


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 #19-0480 / ZONING – USE STANDARDS – NEIGHBORHOOD COMMERCIAL ESTABLISHMENTS		

TO

DATE:

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

January 31, 2020

At its regular meeting of January 30, 2020, the Planning Commission considered City Council Bill #19-0480, for the purpose of allowing the limited expansion of a non-residential use into a newly constructed addition to the principal building; and conforming and clarifying related provisions.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report, which recommended amendment and approval of City Council Bill #19-0480 and adopted the following resolution; seven members being present (seven in favor):

RESOLVED, That the Planning Commission recommends that City Council Bill #19-0480 be amended passed by the City Council, with the following amendments:

- That the proposed amendments to *Zoning* – Title 18 be removed from the bill; and
- That Planning Staff coordinate with relevant agencies to formulate appropriate text edits for the proposed amendments to *Zoning* – Title 14 that would allow for expansions of Neighborhood Commercial Establishments within the bulk and yard limitations as permitted by the property's underlying zoning district.

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
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

January 30, 2020

REQUEST: City Council Bill #19-0480/ Zoning – Use Standards – Neighborhood Commercial Establishments:

For the purpose of allowing the limited expansion of a non-residential use into a newly constructed addition to the principal building; and conforming and clarifying related provisions.

RECOMMENDATION: Amendment and Approval, with the following amendment:

- That the proposed amendments from page 2, in line 25 through the end of the bill be removed.

STAFF: Eric Tiso

INTRODUCED BY: Councilmembers Schleifer and Henry

SITE/GENERAL AREA

Neighborhood commercial establishments can be located in R-5 through R-10 residential districts as well as in office-residential zoning district. This use is normally established as a conditional use requiring BMZA approval either in a structure that is non-residential in its construction and original use, or that has received prior zoning approval for a non-residential use.

HISTORY

Neighborhood commercial establishments (NCE) were added as a new use with the comprehensive re-write of our Zoning Code, that went into effect in June, 2017.

ANALYSIS

Background: This bill has been introduced to address applicant concerns raised in the first two years or so of NCEs being approved through the Board of Municipal and Zoning Appeals (BMZA).

Effects of the Bill

Technical correction: The amendment on page 1 in line 20 of the bill corrects the use of "structures" to "buildings" as a technical amendment (§14-328(a)). As an example, a picnic shelter would be a structure, but not a building. Staff supports this correction.

Outdoor uses: On page 2 in lines 20-24 of the bill, §14-328(g) is amended to add "Except as the Zoning Board authorizes, as a conditional use:" before the two requirements relating to uses being limited to the building's interior. While the Board can authorize variances for many things

in the Zoning Code, the addition of this line changes that means of variance authorization to that of a conditional use. Variances are generally intended to be avoided since they create nonconforming uses and structures, and in those cases the “burden of proof” is on the applicant (see variance approval standards at *Zoning* §5-308). This amendment changes the policy on outdoor servicing, processing and display to a conditional use that is presumed to be permitted, unless an opponent can show why it should not be approved (see conditional use approval standards at *Zoning* §5-406). This change will enable any form of outdoor storage, display, or use that the BMZA may approve, potentially anywhere on the property.

Discussion on outdoor uses: As NCEs can vary from large buildings on large lots such as former places of worship or warehouses, down to very small buildings that cover nearly all of the lot such as former corner stores in rowhome neighborhoods. In some ways, this makes it a bit difficult to work in general rules for certain uses, since the impacts may vary based on context. As proposed, the conditional use approval for outdoor use leaves each case to be argued before the BMZA. In this option, simplicity in the code may outweigh the lack of any particular guidance offered to the BMZA and the accompanying potential for inconsistency.

One simplified solution could be to try an incremental approach. For example, in many cases, the desired use outside of a NCE would typically be for outdoor dining. Adding Outdoor Dining to the mix of uses that are permitted in NCEs under §14-328(b) would remove the need for an additional hearing – either through a conditional use or a variance. An advantage to this approach would be that the use would be automatically incorporated into the use mix authorized when a NCE is created. However, that also comes with a disadvantage for smaller properties where having outdoor dining on a street edge is fine, but in the rear yard or on a roof deck would be problematic being so close to other residents’ back yards. If this option is pursued, additional use standards under §14-329 for Outdoor Dining might be needed.

Expansion of use and building: At the bottom of page 2 starting in line 25 through page 3 line 2 of the bill, §14-328(g) is amended to add a new paragraph that allows the BMZA to authorize as a conditional use, the expansion of a non-residential use into a newly constructed addition that does not exceed 25% of the floor area of that use in the principal building. This is accompanied by amendments to §18-302 that deals with expansions to nonconforming uses and structures on page 3 of the bill.

Discussion on Expansion: This amendment reflects a rule under the prior zoning code where nonconforming uses in residential buildings could be expanded by up to 25% of the floor area of that nonconforming use. It important to note that when a NCE is established, it is done as a conditional use. That approval changes any prior nonconforming use in that residential property into a conditional use, and so the proposed changes in Title 18 should not be needed. This was an important design feature when the concept of NCEs were made. Under the prior zoning code, any change to a nonconforming use (which was drawn from the permitted use list of the B-1 district of that day) needed to be approved as a change in nonconforming use each time by the BMZA. In our modern zoning code, once that NCE is approved, the nonconforming use is replaced with a conditional use, and the owner may then change among those seven listed uses (unless otherwise limited in the original authorization), without needing to return to the BMZA for other approvals. NCEs as conditional uses also do not have the risk upon being abandoned or

discontinued in the same way as a nonconforming use that is permanently lost may not be used for anything that isn't allowed in that residential zone.

A second important design feature of NCEs was that it could be approved for the entire structure, without regard to what portion of the building may have been used for a nonconforming use under the old zoning code. Previously, appellants had to establish the exact area that was dedicated to that nonconforming use, and make the calculation for that additional 25% floor area. In many cases, that expansion amounted to only a portion of a floor, and had no rational tie to the actual space within the building, or even its potential impact on the neighborhood. Under today's zoning code, once a building has been determined to be eligible for a NCE, staff does not believe there are any impediments to getting an expansion to that building approved (within the permissible limits of that zone for that building). Given that this is already possible, and that expansion into adjacent buildings goes beyond the original intent for NCEs, staff recommends not adopting this second set of amendments to §14-328(g)(2) and related amendments under §18-302(b) and §18-403(b) at this time.

Notification: Notice of this meeting was sent via GovDelivery to 17,121 unique subscribers (with a 96% delivery rate).



Chris Ryer
Director