owners affected by the final decision.
- *Appeal to the Appellate Court of Maryland* – The bill replaces a provision that authorizes the district council, the applicant, or any aggrieved party to the circuit court proceedings to appeal a final judgment of the circuit court to the Appellate Court of Maryland. The provision is replaced with a provision that authorizes any party to the proceeding in the circuit court to appeal the final judgment of the circuit court to the Appellate Court of Maryland.
- *Recused Member of the District Council* – The bill also establishes that a member of the district council who previously recused themselves from participating in the hearing on the matter or in the decision may not vote on whether the district council will appeal the circuit court judgment to the Appellate Court of Maryland.

Expiration of Development or Subdivision Approvals

The bill establishes that, beginning with approvals issued on July 1, 2025, an “approval” must expire on the later of the period established by the county or 10 years after the date the approval was issued. “Approval” includes (1) an action by the planning board, district council, or other county permitting department on an application for a zoning special exception, a zoning variance, or a conditional zoning use; (2) a development or subdivision approval required to be obtained from the planning board or district council, including a site plan approval, a development plan approval, or any other development or subdivision approval authorized or required by the Land Use Article or local law; or (3) any other approval by, or agreement with, the county planning board or district council that is associated with an application for development or subdivision approval.

Prohibition on Use of Airport Property for Multifamily Residential Dwellings

The bill, notwithstanding any other law, prohibits the district council of Prince George's County from amending the text or map of the zoning law or the zoning classification of property that is currently used as, or its immediate former use was as, an airport in order to permit the construction of multifamily residential dwellings on the property.

Current Law:

Division II of the Land Use Article

Division II of the Land Use Article establishes M-NCPPC (made up of the Montgomery County and Prince George's County planning boards) and governs planning and zoning within the Maryland-Washington Regional District (§ 20-101), which consists of (1) the entire area of Montgomery County, subject to certain limitations (relating to certain municipalities not subject to the planning and zoning authority of the county, unless by agreement, and other municipalities that have certain, limited planning and zoning authority) and (2) the entire area of Prince George's County, except for the City of Laurel as it existed on July 1, 2013.

The county councils of Montgomery and Prince George's counties are the district councils for that portion of the regional district located within the respective counties. The district councils have the authority to adopt and amend the zoning law and any map for the portion of the regional district within the counties.

Jurisdiction/Authority of the Prince George's County Planning Board and District Council

Planning Board

Division II

Under Division II, a planning board is responsible for planning, subdivision, and zoning functions that are primarily local in scope, and must exercise, within the county planning board's jurisdiction, the following powers: (1) planning; (2) zoning; (3) subdivision; (4) assignment of street names and house numbers; and (5) any related matter. These functions do not include the regional planning functions of M-NCPPC affecting the regional district as a whole.

A planning board has exclusive jurisdiction over (1) local functions, including the administration of subdivision regulations, the preparation and adoption of recommendations to the district council with respect to zoning map amendments, and the

assignment of street names and house numbers in the regional district and (2) specified mandatory referrals made by the county planning board's respective county government or any unit of the county government.

A planning board may also be assigned other local functions, as needed, by resolution of M-NCPPC with the approval of the respective county council.

Prince George's County Zoning Ordinance

Under the Prince George's County Zoning Ordinance, the planning board is given various authority and responsibilities, including (1) reviewing and making recommendations to the district council on comprehensive plans (countywide or other broad plans) and zoning map amendments and (2) reviewing and deciding on detailed site plans (a detailed plan for a development that allows for evaluation of whether the development meets applicable requirements/standards).

(The current county zoning ordinance took effect April 1, 2022. Under the previous ordinance, the planning board also decided on comprehensive design plans and specific design plans (referred to in the bill and the *Zimmer* case described below), which were submitted for development in comprehensive design zones. Comprehensive design zones were not continued under the new ordinance other than as legacy comprehensive design zones in order to recognize those zones for development approved under them prior to April 1, 2022.)

District Council

Division II

As mentioned above, the district councils have authority to adopt and amend the zoning law and any map for the portion of the regional district within the counties.

With respect to the Prince George's County district council's jurisdiction in relation to planning board decisions, Chapter 365 of 2015 established, under Division II, that a person may make a request to the district council for the review of a decision of the planning board or the zoning hearing examiner only if (1) the person is aggrieved and appeared at the hearing before the planning board or zoning hearing examiner in person, by an attorney, or in writing and (2) the review is expressly authorized under Division II.

The extent of any such express authorizations under Division II appears to be limited. One such authorization, however, is an authorization for the district council to review a final decision of the planning board to approve or disapprove a detailed site plan. A party

of record may appeal to the district council a final decision by the county planning board to approve or disapprove a site plan.

Chapter 365 also established that when the district council is hearing a zoning matter that has been appealed from a decision of a zoning hearing examiner, the district council (1) may remand the zoning matter back to the zoning hearing examiner only one time and (2) must specify that the zoning hearing examiner take action within 30 days after the matter is remanded and relevant information is received from the applicant or the district council.

Prince George's County Zoning Ordinance

Under the Prince George's County Zoning Ordinance, the district council is given various authority and responsibilities, including to (1) make the final decision on comprehensive plans and zoning map amendments and (2) hear and decide appeals on, elect to review, and decide on, among other things, detailed site plans.

The zoning ordinance establishes an Office of the Zoning Hearing Examiner and authorizes the district council to appoint one or more hearing examiners to conduct hearings and make recommendations or decisions in specified zoning cases.

Zimmer Case

The Supreme Court of Maryland, in *Zimmer*, held that the Prince George's County district council possessed only appellate jurisdiction to review the planning board's decisions regarding a comprehensive design plan and specific design plan and was only authorized to reverse the board's decision if it was not supported by substantial evidence or was arbitrary, capricious, or otherwise illegal. In addition, the court held that the district council was not authorized, after remanding issues to the planning board, to consider issues other than the remanded issues when it reviewed the planning board's subsequent decision. 444 Md. at 584 (2015).

Judicial Review of a Final Decision of the District Council

In Prince George's County, judicial review by the circuit court of any final decision of the district council may be requested by any person or entity that is aggrieved by the decision and is (1) a municipality, governed special taxing district, or person in the county; (2) a civic or homeowners association representing property owners affected by the final decision; (3) the owner of the property that is the subject of the decision; or (4) the applicant.

A final judgment of the circuit court may be appealed to the Appellate Court of Maryland by the district council, the applicant, or any aggrieved party to the circuit court proceedings.

Each member of the district council is entitled to vote on whether the district council will appeal to the Appellate Court of Maryland regardless of whether the member participated in the hearing on the matter or in the decision.

Expiration of Development Approvals and Permits

Under the Prince George's County Zoning Ordinance, development approvals and permits expire as provided in review procedures for each specific type of development approval or permit. An approved detailed site plan, for example, is valid for six years.

If no expiration period is provided for the specific type of development approval or permit, and if no expiration period is imposed as part of the approval by the decision-making body or official, the development approval or permit expires if a use and occupancy permit authorizing the approved development is not obtained within two years after the effective date of approval.

A one-year extension of the expiration time period for a specific development approval or permit may be granted by the decision-making body or person that granted the approval or permit upon the applicant's written request for the extension before the expiration date, and a showing of good cause.

Multifamily Development on Specified Airport Property

The Maryland Supreme Court, in *Prince George's County Council v. Concerned Citizens of Prince George's County*, held that a text amendment to the zoning law that allowed for development of townhouses and higher density development in order to encourage development of certain airport property did not violate a requirement under Division II that zoning laws be uniform for each class or kind of development throughout a district or zone. The court found that the ordinance was adopted to further a valid public purpose and did not discriminate against similarly situated properties. 485 Md. 150, 162, 199-200 (2023)

Local Fiscal Effect: To the extent the bill's provisions that modify the authority and responsibilities of the planning board and district council (giving the district council broader jurisdiction and decision-making authority) increase the workload of the planning board to support a greater amount of decision-making overall by the planning board and district council, M-NCPPC expenditures may increase if additional staff are needed to handle the additional workload. The extent to which additional staff are needed, however, cannot be reliably estimated.

Small Business Effect: Small businesses involved in development in Prince George's County may be negatively affected by the bill to the extent the expanded jurisdiction/authority of the district council under the bill, and the expansion of access to judicial review of district council decisions, limit the amount of development in the county.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1104 of 2024.

Designated Cross File: None.

Information Source(s): Prince George's County; Maryland-National Capital Park and Planning Commission; City of Laurel; Judiciary (Administrative Office of the Courts); Maryland Department of Planning; Montgomery County Public Schools; Department of Legislative Services

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