

## Prince George's County Council

### Agenda Item Summary

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**Meeting Date:** 11/30/2004  
**Reference No.:** CB-111-2004  
**Draft No.:** 2  
**Proposer(s):** Harrington  
**Sponsor(s):** Harrington, Dean, Exum  
**Item Title:** An Ordinance clarifying that asphalt mixtures are asphalt mixing plants and permitting asphalt mixing plants and concrete batching or cement mixing plants in the I-2 Zone without the requirement for a special exception under certain circumstances.

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**Drafter:** Jackie Brown, Director PZED Committee  
**Resource Personnel:** Kenneth C. Williams, Legislative Aide

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#### LEGISLATIVE HISTORY:

<b>Date Presented:</b>	10/12/2004	<b>Executive Action:</b>	
<b>Committee Referral:</b>	10/12/2004 - PZED	<b>Effective Date:</b>	1/17/2005
<b>Committee Action:</b>	10/26/2004 - FAV(A)		
<b>Date Introduced:</b>	11/1/2004		
<b>Public Hearing:</b>	11/30/2004 - 10:00 AM		
<b>Council Action (1)</b>	11/30/2004 - ENACTED		
<b>Council Votes:</b>	MB:A, WC:A, SHD:-, TD:A, CE:A, DCH:A, TH:-, TK:A, DP:A		
<b>Pass/Fail:</b>	P		
<b>Remarks:</b>			

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#### AFFECTED CODE SECTIONS:

27-473

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#### COMMITTEE REPORTS:

##### PLANNING, ZONING & ECONOMIC DEVELOPMENT COMMITTEE

**Date 10/26/2004**

Committee Vote: Favorable with amendments, 4-0 (In favor: Council Members Dernoga, Bland, Exum, and Harrington)

This legislation alters Zoning Ordinance treatment and use table designation of asphalt mixing plants (presently called asphalt “mixtures”), which are now permitted by special exception in the I-2 Zone. A new footnote 48 in the industrial use table provides that a special exception is not required if the asphalt mixing plant site is within an industrial park of five or more acres, is not contiguous to land zoned or used for residential purposes, abuts a railroad right-of-way, and is within the Developed Tier, as defined in the General Plan.

Council Member Harrington, the bill’s sponsor, informed the committee that CB-111-2004 would facilitate the location of an asphalt mixing plant in an industrial location that is currently the location of significant asphalt mixing activity and that the use is not inconsistent with the surrounding area.

The Principal Counsel reviewed CB-111-2004 and noted that the bill does not follow the general Zoning Ordinance policy for this land use, that special exception review should be required of all asphalt plants. Special exception procedures, which involve examination of the effects of a proposed use on surrounding properties and the neighborhood, might be appropriate for this use even if there is no contiguous residential land and the property is in a developed area. The Office of Law found the bill to be in proper legislative form and suggested that a definition of asphalt mixing plant be added to the bill.

The Planning Board opposes CB-111-2004 and provided the following comments in support of its position. The I-2 Zone allows for industrial uses with the highest intensity and potential negative impact on other properties. A number of these uses are only allowed by special exception because of their particular nature, some of which includes high degrees of noxious fumes, odors, and noise. Currently, the Ordinance allows asphalt plants by special exception to permit the County to judge the merits of allowing the use on a specific site and determine if there are special circumstances that would help decision-makers decide what restrictions should be placed on the use, if allowed. Therefore, asphalt plants should continue to be allowed only by special exception.

The Planning Board also stated that permitting certain potentially harmful uses by right rather than through the special exception process has a destabilizing effect on competing businesses and property investments. Property owners need assurance that the prescribed uses in the zoning districts are meaningful and can be relied on when making investment decisions. The special exception process provides for a systematic in-depth review of a particular use on a site. The special exception process mandates the public notification, participation, and appeal process that is necessary to ensure a fair, equitable, and legally defensible procedure. The proposed text amendment undermines these fundamental principles of procedural and substantive due process.

The Office of Audits and Investigations determined there should be no negative fiscal impact on the County as a result of enacting CB-111-2004.

Norman Rivera spoke in support of the legislation. Mr. Rivera proposed amendments to the bill to clarify the uses intended in conjunction with the asphalt mixing plant and its location. He requested amendments to the use table on page 2 as follows:

1. Add "Concrete Batching or cement mixing plant" to the table and insert the new footnote 48 next to "SE" in the I-2 Zone for this use.
2. In subsection (B) of footnote 48, delete the words "residentially zoned land or."
3. In subsection (C) of footnote 48, change "right-of-way" to "spur."

The committee accepted the amendments as proposed by Mr. Rivera.

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#### **BACKGROUND INFORMATION/FISCAL IMPACT:**

(Includes reason for proposal, as well as any unique statutory requirements)

This legislation amends the industrial zone table to clarify that asphalt mixtures are asphalt mixing plants and to permit the use in the I-2 Zone under certain circumstances. Currently, a special exception is required for this use in the I-2 Zone.

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#### **CODE INDEX TOPICS:**

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#### **INCLUSION FILES:**

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