

<b>FROM</b>	<b>NAME &amp; TITLE</b>	CHRIS RYER, DIRECTOR	CITY of <b>BALTIMORE</b> <b>MEMO</b>	
	<b>AGENCY NAME &amp; ADDRESS</b>	DEPARTMENT OF PLANNING 8 <sup>TH</sup> FLOOR, 417 EAST FAYETTE STREET		
	<b>SUBJECT</b>	CITY COUNCIL BILL #19-0333 / REZONING – 801-803 NORTH CHESTER STREET		

DATE:

March 8, 2019

**TO**

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

At its regular meeting of March 7, 2019, the Planning Commission considered City Council Bill #19-0333, for the purpose of changing the zoning for the properties known as 801-803 North Chester Street from the R-8 Zoning District to the C-1 Zoning District.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report which recommended disapproval of City Council Bill #19-0333, heard additional testimony, and adopted the following resolution, eight members being present (eight in favor):

RESOLVED, That the Planning Commission does not concur with the recommendation of its Departmental staff, and instead finds that there was a mistake in the existing zoning classification of 801 North Chester Street, and a substantial change in the character of the neighborhood that warrants a map amendment with regard to 803 North Chester Street. The Commission adopts the facts presented by the applicant, and therefore recommends that City Council Bill #19-0333 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. Pete Hammen, Chief Operating Officer  
 Mr. Jim Smith, Chief of Strategic Alliances  
 Ms. Karen Stokes, Mayor's Office  
 Mr. Colin Tarbert, Mayor's Office  
 Mr. Jeff Amoros, Mayor's Office  
 The Honorable Edward Reisinger, Council Rep. to Planning Commission  
 Mr. William H. Cole IV, BDC  
 Mr. Derek Baumgardner, BMZA  
 Mr. Geoffrey Veale, Zoning Administration  
 Ms. Sharon Daboin, DHCD  
 Mr. Tyrell Dixon, DCHD  
 Ms. Elena DiPietro, Law Dept.  
 Mr. Francis Burnszynski, PABC  
 Mr. Frank Murphy, DOT  
 Ms. Eboni Wimbush, DOT  
 Ms. Natawna Austin, Council Services  
 Mr. Ervin Bishop, Council Services  
 Ms. Caroline Hecker, esq., for Land of Kush, Inc.





MEMORANDUM

TO: BALTIMORE CITY PLANNING COMMISSION

FROM: CAROLINE L. HECKER

CC: THE LAND OF KUSH, INC.

RE: CCB # 19-0333 – REZONING – 801-803 N. CHESTER STREET  
PROPOSED FINDINGS OF FACT

DATE: MARCH 7, 2019

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Under the State Land Use Article (§ 10-304), the City Council may approve a change in zoning classification based on a finding that there was “(i) a substantial change in the character of the neighborhood where the property is located; or (ii) a mistake in the existing zoning classification.” Here, the rezoning of the property known as 801 N. Chester Street to the R-8 Zoning District under Transform Baltimore was a mistake, as demonstrated by the existing structures and the prior B-2-2 zoning. Additionally, there has been a change in the character of the neighborhood due to the redevelopment of the nearby New East Baltimore Community that demonstrates that the rezoning of the adjacent property at 803 N. Chester Street to the C-1 Zoning District is proper at this time. As set forth in more detail below, the following findings of fact support the proposed rezoning of the properties known as 801 and 803 N. Chester Street (collectively, the “Property”) to the C-1 District.

In approving a zoning change, the City Council must make findings of fact that address:

**(i) Population Change**

According to U.S. Census data, the census tract where the Property is located (Census Tract 703) has a total population of 885 as of 2017. This is a decrease from the 2010 census count of 1,042 individuals. This census tract has 317 households and 553 housing units, of which 43% are vacant according to census data. By comparison, the 2010 Census data showed 604 total housing units in Tract 703, 275 of which were vacant, for a vacancy rate of 46%.

**(ii) The availability of public facilities;**

The area is well-served by public utilities and services, and will remain so for the foreseeable future. The decline in population and high vacancy rate contribute to a lower current demand for public facilities.

**(iii) Present and future transportation patterns;**

The rezoning of the Property will not adversely impact present or future transportation patterns, as the neighborhood commercial use of the properties will not be an intense use that will generate significant traffic to the site.

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

The proposed C-1 zoning is consistent with existing and proposed development for the area, which is adjacent to the New East Baltimore Community and the Johns Hopkins Hospital. The properties surrounding the site are zoned BSC, H, and C-1, and the proposed C-1 zoning of this Property is consistent with other uses in the area.

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

The Planning Commission is urged to make a favorable recommendation on this bill.

The Board of Municipal and Zoning Appeals has not yet commented on this bill.

**(vi) The proposed amendment's consistency with the City's Comprehensive Master Plan.**

The proposed rezoning is consistent with the City's LiveEarnPlayLearn Master Plan by creating opportunities for commercial services to be developed near growing residential communities, creating amenities for City residents.

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

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

The other properties in the 800-block of N. Chester Street, which have been vacant for a long time, are in the process of being gutted and rehabbed for residential use. The ability to have a small commercial enterprise such as restaurant at the end of the block will create an amenity for these new residents. Across the street are other commercial structures, and the properties on all three other corners of the intersection all have commercial uses.

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

The properties on all three other corners of the intersection are commercially zoned: the northwest corner is zoned BSC; the southwest corner is zoned H; and the southeast corner is zoned C-1. The property at 801 N. Chester St. was zoned B-2-2 before the enactment of Transform Baltimore.

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

The property at 801 N. Chester Street was constructed for a commercial purpose, as is evident in its architecture. The current R-8 zoning would not permit commercial uses, and would not permit the expansion of the prior commercial use into the adjacent building at 803 N. Chester Street. Neighborhood-scale commercial uses that support the fledgling residential area will create an amenity that will support the development of additional housing options in the area.

- (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 ongoing development of the nearby New East Baltimore Community continues to spark economic development in adjacent areas. The general area saw a large decline in population in the early 2000s as a result of East Baltimore Development, Inc.'s (EBDI) implementation of a new master plan for the area. In recent years, however, the area has begun to see a reversal of this trend, with new housing options being constructed near the Johns Hopkins Hospital and surrounding bio park. New neighborhood-scale commercial options to support the burgeoning residential community will help make this area attractive to new residents, and incentivize current residents to stay.





Catherine E. Pugh  
Mayor

## PLANNING COMMISSION

Sean D. Davis, Chairman

### STAFF REPORT



Chris Ryer  
Director

March 7, 2019

**REQUEST:** City Council Bill #19-0333/ Rezoning – 801-803 North Chester Street:

For the purpose of changing the zoning for the properties known as 801-803 North Chester Street (Block 1605, Lots 001 and 002), as outlined in red on the accompanying plat, from the R-8 Zoning District to the C-1 Zoning District.

**RECOMMENDATION:** Disapproval

**STAFF:** Martin French

**PETITIONERS:** Councilmembers Sneed and Stokes, and Council President Young, at the request of Land of Kush, Inc.

**OWNER:** 800 Chester Street LLC

#### **SITE/ GENERAL AREA**

Site Conditions: 801 North Chester Street is located on the northeast corner of the intersection with Madison Street. This property measures approximately 14'10" by 70' and is currently improved with a two-story semi-detached residential mixed-use building covering the entire lot. 803 North Chester Street is located on the east side of the street, approximately 14'10" north of the intersection with Madison Street. This property measures approximately 13'9" by 70' and is currently improved with a two-story attached residential building measuring approximately 13'9" by 46'. These properties are part of a row of houses built in 1903. A 9'3" wide alley behind these properties separates them from a former parochial school building dating from 1914, and across Madison Street to the south are more row-houses. Although now under common ownership, 801 and 803 North Chester Street have never been consolidated. This site is zoned R-8 and is located within the Middle East Urban Renewal Plan area and the East Monument National Register Historic District.

General Area: This site is in the central portion of the Middle East community, and is representative of the "old" of it. Cater-corner to this site is one part of the "new" of the Middle East community, represented by the northeast corner of the expanded Johns Hopkins Hospital urban campus. Across Chester Street is another part of the "new" Middle East community, the hospital-related bio-science campus. One block south of this intersection is the Monument Street commercial corridor, a commercial focus for East Baltimore's shopping activity spanning over twelve blocks from Washington Street on the west to Belnord Avenue on the east. One block north of the 800 block of North Chester Street is the Education Campus Zoning District that includes the new Henderson-Hopkins School. Three blocks north, the Amtrak main line from Washington DC to Boston bisects the large R-8 zoning district covering much of East Baltimore.

## **HISTORY**

The Middle East Urban Renewal Plan was approved by Ordinance no. 1202 dated November 30, 1979. This Plan was last amended by its Amendment 13, dated May 14, 2018, approved by Ordinance no. 18-190 dated November 9, 2018. This Plan includes 801 North Chester Street and 803 North Chester Street (and the other properties known as 805 through 817 North Chester Street) on its list in its Appendix D, Properties for Acquisition and Disposition for Rehabilitation or Redevelopment. This Plan also includes the East Monument Street Business Area, which is a designated Main Street extending from Washington Street eastward to Milton Avenue. The East Monument Historic District was certified to the National Register of Historic Places on December 8, 2009.

## **CONFORMITY TO PLANS**

The scope of the proposed rezoning action partially conflicts with goals, objectives and strategies contained in the Comprehensive Master Plan for the City of Baltimore. One of the objectives expressed in the Master Plan for the new zoning code was consistency of zoning with existing land use, community character, City plans and projects, and City economic development goals (Master Plan, p. 15). In this regard, this site is a part is a group of houses, and in part of a community defined by its row-housing and residents as residential, for which R-8 zoning is appropriate.

## **ANALYSIS**

The proposed use of the two properties, which have not been consolidated, is a restaurant (and restaurants may or may not have on-premises liquor licenses). The property known as 801 North Chester Street qualifies for approval of this use under the current R-8 zoning because the Zoning Code authorizes approval, as a conditional use, of Neighborhood Commercial Establishments in structures that were originally constructed or altered and used for non-residential use, or have a record of permitted non-residential use. 801 North Chester Street was recorded by the Police Survey of 1931 as in use for an automobile supply store with associated repairs (e.g., installation of parts) and one dwelling unit. On November 13, 1962 this was superseded by a permit for use as a clothing store and two dwelling units; on January 24, 1966, this changed to a restaurant and two dwelling units. On March 19, 1974 the restaurant use was continued and the residential use was reduced to one dwelling unit. In recognition of this continuous commercial use of the first floor level of the property, in the 1971 comprehensive rezoning of Baltimore City this property was included in a larger B-2-2 Zoning District that covered properties on the three other corners of the intersection of Chester and Madison Streets. Although the rezoning of the property to R-8 on June 5, 2017 made its use conditional rather than “by right”, 801 North Chester Street is not in need of any zoning change in order for the proponents to (continue to) use it as a restaurant.

803 North Chester Street was listed in the 1931 Police Survey as a dwelling with a hat store. On its street level, unlike 801 North Chester Street, this property had not been originally constructed or altered for non-residential use. The physical appearance of the façade of this structure suggests that the hat store functioned in one or more converted downstairs front rooms of the original dwelling unit. There is no other record of any permitted commercial activity on this premises. In 1971 this property, unlike its neighbor at 801 North Chester Street, was placed in the R-8 Zoning District, where it remained when the current comprehensive rezoning became effective in June 2017. This property is the reason for this bill: It did not qualify under the terms



of the new (now current) Zoning Code definition of Neighborhood Commercial Establishment for consideration for the proposed restaurant use because of the combination of the physical character of its façade and its lack of permits for non-residential use, and the petitioner's request is based upon their need to have both properties consolidated and commercially zoned in order to provide adequate floor area for their restaurant.

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 of §5-508(3) of Article 32 – *Zoning*, where staff finds that this proposed change may not be in the public's interest, in that it would make the end-of-row residential mixed-use structure and its next-door dwelling usable in their entirety as a commercial establishment physically attached to a row of dwellings. There would be no public street or alley to separate the non-residential use from its residential neighbor, which is part of a row of dwellings. Given that the C-1 Zoning District allows a far greater variety of commercial uses than does the Neighborhood Commercial Establishment category within the R-8 Zoning District, this could present some issues for nearby residents if the future use of 801-803 North Chester Street (following consolidation) would change from a restaurant to a different use.

It has been approximately twenty months since the two properties were placed in their present zoning classification. There had been significant change in this general area since the previous version of the Zoning Code was adopted in 1971, related to redevelopment in this area. That level of change was in turn reflected in the placement of part of it in the newly-created Hospital

Campus Zoning District and the Bio-Science Campus District. Residential use of this block and nearby residentially-developed blocks of Chester Street and Madison Street has remained relatively unchanged. Similarly, commercial use of the Monument Street commercial corridor, now zoned C-1, has continued. The new zoning of 801 North Chester Street (R-8) that took effect on June 5, 2017 is reflective of its past residential mixed-use and its physical attachment to a row of dwellings, while the continuation of R-8 zoning for 803 North Chester Street reflected its continued residential use.

All other parts of the row to which this end-of-row structure is attached are used residentially. Properties across Chester Street (west of this property) are non-residential in use, which is reflected in their H (Hospital Campus) or BSC (Bio-Science Campus) zoning that became effective June 5, 2017. There has been significant residential and other redevelopment activity in the area immediately adjacent to these properties carried out under the auspices of East Baltimore Development, Inc. (EBDI), which is a working partnership of private, institutional, and non-profit entities.

**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:** This action does not advance most goals, objectives or strategies contained in the Comprehensive Master Plan also known as LIVE EARN PLAY LEARN. It could be construed to advance the LIVE Goal 1, Objective 2: Strategically Redevelop Vacant Properties Throughout the City, to the extent that these properties would be actively re-used as a restaurant under the current proposal by the petitioner.
2. **The needs of Baltimore City:** This action is not needed to serve either a comprehensive redevelopment strategy or a Mayoral initiative.
3. **The needs of the particular neighborhood:** This action is not necessary to meet the needs of the portion of East Baltimore that abuts the eastern portion of the non-residential and institutional uses associated with the Johns Hopkins Hospital and Medical Institutions, given the extent of the East Monument Street commercial corridor one block south of this site.

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 may not be a noticeable population change between June 5, 2017 and the effective date of this proposed action. However, approved plans for EBDI-managed properties in this area would result in creation of 250 new rental dwelling units and 167 for-sale dwelling units within the next three years, which could bring approximately 1,000 more residents to this vicinity.*
2. **The availability of public facilities;** *Public facilities are expected to remain unchanged.*

3. **Present and future transportation patterns;** *These are expected to remain unchanged.*
4. **Compatibility with existing and proposed development for the area;** *There are no proposed new major development plans for the area that would call for this action. However, EBDI is working with the City's Department of Housing and Community Development to complete plans for redevelopment of the opposite side of the 800 block of North Chester Street with offices, residences, and retail space.*
5. **The recommendations of the Planning Commission and the Board of Municipal and Zoning Appeals (BMZA);** *For the above reasons, based on the relative amounts of newly-completed redevelopment that has been reflected in zoning as of June 5, 2017 and of additional redevelopment yet to be completed, the Planning Department will recommend disapproval of the rezoning request to the Planning Commission. The BMZA has not yet commented on this bill.*
6. **The relation of the proposed amendment to the City's plan.** *As the rezoning to R-8 that became effective June 5, 2017 is consistent with the City's Comprehensive Master Plan, which the Planning Commission previously determined in recommending the new zoning districts map to the Mayor and City Council, there is no obvious relationship of this proposed amendment to the City's plan.*

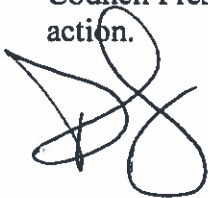
There are additional standards under §5-508(b)(3) that must be considered for map amendments. These include:

- (i) **existing uses of property within the general area of the property in question;** *On the opposite side of Chester Street in this 800 block, uses are predominantly non-residential; on this side of Chester Street, this block is predominantly residential, part of the larger predominantly residential area of East Baltimore. Immediately to the north there is a pocket of institutional use associated with redevelopment of a formerly residential area for educational use; immediately to the south, Chester Street crosses the East Monument Street commercial corridor, where low-intensity commercial uses serve primarily their surrounding residential communities. This 700 block of North Chester Street is zoned C-1 presently, as it functions as a northward extension of the Monument Street commercial corridor.*
- (ii) **the zoning classification of other property within the general area of the property in question;** *Reflective of the existing uses cited above, zoning of other property is H (Hospital Campus) southwest of this site; BSC (Bio-Science Campus) west and northwest of this site; R-8 east of this site; and C-1 in the 700 block of Chester Street that connects to the East Monument Street commercial corridor, which is zoned C-1. This proposed action would extend the C-1 zoning district across Madison Street on the east side of Chester Street.*
- (iii) **the suitability of the property in question for the uses permitted under its existing zoning classification;** *As described above (please see Page 2 of this report), both properties are suitable for uses permitted under the R-8 zoning classification, in accordance with the terms of the current Zoning Code. 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. *East Baltimore in the vicinity of the Johns Hopkins Hospital and Medical Institutions has experienced either a replacement of residential use with non-residential institutional or related commercial development, or development of new housing and rehabilitation of existing structures for housing.***

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. There is not likely to be a relatively large additional substantial change in neighborhood character between June 5, 2017 and the effective date of the proposed amending ordinance. The current zoning classification of R-8 was based upon the physical characteristics of the existing structure (801 North Chester Street, an end-of-row dwelling with a commercial use of one level) and of the dwellings to which it is attached, including the adjoining premises known as 803 North Chester Street, as well as the residential character of the community further east of Chester Street. As such, there was no mistake in classifying the subject properties as R-8, even though the change has made limited commercial (including restaurant) use of the premises at 801 North Chester Street conditional, and now prevents use of 803 North Chester Street as part of that limited commercial use. This determination is based in part upon timing: the rezoning determination for 801 North Chester Street to be in the R-8 Zoning District, and continuation of R-8 zoning for 803 North Chester Street, was made in the autumn of 2016, prior to finalization of plans for the proposed restaurant use.

**Notification:** East Baltimore Development, Inc. (EBDI), the Care Community Association (CARE), Historic East Baltimore Community Action Coalition (HEBCAC), Monument Street Merchants Association, 800 Block of North Washington Street Beautification, Ashland Park Mews Condo II Association, Milton-Montford Improvement Association, McElderry Park Community Association, Northeast Market Merchants Association, Milton Avenue Improvement Association, Eastside Community Reinvestment Corporation, Reclaiming Our Community, and Council President Young and Councilmembers Sneed and Stokes have been notified of this action.



**Chris Ryer  
Director**