

PRINCE GEORGE'S COUNTY COUNCIL

COMMITTEE REPORT

2022 Legislative Session

Reference No.: CB-076-2022

Draft No.: 2

Committee: PLANNING, HOUSING AND ECONOMIC DEVELOPMENT

Date: 9/15/2022

Action: FAV (A)

REPORT:

Committee Vote: Favorable as amended, 5-0 (In favor: Council Members Franklin, Glaros, Harrison, Hawkins, and Turner)

The Planning, Housing and Economic Development (PHED) Committee convened on September 15, 2022, to consider CB-76-2022. The Planning, Housing and Economic Development (PHED) Committee Director summarized the purpose of the legislation and informed the Committee of written comments received on referral. This bill amends the Zoning Ordinance to require special exception approval for gas stations in certain Nonresidential and Transit-Oriented/Activity Center base zones and the Town Center Activity Center-Planned Development (TAC-PD) Zone and revises specific special exception site design criteria for gas stations in the Zoning Ordinance for Prince George's County.

The Planning Board took no position with amendments as explained in a September 8, 2022, letter to the Council Chairman as follows:

“CB-76-2022 would change the use permission for gas stations located in the Commercial Service (CS), Town Activity Center (TAC) Edge, Local Transit-Oriented (LTO) Edge, Regional Transit-Low Intensity (RTO-L) Edge, Regional Transit - High Intensity (RTO-H) Edge, and Town Center Activity Center-Planned Development (TAC-PD) Zones to be permitted subject to special exception approval rather than be permitted by-right. The bill also requires the special exception site plan to demonstrate that the property will have sufficient ingress and egress, show that signs are limited to ‘the minimum necessary,’ prepare a remediation plan for when the site has been abandoned, and provide an acoustic analysis to show the site will adhere to the County noise ordinance. Last, the bill permits the District Council to consider the number of proposed or existing gas stations within a three-mile radius of the proposed site.

The proposed legislation which requires special exception approval for gas stations in the above-listed zones, and which adds new global special exception standards for any gas station requiring special exception approval in the County is a policy decision to be made by the District Council. The Planning Board will be able to implement the requirements of this legislation without administrative issues.

The Planning Board notes for District Council’s consideration that the language on page 6, lines 8 through 10, should be amended to state a specific finding. The language as drafted is vague and does not provide a specific finding to trigger the determination of whether a special exception for a gas

station is warranted. Adding a specific finding instead of the more nebulous language currently proposed will give the District Council the tools to make an appropriate decision on approving or denying the gas station special exception application.

Also, while less directly pertinent to decision-making as the finding language, the Planning Board notes the proposed requirement that “signage shall be limited to the minimum necessary” is extremely vague and subjective. Finally, and importantly, CB-76-2022 would change all gas stations to be subject to special exception approval. As such, the use-specific standards for gas stations must be deleted because they will no longer apply. To do this, all four principal use tables should be part of the bill, with brackets inserted around the reference to "Section 27-5102(e)(10)(B) and" in the "use-specific standards" column of the use tables, and Section 27-5102(e)(10)(B) itself needs to be added to the bill and bracketed out, to be replaced with the word "RESERVED." This will ensure the use tables properly and only refer to the special exception standards and eliminate use regulations that would no longer be applicable to any application.

In proposed section 27-5402(cc)(1)(B) ‘line-of-site’ should be ‘line-of-sight.’”

The Zoning Hearing Examiner submitted a September 12, 2022, memorandum with the following comments:

“This bill will now require that Gas Stations be permitted upon approval of a special exception and no longer be permitted by right in certain zones. I would recommend a few changes to the draft.

1. Since the bill is revising requirements for Gas Stations, the title should be concerning ‘Gas Stations’ on page 1, line 2. The purpose clause itself should be revised as follows, on page 1, lines 3-5: For the purpose of requiring special exception approval for Gas Stations in certain zones, and revising the requirements for approval of a special exception for Gas Stations.
2. We currently address the new language on page 4, lines 8-10, but agree it may be included in the bill.
3. The bill will increase the setback (from 300 feet to 500 feet) from any lot on which a school, outdoor playground, library, or hospital is located. It will also require sidewalks 8 feet in width for the area between the building line and the curb. All gasoline pumps must be 35 feet behind the street line. Finally, an acoustic analysis will be required to address the impact of nighttime noise. (See pages 4-5). All of these changes will make many existing stations nonconforming uses. If that is not the sponsors’ intent language should be added (perhaps a new paragraph (cc)(5)) to clarify that existing uses will not be considered nonconforming.
4. On page 5, line 15 now requires that any signage on site ‘be limited to the minimum necessary’. This language may be subject to different interpretations, and therefore subject to legal challenge. If the Council would like to limit the number of freestanding signs it should specifically note the number. Signs at each pump island and the number of freestanding signs are regulated in Section 27-61502 of the Zoning Ordinance. It might be helpful if any limitations are also referenced in that Section.
5. On page 5, lines 16-18 require Applicant submit a remediation plan for the site upon abandonment. There is current language in the law (shown on page 5, lines 28-31 and page 6, lines 1-2) that addresses what must be done upon abandonment of the site. If the sponsors are envisioning something different the language on page 5 lines 16-18 should be further refined. In any event, I believe a full plan for remediation may be premature at the time of application since

said plan may not satisfy any federal, state or County law in effect years down the road when the abandonment may occur.

6. The new language on page 6, lines 8-10, requires the District Council to consider the number of existing or proposed gas stations within a 3-mile radius of the subject property. First, proposals may or may not come to fruition, so it may be arbitrary to consider proposed gas stations when evaluating an application. Second, the other gas stations in the market area presented by Applicant are taken into consideration currently when the Council makes a determination as to whether the Special Exception is ‘necessary’. Finally, a Special Exception is a use that the Council has already determined should be permitted, if certain prerequisites are satisfied. Case law notes that an Applicant need not, therefore, prove that the use will be a boon/benefit to the area. Accordingly, an applicant does not have to prove that the use is ‘warranted’ and that term should be deleted on line 8.”

The Committee discussed agency recommendations including signage, remediation plan, grandfathering, the term “necessary” versus “warranted” and inquiries from Council Members concerning the requirement for an acoustics study. Sarah Price, representing Maryland Retailers Association, testified explaining the Association’s concerns with the legislation and urging the Committee to reject the proposal. Matthew Tedesco, Law Firm of McNamee Hosea, testified in opposition to CB-76-2022.

On a motion by Council Member Harrison and second by Council Member Glaros, the Committee voted favorable, 5-0, on CB-76-2022 with amendments to incorporate the Planning Board and Zoning Hearing Examiner recommended revisions.