

PRINCE GEORGE'S COUNTY COUNCIL
COMMITTEE REPORT
2024 Legislative Session

Reference No.:	CB-062-2024
Draft No.:	2
Committee:	PLANNING, HOUSING AND ECONOMIC DEVELOPMENT
Date:	10/03/2024
Action:	FAVORABLE (A)

REPORT: Committee Vote: Favorable, as amended with additional amendments before introduction, 4-0 (In favor: Chair Dernoga, Council Members Harrison, Hawkins, and Olson)

The Planning, Housing and Economic Development (PHED) Committee convened on July 15, 2024, to consider CB-062-2024. The Committee voted 4-0 to hold the bill until September 19. On September 19, 2024, the PHED Committee voted 3-0 to hold the bill in Committee until October 3, 2024. Ms. Sakinda Skinner, County Council Liaison with the County Executive's Office, explained that the Administration supported the Planning Board's rationale behind their opposition to CB-062-2024 (Proposed DR-2). In addition, Ms. Lori Parris, Senior Advisor to the DPIE Director, would like to add technical commentary regarding enforcing the proposed legislation.

On October 3, 2024, the PHED Committee Director summarized the purpose of the legislation and informed the Committee of written comments received on the referral. As presented on July 9, 2024, Draft-1 of the bill is to amend the Zoning Ordinance to revise the use-specific standards applicable to convenience stores by adding a minimum distance between convenience store uses and setting reasonable hours of operation for convenience stores in furtherance of the public safety, health, and welfare of citizens and residents of Prince George's County.

The Planning Board voted to oppose CB-062-2024 (DR-1). The advisability of amending the text of this Ordinance is a matter committed to the legislative discretion of the County Council sitting as the District Council and is not controlled by any one factor. Within each zone listed in the Classes of Zones (Section 27-4102), the District Council may regulate the construction, alteration, and uses of buildings and structures and the uses of land, including surface, subsurface, and air rights. The provisions for each zone shall be uniform for each class or kind of development throughout the zone. No legislative amendment may create different standards for a subset of properties within a zone unless such standards are necessary to implement development policies within the applicable Area Master Plan, Sector Plan, development policies of the

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General Plan, or other approved development district; however, any differentiation of a subset of properties within a zone shall be reasonable and based upon the public policy to be served.

In addition, the Planning Board recommended the draft amendments listed below.

Page 2, Lines 9 and 24 – "Convenience" should have a lowercase "c." In addition, "uses" are "conducted," not "located." Buildings are "located." So, the language should read, "A convenience store use may not be conducted on property within three miles, measured from the property line, of a building in which a convenience store use is legally operating with a use and occupancy permit."

B. Page 2, Line 12 – Replace "convenience stores" with "convenience store use."

C. Page 2, Line 15 – Add "use" after convenience store.

D. Page 2, Lines 16 and 30 – The words "date of enactment of this Act " should be amended to pick a specific date. The language is preferable to "the date of enactment," which would require everyone who may be dealing with a convenience store application (staff, DPIE, applicants, agents, residents, etc.) to look up the date of enactment; it better to specify an actual date certain in the law. Further, the Department notes the bill language reads "the date of enactment of this Act," which is incorrect. CB-062-2024 is a Zoning Bill, so the correct term is "Ordinance," not "Act."

E. Page 2, Line 18 – Change "detail" to "detailed." F. Page 2, Line 29 – Add a row of asterisks to denote skipped text that comes after this section.

The Chief Zoning Hearing Examiner, Ms. Maurene McNeil, submitted comments, recommendations, and amendments to CB-062-2024 (DR-1) and CB-062-2024 (Proposed DR-2).

CB-062-2024 (DR-1) recommendations and amendments are as follows:

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 if there is a rational basis.

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. 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.

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(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.

Ms. McNeil’s recommendations and amendments for CB-062-2024 (Proposed DR-2) are as follows:

As noted in the Purpose Clause, CB-062-2024 (Proposed DR-2) will limit the operation of certain convenience stores depending on their location. However, page 2 of the bill deletes reference to "location" and instead references convenience stores "conducted" on property. The current Zoning Ordinance and its prior iterations refer to the location of uses. The bill should use similar language to ensure clarity regarding the District Council's intent to apply a different term at this time.

On page 2, the new (i) should be followed by (aa), (bb), etc., and “such convenience store uses” in what is currently (i)(a) should be “use.” On page 2, the new “ii” underlines existing language found in Section 27-5102(e)(9)(D) in a few places and adds a long phrase that would fit better elsewhere in the sentence.

The bill’s language should be revised as follows: A Convenience store use that sells tobacco products may not be located within three miles, measured from the property line[,] as shown on the applicable permit site plan or detailed site plan, of a building in which another convenience store, tobacco shop, electronic cigarette shop, or a retail tobacco business legally operates [as shown on the applicable permit or site plan].

The County Council Clerk received a letter from Mr. McCauley with WMDA/CAR opposing CB-062-2024.

Ms. Dinora Hernandez, with the Office of Law, submitted a memorandum stating that the CB-062-2024 (Proposed DR-2) was in proper legislative form with no impediments to enactment and did offer a technical amendment to the bill. The amendment reads: On page 2, the new (i) should be followed by (aa), (bb), and so on.

The bill sponsor, Council Member Oriadha, explained that inside the Capital Beltway, there is a huge issue with the over-saturation of convenience stores, which are really tobacco shops; the stores do not operate as convenience stores. The legislation comes from recommendations made by the Department of Permitting, Inspection and Enforcement (DPIE) to better address enforcement of convenience stores. Council Member Oriadha stated that the main difference between CB-062-2024(DR-1) and proposed DR-2 is that the revised bill addresses the Planning Board’s recommendation to remove the hours of operation from the bill.

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Mr. Eric Irving discussed the amendments to CB-062-2024.

Council Member Harrison asked about the Prince George's County Health Department's role in approving convenience store use and occupancy permits. He asked if a health atlas report could be created to show whether there is a benefit and need in Prince George's County rather than the use creating a burden. He explained that a health atlas report could solve the concerns.

Council Member Oriadha explained that creating a health impact assessment with teeth would solve the problem of oversaturation for different uses.

Chair Dernoga mentioned that convenience stores could be treated similarly to gas stations by requiring special exception approval with a need assessment. Chair Dernoga asked how the legislation will affect gas stations.

Ms. McNeil explained that gas stations are not affected by this legislation because the definition of a convenience store requires a certain size.

Council Member Olson asked Council Member Oriadha if she was trying to address the definition of a convenience store.

Council Member Oriadha explained that she would like to address two concerns through her legislation. One goal is to regulate the number of convenience stores developed inside the Beltway. Secondly, the bill sponsor would also like to limit convenience stores because of oversaturation, like the County Council has regulated gas stations and public storage facilities.

Council Member Olson expressed his concern about the bill as drafted because convenience stores would be limited in transit and urban areas where this type of use is needed. He proposed an amendment that would exempt Transit-Oriented/Activity Center Zones and Transit-Oriented/Activity Center Planned Development Zones.

Council Member Hawkins thanked the bill sponsor for proposing the legislation and explained that he proposed convenience store legislation when he first became a council member.

Council Member Harrison requested that DPIE provide operational staffing information and redefine the definition of a convenience store.

Ms. Hull, the Planning Director, explained that the Planning Board voted on CB-062-2024 (DR-1), and if the County Council made amendments, the Planning Department would have to review them with current data.

Council Member Dernoga asked if the Planning Board had any analysis of draft two of the bill.

Mr. Irving explained that 99% of the amendments included in draft two were offered by the Planning Department's technical staff report or came from individual work sessions with Planning Department staff.

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Ms. Skinner explained that the Administration is uncomfortable taking a position on CB-062-2024 (Proposed DR-2) because the Planning Board has yet to consider proposed draft two of the bill formally. Ms. Skinner stated that the Administration believes the health atlas report mentioned by Council Member Harrison is crucial when businesses apply for a use and occupancy permit. The Administration will provide the fiscal and operational impact if the legislation is enacted. Lastly, regarding tobacco enforcement, she reminded the Committee members that DPIE has limited staffing and that concern should be considered when moving the proposed legislation forward.

Council Member Harrison asked for a breakdown of the total number of businesses classified as convenience stores. This request was in addition to Council Member Dernoga's request that the Planning Department provide information on the total number of convenience stores listed on their three-mile radius map.

Ms. Ellen Valentino, representing the Mid-Atlantic Petroleum Distributors Association, who are owners of convenience stores, explained that the industry is continuing to evolve and striking a shade over industry does a disservice to convenience stores. The prohibition of convenience stores within three miles of each other would be considered a ban on the use, and she requested the Council take a moment to evaluate the proposed legislation.

Ms. Sarah Price, with the Maryland Retailers Alliance, testified in opposition to the legislation. She explained that CB-062-2024 (Proposed DR-2) is better than draft one. Ms. Price stated that based on the discussion, it appears there is a definition and enforcement concern based on the discussion, and the legislation as drafted would prohibit convenience stores. It would be short-sighted and inappropriate to prohibit an entire industry arbitrarily and mandate that no additional convenience stores be permitted.

Council Member Harrison thanked the speakers and mentioned that he keeps hearing about innovation and the evolution of convenience stores over time. He said some convenience stores sell unhealthy products to Prince George's County residents. He would like them to work with the bill sponsor to improve health outcomes.

On motion of Council Member Olson, seconded by Council Member Hawkins, the PHED Committee voted 4-0 favorably on Amendment # 1. The language for Amendment #1 is as follows:

(iii) Convenience store uses conducted in Transit-Oriented/Activity Center Zones and Transit-Oriented/Activity Center Planned Development Zones shall not be subject to the limitations set forth in Subsections (i) and (ii) above.

On motion of Council Member Olson, seconded by Council Member Hawkins, the PHED voted 4-0 favorably on CB-062-2024 as amended, with the understanding that additional amendments

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are to occur before introduction of the bill.