



Office of the Chairman
Prince George's County Planning Board

(301) 952-3561

March 11, 2021

The Honorable Calvin S. Hawkins, II
Chairman
Prince George's County Council
County Administration Building
14741 Governor Oden Bowie Drive
Upper Marlboro, Maryland 20772

Re: CB-13-2021, CB-14-2021 and CB-16-2021

Dear Chairman Hawkins: 

Thank you for providing the Planning Board an opportunity to review and comment on proposed District Council legislation. During the March 11, 2021 Planning Board meeting, the following positions were adopted in accordance with the planning staff's recommendations on the proposed legislation. A **Planning Board Analysis of each bill is attached for your consideration and a brief excerpt from each report is provided below:**

***CB-13-2021** The bill adds a definition for "Farm brewery" and permits the use in the Open Space (O-S) Zone under certain specific requirements.*

Planning Board Recommendation: Support with amendments.
(See Attachment 1 for full analysis)

The bill will create a new use and permit the use in the Open Space (O-S) Zone if the property has at least four acres of land. The O-S Zone is intended to promote the economic use and conservation of agriculture, natural resources, residential estates, and non-intensive recreational uses. The proposed use appears to be compatible with the purposes of the zone. The Planning Board would like to recommend a few amendments for District Council consideration.

On page 5, line 31, remove the comma behind the word "less" and place the comma behind the word "smaller". The revised language would read: "Smaller, less attended functions, such as but not limited to tastings, private parties, brewery tours meetings or picnics are permitted with limitation on the number of events.

Delete the language on page 6, lines 6 through 8, that reads: "Adequate parking for visitors for the Farm brewery shall be provided on the premises. No visitor parking shall be allowed on public or private rights-of-way." The Planning Board recommends replacing the language with amendments to Sections 27-568 and 27-582. The Planning Board also recommends adding the Part 12 (Signs.) regulations to the bill.

The Planning Board believes that CB-13-2021 is a good bill for agritourism efforts for county farms who meet the qualifications, and who do not want to utilize a farm winery.

***CB-14-2021** The bill amends the Commercial Table of Uses to permit the “Townhouse” use in the Commercial Shopping Center (C-S-C) Zone, under certain circumstances.*

Planning Board Recommendation: Oppose as drafted.
(See Attachment 2 for full analysis)

The current Zoning Ordinance permits townhouses subject to specific footnotes in the Commercial Shopping Center (C-S-C) Zone. The Planning Board believes the language under footnote 85 (E) should be deleted. The Zoning Ordinance removed all bedroom percentages for multifamily dwellings units developed on or after October 1, 2019. The proposed language would not apply to townhouses because they are classified as single-family attached dwellings units.

Letter (F) should be clarified. It is not clear if the intent is to develop townhouses or multifamily dwelling units. Next, the words “In no event shall the maximum density exceed forty-eight (48) dwelling units per acre” should be deleted. The previous sentence discusses not permitting more than forty-eight (48) dwelling units per acre. Also, setting the maximum density of forty-eight 48 dwelling units per acre would equal an approximate 900 square foot townhouse lot size. This size of lot and type of density for townhouses is something usually only seen near metro stations. The Planning Board questions the planning merit in allowing this type of density adjacent to Euclidean residentially zoned property and the Capital Beltway.

The language as drafted does not provide development standards for townhouses. There are no development regulations describing the net lot area, lot size, lot coverage, green area, lot width and setbacks, yard width and setbacks, building height, and parking for the townhouses. Development standards for townhouses should be added to the bill. Perhaps adding townhouse development regulations from the Residential Townhouse (R-T) or the Mixed Use-Transportation Oriented (M-X-T) Zones would be acceptable.

Authorizing the Planning Board to set the development regulations for a property during Detailed Site Plan review, without sufficient legislative guidance, deprives the community and property owners of the predictability and objectivity that a zoning ordinance is meant to provide.

The Planning Board notes that townhouses will be permitted in the successor to the C-S-C Zone (the CGO Zone) when the adopted Zoning Ordinance takes effect. However, permitting townhouses only for certain C-S-C properties is a piecemeal approach to allowing townhouses in commercial zones that are not supported by the Planning Board, and this bill does not contain the carefully designed townhouse standards that are included in the new Zoning Ordinance.

***CB-16-2021** A bill to amend the criteria for granting zoning appeals involving variances.*

Planning Board Recommendation: Oppose.
(See Attachment 3 for full analysis)

CB-16-2021 significantly limits the conditions under which a variance can be granted. The proposed legislation would be much stricter than surrounding jurisdictions. Approval of a variance is a two-step process. The property owner must: (1) show that a unique or unusual condition is causing the property to be disproportionately impacted by a zoning requirement, and (2) the impact is causing the property owner an unreasonable hardship or practical difficulty.

The proposed language on page 2, lines 10 through 12, limits variances to only situations where a parcel of property has exceptional narrowness, shallowness, shape, or topographic conditions. Under current law, other extraordinary situations or conditions can also be considered in determining whether a parcel of property has a unique or unusual condition. For example, under the proposed amendment, the District Council could not consider conditions such as sub-surface issues, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions), or other similar restrictions no matter how unique, unusual, or extraordinary the condition might be.

In addition, requiring that the unique or unusual condition be different from surrounding properties will present challenges in certain areas of the County, especially older neighborhoods. Lots in older communities often share a similar exceptional narrowness because the lots were developed under old zoning regulations. Such homeowners would not qualify for variances under the proposed legislation.

The proposed language on page 2 lines, 13 through 15, limits variances to only situations where the impact will cause a peculiar or unusual practical difficulty for the property owner. Under current law, the District Council can also grant a variance if the impact is causing an exceptional or undue hardship on the property owner. “Practical difficulty” is generally only a test for dimensional variances, so it appears that the legislation intends to prohibit all other types of variances.

On line 21, the words “detrimental to the use and enjoyment of adjoining properties” should be expanded upon.” The words use and enjoyment are open to broad interpretation which could result in inconsistent application of the County’s variance standards.

On line 24, the phrase “self-inflicted hardship” is more appropriate under land use law than “self-inflicted harm.” It would also be helpful to further define or clarify what the District Council intends by the term which presumably refers to a property owner intentionally or unintentionally creating the unique or unusual condition.

It should also be noted that applications for area variances within the Chesapeake Bay Critical Area Overlay Zones (CBCA) already must comply with seven specific conditions under Section 27.01.12.04 of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays. As a result, the Planning Board believes the proposed bill, which requires compliance with six additional and potentially conflicting requirements, will have the effect of making it essentially impossible to grant area variances in the CBCA.

As always, Planning Department staff members are available to work with the Council and your legislative staff on any pertinent legislative matters. Please let us know if we may be of further assistance.

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Should you have questions, please do not hesitate to contact the Office of the Planning Director at 301-952-3595. Thank you, again, for your consideration.

Sincerely,

A handwritten signature in blue ink that appears to read "Betty".

Elizabeth M. Hewlett
Chairman

Attachments

CB-13-2021 – Planning Board Analysis (Attachment 1)

The bill adds a definition for “Farm brewery” and permits the use in the Open Space (O-S) Zone under certain specific requirements.

The Planning Board has the following comments, questions, and amendments for consideration by the District Council:

Policy Analysis:

The bill will create a new use and permit the use in the Open Space (O-S) Zone if the property has at least four acres of land. The O-S Zone is intended to promote the economic use and conservation of agriculture, natural resources, residential estates, and non-intensive recreational uses. The proposed use appears to be compatible with the purposes of the zone. The Planning Board would like to recommend a few amendments for District Council consideration.

On page 5, line 31, remove the comma behind the word “less” and place the comma behind the word “smaller”. The revised language would read: “Smaller, less attended functions, such as but not limited to tastings, private parties, brewery tours meetings or picnics are permitted with limitation on the number of events.

Delete the language on page 6, lines 6 through 8, that reads: “Adequate parking for visitors for the Farm brewery shall be provided on the premises. No visitor parking shall be allowed on public or private rights-of-way.” The Planning Board recommends replacing this language with amendments to Sections 27-568 and 27-582 as shown below.

Section 27-568 (Schedule (number) of parking spaces required, generally.)

Type of Use	Number of Spaces	Unit of Measurement
(5) COMMERCIAL TRADE (GENERALLY RETAIL)/SERVICES:		
<u>Farm Brewery</u>	<u>1</u>	<u>1,000 sq. ft of GFA Inside the Beltway</u>
	<u>1</u>	<u>1,000 sq. ft of GFA Outside the Beltway</u>

Section 27-582 (Schedule (number) of loading spaces required, generally.)

Type of Use	Number of Spaces	Unit of Measurement
<u>Farm Brewery</u>	<u>None</u>	<u>0—10,000 sq. ft. of GFA</u>
	<u>1</u>	<u>10,000 sq. ft of GFA and above</u>

The Planning Board also recommends adding the Part 12 (Signs.) regulations to the bill.

The Planning Board believes that CB-13-2021 is a good bill for agritourism efforts for county farms who meet the qualifications, and who do not want to utilize a farm winery.

Impacted Property:

There are approximately 3,293 split or wholly zoned O-S properties that have at least four acres of land. Planning Department staff are not able to exclude lots or open space locations within a subdivision defined as a parcel of land under a homeowner's association or recorded covenants. There is no mapping tool available to determine which lots or parcels are under a homeowner's association agreement or a recorded covenant.

Adopted Zoning Ordinance:

The adopted Zoning Ordinance renames the O-S Zone, the Agricultural and Preservation (AG) Zone. The "Farm brewery" use would fall under the "Farm-Based Alcohol Production" use. The use is permitted with use-specific standards in all rural and agricultural and residential base zones, and in the Industrial/Employment (IE) and Industrial, Heavy (IH) Zones.

Following discussion, the Planning Board voted to support CB-13-2021 with amendments.

CB-14-2021 – Planning Board Analysis (Attachment 2)

The bill amends the Commercial Table of Uses to permit the “Townhouse” use in the Commercial Shopping Center (C-S-C) Zone, under certain circumstances.

The Planning Board has the following comments, questions, and amendments for consideration by the District Council:

Policy Analysis:

The current Zoning Ordinance permits townhouses subject to specific footnotes in the Commercial Shopping Center (C-S-C) Zone. The Planning Board believes the language under footnote 85 (E) should be deleted. The Zoning Ordinance removed all bedroom percentages for multifamily dwellings units developed on or after October 1, 2019. The proposed language would not apply to townhouses because they are classified as single-family attached dwellings units.

Letter (F) should be clarified. It is not clear if the intent is to develop townhouses or multifamily dwelling units. Next, the words “In no event shall the maximum density exceed forty-eight (48) dwelling units per acre” should be deleted. The previous sentence discusses not permitting more than forty-eight (48) dwelling units per acre. Also, setting the maximum density of forty-eight 48 dwelling units per acre would equal an approximate 900 square foot townhouse lot size. This size of lot and type of density for townhouses is something usually only seen near metro stations. The Planning Board questions the planning merit in allowing this type of density adjacent to Euclidean residentially zoned property and the Capital Beltway.

The language as drafted does not provide development standards for townhouses. There are no development regulations describing the net lot area, lot size, lot coverage, green area, lot width and setbacks, yard width and setbacks, building height, and parking for the townhouses. Development standards for townhouses should be added to the bill. Perhaps adding townhouse development regulations from the Residential Townhouse (R-T) or the Mixed Use-Transportation Oriented (M-X-T) Zones would be acceptable.

Authorizing the Planning Board to set the development regulations for a property during Detailed Site Plan review, without sufficient legislative guidance, deprives the community and property owners of the predictability and objectivity that a zoning ordinance is meant to provide.

The Planning Board notes that townhouses will be permitted in the successor to the C-S-C Zone (the CGO Zone) when the adopted Zoning Ordinance takes effect. However, permitting townhouses only for certain C-S-C properties is a piecemeal approach to allowing townhouses in commercial zones that are not supported by the Planning Board, and this bill does not contain the carefully designed townhouse standards that are included in the new Zoning Ordinance.

Impacted Property:

There are three properties impacted by the proposed legislation. The tax identification numbers are 2256345 on Martin Luther King Highway, 3109196 located at 8803 Annapolis Road, and 2753580 located at 5474 St Barnabas Road.

Adopted Zoning Ordinance:

The adopted Zoning Ordinance renames the C-S-C Zone the Commercial General Office (CGO) Zone. The CGO Zone permits townhouses by right. Since the bill currently references provisions that would pertain to multifamily development (bedroom percentages and the maximum density at forty-eight 48 dwellings units per acre), the Planning Board notes multifamily dwelling units are also permitted in the CGO Zone.

Following discussion, the Planning Board voted to oppose CB-14-2021 as drafted.

CB-16-2021 – Planning Board Analysis (Attachment 3)

A bill to amend the criteria for granting zoning appeals involving variances.

The Planning Board has the following comments, questions, and amendments for consideration by the District Council:

Policy Analysis:

CB-16-2021 significantly limits the conditions under which a variance can be granted. The proposed legislation would be much stricter than surrounding jurisdictions. Approval of a variance is a two-step process. The property owner must: (1) show that a unique or unusual condition is causing the property to be disproportionately impacted by a zoning requirement, and (2) the impact is causing the property owner an unreasonable hardship or practical difficulty.

The proposed language on page 2, lines 10 through 12, limits variances to only situations where a parcel of property has exceptional narrowness, shallowness, shape, or topographic conditions. Under current law, other extraordinary situations or conditions can also be considered in determining whether a parcel of property has a unique or unusual condition. For example, under the proposed amendment, the District Council could not consider conditions such as sub-surface issues, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions), or other similar restrictions no matter how unique, unusual, or extraordinary the condition might be.

In addition, requiring that the unique or unusual condition be different from surrounding properties will present challenges in certain areas of the County, especially older neighborhoods. Lots in older communities often share a similar exceptional narrowness because the lots were developed under old zoning regulations. Such homeowners would not qualify for variances under the proposed legislation.

The proposed language on page 2 lines, 13 through 15, limits variances to only situations where the impact will cause a peculiar or unusual practical difficulty for the property owner. Under current law, the District Council can also grant a variance if the impact is causing an exceptional or undue hardship on the property owner. “Practical difficulty” is generally only a test for dimensional variances, so it appears that the legislation intends to prohibit all other types of variances.

On line 21, the words “detrimental to the use and enjoyment of adjoining properties” should be expanded upon.” The words use and enjoyment are open to broad interpretation which could result in inconsistent application of the County’s variance standards.

On line 24, the phrase “self-inflicted hardship” is more appropriate under land use law than “self-inflicted harm.” It would also be helpful to further define or clarify what the District Council intends by the term which presumably refers to a property owner intentionally or unintentionally creating the unique or unusual condition.

It should also be noted that applications for area variances within the Chesapeake Bay Critical Area Overlay Zones (CBCA) already must comply with seven specific conditions under Section 27.01.12.04 of the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays. As a result, the Planning Board believes the proposed bill, which requires compliance with six additional and potentially conflicting requirements, will have the effect of making it essentially impossible to grant area variances in the CBCA.

Impacted Property:

The bill will impact all properties that require an area variance inside and outside of the Chesapeake Bay Critical Area.

Adopted Zoning Ordinance:

The adopted Zoning Ordinance retains the existing variance decision standards for granting a variance. If this legislation is enacted this change would have to be incorporated in the omnibus clean-up legislation.

Following discussion, the Planning Board voted to oppose CB-16-2021.