

From: [Rob Robinson](#)
To: [Retool Gaithersburg](#)
Subject: FW: Comment on the Draft Rewrite of the Zoning Code
Date: Monday, June 3, 2024 12:21:14 PM
Attachments: image001.png

For Record

From: Frank Johnson <Frank.Johnson@gaitthersburgmd.gov>
Sent: Friday, May 31, 2024 3:48 PM
To: Rob Robinson <Rob.Robinson@gaitthersburgmd.gov>
Subject: RE: Comment on the Draft Rewrite of the Zoning Code

Rob: Yes, in fact as to agreements, they are effectively vested, and the general presumption is that the laws apply proactively, not retroactively to impact existing agreements. Overall, if the issue is added in a code update, the implication is that there is an intent to retroactively apply the law.

Indeed, in Maryland, “the presumption is that statutes operate prospectively unless there is evidence of a contrary intent.” *John Deere Construction and Forestry Co. v. Reliable Tractor, Inc.*, 406 Md. 139, 146 (2008), *citing Allstate Insurance Co. v. Kim*, 376 Md. 276, 289 (2003). Thus, by remaining silent, as you indicate, that means there is no intent to apply retrospectively. Overall, the laws existing at the time of the agreement apply, especially if the agreement specifically so provides, *Dennis v. Mayor and City Council of Rockville*, 286 Md. 184, 198 (1979) but arguably even without such explicit application provisions, as “applicable or relevant laws must be read into the agreement of the parties except when a contrary intention is evident.” *Lema v. Bank of America*, 375 Md. 625, 645 (2003).

As such, I’d say your response has been quite correct, as the only reason to mention retroactive application would be if there was some intent to try to make a change retroactively. Since we have no such intent, and would likely face a takings claim if we did have such an intent, it is not recommended that we add such a reference even to specify the Code doesn’t supersede existing the agreements. Among other concerns is that doing so may raise questions for any other area of the code not so specifying, when under Maryland law, not mentioning it applies the presumption that there is no such intent.

Thanks
Frank



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From: Rob Robinson <Rob.Robinson@gaitthersburgmd.gov>
Sent: Friday, May 31, 2024 1:04 PM
To: Frank Johnson <Frank.Johnson@gaitthersburgmd.gov>
Subject: FW: Comment on the Draft Rewrite of the Zoning Code

Hi Frank, Pete has submitted the attached and copied Council so I feel I need for a response in the record. Pete keeps stating that we need to explicitly state in the Code that Retool does not supersede existing agreements. I have continually told him that is not necessary as the revised ordinance cannot do away with existing contractual agreements (annexation, settlement, drra. Etc.) unless said agreements have that as a clause – expires with ordinance changes. Have I been correct in my statements?

Rob

From: Peter Henry <pHenry@hipprojects.com>

Sent: Friday, May 31, 2024 12:53 PM

To: Jud Ashman <Jud.Ashman@gaithersburgmd.gov>; Lisa Henderson <Lisa.Henderson@gaithersburgmd.gov>; Neil Harris <Neil.Harris@gaithersburgmd.gov>; Robert Wu <robert.wu@gaithersburgmd.gov>; Jim McNulty <Jim.McNulty@gaithersburgmd.gov>; Yamil Hernández <Yamil.Hernandez@gaithersburgmd.gov>

Cc: Rob Robinson <Rob.Robinson@gaithersburgmd.gov>; Gregory Mann <Greg.Mann@gaithersburgmd.gov>

Subject: Comment on the Draft Rewrite of the Zoning Code

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Greetings Friends!

We have a comment on the draft zoning code update we wanted to share.

Greg – if you could forward this to the Planning Commission members I would appreciate it (We do not have their emails)

Thanks all, and have a great weekend!

Peter Henry

Henry Investment Partners/HIP Projects, LLC

Cell -- 202-494-1311

“Changing your mind is a sign of Intelligence.” - R. Kawasaki



May 31, 2024

The Mayor and City Council
The Planning Commission
The City of Gaithersburg
31 S. Summit Ave,
Gaithersburg, MD 20877

RE: DRAFT ZONING ORDINANCE

Dear Members of the City Council and Planning Commission:

There has clearly been a lot of effort and good work put into this revision to the Zoning Ordinance. This will be a much clearer and understandable text for the citizens of the City, prospective landowners and developers to follow – and the City’s Staff to use and implement the approval process.

We really have just one comment relating to existing agreements between the City and property owners – including the Watkins Mill properties.

In the course of projects zonings and approvals, legally binding agreements often come into being between the City and developers. These agreements often contain specific existing requirements, conditions and timelines that will be in conflict with those proposed by the revised text.

Examples of these agreements would be annexation agreements, dedication agreements, settlement agreements, agreements relating to signage, DRRA’s, certain SDPs, and other similar agreements which will often reference the specific timelines (e.g., 15, 20 or 30 years) as well as the code standards to be applied (e.g., often those in place at the time of the agreement).

In updating codes, to avoid a breach of an existing agreement, it is common practice to insert a paragraph in the early section of the revised code noting that where the terms of a pre-existing agreement is in conflict with the terms of the updated code, the terms of the pre-existing agreement control. This is how we see the State of Maryland commonly handling these issues. In this way Staff is not placed in a position of having to choose between ignoring the code or placing the City, County or State in breach of its agreement.

A global statement is generally considered a cleaner drafting way of addressing issues such as these, as opposed to drafting specific exceptions and carveout in each paragraph that would be impacted -- which could include, by way of example, the following sections:

- 24-1.4 (A)(8) [continuing validity of existing approved signage plan];
- 24-1.4 (A)(13) [Applicability of Affordable Housing Requirements];
- 24-1.4 (A)(14), 24-4.6(E), 24-12.5(C) [Adequate Public facilities requirements];

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- 24-4.6 (D); 24-4.6(D); 24-6.1 [Open Area and Landscape Requirements]
- 24-4.6 (E) [Dedication requirements];
- 24.4.6 (J) [Open Area, setbacks, lot coverage];
- 24.4.7 [Overlay Zones that restrict the terms of the existing agreement(s)];
- 24-12.5(A) [10-year time limit for an approval that conflicts with existing agreements];
- 24-12.5(C);24-12.6 [affordable housing plan requirement that conflicts with an existing agreement]
- 24-12.5(C); 24-12.6(C) [SWM requirements which conflicts with an existing agreement];
- 24-12.5(C) [traffic study requirements which are inconsistent with an existing agreement].

This is a simple additional will avoid the Staff being propelled in a direction inconstant with the City's Good Faith agreements. Thank you again for your consideration in this matter allowing us and others to continue our cooperative efforts to move the City of Gaithersburg forward.

Respectfully Submitted;



HIP Projects, LLC
BP Realty Investments, LLC

Cc: Bradford Kline
Leigh Henry