


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 #19-0453 / REZONING – 3127 EAST BALTIMORE STREET		

TO

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

DATE: November 13, 2020

At its regular meeting of November 12, 2020, the Planning Commission considered City Council Bill #19-0453, for the purpose of changing the zoning for the property known as 3127 East Baltimore Street (Block 1743, Lot 002), as outlined in red on the accompanying plat, 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 #19-0453 and adopted the following resolution, with nine members being present (seven in favor, one opposed, one abstained):

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 #19-0453 be disapproved 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



Bernard C. "Jack" Young
Mayor

PLANNING COMMISSION

Sean D. Davis, Chairman

STAFF REPORT



Chris Ryer
Director

November 12, 2020

REQUEST: City Council Bill #19-0453/ Rezoning – 3127 East Baltimore Street:

For the purpose of changing the zoning for the property known as 3127 East Baltimore Street (Block 1743, Lot 002), as outlined in red on the accompanying plat, from the R-8 Zoning District to the C-1 Zoning District.

RECOMMENDATION: Disapproval

STAFF: Matthew DeSantis, AICP (with assistance from Martin French)

PETITIONERS: Councilmember Cohen, at the request of 3127 East Baltimore Street LLC

OWNER: 3127 East Baltimore Street LLC

SITE/GENERAL AREA

Site Conditions: This site is at the southeastern corner of the intersection of Baltimore and Robinson Streets, and contains approximately 5,200 square feet. The property is improved with a two-story stone historic church structure constructed in 1906 that covers the entirety of its original lot. The two abutting attached two-story buildings on E. Baltimore Street were previously consolidated with the church parcel but have recently been re-subdivided by the applicant for renovation/sale as fee-simple rowhomes.

General Area: This site is located approximately four blocks northeast of Patterson Park in the Patterson Park neighborhood, which is composed predominantly of two-story and three-story row-houses, with some institutional and small commercial establishments scattered in their midst. The general area comprises the geographic central portion of the Patterson Park – Highlandtown National Register Historic District.

HISTORY

- At the December 12, 2019 hearing the Planning Commission approved the resubdivision request to split the two abutting rowhomes along the former lot lines, splitting them from this church parcel at 3127 E. Baltimore Street (Subdivision #2019-028).
- The Patterson Park – Highlandtown Historic District was certified to the National Register of Historic Places on December 27, 2002.

CONFORMITY TO PLANS

The proposed rezoning action would not necessarily be in conflict with the Goals and Objectives listed in LIVE EARN PLAY LEARN, the Comprehensive Master Plan for Baltimore. The redevelopment project that is driving this requested rezoning could even be argued to be in direct support of the plan aspect LIVE Goal 1, Objective 2: *Strategically Redevelop Vacant Properties Throughout the City*, in that it would help facilitate a specific redevelopment of a structure that has historic significance yet is no longer needed by its religious congregation. The redevelopment driving the rezoning, however, is not what the rezoning review criteria are established to address, but rather the proposed rezoning in itself is what is under scrutiny - any change in zoning designation runs with the land and is not beholden to any specific development project that may be proposed.

ANALYSIS

In the course of comprehensive rezoning that became effective on June 5, 2017, the Planning Commission and the City Council studied land use patterns across the City of Baltimore and deliberated on the most effective zoning tools that would balance protection of existing communities with encouragement of desirable development or redevelopment. This site was, in the previous comprehensive rezoning completed in 1971, placed in an R-8 zoning district along with the majority of properties in close proximity. Through the deliberative Transform rezoning process, this property (along with the majority of those in proximity) retained an R-8 zoning designation. This property, like many other similar historic non-residential buildings in residentially-zoned areas, retained their residential zoning designation for the reason hereby explained:

A new provision was created in this new Zoning Code – that properties which had a history of some non-residential use could be considered qualified for seven different types of non-residential use under the category “Neighborhood Commercial Establishment”. (This responded to LIVE Goal 2, Objective 3: Promote Transit-Oriented Development and Mixed-use Development to Reinforce Neighborhood Centers and Main Streets, Strategy: “Create mixed-use with residential zoning category”.) This site, having been used for a religious institution, readily qualifies itself for approval of Neighborhood Commercial Establishment uses such as art galleries, arts studios, day care centers, offices, personal services establishments, restaurants (with no live entertainment or dancing), and retail goods establishments with no alcoholic beverage sales (Zoning Code, §14-328.(b)). Rezoning this site from R-8 to C-1 would allow, as future uses of the property, all C-1 zoning district uses including carry-out food shops, health-care clinics, health and fitness centers, and taverns; and if approved by ordinance, check-cashing establishments and retail goods establishments with alcoholic beverage sales. While some of the uses that would be enabled by rezoning this site to C-1 may be considered desirable by nearby residents, others may not be as welcomed. Because the zoning of property “runs with the land” there would be no guarantee that details of a plan for re-use of this site now being advanced would remain in place for years to come.

In addition to these considerations on permitted uses, a rezoning to C-1 would permit the historic church building to be demolished and replaced with a new structure (the National Historic district designation does not provide any protections against demolition). While the current applicant may have no such plans, it is worth repeating that zoning is not contingent on any

specific development plans and any current or future owner could pursue other ends that are permitted by the C-1 district. Also, while the R-8 zoning district would normally require minimum off-street parking spaces, there are exemptions provided for both Neighborhood Commercial Establishments as well as for structures over 50 years old, both of which would be applicable to this property (C-1 would not require any off-street vehicle parking).

When this legislation was introduced in 2019, Planning staff met with the applicants in the Fall of that year to better understand what was driving this proposed rezoning. Conceptual development plans, several years in the works, were shared that included possible office space and a small retail café. Staff related that while the redevelopment plans could be supported and would make for a positive reuse of the vacant building, it would be difficult to justify the rezoning due to there not being a mistake in the current zoning designation and since it had only been a few years since the last comprehensive rezoning. The uses proposed, however, would all be allowed via the Neighborhood Commercial Use category, so staff directed the applicants to explore this option more fully and to explain if this path was inadequate in any specific ways. Staff never received any specific response from the applicant as to why the rezoning was absolutely needed to facilitate the redevelopment project. More recently, the applicant has suggested that while not strictly necessary, the rezoning would enable the development project to avoid going to the Board of Municipal and Zoning Appeals for any conditional use approvals. It is also generally understood that financiers might prefer to lend to a property with a commercial zoning designation that clearly permits commercial uses by right. Neither of these considerations, however, are legal justification to amend the zoning designation of a property.

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(b)(3) of Article 32 – *Zoning*, where staff finds that this change is preponderantly not in the public's interest, in that it will create an island of various possible commercial activities in the middle of a long-established predominantly residential community, and may create opportunity for less compatible non-residential uses than those now allowed under the Neighborhood Commercial Establishment provisions of the Zoning Code.

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 current Zoning Code (*Article 32 – Zoning, of the Baltimore City Code*) includes provisions for re-use of structures that were partially or completely non-residential in use in their past. The petitioner seeking to redevelop this site has options that would be commercially viable without being incompatible with the surrounding residential community.
- 2. The needs of Baltimore City:** While the City will benefit from productive re-use of this site, there is no need to rezone this site in order to make productive re-use possible; that is already possible under the terms of the Neighborhood Commercial Establishment provisions of the Zoning Code.
- 3. The needs of the particular neighborhood:** The Patterson Park neighborhood will benefit from constructive re-use of this site, which as stated above is possible without resort to rezoning the 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 is not likely to have been a significant population change between June 5, 2017, when the current Zoning Code was adopted, and the effective date of the proposed action.
- 2. The availability of public facilities;** The Patterson Park neighborhood is adequately served by public facilities, and no changes are anticipated in them at this time.
- 3. Present and future transportation patterns;** There are no anticipated changes to present and future transportation patterns in the Patterson Park neighborhood.
- 4. Compatibility with existing and proposed development for the area;** This site is located in and surrounded by a strengthening residential community. The predominant building type corresponds to the current R-8 zoning of the area. Re-use of this site as a

R-8-zoned Neighborhood Commercial Establishment would be compatible with other existing and potential development for the Patterson Park neighborhood.

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 has not yet commented on this bill.
6. **The relation of the proposed amendment to the City's plan.** The R-8 zoning that became effective on June 5, 2017 is consistent with the Comprehensive Master Plan. The Planning Commission and the Mayor and City Council previously supported residential zoning of this block of East Baltimore Street as part of that legislative process, and this residential zoning was a continuation from the zoning effective before the adoption of Transform.

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;** This site is surrounded primarily by rowhouses, some of which housing first-floor neighborhood commercial uses.
- (ii) **the zoning classification of other property within the general area of the property in question;** Nearly all properties within several blocks radius of this site are zoned R-8.
- (iii) **the suitability of the property in question for the uses permitted under its existing zoning classification; and** The structure on this site could be renovated for both residential and light commercial use under the Neighborhood Commercial Establishment provisions of the Zoning Code and other provisions of the R-8 zoning district in particular.
- (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 no major changes in the general area around this site since June of 2017, when comprehensive rezoning of the community became effective.

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 has not been a substantial change in the character of the Patterson Park neighborhood since June of 2017. Further, the current R-8 zoning of this site and its environs is properly reflective of and appropriate for the physical form of the community. This current zoning is a continuation of the pre-Transform zoning for the property, and the creation of the Neighborhood Commercial Use as an avenue for the creative re-use of this property demonstrates that the continued zoning of R-8 was not a mistake. As such, there is insufficient cause for rezoning 3127 East Baltimore Street at this time.

Notification: The Patterson Park Neighborhood Association has been notified of this action. Additionally, the site has been posted in accordance with Planning Commission guidelines.



Chris Ryer
Director