

PRINCE GEORGE'S COUNTY COUNCIL

COMMITTEE REPORT

2020 Legislative Session

Reference No.: CB-063-2020

Draft No.: 2

Committee: COMMITTEE OF THE WHOLE

Date: 10/08/2020

Action: FAV (A)

REPORT:

Committee Vote: Favorable as amended, 10-0-1 (In favor: Council Members Turner, Anderson-Walker, Davis, Franklin, Glaros, Harrison, Hawkins, Ivey, Streeter and Taveras. Abstain: Council Member Dernoga)

The Committee of the Whole convened on October 1, 2020 and October 8, 2020 to consider CB-63-2020. The Planning, Housing, and Economic Development Committee summarized the purpose of the bill and informed the Committee Director of written referral comments received. Council Member Davis, the bill's sponsor, indicated that he has been working with the owner of a property in his district concerning a waste removal concept that has been in place for over 50 years and looking to upgrade the business in accordance with the current Code regulations and in consultation with the surrounding community.

The Planning Board opposed CB-63-2020 and submitted a September 24, 2020 letter to Council Chair Turner summarizing the Planning staff analysis and position on the bill as follows. As drafted, this bill appears to circumvent the Zoning Ordinance by proposing a new use that is very much like the existing "trash removal services" use, except the use would be in conjunction with a private fueling station. A private fueling station is akin to the current "commercial fuel depot" use, permitted in the 1-1 Zone with a footnote, and prohibited in the 1-2 Zone. This bill would essentially combine two existing uses and permit a few properties to benefit from the new use.

This bill will impact four properties located at 9300, 9304, and 9310 Darcy Road. Three of the four properties are split-zoned 1-1 and 1-2. Defining and permitting a new use for a limited circumstance adds confusion to the current Zoning Ordinance. The limited circumstance specified in CB-63 2020 provides an alternative path for the proposed use to obtain a use and occupancy permit with fewer approval regulations. The proposed waste services with private fueling station use will not have to adhere to the locational requirement of the current trash removal services use. The new proposed use is not required to be more than 1,000 feet from any residentially zoned land. Also, there is no language prohibiting a business from delivering collected trash to the property and storing the trash overnight inside trucks and dumpsters.

The bill requires a Detailed Site Plan (DSP) approval for the use. There are no development regulations except for requiring the use to adhere to the parking and loading regulations for a

trash removal service use. The bill does not require the review of driveways for ingress and egress, measures taken to control noxious and offensive odors, the hours of operation, traffic, noise levels; or any objective criteria that would protect adjacent properties and in the general neighborhood. Not adding development regulations to the bill defeats the purpose of zoning by preventing the uniform application of objective development standards to all properties in these zones.

If development standards are not established until DSP, there is a strong possibility that development may be inconsistent with the recommended land use designation which would conflict with the District Council's approved master plans. Furthermore, it is within the District Council's authority to establish development standards and density requirements, therefore development standards should not be established during the Planning Board's review of the DSP.

If the District Council intends to move forward with this legislation the following amendments should be made to the bill:

- Instead of defining a new use, consider revising the definition for trash removal services to add a private fueling station as an accessory use. Understandably, a trash removal services business would need a fueling station to fuel their dump trucks and would thus make sense as an accessory to that use.
- Regardless of how the Council wishes to resolve the use itself, the regulatory language on page 2, lines 14 through 17, should be placed under Section 27-475.06 (Trash Removal Services.) or, should the Council wish to keep the proposed waste services and private fueling station, a new subsection under Additional Requirements for Specific Uses should be added to the bill. Regulations should not be part of the definition of a use.

The adopted Zoning Ordinance does not contain specific uses for "trash removal services" or for waste services as proposed in CB-63-2020. As proposed in CB-63-2020, the definition for waste services with private fueling station specifically incorporates maintenance facilities as permitted accessories, and staff would classify this use as "commercial vehicle repair and maintenance," which is permitted in the Commercial Service (CS), Industrial/Employment (IE), and Industrial High (IH) Zones. The use requires Special Exception approval in the CGO Zone.

The Zoning Hearing Examiner (ZHE) reviewed CB-63-2020 and offered the following comments in a September 22, 2020 memorandum to the PHED Committee Director.

Section 27–107.01 (a)(243.2) of the zoning ordinance currently defines “trash removal services” as “ A business involving the dispatching and storage of trucks or dumpsters for the purpose of trash removal.” in order to avoid any adverse impact upon existing trash removal services I would suggest that page 2 line 12 be amended to “Trash Removal Service with Private Fueling Station”. On page 2 line 14 delete the second “on-site.” The remainder of line 14 to line 20 should be removed the Use Table and/or footnote on page 3 since this is the type of language usually found therein and not in the definition. In its stead the following language should be inserted on line 14 to make it clear that the use

is a private one: “This use does not include any retail sale of gasoline or compressed natural gas.”

Once relocated I would urge that the Council not include the language “may include certain accessory uses, such as...” currently found on p. 2 line 14. The Zoning Ordinance allows all customary, incidental accessory uses without naming them, but when the Council wants certain uses to be accessory and said uses would not usually be customary and incidental to the primary use in question, the Council must expressly name the accessory use.

There may be some dangers associated with compressed natural gas. If the Council wants this to be permitted by right, may be reasonable to require a minimum acreage and a reasonable setback for the use. This is even more important because there is no provision that prevents this property from abutting land zoned residential. Finally, Gas Stations and the private Commercial Fuel Stations include language that requires the removal of all associated structures, including storage tanks, upon abandonment of the use. Similar language should be considered for this use.

Terry Bell, Council Liaison, Office of the County Executive, stated that the County Executive takes no position on the bill.

The bill was held in Committee on October 1, 2020 to allow time for staff to prepare amendments to address the Planning Board and ZHE comments.

On October 8, 2020, the Committee reviewed a Proposed Draft-2 (DR-2) with amendments summarized by the Zoning and Legislative Counsel. The amendments included changing the name of the use from “Waste Services and Private Fueling Station” to “Trash Maintenance Services and Private Fueling Station”, amending the definition to provide that the use does not include any retail sale of gasoline or compressed natural gas, and adding a new Section 27-475.06.10 with additional specific requirements, including Detailed Site Plan, for the use.

During discussion of Proposed DR-2, the ZHE recommended additional amendments to include language in Section 27-475.06.10 to require conformance with Section 27-358(a)(2) and (c) of the Subtitle and to require that fueling equipment associated with the use shall not be located less than one hundred (100) feet from the primary ingress/egress of the property. An additional amendment was noted in Proposed DR-2 to change the name of the use in the Table of Uses in accordance with other sections of the bill.

Chris Hatcher, representing Waste Management of Maryland, testified in support of the legislation during both Committee of the Whole worksessions. Chris Pilzer, of Waste Management of Maryland, was present in support and to respond to questions.

On a motion by Council Member Davis for favorable recommendation on Proposed DR-2 including the additional amendments recommended by the ZHE, and second by Council Member Streeter, the Committee voted favorably, 10-0-1, on CB-63-2020 as amended.