

INTER-OFFICE MEMORANDUM PRINCE GEORGE'S COUNTY, MARYLAND

ZONING HEARING EXAMINER OFFICE
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TO: Rana Hightower, Director
Planning, Housing, and Economic Development Committee

FROM: Maurene Epps McNeil,
Chief Zoning Hearing Examiner

DATE: July 12, 2024

RE: CB-62-2024

Thank you for the opportunity to provide the following comments on the above-referenced bill that amends Section 27-5102 of the Zoning Ordinance to impose certain conditions on Convenience Stores.

Gas Stations are defined to allow what would fall under the definition of a “convenience store” as an accessory use. It would be helpful to clarify that the law does not apply to Gas Stations if that is the Council’s intent. It is permissible for the Council to distinguish between these uses as long as there is a rational basis for doing so. See, Baddock v. Baltimore County, 239 Md. App. 467 (2018) (a decision reviewing the legality of a County law that restricted the hours of operation for hookah lounges but did not address cigar lounges or other uses where smoking or the sale of tobacco products might occur).

It is also permissible for the Council to regulate the hours of operation for convenience stores within the Zoning Ordinance. We currently do so for a few special exceptions and uses permitted by right. (See, Prince George’s County Code Sections 27-5102 (d)(2), (e)(2)(B), and various provisions within Section 27-5400) While limiting the hours of operation is not, strictly speaking, a zoning issue, the Council is not precluded from exercising the general powers given it in Section 10-206 of the Maryland Annotated Code Local Government Article within a zoning regulation. The Baddock decision reiterated that “simply because an enactment ... affects the activities which are otherwise allowed or disallowed under local zoning regulations, does not make the enactment a zoning law A legislature’s choice of label does not control whether a provision falls within the

legislature's constitutional power." (*Id.*, at 475.) Put another way, the courts will not strike our zoning law simply because it includes language that falls under the Council's police powers.

The Baddock decision also noted that amortization is not necessary if the zoning law is not prohibiting the use. However, Baltimore County allowed the hookah lounges 45 days to come into compliance. It would be reasonable for the Council to also allow a similar period for compliance by legally pre-existing Convenience Stores.

Finally, I recommend technical revisions:

1. The Director or designee of the Department of Permitting, Inspections, and Enforcement generally "denies" a permit and does not "disapprove." I recommend that the language on page 2, line 21, be revised accordingly.
2. The existing Zoning Ordinance already has Section 27-5102 (e)(9)(D). The existing language should add (i) at the beginning. The new language should start with (ii). Any subparagraphs under the new (ii) should be changed to (aa), (bb), etc., for consistency with the numbering used throughout the Code.