

## Testimony Regarding Senate Bill 1047:

### Anne Arundel County – Alcoholic Beverages – Music and Entertainment Privileges

#### Section 1, Background/Context

I believe the trigger for the Liquor Board requesting this bill is complaints from my husband and I about the tavern next door that has a dancing license (and therefore live music). We live in a home in a residentially zoned neighborhood and share a property line with a grandfathered tavern. We also own an adjacent second home which also shares a property line with the tavern and these two houses are the only houses on the east property line of the tavern. My husband's grandparents built these two homes themselves in the late 1930's and a decade later, the house next door became a tavern, which is now a legal non-conforming use (aka grandfathered). The distance from our home to the tavern building is approximately 30 feet.

There is one house on the west property line, with an unimproved lot on the north property line and a street on the south property line. Therefore, there are three houses which are much more vulnerable to noise nuisance issues both because of distances, and because our three houses impede noise from reaching farther out to additional houses in the neighborhood.

#### Section 2, Liquor License Review Life Cycle

Only an original application for a liquor license gets a full review. Renewals, permits, or license expansions (such as expanding into outdoor service) trigger virtually no review. The only way to trigger another full review is via the protest hearing procedures. This hearing<sup>1</sup> is only available to the public with paperwork turned in during March with the hearing during April and requires 10 people who live or own property within a few miles of the licensee to both sign up and show up or the hearing is cancelled. This is not reasonable access to a regulatory response for the small number of people living or owning property within 100 ft of a given licensee and therefore facing nuisance noise risks that others do not. It is critical that this flaw in the regulatory oversight structure be addressed.

The lack of meaningful access to a public hearing allows the Liquor Board to regulate these near neighbor issues largely out of the public eye and incentivizes them to consider these issues low priority.

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<sup>1</sup> I am referring here to a protest renewal hearing (MD ABC 4-406) which is required to be conducted as would a review for an original application (MD ABC 4-406(a)(2)). There is also a complaint hearing (MD ABC 4-603) with the same requirement of 10 people who live or own property within a few miles of the licensee, however, if a hearing is held or not is at the discretion of the board and there is no requirement that it be conducted as would a review of an original application. This is a very meaningful distinction because it allows the board to narrowly define the scope of the complaint hearing.

**Section 3, Direct Comment on SB 1047**

**11-1102(a)(1)** – this portion allows every licensee piped-in background music or one television screen (no need for a permit).

- 1) This can create a noise nuisance in residential neighborhoods. No one on residential property should be forced to listen to a licensee’s music or TV.
  - a. Consider limiting to indoors only when the source is within 100 ft of residentially zoned property.
  - b. Consider limiting to be non-audible on residentially zoned property.
  
- 2) This speaker/TV, as well as all the permits authorized by this section of the code, have a far greater impact on those residents who reside or own property within 100 ft of the premises of the licensee, which may be a small number of people per licensee.
  - a. Consider that residents or property owners of residentially zoned property within 100 ft of the premises of the licensee will be able to trigger a liquor hearing with only one petitioner and at any point in the year.

**11-1102(a)(2)** – this portion describes the new requirement for OPZ written approval prior to any permit from this section being considered at a hearing.

- 1) By referencing only hearings, and not license renewals, this means any licensee who is not eligible because of their proximity to residential property, will continue to get their permits renewed (unless another provision is made to address current licensees).
- 2) What is OPZ approving and what are the criteria for approval?
  - a. Consider specifying the criteria OPZ will use.
  - b. Consider requiring an OPZ response whether an approval or denial.
  - c. Consider specifying the timeframe by which OPZ must provide a response and that it should include the information to support and explain the approval or denial (example: measurements/distances and location of residentially zoned property in relation to the licensee).

**11-1102(a)(3)(ii)** – this portion describes the conditions of the permit issuance to include that issuance will not “unduly disturb the peace of the residents of the neighborhood in which the place of business is located”.

- 1) This can create a noise nuisance in residential neighborhoods.
  - a. This should contain a reference that any mechanically amplified sound being audible on residential property is presumed to be unduly disturbing.

**11-1102(a)(3)(iii)** – this portion defines the restriction that the permit may only be issued if the area used for the activity under the permit is at least 100 ft from all residentially zoned property.

- 1) Licensees will fall into one of three categories:
  - a. No residentially zoned property within 100 ft of the licensee’s premises. This should be able to be determined via a map review.
  - b. Residentially zoned property is within 100 ft of the licensee’s premises and the premises are not sufficiently large to provide any area for the activity which would be at least 100 ft away from all residentially zoned property. This should be able to be determined via reviewing maps.
  - c. Residentially zoned property is within 100 ft of the licensee’s premises and the premises are sufficiently large that they could provide an area for the activity which would be at least 100 ft away from all residentially zoned property. This would need to have measurements taken at the licensee’s premises. Given the considerable incentive for a licensee to provide incorrect information in this circumstance, either OPZ or the Board should perform measurements.
- 2) Who will be doing the measuring, OPZ or the Liquor Board?
- 3) What is the definition of ‘area used for the activity’? Is that the stage where the band or DJ is located, the speakers, the audience, or the entire area within which any amplified sound from the activity is heard?
- 4) Consider making the permit specific to the activity use areas to avoid a licensee obtaining the permit, and then moving the area used for the activity such that it is within 100 ft of residentially zoned property.

#### **Section 4, Overlap in Responsibilities/Expertise Between the Liquor Board and OPZ**

There are three ways OPZ and the Board intersect in terms of responsibility or expertise:

- Zoning Conformance for the Premises of Licensees  
There is a companion AAC Zoning code<sup>2</sup> to cover this requirement however it states that “the findings shall take into account conformance to this [zoning] section” where the state and county alcohol codes are directive and prohibit the issuance of a license to premises that violate any zoning code<sup>3</sup>. It is critical that OPZ’s staff performing any liquor license review understand that their considerable enforcement discretion for OPZ

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<sup>2</sup> 18-2-109 Review of applications for alcoholic beverage licenses.

<sup>3</sup> County Rules and Regulations of the Board of License Commissioners for Anne Arundel County, Page 20: 2.12 Zoning “No license shall be issued which will result in a use of premises, which violates and zoning...restriction.” MD ABC 1-405(b): “A license ... may not be issued for a premises unless the premises conforms with all zoning laws, regulations, ordinances...”

enforcement actions does not apply to reviews for liquor licenses and they instead need to conform to the liquor code requirements.

In addition, a grandfathered commercial structure is only allowed to expand by 30% (County code 18-15-103(a)(1)) and must go through an approval process overseen by the Office of Planning and Zoning (OPZ). The tavern next door to us expanded 30% through the approval process and has bypassed the approval process to expand another 45%, bringing their noise closer to both the east and west property lines. We met with both OPZ and Liquor Board personnel last week and it was clear to us from the discussion that OPZ and the Liquor Board do not have a shared understanding of the requirements, nor a clear pathway as to how to react together when information to show an unapproved expansion has occurred at a licensed premises is provided to them.

- **Permit Distance Requirements**

This is the issue addressed in SB1047 which alters one measurement point. The existing requirement is 100 ft from the licensee to any residentially zoned property with SB1047 redefining the requirement as 100 ft between the area used by the licensee for the permit related activity and any residentially zone property.

To date, the Liquor Board has considered itself to have 'grandfathering authority' for this purpose and, until my husband and I pointed out the lack of regulatory authority for it, have failed to enforce this requirement. As a result, the tavern next door to us became a live music venue last summer with one to three performances a month and so far, the Liquor Board have taken no steps to stop them.

- **County Noise Code 9-1-707**

This noise code applies only to residentially zoned areas and went into effect in 2021, tightening the noise standards. The Liquor Board considered the licensees exempt from this noise code and held that position despite my husband and I pointing out there is no basis in the code for exempting licensees. The Liquor Board has provided the guidance to licensees that they may disregard the county noise code levels and have the far more liberal state thresholds quoted on their paperwork for the 2024 license renewal cycle for outdoor service. The County Office of Law reviewed the issue in January and agreed with us that licensees are not exempt. The Liquor Board was immediately advised by the County Office of Law, however, we have noticed no change in the noise profile in the tavern next door, and the Liquor Board has not responded to our inquiry if they have advised the tavern of the county requirements or not.

OPZ and the Liquor Board will have to form an effective working relationship with clear roles and responsibilities to jointly address the above. SB1047 is an opportunity to move towards that goal. Both OPZ and the Liquor Board deserve the support of the Senate to assist in creating a more effective, clear, and fair regulatory landscape for them.