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MEMORANDUM

To: The Honorable Members of the Land Use and Transportation Committee
From: Justin A. Williams, Interim Executive Director
CC: Geoffrey Veale, Zoning Administrator
Date: October 14, 2025
Re: Council Bill No. 25-0040 – Zoning – Uses – Retail: Small Box Establishments
Position: No Objection

NOTE: This report has been prepared by the staff of the Board of Municipal and Zoning Appeals and has not been presented to or approved by the Board members. The comments and concerns expressed herein represent staff observations regarding implementation and administration of the proposed legislation.

OVERVIEW

City Council Bill 25-0040 proposes to regulate small box discount retail stores by defining them as a new use category, making them a conditional use requiring BMZA approval in all commercial zoning districts (C-1 through C-5), and establishing use standards including minimum separation distances between such establishments.

BMZA STAFF COMMENTS AND CONCERNS

1. Clarification Needed on Distance Measurement (§ 14-335.2)

The proposed § 14-335.2 establishes that “any new Retail: Small Box Establishment shall be at least 2,640 feet from any existing Retail: Small Box Establishment.” However, the bill does not specify the method of measurement for determining compliance with this separation requirement.

BMZA Staff requests clarification on whether the 2,640-foot distance should be measured:

- Door-to-door between establishments?
- Property line to property line?
- From the center point of each property?
- By some other method? This clarification is essential for consistent application and enforcement of the standard, and to provide clear guidance to applicants and the Board when reviewing conditional use applications.

2. Responsibility for Compliance Verification

The bill does not clearly designate which City agency or department is responsible for:

- Initially verifying compliance with the 2,640-foot separation requirement
- Maintaining an ongoing inventory of Small Box Retail Establishments citywide
- Monitoring continued compliance with use standards

BMZA Staff notes that if the intent is for BMZA staff to verify compliance with the distance requirement, the BMZA currently lacks:

- **The technological tools** to efficiently map and calculate distances between existing and proposed establishments across all commercial districts citywide
- **The staff resources** to compile, maintain, and update a comprehensive database of Small Box Retail Establishments
- **The enforcement authority** to monitor ongoing compliance after conditional use approval

If the BMZA is expected to determine compliance as part of conditional use review, additional resources and technological infrastructure would be necessary.

3. Concerns Regarding Shortened Discontinuance Timeline

BMZA Staff shares the concerns raised by the Baltimore Development Corporation regarding the originally proposed § 18-307(b), which would have created a significantly shortened discontinuance period (30 consecutive days) specifically for Small Box Retail Establishments, compared to the standard 12-month period for other nonconforming uses.

While we understand that Amendment No. 4 proposes to remove this provision entirely, BMZA Staff wishes to note for the record that such disparate treatment of nonconforming uses:

- May create enforcement challenges and confusion
- Could result in legal challenges based on lack of rational basis for the distinction, and
- Would place additional administrative burdens on City enforcement staff

4. Ongoing Compliance with Grocery Store Exclusion

One of the proposed exclusions from the definition of “Retail: Small Box Establishment” is a grocery store. According to Amendment No. 3, a grocery store is defined as a “store, whose primary business is selling food at retail to the general public for off-premises consumption, of which at least 20% of the gross receipts must be derived from the retail sale of fresh produce, meats, and dairy products.”

BMZA Staff is concerned about ongoing compliance verification:

While an applicant may initially represent that 20% or more of gross receipts derive from fresh produce, meats, and dairy products (thereby claiming exclusion from the Small Box Retail Establishment category), there is no clear mechanism for:

- Verifying the initial representation
- Monitoring ongoing compliance with the 20% threshold, or
- Enforcing the requirement if a store subsequently changes its product mix

The BMZA does not have:

- Access to retailers' sales records or gross receipts data
- Staff resources to audit financial records
- Authority to compel production of sales documentation
- Capacity for ongoing monitoring of product mix and sales percentages

If the intent is to ensure ongoing compliance with this threshold, a different enforcement mechanism would be necessary, potentially involving the Department of Finance or another agency with appropriate audit authority.

5. Licensing as Alternative Regulatory Approach

BMZA Staff acknowledges the City Council's intent to address community concerns regarding small box discount retail establishments and their impacts on neighborhoods. However, we respectfully note and support the position previously raised by the Planning Department that a licensing mechanism may be the more appropriate regulatory tool to address the specific concerns about these establishments.

Advantages of a licensing approach:

- Would allow for direct regulation of business operations and practices
- Could establish ongoing compliance requirements and monitoring
- Would provide clear enforcement mechanisms for problematic operators
- Could target specific operational issues (product quality, maintenance, community impact) rather than use category
- Would allow the City to address "bad actors" without restricting all establishments in this category
- Could include renewal requirements that ensure continued compliance

Zoning regulations, by contrast, are designed to address land use compatibility issues based on the physical characteristics and impacts of different use types, rather than the quality of individual business operations.

CONCLUSION

BMZA Staff respectfully submits these comments for City Council's consideration. While we recognize the policy objectives underlying this legislation, we believe the practical implementation and enforcement challenges identified above warrant careful consideration.

For any questions regarding this report or to discuss these concerns further, please contact **Justin Williams** at justin.williams@baltimorecity.gov or **(410) 396-4301**.