

PRINCE GEORGE'S COUNTY COUNCIL

COMMITTEE REPORT

2021 Legislative Session

Reference No.: CB-048-2021

Draft No.: 2

Committee: COMMITTEE OF THE WHOLE

Date: 09/09/2021

Action: FAV(A)

REPORT:

Committee Vote: Favorable as amended, 7-0-1 (In favor: Council Members Hawkins, Anderson-Walker, Dernoga, Glaros, Harrison, Ivey, and Turner. Abstain: Council Member Franklin)

The Committee of the Whole convened on September 9, 2021 to consider CB-48-2021. As presented on June 15, 2021, Draft-1 of the legislation amends the Zoning Ordinance definition for 'Gas station' to reflect electric vehicle charging stations and requires that new Special Exceptions approved for Gas Station uses in the County be located at least 300 feet from any residential use, and include a minimum of two (2) electric vehicle charging stations on the site where the use is located.

The Planning, Housing and Economic Development Committee summarized the purpose of the legislation and informed the Committee of written comments received on referral. The Planning Board supports the legislation with amendments and provided the following analysis by letter dated June 24, 2021 to Council Chair Hawkins:

“The amendment to the definition of “Gas Station” makes it clear that all gas stations may add electric vehicle charging stations, a change which serves the goals of sustainability and clean energy.

The bill amends the regulations for those gas stations subject to Special Exception approval by requiring that they be located at least 300 feet from a residential use, and providing that there must be at least two electric vehicle charging stations on the gas station site for public use.

According to the Planning Department Information Management Division staff, as of 2019, there were 277 standalone gas stations or gas stations connected to a food or beverage store in Prince George's County, some of which have Special Exception approvals and some of which are permitted uses that do not require Special Exception approval. Standalone gas stations are permitted by right in the Commercial Miscellaneous (C-M), Major Activity Center (M-A-C), Local Activity Center (L-A-C), Village-Low (V-L), and Village-Medium (V-M) Zones. Other zones permit the use subject to Detailed Site Plan only.

The term “residential use” under the Special Exception regulations should be clarified. The term

is broad and can be interpreted as any property where there are lands, buildings, structures used or designed, or intended for use as a home or residence. The Planning Board recommends clarifying the “residential use” term by requiring the “Gas station” to locate away from land that is either residentially zoned or that contains structures used as residences.

The proposed language requiring a 300-foot setback measured from any lot on which the residential use is located will create a significant number of nonconforming use gas stations in the County. The existing language requires the measurement to be from property line to property line. Until and unless existing gas stations amend their approved Special Exceptions, the new requirement for two electric vehicle charging stations will make most gas stations in the County with approved Special Exceptions a nonconforming use. Nonconforming use status can make it difficult for businesses to obtain financing and insurance. The Council may wish to consider language specifying that existing gas stations with Special Exceptions will be “deemed conforming.”

The Planning Board believes that the above-mentioned amendments will clarify the intent of the bill and avoid the creation of nonconforming gas stations in the County.

The adopted Zoning Ordinance retains the existing Zoning Ordinance definition for a gas station. The “Gas station” use is prohibited in all residential zones and the Commercial Neighborhood (CN), Town Activity Center (TAC)-Core, Local Transit-Oriented (LTO)-Core, Regional Transit-Oriented – Low Intensity (RTO-L)-Core, Regional Transit- High Intensity (RTO-H)-Core, and the Planned Mobile Home Community (RHM) Zones.”

The Council’s Zoning and Legislative Counsel prepared a Proposed DR-2 containing amendments requested by the bill sponsor to address Planning Board comments. Additional written referral comments were received upon agency review of Proposed DR-2.

The Zoning Hearing Examiner submitted a September 7, 2021 memorandum to the PHED Committee Director providing the following comments on Proposed DR-2:

“This draft of CB-48 has added a revision to the setback requirements for Gas Stations. However, the purpose clause notes that the bill will be **including** a minimum distance from residential uses. This language is inaccurate. The current law already provides that the **subject property** be a minimum of 300 feet from residential uses, so the bill is not **including** this criteria. Instead the bill is changing the measurement to be from the “nearest gas pump” to “structures used as a residence.”

I don’t see any legal problem with changing the points measured but I do believe the purpose clause must be revised to accurately reflect that the bill is not including a minimum distance but is revising the measurement criteria for that distance. I think the change from “residential uses” to “structures used as a residence” is mostly wordsmithing especially since “residential uses” is not currently defined; accordingly, while that change could be added to the purpose clause it isn’t necessary to do so.

I suggest that the purpose clause on Page 1 be revised as follows:

For the purpose of amending the definition of Gas Station uses in the Zoning Ordinance, amending the Special Exception requirement that Gas Stations include a minimum distance from residential uses, and adding a requirement that the Gas Station provide at least two (2) electric vehicle charging stations.”

During the Committee meeting, the Legislative and Zoning Counsel summarized additional recommended amendments in the form of a Proposed DR-2A.

Department of the Environment Acting Director Andrea Crooms addressed the Committee regarding the various levels of electric vehicle charging stations. Ms. Crooms recommended that the legislation require level 3 - or DC fast chargers, which can provide 100 miles in approximately 15-30 minutes depending on vehicle battery efficiency.

The Office of Law reviewed CB-48-2021 as it was presented on June 16, 2021 and found it to be in proper legislative form with no legal impediments to its adoption. However, the Office of Law concurred with the Zoning Hearing Examiner’s analysis of Proposed Draft 2 and their offered technical edit to the PURPOSE clause. Terry Bell, County Executive’s Liaison to the County Council, informed the Committee that the County Executive is in support of the legislation.

Daniel Lynch, representing Wawa and the Wills Group (Shell) testified regarding concerns with provisions of the legislation concerning the location of electric vehicle charging stations suggesting they should be required as recommended by the Department of Transportation. Thomas Haller testified regarding his concerns that grandfathering provisions should apply to all gas stations including those for which a Detailed Site plan was approved. Mr. Haller suggested an amendment to provide this clarification in Section 27-358 (a)(12).

On a motion by Council Member Glaros and second by Council Member Dernoga, the Committee voted favorable, 7-0-1, on CB-48-2021 DR-2A with additional amendments as follows based on the Committee discussion:

- Page 1: For the purpose of amending the definition of Gas station uses in the Zoning Ordinance, ~~and~~ requiring that Special Exceptions approved for Gas station uses include a minimum distance from residential uses, and **ADDING A REQUIREMENT THAT THE GAS STATION PROVIDE** at least two (2) electric vehicle charging stations.
- Page 3: **Sec. 27-358. Gas station.**
 - (a) A gas station may be permitted, subject to the following:
 - (1) The subject property shall have at least one hundred and fifty (150) feet of frontage on and direct vehicular access to a street with a right-of-way width of at least seventy (70) feet;
 - (2) The **NEAREST GAS PUMP ON THE** subject property shall be located at least three hundred (300) feet from any lot on which a school, outdoor playground, library, [or] hospital, ~~or residential use~~ **A STRUCTURE USED AS A RESIDENCE** is located;
- Page 4: (11) At least two (2) LEVEL 3 OR DC FAST CHARGER electric vehicle charging stations must be provided on-site for public use.

(12) ANY SPECIAL EXCEPTION OR DETAILED SITE PLAN APPLICATION FILED

PRIOR TO JANUARY 1, 2022, AND APPROVED SHALL

NOT BE SUBJECT TO THIS PROVISION AND SHALL BE DEEMED A CONFORMING USE.

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~~SECTION 2. BE IT FURTHER ENACTED that the provisions of this Ordinance shall apply only to applications for Special Exceptions filed on or after January 1, 2022. All gas station uses with a valid special exception shall be deemed conforming uses.~~

- Insert a new SECTION 2. to provide that the Ordinance take effect 45 calendar days after its adoption instead of on the date of its adoption.
- Revise the purpose clause accordingly to address Zoning Hearing Examiner and Office of Law comments as well as other revisions approved by the Committee during discussion of the legislation.