



June 4, 2024

TECHNICAL STAFF REPORT

TO: Prince George's County Planning Board

FROM: Richard Eberhart Hall, AICP, Special Assistant to the Director

SUBJECT: Legislative Drafting Request LDR-83-2024
Convenience Store Locations and Hours of Operation

The Planning Department's legislative team has reviewed the proposed legislative amendment to the Prince George's County Zoning Ordinance and presents the following evaluation and findings leading to a recommendation of **OPPOSE**, as described in the Recommendation section of this technical staff report.

I. EVALUATION CRITERIA

Proposed legislative amendments to the Prince George's County Zoning Ordinance are reviewed under the requirements of Section 27-3501, Legislative Amendment, of the Ordinance. The Department has considered the following in reviewing this proposed legislative amendment:

- A. The Prince George's County Zoning Ordinance;
- B. The *Plan Prince George's 2035 Approved General Plan*;
- C. The current area master plans, sector plans, and functional master plans for Prince George's County;
- D. The Prince George's County Climate Action Plan; and
- E. Referral comments.

II. COMPLIANCE WITH LAW, ASSESSMENT OF TECHNICAL DRAFTING CONVENTIONS, AND PROPOSED AMENDMENTS

Section 27-3501(c)(2)(A) of the Prince George's County Zoning Ordinance states in part that **"the Council's Legislative Counsel shall prepare the proposed amendment in consultation with the Planning Director,...."** The Planning Department is submitting this memorandum to provide clarifications and any recommendations for consideration.

Pursuant to Section 27-3501(c)(2)(C), this technical staff report **"shall contain an independent, non-substantive assessment of the technical drafting conventions of the**

proposed legislative amendment, in order to ensure consistency with the legislative style and conventions of the current Zoning Ordinance.” As such, the Department has determined that LDR-83-2024 was not drafted in a manner consistent with the legislative style and conventions of the current Zoning Ordinance.

The following are specific drafting comments.

- A. **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** – Regarding enactment date, the Department suggests picking a specific date. This 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; 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. This 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.

III. BACKGROUND

- A. **Purpose:** LDR-83-2024 would prohibit new convenience store uses (referred to as “convenience stores” for purposes of this memorandum) within three miles of existing convenience stores and limit their hours of operation.
- B. **Impacted Property:** The bill would essentially eliminate the ability to build new convenience stores. The attached Map 1 shows areas that would be covered by the three-mile radius. Almost the entire County would be affected except for some Federal lands in the north portion of the County and portions of the Rural and Agricultural Area to the southeast. If convenience stores associated with gas stations are incorporated in a future draft of this bill (see discussion on gas stations below), the area of restriction becomes substantially larger, and the bill becomes even more impactful in prohibiting any new convenience stores in the County (see attached Map 2).
- C. **Policy Analysis:** As mentioned above, LDR-83-2024 would essentially prohibit new convenience stores in the County by not allowing new stores within three miles of existing ones. The bill’s limit on hours of operation (5 a.m. to 10 p.m.) for new stores would also be too restrictive for some stores. Convenience stores provide an important role in the County and are one of the land uses planned – and permitted - in our designated centers.

While the Department does not know the sponsor’s intentions, this bill would not apply to stores associated with gas stations. This is because a “convenience store” is a separately defined and listed use in the current Zoning Ordinance while “gas station” is

defined in a manner where any convenience store associated with a new gas station is simply an inherent component of a gas station and is completely unaffected by LDR-83-2024.

Page 2, Lines 15–17, state that “A convenience store legally operating with an approved use and occupancy permit as of the date of enactment of this Act shall not be considered a nonconforming use.” This would appear to permanently permit convenience stores that are currently nonconforming uses by effectively removing their certified nonconforming status in favor of making them legal uses. The intent of rezoning a property to make its use nonconforming is to discourage the use in the hope that it will one day redevelop to something desired. Convenience stores that are currently nonconforming uses were zoned that way to hasten their redevelopment. Making them conforming in perpetuity undermines this action. In addition, as use prohibitions cannot be made retroactive, this language is unnecessary. More effective language could be “shall not be considered nonconforming to these use-specific standards.”

With regard to proposed Subsection 27-5102(e)(9)(D)(i)(c) of the Zoning Ordinance, detailed site plans depict the physical development of property. There are no grounds for denying a detailed site plan simply because the proposed use is not permitted. It is recommended that Subsection (c) should be relocated to Section 27-3605(e) to provide the Planning Board the authority to recommend denial. The detailed site plan process is designed to provide the applicant with recommendations concerning the physical design of the property. If the Council seeks to deny a use, it should amend the use table.

IV. COMPLIANCE WITH EVALUATION CRITERIA

Section 27-3501(c)(2)(B) requires the Planning Director to issue a technical staff report on any proposed legislative amendment to the Zoning Ordinance within 14 calendar days of the transmittal of the proposed amendment by the Clerk of the Council. This Section also requires, at minimum, analysis of the extent to which the proposed legislative amendment complies with six criteria.

A. This proposed legislative amendment meets the requirements of Section 27-3501(c)(2)(B) as follows:

(i) Is consistent with the goals, policies, and strategies of Plan Prince George’s 2035 (or any successor General Plan), area master plans, sector plans, functional master plans, and any other applicable approved plans;

The *Plan Prince George’s 2035 Approved General Plan* (Plan 2035) calls for the transformation of the County’s 34 designated centers into dense, walkable, mixed-use communities. Convenience retail is a preferred use in a transit-oriented or transit-adjacent development as identified in the adopted policy documents. The population densities permitted by the Transit-Oriented/Activity Center, RMF-48 Zone, and commercial zones has potential to support levels of development for economic vitality of multiple convenience stores within the same block.

This bill, if enacted, would effectively prohibit new convenience retail at most, if not all, of the County’s Metrorail and Purple Line stations. This would, in turn,

discourage private investment in any new development in these locations, as Prince George's County would prohibit a common use that is permitted in our neighboring, competing jurisdictions in their targeted growth locations and transit centers. Such an action would substantially impair implementation of Plan 2035 and all of the County's area master plans, sector plans, and transit district development plans around Metrorail and Purple Line stations, all of which explicitly recommend or presume convenience retail as a common element of vertical mixed-use development.

(ii) Addresses a demonstrated community need;

As discussed above, convenience stores provide an important role in our communities and this bill would essentially prohibit new ones, which would run counter to the demonstrated community need identified in many active comprehensive plans for convenience services and retail, especially at the ground floor of vertically mixed developments.

The Department suggests that a better option to address convenience store safety issues is through enforcement actions rather than zoning.

(iii) Is consistent with the purpose and intent of the zones in this Ordinance, or would improve compatibility among uses and ensure efficient development within the County;

By essentially prohibiting new convenience stores, LDR-83-2024 would run counter to "efficient development within the County" because these stores provide an important part of the services needed in any community.

(iv) Is consistent with the implementation of the strategies and priority recommendations of the Prince George's County Climate Action Plan;

The 2022 Prince George's County Climate Action Plan contains 26 priority recommendations intended for rapid implementation with key near-term actions, and numerous strategies focused on the long-term vision to guide the County's climate mitigation and adaptation efforts over time. The strategies are contained in Chapter VI, Taking Action: Strategies to Achieve a Low-Carbon, Resilient Prince George's County, while the recommendations are described with detailed action steps in Chapter VII, Next Steps.

The 26 priority recommendations are divided into 3 action areas:

1. Operational actions to bring about transformational change;
2. Mitigating the cause of climate change by reducing greenhouse gas emissions; and
3. Adapting to coming climate impacts.

By essentially prohibiting new convenience stores, LDR-83-2024 could result in generating more car trips as residents drive further to existing stores, thereby increasing greenhouse gas emissions.

- (iv) **Is consistent with other related State and local laws and regulations; and**

This bill does not conflict with existing laws.

- (vi) **Would avoid creating significantly adverse impacts on the natural environment, including but not limited to water, air, noise, stormwater management, wildlife, vegetation, wetlands, and the natural functioning of the environment.**

LDR-83-2024 will not create significantly adverse impacts on the natural environment of the County, but it will likely lead to minor adverse impacts pertaining to air and noise quality as residents will be likely to drive further distances to existing convenience stores.

- B. Pursuant to Section 27-3501(c)(2)(C), this technical staff report “**shall contain an independent, non-substantive assessment of the technical drafting conventions of the proposed legislative amendment, in order to ensure consistency with the legislative style and conventions of the current Zoning Ordinance.**”

This analysis was provided above in Section II of this technical staff report.

- C. Finally, Section 27-3501(c)(2)(D) requires the Planning Board to make a recommendation on the proposed amendment in accordance with the Legislative Amendment Decision Standards that guide the District Council’s final decision on the approval of a proposed legislative amendment.

Analysis of the Legislative Amendment Decision Standards is contained in a separate subsection of this technical staff report below.

2. Referral Comments

The Department referred LDR-83-2024 to colleagues throughout the Planning Department and received referral comments from the Community Planning Division that were reviewed and integrated in this staff report.

V. PLANNING BOARD PUBLIC HEARING

Section 27-3501(c)(2)(D) requires the Prince George’s County Planning Board to hold a public hearing and make comments on the proposed legislative amendment within 30 days of the date of the transmittal of the Clerk of the Council. Said public hearing must be noticed by electronic mail at least 21 days prior to the public hearing, sent to every community organization in the County registered pursuant to Section 27-3407(b)(3) of the Zoning Ordinance, and to any person or organization registered pursuant to Section 27-3402(d) of the Zoning Ordinance.

Notice for the public hearing on LDR-83-2024 was sent on May 30, 2024, as required by the Zoning Ordinance. The Planning Board public hearing will be held on June 20, 2024, thus meeting the notice requirement of the Zoning Ordinance.

Comments offered by the public prior to and during the Planning Board's public hearing will be summarized, along with the Planning Board's comments, in the Board's recommendation to Clerk of the Council.

VI. ANALYSIS OF LEGISLATIVE AMENDMENT DECISION STANDARDS

LDR-83-2024 has been reviewed for consistency with Section 27-3501(d), Legislative Amendment Decision Standards, of the Zoning Ordinance. The Department finds the following:

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 (D)istrict (C)ouncil 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, and 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 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.

The Department finds that LDR-83-2024 would create a different standard for the hours of operation for new versus existing convenience stores; although the provisions pertaining to convenience stores proposed in LDR-83-2024 would be uniform between zones, this different standard for hours of operation – applicable only to new convenience stores and not existing stores – results in different standards for a subset of properties within the zones that permit convenience store uses.

In addition, it is unclear to the Department what public policy may be served by limiting store operating hours. Should the Council seek to limit operating hours for new convenience stores, it is recommended for the Council should justify why they are choosing this policy direction and ensure any proposed legislation is well-grounded in such justification.

Based on the above preliminary assessment, the Department finds that LDR-83-2024 is not consistent with the Legislative Amendment Decision Standards specified in Section 27-3501(d) of the Zoning Ordinance.

VII. PROPOSED AMENDMENTS

Following review of LDR-83-2024, the Department has offered the necessary technical drafting convention edits that are necessary for this proposed bill in Section II, above. As to the substantive aspects of the bill, the Department has no amendments at this time and requests to coordinate with the bill's sponsor to better understand the underlying concerns and work toward more effective outcomes than LDR-83-2024 would engender.

VIII. RECOMMENDATION

Based upon the foregoing evaluation and analysis, the Planning Department's legislative team recommends the Planning Board adopt the findings of this report and also recommends the Planning Board **OPPOSE** LDR-83-2024.

Attachments