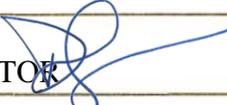


FROM	NAME & TITLE	CHRIS RYER, DIRECTOR 	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 TH FLOOR, 417 EAST FAYETTE STREET		
	SUBJECT	CITY COUNCIL BILL #22-0261 / REZONING – 801 SOUTH HAVEN STREET, BLOCK 6458/LOT 004A, AND BLOCK 6467/LOT 021A, AND A PORTION OF BLOCK 6458/LOT 004		

TO

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

DATE: September 23, 2022

At its regular meeting of September 22, 2022, the Planning Commission considered City Council Bill #22-0261, for the purpose of changing the zoning for the properties known as 801 South Haven Street, Block 6458/Lot 004A, and Block 6467/Lot 021A, and a portion of Block 6458/Lot 004, from the I-2 and IMU-2 Zoning Districts to the R-8 Zoning District.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report which recommended approval of City Council Bill #22-0261 and adopted the following resolution, with six members being present (six in favor):

RESOLVED, That the Planning Commission does not concur with the recommendation of its departmental staff. Instead, the Planning Commission adopts the findings of the applicant, and adopts the recommended amendment from staff, with consideration for testimony and facts presented in the meeting, and therefore recommends that City Council Bill #22-0261 be **amended and approved** by the City Council.

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: Ms. Natasha Mehu, Mayor's Office
Ms. Nina Themelis, Mayor's Office
Mr. Ethan Cohen, Mayor's Office
The Honorable Eric Costello, Council Rep. to Planning Commission
Mr. Matthew Stegman, City Council President's Office
Ms. Nikki Thompson, City Council President's Office
Mr. Colin Tarbert, BDC
Ms. Kathleen Byrne, 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
Ms. Caroline Hecker, Esq.



Brandon M. Scott
Mayor

PLANNING COMMISSION

Sean D. Davis, Chairman; Eric Stephenson, Vice-Chairman

STAFF REPORT



Chris Ryer
Director

September 22, 2022

REQUEST: City Council Bill #22-0261 / Rezoning – 801 S. Haven Street, Block 6458/Lot 004A, and Block 6467/Lot 021A, 3 and a Portion of Block 6458/Lot 004:

For the purpose of changing the zoning for the properties known as 801 South Haven Street, Block 6458/Lot 004A, and Block 6467/Lot 021A, and a portion of Block 6458/Lot 004, as outlined in red on the accompanying plat, from the I-2 and IMU-2 Zoning Districts to the R-8 Zoning District; and providing for a special effective date.

RECOMMENDATION: Disapprove

STAFF: Matthew DeSantis, AICP

PETITIONERS: Councilmember Zeke Cohen, at the request of Haven Rock, LLC

OWNERS: Brewers Rock, LLC; Rock Rental Company, Inc

SITE/GENERAL AREA

Site Conditions: There are four parcels included in this bill and the total area proposed to be rezoned is approximately 1.5 acres. All of the land in question is currently in use for outdoor storage – 801 S. Haven is a storage / truck yard with access via South Haven Street and the other unaddressed parcels are accessed via a parcel to the south (1025 S. Haven Street).

General Area: This site is located in the Brewer's Hill neighborhood, which is comprised of a mixture of medium-density attached residential dwellings, neighborhood-scale commercial establishments along the Eastern Avenue corridor, a combination of renovated and new construction mixed-use buildings clustered just north of Boston Street, and light industrial uses. South Haven Street is a very active truck route that connects many east Baltimore industrial areas to the Port of Baltimore, yet has seen a large amount of recent residential and commercial development along its extent through the neighborhood.

HISTORY

- On October 8, 2020 the Planning Commission recommended approval of CCB#20-0614 to comprehensively rezone 801 S. Haven and two other parcels from the I-1 zoning district to the IMU-2 zoning district. This bill was left unsigned at the end of the previous legislative session and so failed.
- On January 21, 2021 the Planning Commission recommended approval of CCB#21-0013, which was a copy of the previous bill that had failed to be enacted. This bill was enacted via Ordinance #21-012 on April 5, 2021.

BACKGROUND

The subject properties are currently zoned a mix of I-2 (Heavy Industrial) and IMU-2 (Industrial Mixed-Use). The I-2 properties (those parcels included in the bill that are unaddressed) have had this zoning designation since the effective date of Transform Baltimore in 2017. Prior to this, these parcels were zoned M-3 – zoning designations roughly analogous to their current state. The IMU-2 zoned property, 801 S. Haven Street, was designated as such via Ordinance #21-012 on April 5, 2021. That parcel previously been zoned I-2 but, along with two other nearby parcels on the South Haven Street corridor, was rezoned to the IMU-2 district as part of a comprehensive rezoning.

The South Haven street corridor has seen tremendous changes over the past decade. This corridor is a vital trucking route that provides the only direct connection between many industrial properties in East and Southeast Baltimore to the Port of Baltimore. And yet, residential development pressure from the waterfront moving northward has resulted in increased residential uses within close proximity and even directly fronting on this trucking route. Most significantly, several large parcels fronting South Haven Street were rezoned during the Transform Baltimore comprehensive rezoning process to permit residential development. Two of these parcels that flank the subject site have recently completed construction: 36 new townhomes known as Brewers Crossing have been built on the property formerly known as 4001 Hudson Street to the immediate east and 70 new apartment townhomes known as Refinery Row have been built on the property formerly known as 601 S. Haven to the immediate north. In fact, the applicant proposing this rezoning wishes to construct a second phase of Refinery Row apartment townhomes on this site.

In 2020 the Department of Planning worked with Councilman Cohen’s office and engaged surrounding property owners and community stakeholders to arrive at the introduction of this recent comprehensive rezoning bill. The main intention behind that comprehensive rezoning of these several properties to IMU-2 was that this new zoning designation would acknowledge the changes that have been happening along the South Haven Street corridor and so would allow for additional of office, commercial, and retail uses while at the same time continuing to prohibit any additional residential development. This prohibition of additional residential development along South Haven Street was of importance to not just the Department of Planning, but also to the Brewer’s Hill Neighbors community association, as they had expressed an openness to additional office or retail uses along the corridor but did not wish to see any additional residential development.

COMMUNITY SUPPORT and BALTIMORE GREENWAY TRAIL

The Brewer’s Hill Neighbors association has submitted a conditional letter of support to the developer proposing this rezoning and the construction of a second phase of the Refinery Row apartment townhomes. Central to this community support is the follow-through of promises that the developer has made to construct portions of the Greenway Trail shared-use pathway that are adjacent to the development site.

Design and implementation of the Greenway Trail has been a priority of not only the Department of Planning but of the Scott Mayoral Administration. The Department of Planning staff have

worked closely with the development team and with Councilmember Cohen’s office to review conceptual trail designs as they relate to the associated townhome project on this site. While staff appreciate both the specific improvements to these conceptual trail designs as well as the general commitment of the developer to construct this important piece of public infrastructure, the analysis of this rezoning bill must be focused on applicable City and State law as it pertains to the review of proposed site-specific rezonings. Staff’s review is whether the proposed rezoning of land from the IMU-2 and I-1 districts to the R-8 district meets the established review criteria; not whether the associated development project and trail infrastructure should or should not be approved.

CONFORMITY TO PLANS

The proposed action would not be consistent with the following aspects of LIVE EARN PLAY LEARN, the Comprehensive Master Plan for Baltimore City:

- Earn Goal 1: Strengthen Identified Growth Sectors,
 - Objective 1: Retain and Attract Businesses in all Growth Sectors
 - Objective 5: Retain and Attract Businesses in Construction

ANALYSIS

801 S. Haven Street was part of a comprehensive rezoning less than 1.5 years ago, in which it was rezoned from the I-2 (Heavy Industrial) district to the IMU-2 (Industrial Mixed-Use) district. The main objective of that rezoning, as was stated in the associated staff report and hearing presentation, was to allow for additional commercial and retail uses for the site but to ensure that residential uses were continued to be prohibited, given the presence on the South Haven Street truck corridor. In the intervening time since the passage of that rezoning ordinance, the only change that has taken place to the 801 S. Haven property and the other adjacent unaddressed parcels subject to this bill is that they have come under ownership of the development team seeking to construct additional apartment townhomes.

Additionally, the rezoning of these parcels to the R-8 zoning district would create non-conformities to the permitted uses, as the parcels are being used for outdoor storage which is not permitted in the R-8 zoning district. While property owner does have residential redevelopment intentions for the site, should such redevelopment plans fail to materialize any expansion of the existing uses would no longer be permitted.

REQUIRED FINDINGS

Below are the approval standards under §5-508(b) of Article 32 – *Zoning* for proposed zoning map amendments:

- (b) *Map amendments.*
 - (1) *Required findings.*

As required by the State Land Use Article, the City Council may approve the legislative authorization based on a finding that there was either:

- (i) a substantial change in the character of the neighborhood where the property is located; or
 - (ii) a mistake in the existing zoning classification.
- (2) *Required findings of fact.*
 In making the determination required by subsection (b)(1) of this section, the City Council must also make findings of fact that address:
- (i) population changes;
 - (ii) the availability of public facilities;
 - (iii) present and future transportation patterns;
 - (iv) compatibility with existing and proposed development for the area;
 - (v) the recommendations of the City agencies and officials; and
 - (vi) the proposed amendment's consistency with the City's Comprehensive Master Plan.
- (3) *Additional standards – General*
 Additional standards that must be considered for map amendments are:
- (i) existing uses of property within the general area of the property in question;
 - (ii) the zoning classification of other property within the general area of the property in question;
 - (iii) the suitability of the property in question for the uses permitted under its existing zoning classification; and
 - (iv) the trend of development, if any, in the general area of the property in question, including changes, if any, that have taken place since the property in question was placed in its present zoning classification.

Below is the staff's review of the required considerations where staff finds that this change is in the public's interest, in that it will provide for the continued use and future reuse of the properties in a way compatible with the surrounding neighborhood context.

Maryland Land Use Code – Requirements for Rezoning:

The Maryland Land Use Code requires the Planning Commission to study the proposed changes in relation to: 1. The plan; 2. The needs of Baltimore City; and 3. The needs of the particular neighborhood in the vicinity of the proposed changes (*cf.* Md. LAND USE Code Ann. 2012, §10-305). In reviewing this request, the staff finds that:

- 1. The Plan:** The proposed action would not support goals contained in the Comprehensive Master Plan for Baltimore City, *Earn Goal 1: Strengthen Identified Growth Sectors, Objective 1: Retain and Attract Businesses in all Growth Sectors* and *Objective 5: Retain and Attract Businesses in Construction*. Additionally, 801 S. Haven was just rezoned to the IMU-2 district in April 2021.
- 2. The needs of Baltimore City:** Baltimore's industrially-zoned properties have been rezoned bit by bit over the past several decades, usually in response to continued residential encroachment. It is vitally important for the City to maintain its industrially-zoned properties as they provide a needed source of employment – often with employment opportunities that are accessible without higher educational requirements.
- 3. The needs of the particular neighborhood:** The previous rezoning to IMU-2 had the intention of allowing for additional retail and commercial uses to support the Brewers Hill neighborhood. While located on a commercial trucking route, however, there clearly has been high demand for additional residential opportunities which this rezoning seeks to accommodate.

Similarly, the Land Use article requires the City Council to make findings of fact (*cf.* Md. LAND USE Code Ann. 2012, §10-304). The findings of fact include:

- 1. Population changes;** There has been continued significant population changes in the immediate vicinity of this proposed rezoning. From just April 2021 until now, the second half of the 36 townhomes at 4001 Hudson Street (Brewers Crossing) have been constructed; 70 new apartment townhomes have been built adjacent to the immediate north as Refinery Row; 500 apartment units are either under construction or finished a few blocks to the south within the new Collective at Canton mixed-use development.
- 2. The availability of public facilities;** This site is well-served by public services and utilities, which can also support redevelopment or reuse of this site.
- 3. Present and future transportation patterns;** This rezoning to potentially allow additional townhomes fronting directly on South Haven Street, which is a major commercial trucking route, will create additional conflicts between new residential and existing heavy commercial/industrial uses.
- 4. Compatibility with existing and proposed development for the area;** The proposed zoning district is consistent with the existing R-8 zoning to the immediate north that was enacted through the Transform Baltimore rezoning process. It is, however, not compatible with the existing truck route.
- 5. The recommendations of the Planning Commission and the Board of Municipal and Zoning Appeals (BMZA);** For the above reasons, the Planning Department will recommend disapproval of the rezoning request to the Planning Commission. The BMZA will comment separately on this bill.
- 6. The relation of the proposed amendment to the City's plan.** As noted previously, rezoning of these properties to the R-8 zoning district would not be consistent with the City's plan, as they were just rezoned to their existing zoning district in April 2021.

There are additional standards under §5-508(b)(3) that must be considered for map amendments. These include:

- (i) existing uses of property within the general area of the property in question;**
Existing uses of subject properties are outdoor storage.
- (ii) the zoning classification of other property within the general area of the property in question;** the site is surrounded by I-2 zoning to the east and south, C-2 and IMU-2 to the west, and R-8 to the north.
- (iii) the suitability of the property in question for the uses permitted under its existing zoning classification; and,** The existing IMU-2 and I-2 zoning classifications permit the existing outdoor storage uses that the parcels are currently used for.
- (iv) the trend of development, if any, in the general area of the property in question, including changes, if any, that have taken place since the property in question was placed in its present zoning classification.** The general trends in the area that have seen increased residential development over the past several years have continued. However, since the time of the last comprehensive rezoning for this property in April 2021 there

have not been any changes that would negate Planning staff's previous position that additional residential development directly on the South Haven Street corridor represents appropriate land use development.

Per §5-508(1) of Article 32 – *Zoning*, and as required by the State Land Use Article, the City Council may approve the legislative authorization based on a finding that there was either: (i) a substantial change in the character of the neighborhood where the property is located; or (ii) a mistake in the existing zoning classification. Planning staff do not find that either instance has occurred, as the last comprehensive rezoning for this area was in April 2021, and there was a deliberate intent to zone the properties such that residential uses would continue to be prohibited.

DRAFTING AMMENDMENT

Should the Planning Commission and/or City Council adopt alternative findings of fact and recommend approval of this bill, Planning staff would recommend the following technical amendments to the bill text to accurately match the submitted plat map:

- Amend and clarify that all three of the unaddressed parcels would only be rezoned in part, as indicated in the plat map

Notification: Brewer's Hill Neighbors and the Baltimore Industrial Group have been notified of this action. Additionally, the area has been posted in compliance with Planning Commission requirements.

Chris Ryer
Director



Stephanie Smith
Assistant Director

MEMORANDUM

To: Baltimore City Planning Commission
From: Caroline L. Hecker
Cc: Haven Rock, LLC
Date: September 22, 2022
Re: **CCB # 22-061 – Rezoning – 801 S. Haven Street,
Block 6458/Lot 004A, Block 6467/Lot 021A, and a Por-
tion of Block 6458/Lot 004
Proposed Findings of Fact**

This firm represents Haven Rock, LLC, (the “Applicant”), the developer of Refinery Row at Brewers Hill, the residential community under development on the eastside of S. Haven Street, south of Fleet Street. To allow for the continued development of Refinery Row, at the Applicant’s request, Councilmember Cohen has introduced the above-referenced legislation to rezone the parcels known as 801 S. Haven Street, Block 6458/Lot 004A, Block 6467/Lot 021A, and a Portion of Block 6458/Lot 004 (collectively, the “Property”) from the I-2 and IMU-2 Zoning Districts to the R-8 Zoning District.

Briefly, the basis of the request is that it was a *mistake* to rezone 801 S. Haven Street to the IMU-2 Zoning District via Ord. 21-12 (signed by the Mayor on April 5, 2021). As indicated in the letter of support from Brewers Hill Neighbors, the Applicant proposes to construct the Greenway Rails-to-Trail along the south and southeast edge of the Property; however, the “park; playground” use category (the definition of which includes “hiking and biking trails,”) is not permitted in the IMU-2 Zoning District.

Additionally, there has been a *change* since the April 2021 rezoning of 801 S. Haven Street and since the 2016 enactment TransForm Baltimore that led to the designation of Block 6458/Lot 004A, Block 6467/Lot 021A, and a Portion of Block 6458/Lot 004 to the I-2 Zoning District.

Development Background

As brief background, in 2019, Councilmember Cohen introduced legislation, subsequently enacted as Ord. No. 20-351, which rezoned the bed of a former railroad spur that entered 601 S. Haven Street to accommodate the then-proposed development. At the time, the former railroad spur was proposed to be consolidated into 601 S. Haven Street to allow for a 2.98-acre, 70 rowhouse dwelling unit development. The rezoning had the support of the Brewers Hill Neighbors group and the Planning Commission unanimously voted to recommend approval on the basis that there was “both a substantial change ...in that the parcel has been formally abandoned for railroad use and that the City Council made a

mistake in not also rezoning [the] property for residential use along with the adjacent 601 S. Haven Street parcel, and that rezoning it to R-8 would be appropriate as a way to encourage and facilitate productive reuse.”

Later, in 2021, Councilmember Cohen introduced legislation, subsequently enacted as Ord. No. 21-046 upon the Mayor’s signature on October 18, 2021, which rezoned the beds of two additional former railroad spurs that ran into 715 S. Haven Street from the I-2 to the R-8 Zoning District to accommodate an additional ±56,100-SF of land and the construction of an additional 25 rowhouses. The rezoning had the support of the Brewers Hill Neighbors group and the Planning Commission unanimously voted to recommend approval of the legislation on the basis that “the City Council made a mistake in not also rezoning this site along with the adjacent 715 S. Haven Street parcel, and that rezoning it to R-8 would be appropriate as a way to encourage and facilitate productive reuse.”

The Property that is the subject of the pending legislation was zoned I-2 when Transform Baltimore was enacted in 2016. The parcel known as 801 S. Haven Street was rezoned from I-2 to IMU-2 via CCB # 21-13 (Ord. 21-12) in a comprehensive rezoning, along with 4015 Foster Avenue, and 4000 Hudson Street. The remaining parcels that comprise the Property remained in the I-2 Zoning District.

As explained in greater detail below, not only has there been a *substantial change* in the neighborhood since the Property was zoned I-2 in 2016 (which the Planning Commission has previously determined in its review of Ord. 20-351), the character of the neighborhood has continued to undergo significant changes since 801 S. Haven Street was rezoned in April 2021. Furthermore, the City Council made a *mistake* in both including the Property in the I-2 Zoning District in 2016 (which the Planning Commission previously determined in its review of the zoning designation of the railroad spurs adjoining 601 S. Haven Street), and in rezoning 801 S. Haven Street to the IMU-2 Zoning District in 2021.

Accordingly, the Planning Commission is urged to adopt the following findings made with respect to the requirement of change/mistake set forth in Section 10-304(b)(2) of the Land Use Article and Section 5-508(b) of the Zoning Code:

1. The Requested Rezoning Should Be Approved Because There Has Been a Substantial Change in the Character of the Neighborhood

1.1 There has Been a Substantial Change in the Character of the Neighborhood Since the 2016 Enactment of Transform Baltimore

A substantial change in the character of the neighborhood has taken place since Transform Baltimore was passed in 2016 because the area has subsequently transitioned from heavy industrial to predominately residential and commercial. The Property is adjacent to 601 S. Haven Street. In 2019, 601 S. Haven Street was consolidated with a former railroad bed, which was rezoned from I-2 to R-8 via City Council Bill # 19-426 in 2019 to enable the

construction of 70 rowhouses. The Planning Department recommended approval of the rezoning on the grounds of a change in the character of the neighborhood, citing the ceased industrial use of the adjacent parcel resulting in the 2019 demolition of neighboring vacant warehouse. The Planning Department also noted the abandonment of the railroad's right-of-way as of July 2019. This Commission adopted the Planning Department's recommendation for approval in a memorandum dated October 10, 2019.

This Commission's 2019 finding that there was a substantial change in the neighborhood meriting the rezoning of the adjacent former railroad serves as conclusive evidence that the character of the neighborhood has substantially evolved since the enactment of Transform Baltimore in 2016. As further evidence of the above-discussed change, the following are further examples of the neighborhood's five-year evolution. Each project described below is located within ½ mile of the Property.

- 2018: The former warehouse at 4001 Hudson Street was demolished and 36 townhomes were erected on the property. The development is known as Evergreene Homes.
- 2019: A 90,000-SF shopping center known as Canton Crossing Phase II opened to patrons.
- 2019: The former warehouse at 4015 Foster Avenue was converted for use as offices, a personal training studio, and a brewery with a tap room.
- 2019: A 371-unit apartment building opened at 1211 S. Eaton Street.
- 2019: By passage of Ordinance No. 19-282, the City Council amended the Canton Industrial Area Urban Renewal Plan to remove a 12-acre property at 1200 S. Haven Street from the plan area, thus removing the heavy industrial land use restriction.
- 2020: The property removed from the Canton Industrial Area Urban Renewal Plan was converted into the "Collective at Canton," a mixed-use development. Current tenants include Sprouts Grocery, Sola Salon, and Chase Bank.
- 2020: Construction began on a 500-unit apartment building in the Collective at Canton.

1.2 The Neighborhood Has Continued to Evolve Since 801 S. Haven Street was Rezoned from the I-2 District to the IMU-2 District in 2021

The neighborhood has continued its evolution from industrial to commercial and residential since 801 S. Haven Street was rezoned IMU-2 in 2021, meriting the Property's rezoning from industrial mixed-use to residential. "The IMU Industrial Mixed-Use Zoning Districts are intended to encourage the reuse of older industrial buildings for light industrial use,

as well as a variety of non-residential uses.” Art. 32, § 11-203. The parcel known as 801 S. Haven Street is not presently, nor has it recently been, improved by an industrial building that could be repurposed for commercial, light-industrial, or non-residential use. The below-listed existing and proposed changes in the neighborhood indicate that the IMU-2 designation, which explicitly prohibits residential use and permits light industrial uses, is no longer suitable for the area, which is rapidly turning into a residential-commercial area no longer suitable for light industrial uses.

- 2022: Construction began on Phase II of the Collective at Canton following approvals from the Board of Municipal Zoning Appeals. The second development round will include in addition to a host of other commercial uses.

To demonstrate change in the character of the Neighborhood, the Committee on Economic and Community Development is entitled to consider projects that are “reasonably probable of fruition in the foreseeable future.” *Jobar Corp. v. Rodgers Forge Community Ass’n*, 236 Md. 106 (1964) (citations and quotations omitted). In addition to the changes above, the following non-industrial projects are “probable of fruition” in the Brewers Hill neighborhood. *Id.*

- 2022: AvalonBay Communities announced its plans to erect a seven-story, 380-unit luxury apartment complex at 3700 Boston Street.
- 2022: The Shops at Canton Crossing announced an additional retail building that will house three more commercial tenants.
- 2023 (pending the approval of the subject rezoning): A two-mile bike trail will be constructed along the abandoned Pennsylvania Railroad line as part of the Baltimore City Greenway Trail.

Based on the above-described existing and anticipated conversions of properties within ½ mile of the Property from industrial to commercial and residential mixed uses, there has been a substantial change in the character of the Brewers Hill neighborhood.

2. The Zoning of the Property to I-2 In 2016, as well as the Subsequent Rezoning of 801 S. Haven Street to the IMU-2 Zoning District in 2021 was a Mistake

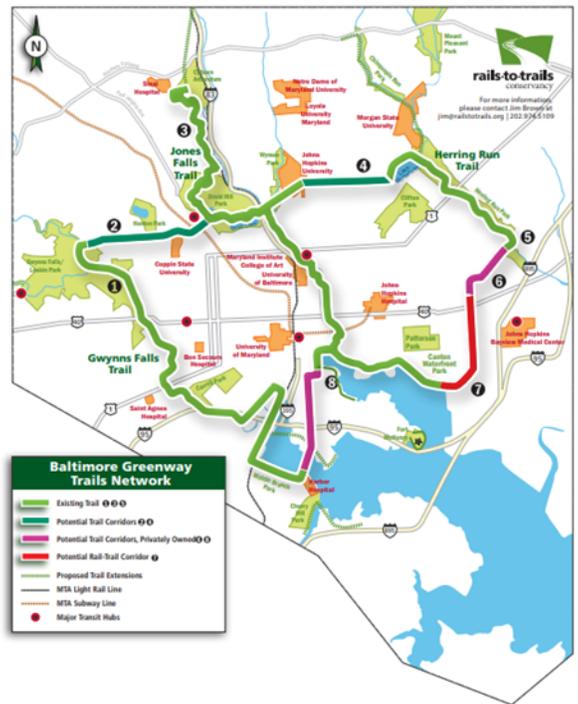
The Council acted in error when zoning the Property I-2 under Transform Baltimore and later rezoning 801 S. Haven Street to the IMU-2 Zoning District in lieu of assigning the lot a high-density residential or low-density commercial zoning designation. Accordingly, the Council should rezone the Properties to the R-8 Zoning District.

An “error [or mistake] can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends

which were reasonably foreseeable of fruition in the future, so that the Council’s action was premised initially on a misapprehension.” *Boyce v. Sembly*, 25 Md. App. 43, 51 (1975) (citations omitted). “Thus, in order to establish error based upon a failure to take existing facts or events reasonably foreseeable of fruition into account, it is necessary not only to show the facts that existed at the time of the comprehensive zoning but also which, if any, of those facts were not actually considered by the Council.” *Id.* at 52.

2.1 The City Council’s 2016 I-2 Zoning Classification of the Property and the Subsequent 2021 Rezoning of 801 S. Haven Street to the IMU-2 Zoning District Constituted a Mistake Because (1) It Did Not Account for the Proposed Baltimore City Greenway Trail; and (2) the City Council Committee on Economic and Community Development Findings of Fact Indicate the City Council Was Unaware of the Proposed Playground and Trail

In 2015, the Rails to Trails and the Baltimore Greenway Commission proposed a trail that would run up the abandoned Pennsylvania Railroad Line and into portions of private property in the area between Haven Street and O’Donnell Street, which would serve as a portion of the Baltimore Greenway Trails Network.¹ The map below indicates that the proposed bike trail would likely run directly through the Property.



As is evidenced by the above map, substantial steps have been taken toward the completion of the project, demonstrating its feasibility and longevity. Moreover, in 2020, WYPR

¹ railstotrails.org/our-work/trailnation/baltimore-greenway-trails-network/ - visited 9/22/2022

released a story discussing the proposed 2-mile trail ranging from the Canton neighborhood up to the Baltimore Gas & Electric Corridor along the unused Pennsylvania Railroad line.² The above map also demonstrates that the 2-mile stretch from Canton neighborhood would very likely pass through the Property.

Under the Code, hiking and biking trails fall under the “parks; playground” use category. Art. 32, § 1-311(i)(2). Parks and playgrounds are prohibited in the I-2 and IMU-2 Zoning Districts. Art. 32, Tbl. 11-301. Despite the initial 2015 proposal of the Baltimore City Greenway Trail Network and the Baltimore Greenway Commission’s continued pursuit of the project, the City Council zoned the Property I-2 in 2016 and then rezoned 801 S. Haven Street to the IMU-2 District in 2021, two zoning districts that prohibit the proposed use. The R-8 District, on the other hand, permits parks or playgrounds by right. Art. 32, Tbl. 9-301. The failure to assign the Property a zoning designation that would facilitate the proposed trail constitutes a misapprehension of a reasonably foreseeable project.

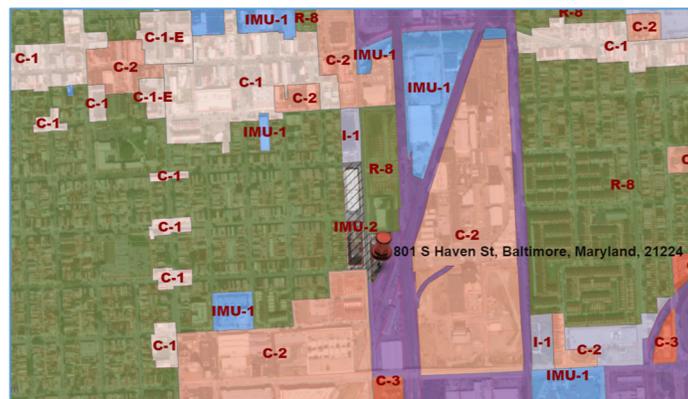
The TransForm Baltimore Full bill file does not indicate there was discussion of the proposed trail location in evaluating the appropriate zoning designation for the Property. Furthermore, the City Council Committee on Economic and Community Development (the “ECD”) Findings of Fact for City Council Bill 21-0013, which adopted the Planning Commission’s Findings of Fact, do not mention the proposed Greenway Trails Network. The ECD’s Findings of Fact for City Council Bill 21-0013 are attached for your reference. The City Council’s failure to consider the trail when assigning the Property the I-2 designation in 2016 and later when assigning the IMU-2 designation to 801 S. Haven Street in 2021 indicates that the City Council was not aware of the proposed use.

In sum, the City Council (1) failed to account for the proposed Baltimore City Greenway Trail when evaluating the I-2 zoning for the Property as a whole in 2016 and the IMU-2 designation for of 801 S. Haven Street in 2021, and (2) was unaware of the proposed trail when evaluating the IMU-2 Zoning District for the lot. For those two reasons, the City Council’s mistake meets the *Boyce* court’s requirements of (1) misapprehension regarding probable development and (2) lack of knowledge of said probable developments. The Property should therefore be rezoned to the R-8 District.

2.2 The City Council’s rezoning of 801 S. Haven Street to the IMU-2 Zoning District Constituted a Mistake Because (1) It Did Not Account for the Predominately Residential and Commercial Uses Surrounding the Lot and (2) the City Council Committee on Economic and Community Development Findings of Fact Indicate the City Council Was Unaware of the Predominance of Residential and Commercial Uses over Light Industrial Uses

² <https://www.wypr.org/post/vision-citywide-trail-network-one-step-closer-reality> - visited 9/21/2022

As of 2018, the lots to the north and south-west of 801 S. Haven Street were zoned high-density residential and low-density commercial. Furthermore, but for a small sliver of under-utilized outdoor storage area and abandoned railroad tracks, the Property abuts a low-density commercial district on the east. Additionally, the two other properties that were rezoned in conjunction with 801 S. Haven as part of the 2019 comprehensive rezoning were intended for and operate as commercial uses, despite the IMU-2 zoning classification. Potentially of greatest significance is the fact that the majority of the narrow strip of properties between S. Haven Street and the railroad tracks that lie north of O'Donnell Street and south of Eastern Avenue are residentially and commercially zoned. The map below indicates that the industrially zoned properties surrounding 801 S. Haven Street are dwarfed by high-density residential and low-density commercial zones.



A review of the Findings of Fact presented by the ECD which, as noted above, adopted the Planning Department's findings of fact, state "the existing uses of property within the general area of [the site] are a mix of residential, light industrial, and commercial." The language in the Findings of Fact indicates the committee was not aware of the disproportionately commercial and residential uses surrounding 801 S. Haven Street, as the memorandum gives equal weight to residential, light industrial, and commercial uses.

The City Council was unaware of the character of the surrounding area and was therefore unable to take said character into account when evaluating the 2019 comprehensive rezoning. Accordingly, the City Council's mistake meets the *Boyce* court's requirements of (1) failure to account for existing facts; and (2) lack of knowledge of said facts, indicating that the City Council should rezone the lot.

3. Required Considerations

In making the determination that there was a substantial change in the neighborhood where the Property is located to justify a change from an existing zoning classification, both Section 5-508(b) of the Zoning Code and Section 10-304 of the State Land Use Article require the City Council to make the following findings of fact that address:

(a) Population change;

According to the ACS 5-year Estimate Survey and the 2020 Census, the Property's census tract (tract 2607) experienced population growth, going from approximately 2,691 residents in 2017 to 2,933 in 2019. At first glance, the 2020 population data appears to show a slight decline to approximately 2,563 residents, but the 380-person margin combined with the significant increase in residential development—70 townhomes on the adjacent property, 36 townhomes at 4001 Hudson Street, and a 371-unit apartment building at 1211 S. Eaton Street—indicate that the population likely held steady or increased from 2019 to 2020.

(b) The availability of public facilities;

The area is well-served by public utilities and services and will remain so for the foreseeable future.

(c) Present and future transportation patterns;

The rezoning of the Property is not anticipated to adversely impact present or future traffic patterns. Because the adjacent property and several other properties in the immediate vicinity are already zoned for residential and commercial use and operating as such, the Property's change to the same category will not have any effect on transportation patterns.

(d) Compatibility with existing and proposed development for the area;

As has been thoroughly outlined above, the R-8 zoning designation is most appropriate for the Property, which is adjacent to an R-8 zoned lot and is in an area rapidly trending away from industrial use and toward residential and commercial uses. Furthermore, the R-8 Zoning Designation will permit the construction of the long-awaited Baltimore City Greenway Trail, which will be developed, at the sole cost to the Developer, in tandem with the proposed 25 townhomes.

(e) The recommendations of the Baltimore City Planning Commission and the Board of Municipal Zoning Appeals;

For the above reasons, we ask that the Planning Commission adopt these findings of fact and recommend a favorable approval of the bill. The Board of Municipal and Zoning Appeals has deferred its recommendation on this legislation to the report of this Commission.

(f) The proposed amendment’s consistency with the City’s Comprehensive Master Plan.

The proposed rezoning from I-2 and IMU-2 to R-8 is consistent with the City’s Comprehensive Master Plan goal of increasing housing opportunities. Furthermore, it will be consistent with the Master Plan’s stated goal to promote play in Baltimore City by enabling the conversion of abandoned railroad tracks into an urban trail.

Section 5-508(b)(3) of the Zoning Code also mandates the following additional standards be considered for map amendments:

(a) Existing uses of property within the general area of the property in question;

As outlined above, the area surrounding the Property has been trending away from industrial and toward residential and commercial since shortly after the 2016 passage of Transform Baltimore. The proposed rezoning from industrial to residential is in-line with many surrounding uses and the direction in which the area is trending.

(b) The zoning classification of other property within the general area of the property in question;

The property directly adjacent to the Property is zoned R-8. There are several other residential and commercial zones in close proximity to the Property, as evidenced by the zoning map included above.

(c) The suitability of the property in question for the uses permitted under its existing zoning classification; and

The four lots that comprise the Property, which range from to approximately 4,128 square feet to approximately 32,234 square feet, are significantly too small and irregularly shaped to accommodate light industrial use. Furthermore, the present outdoor storage yard use of 801 S. Haven Street is not permitted by right under the current IMU-2 zoning designation. The impracticality of the Property for light industrial use and the above-discussed significant shift in the area from industrial to residential and commercial make the Property best suited for the R-8 Zoning District.

- (d) The trend of development, if any, in the general area of the property in question, including changes, if any, that have taken place since the property in question was placed in its present zoning classification.**

As indicated above, the Brewers Hill neighborhood is trending heavily toward residential and commercial uses. The changes in use have occurred since the enactment of Transform Baltimore in 2016 and taken off further since 2021. Because the Property, along with the surrounding area, was still operating industrially at the time Transform Baltimore was enacted, the City Council could not have anticipated that the Property would require residential zoning. The changes that occurred following 801 S. Haven Street's 2021 rezoning rendered the Council similarly unable to appropriately classify the property. Now that the character of the neighborhood has transitioned away from industrial and toward residential and commercial, and the adjacent property is zoned R-8, the City Council should amend the Property's zoning classification.

Additionally, the Department of Planning now performs the following equity analysis on all proposed rezonings:

- (a) Short/long-term impact on surrounding community;**

The proposed rezoning will positively impact the surrounding community in both the short- and the long-term as is evidenced by the attached letter of support from the Brewers Hill Neighbors dated April 11, 2022. The development will eliminate an industrial use in favor of a residential use, which will be a vast improvement for existing residents.

- (b) Impact on Baltimore's existing patterns of inequity;**

The proposed rezoning will provide additional rental housing options to Baltimore City residents.

- (c) Level of meaningful community engagement;**

As is noted above, the Applicant has engaged extensively with the Brewers Hill Neighbors in an effort to proceed with the redevelopment of the Property in alignment with the community's needs and preferences.

- (d) How residents who have been historically excluded from planning processes are being authentically included in the planning of the proposed policy or project;**

According to the 2020 census data, approximately 83% of the Property's census tract's population identifies as 100% white. Furthermore, only approximately 8% of the tract's residents live below the poverty line. Because the existing residents have, for the most part, not been historically excluded from the planning process, this factor does not apply to the proposed rezoning of the Property.

(e) Impact on internal operations;

There has not been, nor is there expected to be, any substantive impact to internal operations as a consequence of this bill.

(f) Notification.

The Brewers Hill Neighbors have been notified of the subject rezoning ordinance.



April 11, 2022

The Honorable Zeke Cohen, District 1
Baltimore City Council
City Hall
100 N. Holiday Street, Suite 500
Baltimore, Maryland 21202

Re: 715 S. Haven Street (Refinery Row Phase II)

To whom it may concern:

This letter serves as a conditional letter of support by Brewers Hill Neighbors, Inc. (BHN), for the variances requested by Mark Levy, et al (Developer), for a development of additional homes at Refinery Row (Refinery Row Phase II).

The BHN Board has met with Mark Levy, his council, and other interested parties and have found the rezoning and variances requested to be acceptable:

1. Rezoning of former railroad beds from I-2 zoning to R-8 zoning to enable the construction of Refinery Row Phase II
 - a. BHN previously supported the similar rezoning of former railroad beds at 601 S. Haven Street (Refinery Row Phase I), enacted under Ordinance 20-351
2. A 5-foot side yard setback, in lieu of a 10-foot side setback, along the north edge of the Refinery Row Phase II property, abutting the existing Refinery Row Phase I property
3. A 3-foot rear yard setback, in lieu of a 25-foot rear yard setback, along the east edge of the Refinery Row Phase II property, abutting the future Greenways Rails-to-Trail footprint
4. As required, a 22-foot rear-yard setback, in lieu of a 25-foot rear yard setback, along the southeast edge of the Refinery Row Phase II property, abutting the future Greenways Rails-to-Trail footprint
 - a. As this may be considered a "side-yard setback" depending on definition, this conditional support may not be required in this instance

For the support of BHN to continue, the Developer must meet the following conditions. Failure to abide by these conditions shall constitute a breach and support may be in jeopardy:

1. Land previously discussed by BHN, the Developer, and agents of the City of Baltimore, along the south and southeast edge of the property, shall be prepared to become an integral part of the Greenways Rails-to-Trail at the cost of the Developer, and maintained in good working order at the cost and by the Developer for use by community members with no restrictions
 - a. Development of this land shall, in principle, follow plans as shown to BHN by the Developer, including the trail, pocket park, screen fence, and landscaping



2. The above land, once prepared and maintained as an eventual part of the Greenway Rails-to-Trail, shall be transferred to the City or its agents for use as part of the Greenway Rails-to-Trail, in perpetuity, at no cost or abridgement of access to community members
3. The Developer shall make and develop traffic mitigation plans for any disruptions along S. Haven Street, including all possible efforts to prevent traffic from S. Haven Street from entering the Brewers Hill neighborhood due to disruptions from development
 - a. The Developer shall coordinate with the City of Baltimore and applicable agencies in preparing and enforcing traffic mitigation plans
4. The Developer shall return S. Haven Street to pre-construction or better condition as soon as possible once underground and above ground work on S. Haven Street is complete
 - a. The Developer shall coordinate with the City of Baltimore and applicable agencies in preparing and enforcing traffic mitigation plans

Sincerely,

A handwritten signature in dark ink, appearing to read "Phil a'Becket", with a long horizontal flourish extending to the right.

Phil a'Becket
Vice President, Brewers Hill Neighbors, Inc.
abecket@gmail.com
BHNBoard@brewershillneighbors.org

CC:

Mark Levy
Justin Williams (Rosenberg Martin Greenberg, LLP)

BAKER & MILLER PLLC

ATTORNEYS and COUNSELLORS
2401 PENNSYLVANIA AVENUE, NW
SUITE 300
WASHINGTON, DC 20037
TELEPHONE: (202) 663-7820

July 11, 2019

BY HAND DELIVERY

Cynthia T. Brown, Chief
Section of Administration, Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington DC 20423-0001



Re: Canton Railroad Company – Abandonment on – In Baltimore City, MD, Docket No. AB-193 (Sub-No. 3X)

Dear Ms. Brown:

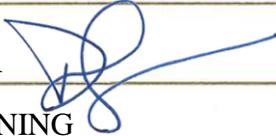
In a decision served May 13, 2019, the Surface Transportation Board (the “Board”), under 49 U.S.C. 10502, exempted the abandonment by Canton Railroad Company (“Canton”) of approximately 1,200 linear feet (the “Line”) in the above-referenced proceeding. The exemption became effective June 12, 2019. Pursuant to 49 C.F.R. 1152.29(e)(2), Canton hereby files this notice of consummation, advising the Board that it has fully abandoned the Line.

Please acknowledge receipt and filing of this letter by date stamping the enclosed acknowledgment copy and returning it to the courier. If there are any questions about this matter, please contact me directly, either by telephone: 202-663-7820 or by e-mail: rnardi@bakerandmiller.com.

Respectfully submitted,


Rose-Michele Nardi

Enclosures

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 #21-0013 / REZONING – 4015 FOSTER AVENUE, 4000 HUDSON STREET, AND 801 SOUTH HAVEN STREET		

TO

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

DATE: January 14, 2021

At its regular meeting of January 15, 2021, the Planning Commission considered City Council Bill #21-0013, for the purpose of changing the zoning for the properties known as 4015 Foster Avenue (Block 6447 Lot 021) and 4000 Hudson Street (Block 6457, Lot 018), as outlined in red on the accompanying plat, from the I-1 Zoning District to the IMU-2 Zoning District; and changing the zoning for the property known as 801 South Haven Street (Block 6458, Lot 003), from the I-2 Zoning District to the IMU-2 Zoning District, as outlined in blue on the accompanying plat.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report, which recommended approval of City Council Bill #21-0013 and adopted the following resolutions; seven members being present (seven in favor):

RESOLVED, That the Planning Commission concurs with the recommendation of its departmental staff, adopts the findings outlined in the previous staff report, with consideration for testimony and facts presented in that meeting, and recommends that City Council Bill #21-0013 be passed by the City Council.

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: Ms. Natasha Mehu, Mayor's Office
Ms. Nina Themelis, Mayor's Office
The Honorable Eric Costello, Council Rep. to Planning Commission
Mr. Colin Tarbert, BDC
Ms. Livhu Ndou, 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

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 #20-0614 / REZONING 4015 FOSTER AVENUE; 4000 HUDSON STREET; 801 S. HAVEN STREET		

DATE:

TO

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

October 9, 2020

At its regular meeting of October 8, 2020, the Planning Commission considered City Council Bill #20-0614, for the purpose of changing the zoning for the properties known as 4015 Foster Avenue and 4000 Hudson Street, from the I-1 Zoning District to the IMU-2 Zoning District, and also for 801 S. Haven Street from the I-2 Zoning District to the IMU-2 Zoning District.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report which recommended approval of City Council Bill #20-0614 and adopted the following resolution nine members being present (nine in favor):

RESOLVED, That the Planning Commission concurs with the recommendation of its departmental staff, adopts the findings outlined in the staff report, with consideration for testimony and facts presented in the meeting, and recommends that City Council Bill #20-0614 be passed by the City Council.

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
Ms. Livhu Ndou, 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
Mr. Jason Watts



Bernard C. "Jack" Young
Mayor

PLANNING COMMISSION

Sean D. Davis, Chairman

STAFF REPORT



Chris Ryer
Director

October 8, 2020

REQUEST: City Council Bill #20-0614/ Rezoning – 4015 Foster Avenue; 4000 Hudson Street; 801 S. Haven Street:

For the purpose of changing the zoning for the properties known as 4015 Foster Avenue (Block 6447 Lot 021) and 4000 Hudson Street (Block 6457, Lot 018), as outlined in red on the accompanying plat, from the I-1 Zoning District to the IMU-2 Zoning District; and changing the zoning for the property known as 801 South Haven Street (Block 6458, Lot 003), from the I-2 Zoning District to the IMU-2 Zoning District

RECOMMENDATION: Adopt Findings and Approve

STAFF: Matthew DeSantis, AICP

PETITIONERS: Councilmember Zeke Cohen, at the request of GLW Partners

OWNERS: Multiple

SITE/GENERAL AREA

Site Conditions: There are three subject properties included in this bill. 4015 Foster Avenue comprises 0.635 acres and is almost entirely covered by a one-story industrial warehouse building. 4000 Hudson Street is directly to the south, almost exactly the same dimensions, and partially improved with a one-story industrial warehouse building. 801 South Haven is on the east side of South Haven Street, is approximately 0.74 acres, and is unimproved while used for outdoor storage.

General Area: This site is located in the Brewer's Hill neighborhood, which is comprised of a mixture of medium-density attached residential dwellings, neighborhood-scale commercial establishments along the Eastern Avenue corridor, a combination of renovated and new construction mixed-use buildings clustered just north of Boston Street, and light industrial uses. South Haven Street is a very active truck route that connects many east Baltimore industrial areas to the Port of Baltimore.

BACKGROUND

The subject properties are currently zoned a mix of I-1 (Light Industrial) and I-2 (Heavy Industrial) and has had this zoning designation since the effective date of Transform Baltimore in 2017. Prior to this, 4015 Foster and 4000 Hudson were zoned M-2-2, and 801 South Haven was zoned M-3 – zoning designations roughly analogous to their current state.

The owners of 4015 Foster Avenue originally approached the Brewer's Hill Neighbors association, Councilman Cohen, and the Department of Planning for support in rezoning just their property from I-1 to IMU-2. The reason for the rezoning was to allow for the expansion of their office use within the building, which is prohibited by the current I-1 zoning designation. The building is currently used by the owner as the office and storage facility of their business, UrbanBuilt contracting. The building has three other tenants: a real estate office, a personal fitness facility, and Mobtown Brewing. Since the property is zoned I-1, in order for these non-industrial uses to be permitted, they must be accessory to an industrial use. The Zoning Administrator has found that since UrbanBuilt uses the majority of their space at 4015 Foster Avenue for storage of their building supplies, this enables the other uses at the property to lawfully exist. Due to the success of UrbanBuilt contracting and their need to expand their office space to 100% of their portion of the building, the extermination of the industrial warehousing use would result in none of the other extant office/retail/commercial uses from being permitted to operate in this I-1 zoned property. Additionally, Mobtown Brewing has recently sought approval to permit outdoor dining. This use, however, is not permitted in the I-1 zoning district, and so this request is not able to be approved. Outdoor dining is permitted via Conditional Use by the BMZA in the IMU-2 district, however, and therefore such an application could be considered if this rezoning was successful.

The South Haven street corridor has seen tremendous changes over the past decade. This corridor is a vital trucking route that provides the only direct connection between many industrial properties in East and Southeast Baltimore to the Port of Baltimore. And yet, residential development pressure from the waterfront moving northward has resulted in increased residential uses within close proximity and even directly fronting on this trucking route. Most significantly, several large parcels fronting South Haven Street were rezoned during the Transform Baltimore comprehensive rezoning by the previous First District Councilperson to permit residential development. Two of these parcels that flank the subject properties in this proposed rezoning are either under development (half of the 36 new townhomes on the property formerly known as 4001 Hudson Street have already been completed) or approved for development (601 South Haven will have over 70 new townhomes, 22 of which will have front doors directly on South Haven Street).

Given the recent history of zoning changes and recently established land uses along the South Haven Street corridor that are incompatible with its nature as a major truck route, the Department of Planning suggested that the scope of a rezoning bill be expanded beyond only 4015 Foster Avenue. Instead of another site-specific rezoning bill, an attempt has been made to make a more comprehensive analysis of the area that would better guide future land use patterns into the future. The Department of Planning and Councilman Cohen's office therefore worked together to engage with surrounding property owners and community stakeholders to arrive at the introduction of this comprehensive rezoning bill.

The main intention behind a rezoning of these several properties to IMU-2 is that this new zoning designation acknowledges the changes that have been happening along the corridor and allows for additional of office, commercial, and retail uses while at the same time continuing to prohibit any additional residential development directly on South Haven Street. This prohibition of additional residential development along South Haven Street is of importance to not just the

Department of Planning, but also to the Brewer’s Hill Neighbors community association, as they have expressed an openness to additional office or retail uses along the corridor but do not want any additional residential development.

While this bill includes three properties, both the Department of Planning and Councilman Cohen’s office contacted a fourth property, 4015 Fleet Street, to discuss the suitability of this property also being included in a comprehensive rezoning. The property is currently zoned I-1 and is improved with a one-story automotive repair facility, owned and operated by Best Battery. A rezoning of this property to IMU-2 would continue to permit the current use of the property by right and would allow for additional retail/office/commercial uses should the current or future owner wish to establish them. The current ownership, however, wished to not be subject to this comprehensive rezoning and as a result, this rezoning bill has been drafted to not include this parcel.

CONFORMITY TO PLANS

The proposed action would be consistent with the following aspects of LIVE EARN PLAY LEARN, the Comprehensive Master Plan for Baltimore City:

- Earn Goal 1: Strengthen Identified Growth Sectors,
 - Objective 1: Retain and Attract Businesses in all Growth Sectors
 - Objective 5: Retain and Attract Businesses in Construction

Additionally, the proposed action would be consistent with the following aspects of the Baltimore City Sustainability Plan:

- Neighborhoods Strategy #2: Support programs and policies to increase investments in neighborhoods

ANALYSIS

4015 Foster and 4000 Hudson were rezoned from M-2-2 to I-1, and 801 South Haven was rezoned from M-3 to I-2 during the Transform Baltimore comprehensive rezoning process in 2017. Transform Baltimore also established a new zoning district, known as IMU (Industrial Mixed Use). The purpose of this new zoning category was to encourage the reuse of older industrial buildings for light industrial uses, as well as a variety of non-industrial uses. CCB #18-0277 (enacted via Ordinance 19-244 on April 29, 2019) was a comprehensive zoning bill introduced in effort to further modify the IMU zoning district by splitting it into an IMU-1 and IMU-2 districts, the latter with the express intention of not permitting residential uses.

Impact of Rezoning on Established Uses:

- 4015 Foster Avenue: All of the established uses would be permitted by-right under an IMU-2 designation. Additionally, UrbanBuilt would be able to replace their warehousing use on the property with expanded office use, and this would not force all of the other commercial uses on the parcel to relocate.

- 4000 Hudson Street: This parcel has a legally-established “Contractor Storage Yard” use. This use is permitted Conditionally by the BMZA in IMU-2. Therefore, upon the rezoning of the parcel this use would automatically be an approved use and not a legal nonconformity.
- 801 South Haven Street: This parcel is currently approved as a parking lot. This use is permitted Conditionally by the BMZA in IMU-2. Therefore, upon the rezoning of the parcel this use would automatically be an approved use and not a legal nonconformity.

Below are the approval standards under §5-508(b) of Article 32 – *Zoning* for proposed zoning map amendments:

(b) *Map amendments.*

(1) *Required findings.*

As required by the State Land Use Article, the City Council may approve the legislative authorization based on a finding that there was either:

- (i) a substantial change in the character of the neighborhood where the property is located; or
- (ii) a mistake in the existing zoning classification.

(2) *Required findings of fact.*

In making the determination required by subsection (b)(1) of this section, the City Council must also make findings of fact that address:

- (i) population changes;
- (ii) the availability of public facilities;
- (iii) present and future transportation patterns;
- (iv) compatibility with existing and proposed development for the area;
- (v) the recommendations of the City agencies and officials; and
- (vi) the proposed amendment’s consistency with the City’s Comprehensive Master Plan.

(3) *Additional standards – General*

Additional standards that must be considered for map amendments are:

- (i) existing uses of property within the general area of the property in question;
- (ii) the zoning classification of other property within the general area of the property in question;
- (iii) the suitability of the property in question for the uses permitted under its existing zoning classification; and
- (iv) the trend of development, if any, in the general area of the property in question, including changes, if any, that have taken place since the property in question was placed in its present zoning classification.

Below is the staff’s review of the required considerations where staff finds that this change is in the public’s interest, in that it will provide for the continued use and future reuse of the properties in a way compatible with the surrounding neighborhood context.

Maryland Land Use Code – Requirements for Rezoning:

The Maryland Land Use Code requires the Planning Commission to study the proposed changes in relation to: 1. The plan; 2. The needs of Baltimore City; and 3. The needs of the particular neighborhood in the vicinity of the proposed changes (*cf.* Md. LAND USE Code Ann. 2012, §10-305). In reviewing this request, the staff finds that:

1. **The Plan:** The proposed action would support goals contained in the Comprehensive Master Plan for Baltimore City, *Earn Goal 1: Strengthen Identified Growth Sectors, Objective 1: Retain and Attract Businesses in all Growth Sectors and Objective 5: Retain and Attract Businesses in Construction*. It would also support Neighborhoods Strategy #2 from the Baltimore Sustainability Plan: *Support programs and policies to increase investments in neighborhoods*.
2. **The needs of Baltimore City:** In addition to the permitted light industrial uses, the IMU-2 zoning district will enable a wider variety of commercial and retail uses. This wider allowance of uses will help to generate employment and investment, while at the same time, the continued prohibition on residential development will serve to buffer nearby existing industrial areas from residential encroachment. The IMU-2 zoning designation will allow the thriving businesses currently operating at 4015 Foster to grow and expand without leaving Baltimore City.
3. **The needs of the particular neighborhood:** The zoning change will support the growing population within the Brewer’s Hill community by allowing for additional retail and commercial uses on the properties. The continued prohibition of residential uses will also support the community by continuing to ensure a residential buffer away from Haven Street, which has been and will continue to be an important commercial trucking route.

Similarly, the Land Use article requires the City Council to make findings of fact (*cf.* Md. LAND USE Code Ann. 2012, §10-304). The findings of fact include:

1. **Population changes;** There have been significant population changes in the immediate vicinity of this comprehensive rezoning between the passage of the last comprehensive rezoning in 2016 and the present time due to the construction of new townhomes at 4001 Hudson Street. Additionally, more than 70 new townhomes are pending construction adjacent to the subject area, as well several hundred more that are under construction a few blocks to the south within the Brewer’s Hill PUD and the new Collective at Canton mixed-use development.
2. **The availability of public facilities;** This site is well-served by public services and utilities, which can also support redevelopment or reuse of this site.
3. **Present and future transportation patterns;** There would be no effect upon present or future transportation patterns in the area as a result of adoption of this bill. The continued prohibition of additional residential uses along the South Haven Street corridor is important.
4. **Compatibility with existing and proposed development for the area;** The proposed zoning district is compatible with the existing and proposed development for the area, as there has been and will continue to be additional residential and commercial development within the area for at least the next several years.

5. **The recommendations of the Planning Commission and the Board of Municipal and Zoning Appeals (BMZA);** For the above reasons, the Planning Department will recommend approval of the rezoning request to the Planning Commission. The BMZA will comment separately on this bill.
6. **The relation of the proposed amendment to the City's plan.** As noted previously, rezoning of these properties to the IMU-2 zoning district would be consistent with the City's plan.

There are additional standards under §5-508(b)(3) that must be considered for map amendments. These include:

- (i) **existing uses of property within the general area of the property in question;** Existing uses of property within the general area of this site are a mix of residential, light industrial, and commercial.
- (ii) **the zoning classification of other property within the general area of the property in question;** IMU-2 zoning would serve as an appropriate buffer between the R-8 and C-2 zoning to the immediate west and south, both of which feature residential dwellings, and the S. Haven Street corridor.
- (iii) **the suitability of the property in question for the uses permitted under its existing zoning classification; and,** All of the subject parcels are currently in use and functional under their current zoning designation. The expanded uses permitted by the proposed zoning designation, however, would enable some of the current businesses in the subject area to continue to grow without being forced to relocate, and will better reflect the changing market demands along the Haven Street corridor.
- (iv) **the trend of development, if any, in the general area of the property in question, including changes, if any, that have taken place since the property in question was placed in its present zoning classification.** There have been recent and proposed developments in close proximity to this site, including the two large townhome developments cited earlier in this report. These development trends represent a significant change in the neighborhood, and have happened since the time of the last comprehensive rezoning.

Per §5-508(1) of Article 32 – *Zoning*, and as required by the State Land Use Article, the City Council may approve the legislative authorization based on a finding that there was either: (i) a substantial change in the character of the neighborhood where the property is located; or (ii) a mistake in the existing zoning classification. Planning staff consider the developments that have taken place nearby as constituting a significant change in the character of the neighborhood.

Notification: Brewer's Hill Neighbors, Maryland Port Authority, and Baltimore Industrial Group have been notified of this action. Additionally, the area has been posted in compliance with Planning Commission requirements.



Chris Ryer
Director