

Office of the County Auditor
Auditor's Analysis - Revised

Council Bill No. 9-2020

Introduced: February 3, 2020

Auditor: Owen Clark

Fiscal Impact:

The fiscal impact of Council Bill 9-2020 cannot be estimated at this time. However, possible fiscal impact of this legislation could be an increase in excise, real property, and business personal property taxes as well as an increase in permit and hearing fees.

We believe these revenues may increase based on indications from the Department of Planning and Zoning (DPZ) that:

- The bill could increase the volume of Conditional Use applications by making the current restrictions on setbacks and property rights more flexible.
- New construction or site improvements are typically required on properties that have been approved for a Conditional Use.

Purpose:

This bill would amend the Howard County Zoning Regulations that pertain to Conditional Uses. See the below summary of changes to each section:

131.0.D.5 – Allows the Hearing Examiner to approve variances to setbacks noted in the criteria for Conditional Uses through a variance process.

131.0.D.6 - Exempts Conditional Uses from setback requirements where adjacent lots are owned by the petitioner or held in an easement, or similar recorded instrument.

131.0.F.2.f – Establishes written authorization for a Conditional Use Petition as a recorded easement or similar recorded instrument. Also, a recorded easement or similar easement that is provided would be presumed valid and legal by the County.

131.0.N.48 – Adds a provision to permit an eligible child day care center and nursery school to be approved as an accessory use under “Schools, Colleges, Universities – Private (Academic)” rather than through their own Conditional Use application.

Other Comments:

Per DPZ, the following proposed changes in this bill are already practiced under the current regulations:

- The portion of the text of Section 131.0.D.6 that exempts Conditional Uses from setback requirements where adjacent lots are *owned by the petitioner*.
- The portion of the text of Section 131.0.F.2.f that addresses *the presumed validity of an easement*.

Based on our inquiries to DPZ, they have indicated that:

- There has been one conditional use denial (Glenelg County School) in the past 24 months that resulted from the petitioner having inadequate property ownership rights due to being an easement holder.
- There have been zero Conditional Use denials in the past 24 months due to property setback restrictions.
- Anne Arundel, Baltimore, and Carroll Counties each require a property owner's signature for a petitioner/easement holder to have a property interest sufficient to process a Conditional Use application.

Per inquiry to Montgomery County's Office of Zoning and Administrative Hearings, they require Conditional Use applicants who hold an easement for property subject to their application to provide written authorization from the fee simple owner of that property. This ensures that:

- Conditional Use applicants have the legal authority to submit their application.
- All parties consent to the Conditional Use restrictions for which the property will be bound.

Other reviews of this bill, which is also known as ZRA-188, include a:

Technical Staff Report (TSR) from DPZ.

The Department of Planning and Zoning released a TSR (whose language mirrors this proposed legislation) recommending approval with certain modifications of ZRA-188. See the TSR for DPZ's consideration of each change and *refer to Exhibit B within the TSR for DPZ's own proposed text for ZRA-188.*

Please note that DPZ's TSR states that *it will be up to the County Council to determine if an easement constitutes a sufficient property interest* to process a Conditional Use submission.

Planning Board Recommendation (PBR).

The Planning Board recommended, with a 5-0 vote, that these proposed Zoning Regulation changes be *denied*. Please see the PBR to review their full consideration.

Planning Board members expressed concerns that the proposed amendments address issues with one property, however, they would apply countywide and may result in unintended consequences. The Board also stated a *preference for continuing to require property owner signatures* on Conditional Use petitions (including those in which a petitioner was granted an easement.)