CITY OF BALTIMORE

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August 20, 2019

The Honorable President and Members
of the Baltimore City Council
Attn: Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 19-0369– Rezoning – 2908 Belmont Avenue

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 19-0369 for form and legal sufficiency. If enacted, the bill would change the zoning for 2908 Belmont Avenue from the R-6 Zoning District to the C-1 Zoning District. For the reasons set forth within, the Law Department cannot find that the bill is legally sufficient.

The City Council can only permit this rezoning if it finds facts sufficient to show either a mistake in the existing zoning classification or a substantial change in the character of the neighborhood. Md. Code, Land Use, §10-304(b)(2); City Code, Art. 32, §§5-508(a), (b)(1). There would appear to be no basis to believe that the neighborhood could have substantially changed between the comprehensive rezoning of the property on June 5, 2017 and the present. Therefore, to legally rezone the property, the City Council must identify a "mistake" that lead to the inappropriate zoning of the property as R-6 only a short time ago. Md. Code, Land Use §10-304(b)(2); City Code, Art. 32, §§5-508(a), (b)(1).

As "there is a strong presumption of the correctness of original zoning and of comprehensive rezoning," there must be substantial evidence "to show that there were then existing facts which the Council, in fact, failed to take into account, or subsequently occurring events which the Council could not have taken into account." *People's Counsel v. Beachwood I Ltd. Partnership*, 107 Md. App. 627, 641 (1995) (citations omitted); *Boyce v. Sembly*, 25 Md. App. 43, 52 (1975) (citations omitted). In other words, "the Council's action was premised initially on a misapprehension" making the selection of the R-6 zoning designation a "conclusion based upon a factual predicate that is incomplete or inaccurate." *People's Counsel*, 107 Md. App. at 641, 645 (citation omitted); *accord White v. Spring*, 109 Md. App. 692, 698 (1996). "[A]n allegedly aberrant conclusion based on full and accurate information, by contrast, is simply a case of bad judgment, which is immunized from second-guessing." *People's Counsel*, 107 Md. App. at 645. Without showing either facts that were not considered or subsequent events, "the presumption of validity accorded to comprehensive zoning is not overcome and the question of error is not 'fairly debatable.'" *Boyce*, 25 Md. App. at 52.

To be sure, if evidence of a factual mistake sufficient to justify a rezoning is revealed, then courts will accord deference to the legislative judgment to rezone. *Cty. Council of Prince George's*

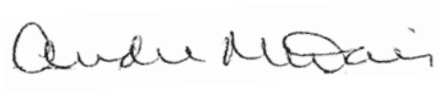
Cty. v. Zimmer Dev. Co., 444 Md. 490, 509-510 (2015); *accord White*, 109 Md. App. at 699 ("the courts may not substitute their judgment for that of the legislative agency if the issue is rendered fairly debatable"); *Floyd v. County Council of Prince George's County*, 55 Md. App. 246, 258 (1983) ("Substantial evidence, we have noted, 'means a little more than a "scintilla of evidence."'").

The Report of the Planning Commission contains *no support* for a mistake in the selection of R-6 as the zoning for 2908 Belmont Avenue. Md. Code, Land Use, §10-304(b)(2). The Planning Commission simply states that it adopts the findings offered by the applicant to support a mistake in the R-6 zoning but does not say what facts it found. In contrast, the Planning staff notes that the property was zoned R-6 "as a deliberate action" and not a mistake. This was done "to reflect the building typology of both this parcel and 2921 Belmont as end-unit attached rowhouse dwellings." The fact that 2908 Belmont Avenue had been a long-standing non-conforming use is support for the selection of residential zoning because residential uses have clearly been the contemplated use for this area for decades. *See, e.g., Tennison v. Shomette*, 38 Md. App. 1, 5 (1977), *cert. den.*, 282 Md. 739 (1978). There has also been no showing of any subsequently occurring events that would evidence a mistake. Again, the Planning staff notes the opposite: "Since the comprehensive rezoning of the City, there hasn't been a significant change in the neighborhood."

Rezoning this property now to C-1 would constitute unlawful spot zoning because it would be only for the benefit of the property owner. When the City has undertaken such efforts in the past, Maryland's highest court has invalidated the ordinance as unreasonable, discriminatory spot zoning because the rezoning had insufficient relationship to the public health, safety or general welfare. *See, e.g., Cassel v. Mayor and City Council of Baltimore*, 195 Md. 348, 354 (1950).

On the present record, it cannot be shown that the City Council had a misapprehension about the facts applicable to the property when it was comprehensively zoned residential. Accordingly, the legal standard for rezoning cannot be met and the Law Department cannot approve the bill for legal sufficiency.

Very truly yours,



Andre M. Davis
City Solicitor

cc: Jeffrey Amoros, Mayor's Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
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