

May 30th, 2021

Senate Education, Health and Environmental Affairs Committee  
HB 980 - Prince George's County - Public Ethics - Definition of Application  
Position - Unfavorable

Dear Chair Pinsky, Vice-Chair Kagan, and Members of the Committee:

The twenty-four organizations listed below, together representing many thousands of Prince Georgians from all over the county, are united in ardent opposition to House Bill 980. Many of us have direct and extensive experience with the Prince George's County land use and zoning process in general, and have been active participants in the County's Zoning Rewrite process.

It is not our intention to stop either the Rewrite or the Prince George's Countywide Zoning Map Amendment (CMA). What we are alarmed by and object to is the ability of developers and their attorneys to file applications for piecemeal zoning intensification that would bypass the usual public engagement and oversight process for zoning change applications during the CMA. It is affidavits indicating prior campaign contributions to council members, filed by property owners and developer attorneys, that have triggered the Ethics Law provisions and resulted in the Council being unable to meet quorum to complete the CMA process. Because the application filing period has not ended, lifting the ethics ban, as currently written in HB980, would signal open season for developer contributions to pour in, along with even more intensification requests, just as the next election cycle approaches. This is not a good look for Prince George's, and it would be a rotten deal for Prince George's residents.

The solution is not HB 980 in its current form - which would exempt the CMA from the Ethics Law. The solution is to either:

- a) Exclude individual intensification applications from the CMA, OR
- b) Explicitly prohibit the Council from approving any intensification, while simultaneously prohibiting council members who have taken any campaign contribution since either March 1, 2020 or November 1, 2020 from participating in this process. (The public hearing for the CMA was first scheduled for March 2020, then postponed to November 2020).

The Maryland General Assembly has purview over the Maryland Public Ethics Law. The CMA is meant to produce a better zoning map that benefits Prince Georgians. It is not meant to be a vehicle to bypass the Ethics Law or the usual process of citizen engagement and oversight on upzoning, nor is it meant to be a gift horse to developers seeking to enhance their property values.

We provide additional background and details below.

Please note that our testimony is being submitted prior to the consideration of any amendments by the Prince George's Senate Delegation. We have submitted our amendments to the delegation. Unfortunately, although the Delegation invited oral testimony from county electeds and staff at its Monday, March 29 voting session, the Delegation did not allow county residents to testify or answer questions, and therefore we were unable to participate in the delegation voting session held on Monday, March 29th. Our Senate Delegation has received more than 470 letters from members of our groups in opposition to lifting the ban in the Ethics Law without stopping intensification applications from developers.

## **Background**

Prince George's County embarked on a comprehensive rewrite of the zoning ordinance and subdivision regulation in 2014. As stated on the County's website (<http://zoningpgc.pgplanning.com/>):

The goals of the Zoning Ordinance Rewrite are to

- Streamline the ordinance and development approval processes
- Modernize and consolidate our zones and development standards
- Incentivize revitalization and economic, transit-oriented, and mixed-use development
- Protect stable residential neighborhoods

The County Council passed the Zoning Rewrite legislation in October 2018.

Following the Rewrite, the County embarked on the Countywide Zoning Map Amendment (CMA) in 2019, to map the new zones onto the County's map and implement the new zones legislated in the Rewrite. The public hearing around the CMA, first scheduled for March 2020 was postponed due to the constraints around COVID-19 to November 2020 and then suddenly canceled with no clear explanation.

On the County's website:

(<http://zoningpgc.pgplanning.com/countywide-map-amendment/#CMAQuestions>), the CMA is described as follows:

*"The CMA process is a non-substantive, technical exercise that transitions a property's existing zone district to the most comparable zone district that is in the new Zoning Ordinance. This process is not intended to be a "zoning grab-bag" for property owners.*

*The CMA process allows property owners to request specific zones for their property, but the requests are limited in certain ways. To request a zoning change, a property owner must complete a zoning request form ([download here](#)). The zoning request **must** detail and justify a technical error in the application of the Guide to New Zones (or decision matrix approved by the*

*County Council at initiation of the CMA) to the property. Zoning request forms must also be accompanied by an applicable affidavit and ex parte forms as required by State law”.*

### **What triggered the Ethics Law**

It was therefore surprising to us, to say the least, when we discovered that the reason the November 2020 hearing could not be held was because the Council found itself unable to meet quorum to complete a process that was expected to be merely a “technical exercise”. We felt it was clearly worth investigating why this issue has arisen, and we are only just beginning to understand the enormity of the problem.

Maryland’s Public Ethics Law, as it relates to Prince George’s County, prohibits developers seeking District Council approval of certain land-use and zoning changes from giving money to the campaigns of council members and candidates. It requires developers who have contributed to council members’ campaigns, and council members who have received developer dollars, to disclose those contributions through affidavits when the District Council considers a zoning or land-use request. And it requires council members who have received those contributions to recuse themselves from discussions and votes on those applications.

**The answer to why the Ethics Law has stopped the CMA hearing** lies in the 3000+ pages of filings made by property owners and developers’ attorneys to the County Council in response to the “zoning request form” cited above. Attorneys have filed letters and affidavits indicating that their clients, at times long lists of multiple developers, plan to file or may file applications for zoning intensification. The word “intensification” or “intensify” appears over 100 times in the filings that the Council provided to a reporter in March, in response to a Public Information Act request. Those property owners, developers, and their attorneys clearly understand that they may use the CMA process to intensify the zoning of their properties, and nothing in the law prevents the District Council from approving those applications through what would be a once-in-50-years short-circuited process. Despite repeated requests, the Council has not made the filings openly available to the public.

The files the County provided to that reporter on March 5 contained more than 800 affidavits. That number apparently has grown rapidly because, on March 29th, Council Member Todd Turner told our Senate Delegation that the County had received more than 1200 affidavits. Again, the Council has refused to publish those public records on the Council’s web site even though, by law, the Council generally must make those affidavits available for public review before any hearing on a zoning application. That refusal to provide even basic transparency only heightens public concern about HB 980.

### **Typical Upzoning Request vs. CMA Mass-Upzoning Threat**

It is important to understand what HB 980 would greenlight if passed in its current form. An intensification, or upzoning, approved through the CMA goes through a significantly less transparent procedure than what is normally required.

Zoning intensification applications filed via the CMA bypass the checks and balances in the normal zoning change process, which includes public notification, evidentiary hearings, and clear opportunities to appeal decisions.

As Prince George's residents, we agree that the Zoning Rewrite and the CMA process should proceed to completion as envisioned: *a non-substantive, technical exercise that transitions a property's existing zone district to the most comparable zone district that is in the new Zoning Ordinance.*

### **Suggested Amendments**

In order to enable that process, the Ethics Law and possibly the Land Use Article should be amended to prohibit intensification requests. Precluding applications from being accepted for zoning intensification will eliminate the problematic affidavits that have been filed and enable the quorum to be met, resulting in increased transparency and credibility.

1. Amend Section 5-835 (or Article 28 -- the Land Use Article) to include the following: The Planning Department may not accept any application to intensify the zoning, permitted uses, or density on a property or parcel as part of a County-wide Sectional or Zoning Map Amendment.

(Result: Applications/affidavits will be withdrawn/returned and the Council quorum can be met without the need to amend the contributions ban in the Ethics Law.)

Or

2. If applications cannot legally be refused, then we ask you to render the Council unable to approve any upzoning via the CMA process before lifting the campaign contribution ban on contributions made prior to say March or November 2020, when the hearings were scheduled to occur.

The District Council may not:

- a. approve any application to intensify the zoning, permitted uses, or density on a property or parcel as part of a County-wide Sectional or Zoning Map Amendment; or
- b. of its own volition, intensify the zoning, permitted uses, or density on a property or parcel as part of a County-wide Sectional or Zoning Map Amendment.

(Result: Developers may withdraw applications, Council will deny all upzoning requests and future contributions will not be encouraged via the CMA.)

We also request that HB 980 be amended to preserve critical public ethics protections with respect to the CMA and property-specific zoning applications filed under it, namely, prohibiting

contributions made by applicants after November 1, 2020; requiring applicants, their agents, and council members to disclose contributions through ethics affidavits; and prohibiting council members from participating in decisions if they have received prohibited contributions from applicants after November 1, 2020.

Submitted Respectfully

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Cedar Haven on the Patuxent River  
Clean Air Prince George's  
Common Cause of Maryland  
Community Research  
Concerned Citizens of Prince George's County District 4  
Friends of Lower Beaverdam Creek  
Friends of Oxon Hill  
Friends of Quincy Run Watershed  
Greater Accokeek Progressive Activists  
Greenbelt Climate Action Network  
Laurel for the Patuxent  
Maryland Legislative Coalition  
Moyaone Association  
The NAACP – Prince George's County Chapter  
Our Revolution Prince George's  
Patuxent Riverkeeper  
Progressive Cheverly  
Progressive Maryland  
Southern Maryland Audubon Society, Inc.  
Sustainable Hyattsville  
West Laurel Civic Association  
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