

DG Written Testimony_SB1047.pdf

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THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401
ANNE ARUNDEL COUNTY DELEGATION

Testimony in Support of SB1047 - Anne Arundel County - Alcoholic Beverages - Music and Entertainment Privileges

Madame Chair, Madame Vice Chair, and Fellow Members of the Senate Finance Committee:

SB1047 requires the Anne Arundel County Board of License Commissioners to receive written approval from the Anne Arundel County Office of Planning and Zoning before considering specified permits. The Board may only issue these specified permits if the area used for the permit is 100 feet away from any residentially zoned properties. Furthermore, the bill renames the “entertainment” permit as the “limited entertainment” permit and the “dancing” permit as the “full entertainment” permit.

This bill is needed because the current permit names are antiquated and have caused confusion among permit holders.

Per the Fiscal Note, SB1047 would not have a state or local budget impact.

For these reasons, I respectfully request a favorable report on SB1047.

Senate Bill 1047.pdf

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Position: FAV

Senate Bill 1047 - CLARIFICATION OF ENTERTAINMENT PERMITS

- * Confusion of misleading titles of the permits. Better understanding of permits by licensees and Inspectors. Update and clearly define the titles of entertainment permits.
- * All entertainment permits are required to obtain approval from The Office of Planning and Zoning as it stands now. This will not change.

§ 18-10-104. [Anne Arundel County Code](#) - Alcoholic beverage uses as accessory to other uses.

An alcoholic beverage use that is accessory to another use shall comply with all of the following requirements:

1. The use shall be licensed by the Board of License Commissioners.
 2. If the use is to be conducted out of doors or will include live entertainment or dancing, the area used for the activity shall be located at least 100 feet from all residentially zoned property.
- * No impact to any current or future licenses.

Definitions of Permit Levels:

- a. Music Permit: The permit authorizes the playing of recorded music or live music with not more than two musicians.
- b. Limited Entertainment Permit:
 - Live music with not more than four musicians.
 - More than one television.
 - A karaoke machine.
 - Music by a disc jockey.
- c. Full Entertainment Permit: The permit authorizes the holder to provide music, dancing, and other legal forms of entertainment.

1047 Testimony.pdf

Uploaded by: Todd Taylor

Position: FWA

I am opposed to Bill 1047 in its current form and have strong concerns regarding a2. These lines are open to interpretation and need language clarifying their intention. I live next door to a grandfathered tavern that does not meet any of the requirements in the bill's a3 section. Over 10 months ago, we identified to the liquor board that this makes the tavern ineligible for dancing and live music licenses. The board responded by citing they have the ability to grandfather dancing licenses, even though there have not been any regulations, dating all the way back to at least 1980, that support this claim. The board has been dismissing complaints from our neighborhood by erroneously citing they have a grandfathering power they have not been granted. I am concerned that Bill 1047's a2, as it is written, will be subject to further loose interpretation by the board and they will continue to claim discretion as the reason they do not enforce their music permit regulations.

A different concern about a2: We met last week with the board and OPZ to discuss the tavern's unapproved expansions that brought the tavern's activity area even closer to our property line. These expansions conflict with liquor board regulations that require OPZ's involvement and zoning expertise. It was clear during our meeting that there is not an established procedure defining the way OPZ needs to support liquor board regulations. OPZ is in the habit of assessing zoning within the confines of their own enforcement policies, but this does not fulfill the obligations of the liquor board's code. In summary, in the absence of a strong working relationship between the two agencies, I believe Bill 1047 needs language that more clearly defines OPZ's role to meet the bill's objective.

SB1047_CatherineViewegTaylor

Uploaded by: Catherine Vieweg Taylor

Position: UNF

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 hearing¹ 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.

¹ 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 code² 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 code³. It is critical that OPZ’s staff performing any liquor license review understand that their considerable enforcement discretion for OPZ

² 18-2-109 Review of applications for alcoholic beverage licenses.

³ 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.