

**PRINCE GEORGE'S COUNTY COUNCIL
AGENDA ITEM SUMMARY**

Meeting Date: 5/6/2003

Reference No.: CB-11-2003

Proposer: Dean

Draft No.: 2

Sponsors: Dean

Item Title: An Ordinance allowing department or variety stores in the I-3 Zone, under certain circumstances.

Drafter: Jackie Brown, Director
PZED Committee

Resource Eugene Singleton
Personnel: Legislative Aide

LEGISLATIVE HISTORY:

Date Presented: __/__/__

Executive Action: __/__/__

Committee Referral: 2/25/2003 PZED

Effective Date: 6/23/2003

Committee Action: 3/12/2003 FAV(A)

Date Introduced: 3/25/2003

Public Hearing: 5/6/2003 10:00 A.M.

Council Action: 5/6/2003 ENACTED

Council Votes: PS:A, MB:A, SHD:A, TD:A, CE:N, DCH:A; TH:A, TK:A, DP:A

Pass/Fail: P

Remarks: _____

PLANNING, ZONING & ECON. DEV. COMMITTEE REPORT DATE: 3/12/03

Committee Vote: Favorable with amendments, 4-1 (In favor: Council Members Harrington, Dean, Dernoga and Knotts. Opposed: Council Member Exum)

This legislation would permit a drug store, or department or variety store, no larger than 25,000 square feet in size on a parcel between 10 and 20 acres in size, located within 500 feet of property in the M-A-C (Major Activity Center) Zone, and having frontage on at least two public streets. Only 50 percent of the floor area can be devoted to non-medical related merchandise.

Staff explained that the bill is intended to facilitate the development of a store such as an Eckerd or CVS that fills medical prescriptions. These types of stores are categorized as "department or variety stores" in the Zoning Ordinance. Historically, the interpretation has been that the term

“drug stores” only applies to the old fashioned pharmacies. This is because the sale of non-medical products has evolved and is not accessory to the sale of medicines and medical supplies.

Norman Rivera, of Rifkin, Livingston, Levitan & Silver, LLC, spoke in support of the legislation indicating that the amendments to the department or variety store requirements are intended to apply to an undeveloped I-3 property known as Largo Commons in the Largo Park industrial park. Mr. Rivera commented that an existing footnote (footnote 27) for department or variety stores in the I-3 Zone was added to the Code for the same property, however, the language in that footnote is applicable to a larger store (at least 100,000 square feet) and would not allow the type of department or variety store that his client intends to develop on the site. The original footnote applies to a store that is no longer in business.

The Office of Audits and Investigations determined there should be no negative fiscal impact on the County as a result of enacting CB-11-2003. The Office of Law finds the bill to be in proper legislative form. The Legislative Officer commented that the proposed legislation, although in proper form, is not in conformance with the requirement of the Regional District Act, Article 28, Section 8-102, regarding uniformity. To cure this defect, the locational criteria in footnote 46, paragraph A, should be amended to delete those criteria that are unrelated to similar uses in other zones.

The Principal Counsel provided the following comments. The bill, like a number of others presented in 2002 and 2003, appears to be user-specific and property-specific. As Planning Department staff, Planning Board, Council staff, and others have pointed out, zoning legislation is best suited for making general rules which apply to many users and many properties, not single users and single properties. But it should also be said, that this bill, property-specific and user-specific though it may be, merely amends a part of the Industrial Zone use table which was already property-specific and user-specific. Before the present bill, CB-21-1994 added department or variety stores as a permitted use in I-3 subject to footnote 27, which has various restrictions tailored to one user and one property. The Principal Counsel also noted the following for the Committee’s consideration:

1. In line 14, page 1, there is a typographical error; “Sections” should be “Section.”
2. Though the bill does not amend footnote 27, it might be instructive to see what that footnote says. Comparing the old footnote 27 and the bill’s new footnote 46, the committee should see that the restrictions are not entirely consistent, so that satisfying everything in 27 means you necessarily violate something in 46. (A store could not, for example, be over 100,000 square feet (footnote 27) and under 25, 000 square feet (footnote 46) at the same time. Similarly, the same store could not meet the user restrictions in both 27 and 46.)

This minor technical problem can be fixed by eliminating footnote 46, incorporating its restrictions into footnote 27, and then having the two sets of restrictions work in the alternative. Or footnote 46 could be amended, to say something like this: “A property which does not meet the requirements of footnote 27 may be approved, if:....”

The Planning Board takes no position on CB-11-2003 and offers the following staff comments. A department store of up to 100,000 square feet in size is currently allowed in the I-3 zone subject to similar size and location requirements. Restaurants are also permitted in the zone. Staff does not believe a drug store would have an adverse impact on any of the other uses allowed in the I-3 Zone or preclude the use of the zone for its primary purposes of industry and employment any more than these two other permitted commercial uses.

While this bill has limited applicability, in a larger sense allowing more retail commercial uses in industrial/employment zones blurs the intent of these zones and complicates the ability to implement the employment recommendations of the General and Area Master Plans through zoning. Although the staff supports efforts to create opportunities for multi- and mixed-use projects in appropriate locations, the General and Area Master Plans speak to areas of the County that are both under- and over-served by certain groups of uses, such as retail commercial. In light of this, staff recommends that the Planning Board reinforce the need for a timely review of the zoning ordinance and appropriate changes necessary to implement the General Plan.

Based on the Planning Board's comments, Council Member Dean, the bill's sponsor, commented on the need to move on with business in the County until such time as the zoning ordinance review is complete. Mr. Dean explained that the purpose of this legislation is to allow a business that is acceptable to the community to move forward with its plans even though the proposed site may not be in the proper zoning category for such a use at this time.

The Committee discussed amendments to address the Principal Counsel's comments such as eliminating footnote 46 and incorporating its restrictions in footnote 27 or eliminating footnote 27 since it was for a larger department store on the same property and is no longer necessary. During this discussion, Andre Gingles, of O'Malley, Miles, Nylan & Gilmore, P.A., addressed the Committee requesting that the existing footnote 27 remain in the Code because it would apply to a property in Councilmanic District 8 where there is a potential for development of a larger department or variety store in I-3.

The Committee voted favorably on the bill with amendments to delete new footnote 46 and include "or" after existing footnote 27 with the language of (B), (C) and (D) of footnote 46 as follows: "The store has no more than 25,000 square feet gross floor area; the store fills medical prescriptions and sells medical supplies and nonprescription medicines, in addition to general merchandise; and except for medical prescriptions, medical supplies, and nonprescription medicines, the store has no more than 50 percent of its gross floor area devoted to the sale of a single type of merchandise, such as food or specialty items."

BACKGROUND INFORMATION/FISCAL IMPACT

(Includes reason for proposal, as well as any unique statutory requirements)

The bill amends the use table for the I-3 Zone to permit department or variety stores with pharmacy operations, under certain circumstances.

CODE INDEX TOPICS: