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| FROM | NAME & TITLE | CHRIS RYER, DIRECTOR | CITY of BALTIMORE MEMO |  |
| | AGENCY NAME & ADDRESS | DEPARTMENT OF PLANNING 8 TH FLOOR, 417 EAST FAYETTE STREET | | |
| | SUBJECT | CITY COUNCIL BILL #19-0449/ ZONING – USE REGULATIONS – NEIGHBORHOOD COMMERCIAL ESTABLISHMENTS | | |

TO

DATE: March 10, 2020

The Honorable President and
Members of the City Council
City Hall, Room 400
100 North Holliday Street

At its regular meeting of March 5, 2020, the Planning Commission considered City Council Bill #19-0449, for the purpose of prohibiting the sale of tobacco products and electronic smoking devices, accessories, and related products by a retail goods establishment that is a neighborhood commercial establishment.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report, which recommended disapproval of City Council Bill #19-0449 and adopted the following resolution; five members being present (five in favor):

RESOLVED, That the Planning Commission does not concur with the recommendation of its departmental staff, and instead recommends that City Council Bill #19-0449 be amended and passed by the City Council. The Planning Commission further directed staff to coordinate with the lead sponsor and affected agencies to determine specific amendment language.

If you have any questions, please contact Mr. Eric Tiso, Division Chief, Land Use and Urban Design Division at 410-396-8358.

CR/ewt

attachment

- cc: Mr. Nicholas Blendy, Mayor's Office
- Mr. Matthew Stegman, Mayor's Office
- Ms. Nina Themelis, Mayor's Office
- The Honorable Edward Reisinger, Council Rep. to Planning Commission
- The Honorable Mary Pat Clarke, 14th District
- Mr. Colin Tarbert, BDC
- Mr. Derek Baumgardner, BMZA
- Mr. Geoffrey Veale, Zoning Administration
- Ms. Stephanie Murdock, DHCD
- Ms. Elena DiPietro, Law Dept.
- Mr. Francis Burnszynski, PABC
- Mr. Liam Davis, DOT
- Ms. Natawna Austin, Council Services
- Mr. Dominic McAlily, Council Services



Bernard C. "Jack" Young
Mayor

PLANNING COMMISSION

Sean D. Davis, Chairman

STAFF REPORT



Chris Ryer
Director

March 5, 2020

REQUEST: City Council Bill #19-0449/ Zoning – Use Regulations – Neighborhood Commercial Establishments:

For the purpose of prohibiting the sale of tobacco products and electronic smoking devices, accessories, and related products by a retail goods establishment that is a neighborhood commercial establishment.

RECOMMENDATION: Disapproval

STAFF: Eric Tiso

INTRODUCED BY: Councilmember Clarke, President Scott, Councilmembers Henry, Cohen, Dorsey, Burnett, and Reisinger

SITE/GENERAL AREA

This bill affects neighborhood commercial establishments, which are all located in residential or office-residential zones that are in buildings that were either non-residential in their original construction and original use, or that they received zoning approval for a non-residential use in certain circumstances (Art. 32 – *Zoning* §1-310.j).

HISTORY

The land use category of neighborhood commercial establishment was created as part of the comprehensive re-write of the City's Zoning Code, which became effective June 5, 2017.

ANALYSIS

Background: Neighborhood commercial establishments (NCEs) were created as a new land use category in the Comprehensive rezoning of the City. This use was designed to recognize that over the span of four decades since the last comprehensive overhaul of the Zoning Code in 1971, there had been a significant number of nonconforming uses that persisted in our residential districts, that were not passively converted over time back to purely residential uses as was expected. Many of those nonconforming uses were either physically difficult to convert back to residential use, or were financially infeasible to do so. For those properties, each time a change of use occurred, or where certain conditions of approval were desired to be changed, the owner or applicant had to return to the Board of Municipal and Zoning Appeals (BMZA) each time. This added time and cost to renovations that made it harder to return these properties to productive use. The NCE land use was created with the intent of establishing a conditional use with a palette of seven uses available, which would avoid the need for returning to the BMZA every time a change occurred, and would remove the higher standards of findings needed for nonconforming uses.

Effects of the bill: This bill modifies one of the specific land uses that are included as part of NCEs by adding to the list of items that are prohibited for retail goods establishments that are part of a NCE. Planning staff notes that the seven uses listed under §14-328 are specific land uses in the use tables within Article 32 – *Zoning* (the zoning code), and several are individually defined. Below is an excerpt from the zoning code, and bill showing the proposed change:

§ 14-328. Neighborhood commercial establishments.

...

(b) *Non-residential uses allowed.*

A neighborhood commercial establishment may contain the following non-residential uses:

- (1) Art galleries – no live entertainment or dancing.
- (2) Arts studios.
- (3) Day care centers: adult or child.
- (4) Offices.
- (5) Personal services establishments.
- (6) Restaurants – no live entertainment or dancing.
- (7) Retail goods establishments – no alcoholic beverage, TOBACCO PRODUCT, OR ELECTRONIC SMOKING DEVICE, ACCESSORIES, AND RELATED PRODUCTS sales.

...

Staff is concerned that the change to one of the uses listed in §14-328(b)(7) will appear to be creating a new land use category. In the code today, there are two forms of Retail goods establishments in the use tables – one with alcoholic beverage sales, and one without. Staff is also concerned that the use of the zoning code to individually list what specific items can and cannot be sold will result in practical difficulties for the Zoning Enforcement office to enforce. There are likely to be more effective licensing avenues that should be explored before the zoning code. The change as proposed would also appear to create two classes of approved NCEs – those that were approved prior to this amendment, and those afterwards that are subject to the tobacco prohibition. Staff is unsure how this would be enforced. We are unsure if NCEs established prior to enactment of this change would be eligible for tobacco sales or not. If not, this creates another level of difficulty for Zoning Enforcement, and would allow sales in some businesses but not others, which could be an issue of fairness.

For the reasons listed above, staff recommends disapproval of the bill. However, in the event that a zoning code amendment is deemed to be the most appropriate (or simply just the most available) solution, we would encourage leaving the seven listed uses as they are now to avoid rippling changes to other parts of the zoning code, and instead to either: 1) modify the definition of *Neighborhood commercial establishment* under §1-310(j) by adding an exclusion paragraph, or 2) by adding a paragraph under §14-328 that prohibits tobacco and related products from being sold within NCEs.

Option 1:

An example of an amendment to the definition of Neighborhood commercial establishment might read as follows:

(j) *Neighborhood commercial establishment.*

(1) *In general.*

“Neighborhood commercial establishment” means a non-residential use that is within a residential or office-residential zoning district, but in a structure that:

- (i) is non-residential in its construction and original use; or
- (ii) has received prior zoning approval for a non-residential use, as evidenced by permits, construction, or historical evidence of lawful non-residential use.

(2) *Exclusions.*

“Neighborhood commercial establishment” does not include the sale of tobacco products, electronic smoking devices, accessories, and related products.

Option 2: An example of an amendment to the use standards under §14-328 that includes a new prohibition paragraph might read as follows:

(i) *Tobacco and related products prohibited.*

The sale of tobacco products, electronic smoking devices, accessories, and related products are prohibited in Neighborhood commercial establishments.

Notification: Notice of this meeting was sent to 16,764 individual subscribers via GovDelivery.



Chris Ryer
Director