Introduced by: Councilmember Cohen , Young, Jeff

At the request of: TRP-MCB 5601 Eastern, LLC
Address: c/o AB Associates, 201 East Baltimore Street, Suite 1150, Baltimore, Maryland 21202
Telephone: 410-547-6900

Prepared by: Department of Legislative Reference **Date:** June 20, 2018

Referred to: LAND USE AND TRANSPORTATION Committee

Also referred for recommendation and report to municipal agencies listed on reverse.

CITY COUNCIL 18 - 0269

A BILL ENTITLED

AN ORDINANCE concerning

Rezoning – 5601 Eastern Avenue

FOR the purpose of changing the zoning for the property known as 5601 Eastern Avenue (Block 6694, Lot 028), as outlined in red on the accompanying plat, from the I-2 Zoning District to the C-3 Zoning District.

BY amending
Article 32 - Zoning
Zoning District Map
Sheet 59
Baltimore City Revised Code
(Edition 2000)

****The introduction of an Ordinance or Resolution by Councilmembers at the request of any person, firm or organization is a courtesy extended by the Councilmembers and not an indication of their position.**

1050-14-1 REV.10/93

Agencies

_____ Baltimore City Public School System

✓ Baltimore Development Corporation

✓ City Solicitor

_____ Comptroller's Office

_____ Department of Audits

_____ Department of Finance

_____ Department of General Services

✓ Department of Housing and Community Development

_____ Department of Human Resources

_____ Department of Planning

_____ Other:_____

_____ Other:_____

_____ Other:_____

_____ Department of Public Works

_____ Department of Real Estate

_____ Department of Recreation and Parks

✓ Department of Transportation

_____ Fire Department

_____ Health Department

_____ Mayor's Office of Employment Development

_____ Mayor's Office of Human Services

_____ Mayor's Office of Information Technology

_____ Office of the Mayor

_____ Police Department

_____ Other:_____

_____ Other:_____

Boards and Commissions

_____ Board of Estimates

_____ Board of Ethics

✓ Board of Municipal and Zoning Appeals

_____ Comm. for Historical and Architectural Preservation

_____ Commission on Sustainability

_____ Employees' Retirement System

_____ Other:_____

_____ Other:_____

_____ Other:_____

_____ Environmental Control Board

_____ Fire & Police Employees' Retirement System

_____ Labor Commissioner

_____ Parking Authority Board

✓ Planning Commission

_____ Wage Commission

_____ Other:_____

_____ Other:_____

_____ Other:_____

CITY OF BALTIMORE
ORDINANCE 18-172
Council Bill 18-0269

Introduced by: Councilmember Cohen, President Young
At the request of: TRP-MCB 5601 Eastern, LLC
Address: c/o AB Associates, 201 East Baltimore Street, Suite 1150, Baltimore, Maryland 21202
Telephone: 410-547-6900
Introduced and read first time: June 25, 2018
Assigned to: Land Use and Transportation Committee
Committee Report: Favorable
Council action: Adopted
Read second time: August 6, 2018

AN ORDINANCE CONCERNING

Rezoning – 5601 Eastern Avenue

FOR the purpose of changing the zoning for the property known as 5601 Eastern Avenue (Block 6694, Lot 028), as outlined in red on the accompanying plat, from the I-2 Zoning District to the C-3 Zoning District.

BY amending
Article 32 - Zoning
Zoning District Map
Sheet 59
Baltimore City Revised Code
(Edition 2000)

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That Sheet 59 of the Zoning District Map is amended by changing from the I-2 Zoning District to the C-3 Zoning District the property known as 5601 Eastern Avenue (Block 6694, Lot 028), as outlined in red on the plat accompanying this Ordinance.

SECTION 2. AND BE IT FURTHER ORDAINED, That as evidence of the authenticity of the accompanying plat and in order to give notice to the agencies that administer the City Zoning Ordinance: (i) when the City Council passes this Ordinance, the President of the City Council shall sign the plat; (ii) when the Mayor approves this Ordinance, the Mayor shall sign the plat; and (iii) the Director of Finance then shall transmit a copy of this Ordinance and the plat to the Board of Municipal and Zoning Appeals, the Planning Commission, the Commissioner of Housing and Community Development, the Supervisor of Assessments for Baltimore City, and the Zoning Administrator.

SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the 30th day after the date it is enacted.

Approved for Form and Legal Sufficiency
This _____ day of _____
Chief Solicitor

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from existing law by amendment.

Council Bill 18-0269

Certified as duly passed this _____ day of AUG 06 2018

President, Baltimore City Council

Certified as duly delivered to Her Honor, the Mayor,

this _____ day of AUG 06 2018

Chief Clerk

Approved this 14 day of August, 2018

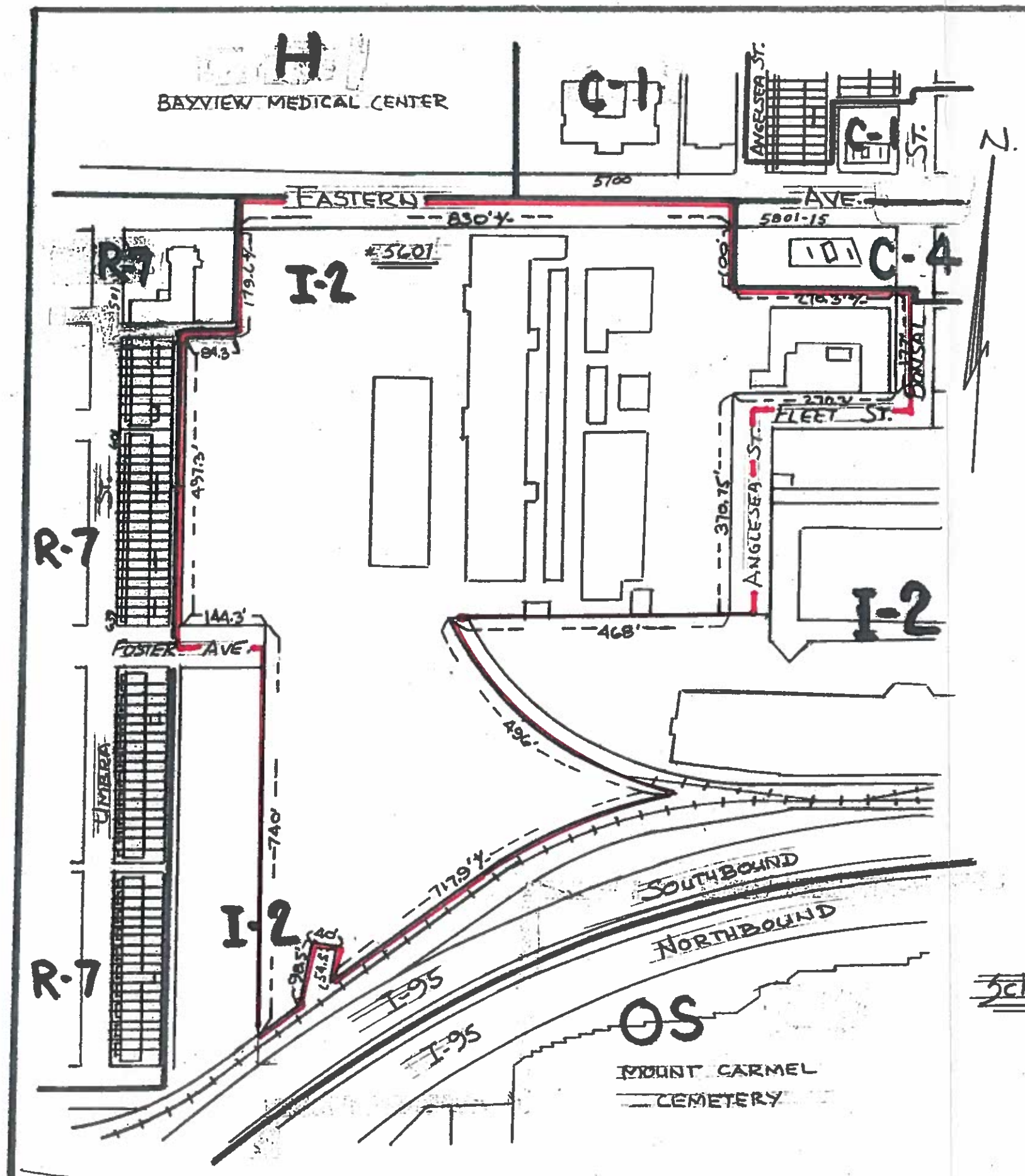
Mayor, Baltimore City

Approved For Form and Legal Sufficiency
This 8th Day of August 2018.

Chief Solicitor

dlr18-0633-3rd/01Aug18
rezone/cb18-0269-3rd/nbr

SHEET NO. 59 OF THE ZONING DISTRICT MAPS OF ARTICLE 30 OF THE BALTIMORE CITY CODE, 1966 EDITION, AS AMENDED BY ORDINANCE NUMBERS 16-581 AND 17-015 AS APPROVED.



SCALE: 1" = 200'

NOTE:

IN CONNECTION WITH THE PROPERTY KNOW AS NO. 5601 EASTERN AVENUE, THE APPLICANT WISHES TO REQUEST TO CHANGE THE ZONING OF THE AFOREMENTIONED PROPERTY FROM THE I-2 ZONING DISTRICT TO THE C-3 ZONING DISTRICT AS OUTLINED IN RED ON THIS PLAT.

WARD: 26
SECTION: 1
BLOCK: 6694
LOT: 28/49

MAYOR

PRESIDENT CITY COUNCIL

RDS 6/18/18

LAND USE AND TRANSPORTATION COMMITTEE

FINDINGS OF FACT

MOTION OF THE CHAIR OF THE LAND USE AND TRANSPORTATION COMMITTEE, AFTER A PUBLIC HEARING AT WHICH AGENCY REPORTS AND PUBLIC TESTIMONY WERE CONSIDERED, AND PURSUANT TO Sections 10-304 and 10-305 of the Maryland Land Use Article and Section 5-508 of the Baltimore City Code, THE CITY COUNCIL ADOPTS THESE FINDINGS OF FACT CONCERNING THE REZONING OF:

CITY COUNCIL BILL NO: 18-0269
REZONING – 5601 EASTERN AVENUE

Upon finding as follows with regard to:

ADOPTED

(1) Population changes;

Per Baltimore City's Neighborhood Statistical Area Map (neighborhood map), this parcel lies within the Pulaski Industrial Area, but is adjacent to the Greektown and Bayview neighborhoods. The majority of the statistical area lies well to the north of the site and does not impact this site. There are not many residents due to the nature of the land use. That being said, there were 82 people living in the area in 2000 and 153 persons by the 2010 Census representing a 50% increase. As for the immediately impacted neighborhoods, the Greektown neighborhood experienced an 11.7% population increase between the 2000 and 2010 Census. The Bayview neighborhood experienced a 4% population increase between the 2000 and 2010 Census.

(2) The availability of public facilities;

The properties are well served by City services, with no expected impacts as a result of rezoning.

(3) Present and future transportation patterns;

This site is located on a major street that is closely monitored by the Department of Transportation. There should not be a negative transportation impact expected as a result of this development.

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

The rezoning proposal is consistent with the existing zoning in the area. The subject parcel is adjacent to a large C-4 zoning district which exists along the south side of Eastern Avenue and the west side of Dundalk Avenue. The resulting massing is compatible with the existing development. The proposed

residential component will be taller than what currently exists in the adjacent residential areas, but the proposed massing is both consistent and compatible with the institutional buildings on the north side of Eastern Avenue. The proposed uses and density are consistent with the area.

(5) The recommendations of the City agencies and officials, including the Baltimore City Planning Commission and the Board of Municipal and Zoning Appeals;

For the above reasons, the Planning Department will recommend approval of the rezoning request to the Planning Commission. The Board of Municipal Zoning Appeal recommends approval of the bill.

(6) The proposed amendment's relationship to and consistency with the City's Comprehensive Master Plan.

The proposed zoning changes are compatible with City's Master Plan's LIVE EARN PLAY LEARN goals to redevelop vacant properties. In addition, the rezoning is in line with the current redevelopment plan in place for the existing PUD.

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

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

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

(10) 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 classification;

(11) For a rezoning based on a <u>SUBSTANTIAL CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD</u>, the following facts establish the substantial change since the time of the last comprehensive rezoning:

(12) For a rezoning based on a <u>MISTAKE</u> in the existing zoning classification, the following facts establish that at the time of the last comprehensive zoning the Council failed to consider then existing facts, or projects or trends which were reasonably foreseeable and/or that events occurring subsequent to the

comprehensive zoning have proven that the Council's initial premises were incorrect:

The Planning Department Staff believes the reversion of 5601 Eastern Avenue back to industrial was a mistake.

In 2012, the administration introduced a bill for a new zoning code, including both maps and text. In addition, in 2013, the Planning Commission made its recommendation on text and map changes to this bill. The subject property was zoned industrial and introduced to retain its industrial zoning. The current redevelopment proposal was not in place at that time. As previously noted, in 2015 this property was rezoned from M-3 to B-2-3 at the same time that the existing PUD was established to make way for a mixed-use redevelopment of the site.

In 2016, the Planning Department sent a list of properties that had been rezoned since the zoning code introduction and Planning Commission's recommendation to Legislative Reference and City Council to be reflected in the final maps of the new zoning code. This property, was included on that list as having been rezoned from M-3 to B-2-3. When the Planning Department created the new maps, this change was not reflected in the new zoning maps with a comparable commercial zoning, but 1-2 an, industrial category. The parcel should be rezoned to C-3 to reflect the clear legislative intent of the 2015 rezoning and establishment of the PUD, which was passed by the same City Council that approved the new zoning code in 2016.

SOURCE OF FINDINGS (Check all that apply):

[X] Planning Report - The findings listed above have been transferred from the Department of Planning's report dated July 12, 2018.

[X] Testimony presented at the Committee hearing on August 1, 2018

Oral – Witness Name:

- Martin French, Department of Planning
- Mr. Al Barry, representative for TRP-MCB 5601 Eastern, LLC

Written – Submitted by:

- Planning Commission, Agency Report – Dated July 12, 2018
- Department of Planning Staff Report – Dated July 12, 2018

LAND USE AND TRANSPORTATION COMMITTEE:

Chairman	Member
Member	Member
Member	Member
Member	Member

BALTIMORE CITY COUNCIL
LAND USE AND TRANSPORTATION
VOTING RECORD

DATE: August 1, 2018

BILL#: 18-0269

BILL TITLE: Rezoning - 5601 Eastern Avenue

MOTION BY: Dorsey SECONDED BY: Clark

☑ FAVORABLE ☐ FAVORABLE WITH AMENDMENTS

☐ UNFAVORABLE ☐ WITHOUT RECOMMENDATION

NAME	YEAS	NAYS	ABSENT	ABSTAIN
Reisinger, Edward, Chair	☑	☐	☐	☐
Middleton, Sharon, Vice Chair	☑	☐	☐	☐
Clarke, Mary Pat	☑	☐	☐	☐
Costello, Eric	☐	☐	☑	☐
Dorsey, Ryan	☑	☐	☐	☐
Pinkett, Leon	☑	☐	☐	☐
Stokes, Robert	☑	☐	☐	☐
TOTALS	6		1	

CHAIRPERSON: Edward L. Reisinger

COMMITTEE STAFF: Jennifer L. Coates, Initials: JLC

THE BALTIMORE SUN MEDIA GROUP

501 N. Calvert St., P.O. Box 1377
Baltimore, Maryland 21278-0001
tel: 410/332-6000
800/829-8000

WE HEREBY CERTIFY, that the annexed advertisement of Order No 5704824

Sold To:
Ab Associates - CU00294545
201 E Baltimore St Ste 1150
Baltimore,MD 21202

Bill To:
Ab Associates - CU00294545
201 E Baltimore St Ste 1150
Baltimore,MD 21202

Was published in "The Baltimore Sun", "Daily", a newspaper printed and published in Baltimore City on the following dates:

Jul 13, 2018

The Baltimore Sun Media Group

By S. Wilkinson

Subscribed and sworn to before me this 13 day of July 2018

By _____

Michele Elaine

Notary Public

My commission expires 10/5/19

MICHELE ELAINE GRIESBAUER NOTARY PUBLIC BALTIMORE COUNTY, MD

RECEIVED
JUL 16 2018
BALTIMORE CITY COUNCIL
PRESIDENT'S OFFICE

BALTIMORE CITY COUNCIL
PUBLIC HEARING ON BILL NO. 18-0269

BALTIMORE CITY COUNCIL
PUBLIC HEARING ON BILL NO. 18-0269

The Land Use and Transportation Committee of the Baltimore City Council will meet on Wednesday, August 1, 2018 at 1:15 p.m. in the City Council Chambers, 4th floor, City Hall, 100 N. Holliday Street to conduct a public hearing on City Council Bill No. 18-0269.

CC 18-0269 ORDINANCE - Rezoning - 5601 Eastern Avenue - FOR the purpose of changing the zoning for the property known as 5601 Eastern Avenue (Block 6694, Lot 028), as outlined in red on the accompanying plat, from the I-2 Zoning District to the C-3 Zoning District.

BY authority of
Article 32 - Zoning
Zoning District Map
Sheet 59
Baltimore City Revised Code
(Edition 2000))

NOTE: This bill is subject to amendment by the Baltimore City Council.
Applicant: MCB Real Estate c/o AB Associates
For more information contact: Jennifer Coates, Committee Staff at (410) 396-1260.

EDWARD REISINGER
Chair
5704824 - 7/13/2018

CERTIFICATE OF POSTING

RE: Case No. CCB 18-0269

Date of Hearing 8/1/18

Baltimore City Council

c/o Natawna B. Austin

Room 409 – City Hall

100 N. Holliday Street

Baltimore, Md. 21202

This letter is to certify that the necessary sign was posted conspicuously, on the property located at

5601 Eastern Avenue

on 7/2/18

Sincerely,

Richard E. Hoffman

904 Dellwood Drive

Fallston, Md. 21047

(443) 243-7360

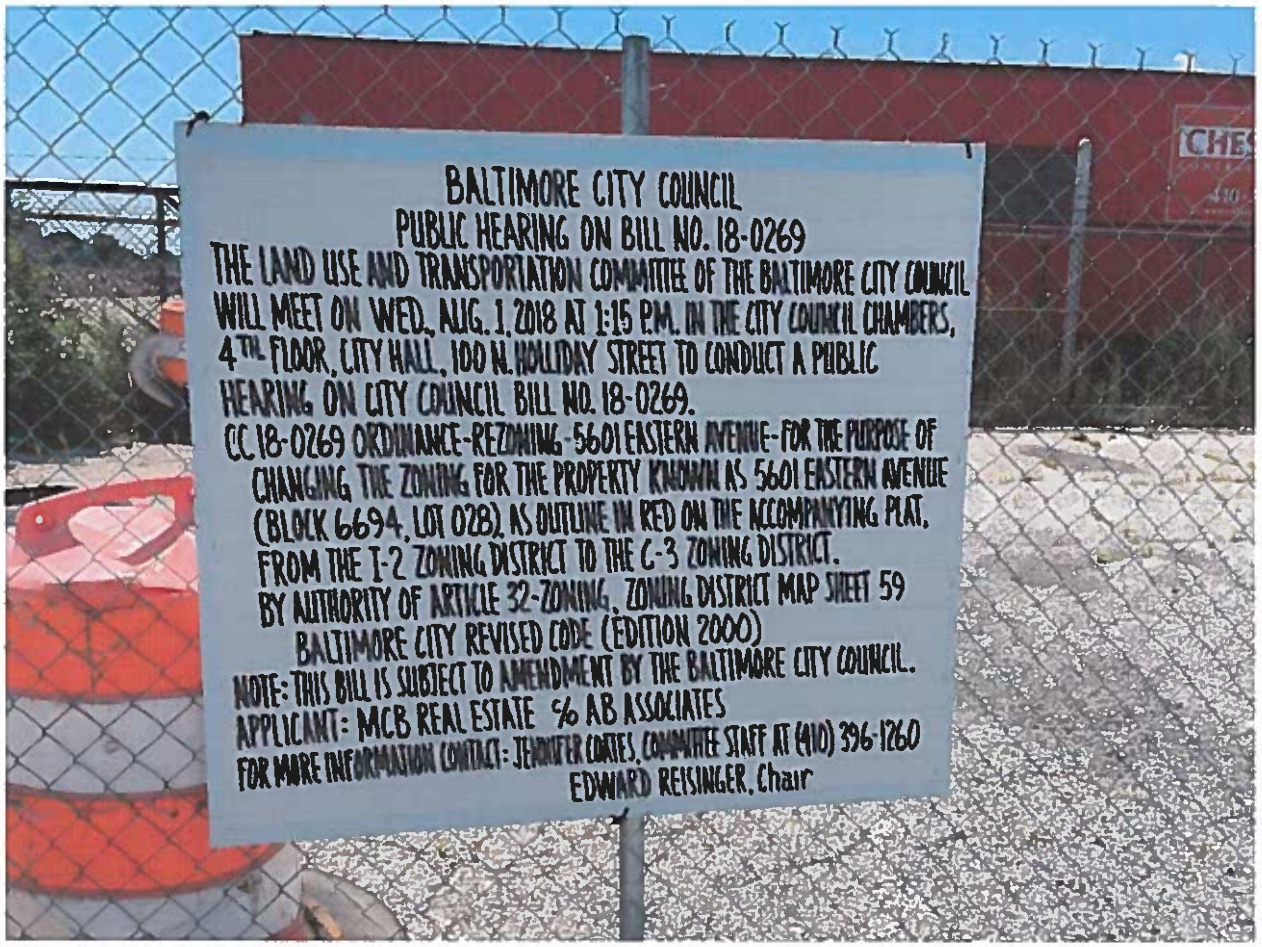
RECEIVED
JUL 23 2018
BALTIMORE CITY COUNCIL
PRESIDENT'S OFFICE

Certificate of Posting

Baltimore City Council

Land Use and Transportation Committee

City Council Bill No. 18-0269



5601 Eastern Avenue

Posted 7/2/18

Richard E. Hoffman

904 Dellwood Drive

Fallston, Md. 21047

443-243-7360

CITY OF BALTIMORE
CATHERINE E. PUGH, Mayor

OFFICE OF COUNCIL SERVICES
LARRY E. GREENE, Director
415 City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202
410-396-7215 / Fax: 410-545-7596
email: larry.greene@baltimorecity.gov

TO: MCB Real Estate c/o AB Associates

FROM: Jennifer L. Coates, Committee Staff, Land Use and Transportation Committee, Baltimore City Council

Date: June 26, 2018

RE: INSTRUCTIONS FOR NOTICE OF A PUBLIC HEARING – MAP AMENDMENTS (REZONINGS); TEXT AMENDMENTS AND PLANNED UNIT DEVELOPMENTS

The Land Use and Transportation Committee has scheduled the following City Council Bill for a public hearing:

Bill: **City Council Bill No. 18-0269**

Date: **Wednesday, August 1, 2018**

Time: **1:15 p.m.**

Place: **City Council Chambers, 4th floor, City Hall, 100 N. Holliday Street**

At the expense of the applicant, notice of the public hearing must be provided in accordance with:

- **Article 32. Zoning § 5-601 – Map or Text Amendments; PUDs**

For helpful information about the notice requirements under Article 32 - Zoning (pages 127 – 128) see Attachment B. You are encouraged to access and review Article 32 using the web link below:

http://ca.baltimorecity.gov/codes/Art%2032%20-%20Zoning.pdf

Newspaper Advertisement

A notice of the public hearing must be published in one (1) newspaper of general circulation, 15 days prior to the date of the hearing.

You may choose any of the following newspapers for advertising purposes: The Daily Record, The Baltimore Sun; or the Afro-American.

Wording for Written Notice to Property Owner(s), Sign Posting and Newspaper Advertisement

The information that must be published in a newspaper advertisement, posted on a sign and mailed to the property owner appears between the double lines on the attached page (***See Attachment A***); the deadline date is indicated in BOLD letters at the top of Attachment A.

Certification of Postings

Certification of the written notice, sign posting on the property, and publication of the newspaper advertisement, in duplicate, must be sent four (4) days prior to the hearing to:

Ms. Natawna Austin, Executive Secretary
Baltimore City Council
100 N. Holliday Street, Fourth Floor, Room 400
Baltimore, MD 21202

If the required certifications are not received as specified above, the public hearing will be cancelled without notice to the applicant.

Please note that ALL of these requirement MUST be met in order for your hearing to proceed as scheduled. If you have any questions regarding your notice requirements please contact:

Ms. Jennifer L. Coates, Committee Staff
Baltimore City Council,
Land Use and Transportation Committee
410-396-1260
Jennifer.Coates@baltimorecity.gov.

ATTACHMENT A

THE INFORMATION BETWEEN THE DOUBLE LINES (SEE BELOW) MUST BE POSTED BY **JULY 2, 2018** AND PUBLISHED **BY JULY 17, 2018,** AS DISCUSSED ON THE PREVIOUS PAGE AND OUTLINED ON ATTACHMENT B.

BALTIMORE CITY COUNCIL

PUBLIC HEARING ON BILL NO. 18-0269

The Land Use and Transportation Committee of the Baltimore City Council will meet on Wednesday, August 1, 2018 at 1:15 p.m. in the City Council Chambers, 4th floor, City Hall, 100 N. Holliday Street to conduct a public hearing on City Council Bill No. 18-0269.

CC 18-0269 **ORDINANCE - Rezoning - 5601 Eastern Avenue** - FOR the purpose of changing the zoning for the property known as 5601 Eastern Avenue (Block 6694, Lot 028), as outlined in red on the accompanying plat, from the I-2 Zoning District to the C-3 Zoning District..

BY authority of
Article 32 - Zoning
Zoning District Map
Sheet 59
Baltimore City Revised Code
(Edition 2000))

NOTE: This bill is subject to amendment by the Baltimore City Council.

Applicant: MCB Real Estate c/o AB Associates

For more information contact: Jennifer Coates, Committee Staff at (410) 396-1260.

EDWARD REISINGER
Chair

SEND CERTIFICATION OF PUBLICATION TO: SEND BILL FOR THIS ADVERTISEMENT TO:

Baltimore City Council
c/o Natawna B. Austin
Room 409, City Hall
100 N. Holliday Street
Baltimore, MD 21202

MCB Real Estate c/o AB Associates
201 E. Baltimore Street, #1150
Baltimore, MD 21202
410-547- 6900

ATTACHMENT B

ZONING
SUBTITLE 6 – NOTICES

ARTICLE 32, § 5-601

§ 5-601. Map or text amendments; PUDs.

(a) Hearing required.

For a bill proposing a zoning map amendment, a zoning text amendment, or the creation or modification of a planned unit development, the City Council committee to which the bill has been referred must conduct a hearing at which:

(1) the parties in interest and the general public will have an opportunity to be heard; and

(2) all agency reports will be reviewed.

(b) Notice of hearing required.

Notice of the hearing must be given by each of the following methods, as applicable:

(1) by publication in a newspaper of general circulation in the City;

(2) for the creation or modification of a planned unit development and for a zoning map
amendment, other than a comprehensive rezoning:

(i) by posting in a conspicuous place on the subject property; and

(ii) by first-class mailing of a written notice, on forms provided by the Zoning Administrator, to each person who appears on the tax records of the City as an owner of the property to be rezoned; and

(3) for a comprehensive rezoning:

(i) by posting in conspicuous places within and around the perimeter of the subject area or district, as the Department of Planning designates; and

(ii) by first-class mailing of a written notice, on forms provided by the Zoning Administrator, to each person who appears on the tax records of the City as an owner of property within the subject area or district.

(c) Contents of notice.

The notice must include:

(1) the date, time, place, and purpose of the public hearing;

(2) the address of the subject property or a drawing or description of the boundaries of the area affected by the proposed rezoning; and

(3) the name of the applicant.

(d) Number and manner of posted notices.

(1) For a zoning map amendment or the creation or modification of a planned unit development, the number and manner of posting is as follows:

(i) for an individual property, at least 1 sign must be visible from each of the property's street frontages;

(ii) for a comprehensive rezoning, a change in the boundaries of a zoning district, or the creation or modification of a planned unit development, at least 2 or more signs are required, as the Department of Planning designates;

(iii) each sign must be posted at a prominent location, near the sidewalk or public right-of-way, so that it is visible to passing pedestrians and motorists;

(iv) a window-mounted sign must be mounted inside the window glass and placed so that it is clearly visible to passing pedestrians and motorists; and

(v) each sign must be at least 3 feet by 4 feet in size.

(2) Nothing in this subtitle prevents the voluntary posting of more notices than required by this subtitle.

(e) Timing of notices – In general.

The notice must be published, mailed, and, except as provided in subsection (f) of this section, posted:

(1) at least 15 days before the public hearing; or

(2) for a comprehensive rezoning, at least 30 days before the public hearing.

(f) Timing of notices – Posting for map amendment or PUDs.

For a zoning map amendment or the creation or modification of a planned unit development, the posted notice must be:

(1) posted at least 30 days before the public hearing; and

(2) removed within 48 hours after conclusion of the public hearing.

ADVERTISING SIGNS MAY BE OBTAINED FROM THE FOLLOWING:

RICHARD HOFFMAN
AMERICAN DRAFTING SERVICE
904 DELLWOOD DRIVE
BALTIMORE, MARYLAND 21047

PHONE: (410) 879-3122
E-MAIL: DICK_E@COMCAST.NET

LA GRANDE VISION
JAMES EARL REID
408 E. EAGER STREET
BALTIMORE, MARYLAND 21202

PHONE: (410) 448-4913 or (410) 783-1555

FAX (410) 783-1559

SIGNS BY ANTHONY
ANTHONY L. GREENE
2815 TODKILL TRACE
EDGEWOOD, MD 21040

PHONE: 443-866-8717
FAX: 410-676-5446
E-MAIL: bones_malone@comcast.net

LINDA O'KEEFE
523 PENNY LANE
HUNT VALLEY, MD 21030
PHONE: 410-666-5366
CELL: 443-604-6431
E-MAIL: LUCKYLINDA1954@YAHOO.COM

OR ANY OTHER COMPANY OF YOUR CHOICE. THE SIGNS MUST BE MADE IN ACCORDANCE WITH THE RULES OF THE BOARD OF MUNICIPAL AND ZONING APPEALS.

THIS OFFICE IS NOT ASSOCIATED WITH ANY OF THE ABOVE DRAFTING COMPANIES, NOR DO WE RECOMMEND ANY SPECIFIC ONE.

5/2/12

ATTACHMENT C

Baltimore City Council
Certificate of Posting - Public Hearing Notice
City Council Bill No.:

Today's Date: [Insert Here]

(Place a picture of the posted sign in the picture box below.)

Address:

Date Posted:

Name:
Address:
Telephone:

- *Email to: Natawnab.Austin@baltimorecity.gov*
- *Mail to: Baltimore City Council; c/o Natawna B. Austin; Room 409, City Hall; 100 N. Holliday Street; Baltimore, MD 21202*

The Baltimore City Department of
HOUSING & COMMUNITY
DEVELOPMENT

MEMORANDUM

To: The Honorable President and Members of the Baltimore City Council
c/o Natawna Austin, Executive Secretary

From: Michael Braverman, Housing Commissioner

Date: July 26, 2018

Re: **City Council Bill 18-0269 - Rezoning – 5601 Eastern Avenue**

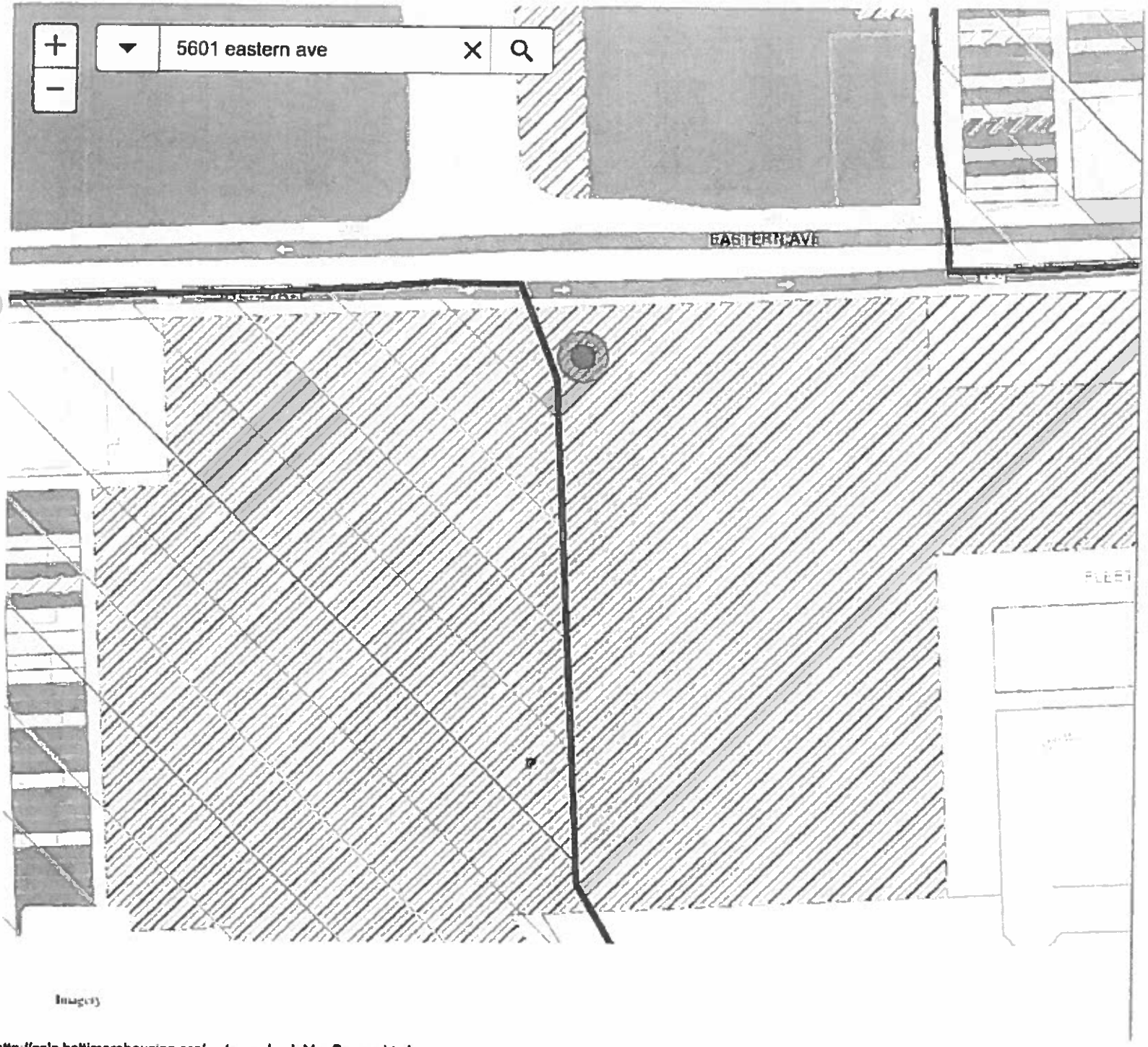
The Department of Housing and Community Development (HCD) has reviewed City Council Bill 18-0269, for the purpose of changing the zoning for the property known as 5601 Eastern Avenue (Block 6694, Lot 028) from the I-2 Zoning District to the C-3 Zoning District.

If enacted, this bill would change the zoning from Industrial to the C-3 zoning district that allows for high density residential and commercial development, which is more appropriate for the area and is consistent with the current Planned Unit Development.

The Department of Housing and Community Development supports the passage of City Council Bill 18-0269.

MB:sd

cc: Ms. Karen Stokes, *Mayor's Office of Government Relations*
Mr. Kyron Banks, *Mayor's Office of Government Relations*


5601 eastern ave
EASTERN AVE
codeMa
Focus Areas
Project COI
Phase 1
Phase 2
Phase 3
Phase 4
Comm De
Major Rede
Major R
Popplet
Streamline
Opportunil
CE Internal
DHCD Acqu
Demolition
Non-CC
eDemo
Intak
Acqu
Due
Dem
Dem
Full D
Partic
Stabi
Hold/
No Ac
Hold

FROM			CITY of BALTIMORE MEMO
	NAME & TITLE	THOMAS J. STOSUR, DIRECTOR	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8TH FLOOR, 417 EAST FAYETTE STREET	
	SUBJECT	CITY COUNCIL BILL #18-0269 / REZONING 5601 EASTERN AVENUE	

TO

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

DATE: July 12, 2018

At its regular meeting of July 12, 2018, the Planning Commission considered City Council Bill #18-0269, for the purpose of changing the zoning for the property known as 5601 Eastern Avenue, from the I-2 Zoning District to the C-3 Zoning District.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report which recommended approval of City Council Bill #18-0269 and adopted the following resolution nine members being present (seven in favor and two recusals):

> RESOLVED, That the Planning Commission concurs with the recommendation of its departmental staff, and recommends that City Council Bill #18-0269 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.

TJS/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. Kyron Banks, 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
Ms. Elena DiPietro, Law Dept.
Mr. Francis Burnszynski, PABC
Ms. Katelyn McCauley, DOT
Ms. Natawna Austin, Council Services
Mr. Ervin Bishop, Council Services
Mr. Alfred Barry, AB Associates

Catherine E. Pugh
Mayor

PLANNING COMMISSION

Sean D. Davis, Chairman

STAFF REPORT

Thomas J. Stosur
Director

July 12, 2018

REQUEST: City Council Bill #18-0269/Rezoning - 5601 Eastern Avenue
For the purpose of changing the zoning for the property known as 5601 Eastern Avenue (Block 6694, Lot 028), as outlined in red on the accompanying plat, from the I-2 Zoning District to the C-3 Zoning District.

RECOMMENDATION: Approval

STAFF: Tamara Woods

OWNER/PETITIONER: TRP-MCB 5601 Eastern LLC

SITE/GENERAL AREA
General Area:
The existing 5601 Eastern Avenue Planned Unit Development (PUD) is located in the Pulaski Industrial Area, which is adjacent to the Greektown and Bayview neighborhoods of southeast Baltimore. The site is situated on the south side of Eastern Avenue, across from the Johns Hopkins Bayview Hospital and is bounded by Bonsal Street to the east, Umbra Street to the west and I-95 bounds the site to the south.

Site Conditions:
The subject parcel, 5601 Eastern Avenue, is approximately 20 acres (871,751 square feet). The site was improved with several warehouse buildings that are that have recently been demolished. Within the 20 acres there are significant grade changes, most notably from an upper section fronting Bonsal Street that is roughly 19 feet higher in elevation than that fronting Eastern Avenue. There is also a significant slope from Eastern Avenue to the rear of the site. In addition to the physical characteristics of the site, there are also environmental challenges.

For many years, the Pemco Corporation, as well as other corporations, held this site to manufacture glass and porcelain. Throughout the time it was used for heavy manufacturing waste porcelain and glass, known as "frit," was disposed of in the western portion of the site. The owner is currently working with the Maryland Department of the Environment to do proper mitigation.

HISTORY

- Ordinance 15-379 was signed by the Mayor on June 24, 2015 to rezone 5601 Eastern Avenue from the M-3 zoning district to the B-2-3 zoning district.
- Ordinance 15-380 was signed by the Mayor on June 24, 2015 to establish the 5601 Eastern Avenue Planned Unit Development.
- On May 4, 2017, the Planning Commission approved the Final Design for the LA Fitness.
- On December 21, 2017, the Planning Commission approved the Final Design proposed retail and site for the Eastern side of the site, as well as a Phase I Signage Package.
- On May 31, 2018, the Planning Commission approved a major subdivision for 5601 Eastern Avenue.

ANALYSIS

Project Overview and Background: The 5601 Eastern Avenue Planned Unit Development (PUD) is a mixed-use commercial and residential development. The development plan proposes the creation of a new mixed use development that includes both a low density and high density option that would be built in phases. As stated before, this site is a former industrial site. The proposed land uses and density in the PUD are based on a 2015 rezoning which rezoned the site from M-3 to B-2-3.

In 2016, the City Council of Baltimore approved a new zoning code which went into effect on June 5, 2017. The subject parcel was rezoned back to an industrial zoning category, I-2. The underlying zoning is being requested to be rezoned back to a commercial category to support the existing PUD and to support a request to repeal and replace the PUD under City Council Bill #18-0270. A PUD cannot be established in the I-2 zoning category.

City Council Bill #18-0269/Rezoning -5601 Eastern Avenue

The requested C-3 zoning district is a neighborhood business district designation that allows for high density residential and commercial development that is in keeping with the previous 2015 rezoning and the current PUD.

In completing its analysis, the Department of Planning Staff not only studied the request based on the Maryland Land Use Article, but also the character of the site.

Rezoning Standards for Review

According to Maryland Land Use Article, Division I, Title 10 (Baltimore City Zoning), any proposed zoning changes must be referred to the Baltimore City Planning Commission and to the Board of Municipal and Zoning Appeals (BMZA), which must study the proposed changes in relation to:

1. *The plan* – The Baltimore City Comprehensive Master Plan is not so specific as to recommend land use and/or zoning changes for the properties in question. But as stated previously, this request is in-line with the goals and objectives of LIVE EARN PLAY LEARN to redevelop vacant properties. In addition, the rezoning is in line with the current redevelopment plan in place for the approved PUD.

2. *The needs of Baltimore City* - The proposed C-3 zoning district supports the City's master plan goal to strengthen neighborhoods and strategically redevelop vacant properties throughout the City.
3. *The needs of the particular neighborhood in the vicinity of the proposed changes* - The proposed C-3 zoning district also supports the specific neighborhood needs to provide additional housing choice for existing residents as well as potential new residents by implementing a long-term vision of creating a mixed-use neighborhood that allows people to live, work and play in the same neighborhood.

Once the Planning Commission and BMZA report their findings and recommendations to the Mayor and City Council, the City Council shall make the following findings of fact:

1. *Population change* - Per our Neighborhood Statistical Area Map (neighborhood map), this parcel lies within the Pulaski Industrial Area, but is adjacent to the Greektown and Bayview neighborhoods. The majority of the statistical area lies well to the north of the site and does not impact this site. There are not many residents due to the nature of the land use. That being said, there were 82 people living in the area in 2000 and 153 persons by the 2010 Census representing a 50% increase. As for the immediately impacted neighborhoods, the Greektown neighborhood experienced an 11.7% population increase between the 2000 and 2010 Census. The Bayview neighborhood experienced a 4% population increase between the 2000 and 2010 Census.
2. *Availability of public facilities* - The properties are well served by City services, with no expected impacts as a result of rezoning.
3. *Present and future transportation problems* - This site is located on a major street that is closely monitored by the Department of Transportation. There should not be a negative transportation impact expected as a result of this development.
4. *Compatibility with existing and proposed development for the area* - The rezoning proposal is consistent with the existing zoning in the area. The subject parcel is adjacent to a large C-4 zoning district which exists along the south side of Eastern Avenue and the west side of Dundalk Avenue. The resulting massing is compatible with the existing development. The proposed residential component will be taller than what currently exists in the adjacent residential areas, but the proposed massing is both consistent and compatible with the institutional buildings on the north side of Eastern Avenue. The proposed uses and density are consistent with the area.
5. *Recommendations of the Baltimore City Planning Commission and the BMZA* - For the above reasons, the Planning Department will recommend approval of the rezoning request to the Planning Commission. The BMZA has not yet commented on this bill.
6. *Relationship of the proposed amendment to Baltimore City's plan* - As mentioned above, the proposed zoning changes are compatible with LIVE EARN PLAY LEARN, the City's Master Plan and existing PUD.

The City Council may grant the change to the zoning classification based on a finding that there was either a substantial change in the character of the neighborhood where the property is located, or that there was a mistake in the existing zoning classification. In this case, the Planning Department Staff believes the reversion of 5601 Eastern Avenue back to industrial was a mistake.

In 2012, the administration introduced a bill for a new zoning code, including both maps and text. In addition, in 2013, the Planning Commission made its recommendation on text and map changes to this bill. The subject property was zoned industrial and introduced to retain its industrial zoning. The current redevelopment proposal was not in place at that time. As previously noted, in 2015 this property was rezoned from M-3 to B-2-3 at the same time that the existing PUD was established to make way for a mixed-use redevelopment of the site.

In 2016, the Planning Department sent a list of properties that had been rezoned since the zoning code introduction and Planning Commission recommendation to Legislative Reference and City Council to be reflected in the final maps of the new zoning code. This property, was included on that list as having been rezoned from M-3 to B-2-3. Somehow, this change was not reflected in the new zoning maps with a comparable commercial zoning, but I-2 an, industrial category. The parcel should be rezoned to C-3 to reflect the clear legislative intent of the 2015 rezoning and establishment of the PUD, which was passed by the same City Council that approved the new zoning code in 2016.

Notifications:
In advance of a hearing on this matter, staff notified the Community Leaders of Bayview, representatives from the following associations: the Bayview Community Association, Southeast Neighborhoods Development (SEND) Southeast CDC, the Greater Greektown Neighborhood Alliance and City Councilman Zeke Cohen.

Thomas J. Stosur
Director

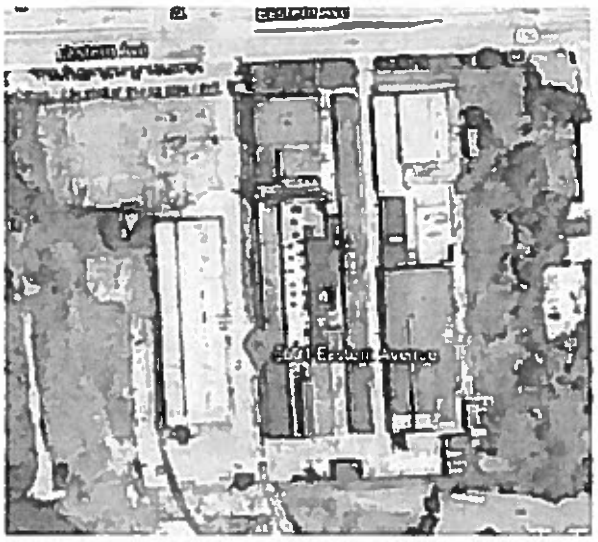
FROM			CITY of BALTIMORE MEMO
	NAME & TITLE	Michelle Pourciau, Director	
	AGENCY NAME & ADDRESS	Department of Transportation (DOT) 417 E Fayette Street, Room 527	
	SUBJECT	City Council Bill 18-0269	

TO Mayor Catherine E. Pugh DATE: 7/30/18

TO: Respective City Council Land Use and Transportation Committee
FROM: Department of Transportation
POSITION: Support
RE: Council Bill – 18-0269 – Rezoning

INTRODUCTION – Rezoning – 5601 Eastern Avenue

PURPOSE/PLANS – For the purpose of changing the zoning for the property known as 5601 Eastern Avenue (Block 6694, Lot 028), as outlined in red on the accompanying plat, from the I-2 Zoning District to the C-3 Zoning District.



AGENCY/DEPARTMENT POSITION –
The Department of Transportation **supports** City Council 18-0269

If you have any questions, please do not hesitate to contact Josh Taylor at Josh.Taylor@baltimorecity.gov, 443-984-3394

Sincerely,

Michelle Pourciau
Director

RECEIVED
AUG - 1 2018
BALTIMORE CITY COUNCIL
PRESIDENT'S OFFICE

CITY OF BALTIMORE

CATHERINE E PUGH, Mayor

BOARD OF MUNICIPAL AND ZONING APPEALS

DEREK J. BAUMGARDNER, Executive Director
417 E. Fayette Street, Room 1432
Baltimore, Maryland 21202

July 31, 2018

The Honorable President and
Members of the City Council
City Hall
100 N. Holliday Street
Baltimore, MD 21202

RE: CC Bill #18-0269 Rezoning – 5601 Eastern Avenue

Ladies and Gentlemen:

City Council Bill No. 18-269 has been referred by your Honorable Body to the Board of Municipal and Zoning Appeals for study and report.

The purpose of City Council Bill No. 18-269 is to change the zoning for the property known as 5601 Eastern Avenue (Block 6694, Lot 028) from the I-2 Zoning District to the C-3 Zoning District.

The BMZA has reviewed the legislation and concurs with the report of recommendation of the Planning Department and the Planning Commission recommending approval of CC Bill. 18-269.

Sincerely,

Derek J. Baumgardner
Executive Director

CC: Mayors Office of Council Relations
City Council President
Legislative Reference

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor

DEPARTMENT OF LAW

ANDRE M. DAVIS, City Solicitor
101 City Hall
Baltimore, Maryland 21202

RECEIVED
JUL 25 2018
BALTIMORE CITY COUNCIL
PRESIDENT'S OFFICE

July 25, 2018

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 18-0269 – Rezoning – 5601 Eastern Avenue

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 18-0269 for form and legal sufficiency. The bill would change the zoning for 5601 Eastern Avenue from the I-2 Zoning District to the C-3 Zoning District.

The City Council may 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); Baltimore City Code, Art. 32, §§5-508(a) and (b)(1). There would appear to be no basis to believe that the neighborhood has substantially changed between the comprehensive rezoning of the property on June 5, 2017 and today's date. Therefore, to legally rezone the property the City Council must identify a "mistake" that lead to the inappropriate zoning of the property as I-2.

In determining whether to rezone on the basis of mistake, the City Council is required to make findings of fact, for each property, on the following matters:

(1) population change;
(2) the availability of public facilities;
(3) the present and future transportation patterns;
(4) compatibility with existing and proposed development;
(5) the recommendations of the Planning Commission and the Board of Municipal and Zoning Appeals; and
(6) the relationship of the proposed amendment to the City's plan.

Md. Land Use Code Ann., §10-304(b)(1); *see also*, Baltimore City Code, Art. 32, §5-508(b)(2) (citing same factors with (v) being "the recommendations of the City agencies and officials," and (vi) being "the proposed amendment's consistency with the City's Comprehensive Master Plan.").

Fav w/ suggestions & comments

Article 32 of the City Code also requires Council to consider:

(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.

Baltimore City Code, Art. 32, §5-508(b)(3).

The Mayor and City Council's decision regarding a piecemeal rezoning is reviewed under the substantial evidence test, and should be upheld "if reasoning minds could reasonably reach the conclusion from facts in the record." *Cty. Council of Prince George's Cty. v. Zimmer Dev. Co.*, 444 Md. 490, 510 (2015) (*quoting*, *Cremins v. Cnty. Comm'rs of Washington Cnty.*, 164 Md.App. 426, 438 (2005)); *see also White v. Spring*, 109 Md. App. 692, 699, *cert. denied*, 343 Md. 680 (1996) ("the courts may not substitute their judgment for that of the legislative agency if the issue is rendered fairly debatable"); *accord Floyd v. County Council of Prince George's County*, 55 Md.App. 246, 258 (1983) ("'substantial evidence' means a little more than a 'scintilla of evidence.'").

With regard to rezoning on the basis of mistake, it is "firmly established that there is a strong presumption of the correctness of original zoning and of comprehensive rezoning." *People's Counsel v. Beachwood I Ltd. Partnership*, 107 Md. App. 627, 641 (1995) (*quoting Wells v. Pierpont*, 253 Md. 554, 557 (1969)). To sustain a piecemeal change, there must be substantial evidence that "the Council failed to take into account then existing facts . . . so that the Council's action was premised . . . on a misapprehension." *White*, 109 Md. App. at 698 (citation omitted). In other words, "[a] conclusion based upon a factual predicate that is incomplete or inaccurate may be deemed in zoning law, a mistake or error; an allegedly aberrant conclusion based on full and accurate information, by contrast, is simply a case of bad judgment, which is immunized from second-guessing." *Id.* "Error 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[,]" [and] "by showing that events occurring subsequent to the comprehensive zoning have proven that the Council's initial premises were incorrect." *Boyce v. Sembly*, 25 Md. App. 43, 51 (1975) (citations omitted). "Thus, unless there is probative 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, the presumption of validity accorded to comprehensive zoning is not overcome and the question of error is not 'fairly debatable.'" *Id.* at 52.

A finding of mistake, however, absent a regulatory taking, merely permits the further consideration of rezoning, it does not mandate a rezoning. *White*, 109 Md. App. at 708. Rather, a second inquiry "regarding whether, and if so, how, the property is reclassified," is required. *Id.* at 709. This second conclusion is due great deference. *Id.* (after a prior mistake has been established and accepted as fact by a legislative zoning entity, that entity's decision as to whether to rezone, and if so, how to reclassify, is due the same deference the prior comprehensive rezoning was due).

In sum, the Land Use and Transportation Committee (the "Committee") is required to hold a quasi-judicial public hearing with regard to the bill wherein it will hear and weigh the evidence as presented in: (1) the Planning Report and other agency reports; (2) testimony from the Planning Department and other City agency representatives; and (3) testimony from members of the public and interested persons. After weighing the evidence presented and submitted into the record before it, the Committee is required to make findings of fact for each property with regard to the factors in §§10-304 and 10-305 of the Land Use Article and § 5-508 of Article 32 of the Baltimore City Code. If, after its investigation of the facts, the Committee makes findings which support: (1) a mistake in the comprehensive zoning; and (2) a new zoning classification for the properties, it may adopt these findings and the legal requirements for granting the rezoning would be met.

Here, **the Planning Department Report states that the facts support a finding of mistake in the property's current zoning under Transform because it had been on a 2016 list to be rezoned to commercial under Transform and somehow it was not so rezoned. However, it is Planning's understanding that the clear legislative intent under Transform was to have a C-3 zoning.**

Finally, certain procedural requirements apply to this bill beyond those discussed above because a change in the zoning classification of a property is deemed a "legislative authorization." Baltimore City Code, Art. 32, §5-501(2)(iii). Specifically, notice of the City Council hearing must be given by publication in a newspaper of general circulation in the City, by posting in a conspicuous place on the property and by first-class mail, on forms provided by the Zoning Administrator, to each person who appears on the tax records of the City as an owner of the property to be rezoned. Baltimore City Code, Art. 32, §5-601(b). The notice of the City Council hearing must include the date, time, place and purpose of the hearing, as well as the address of the property and the name of the applicant. Baltimore City Code, Art. 32, §5-601(c). The posted notices must be at least 3 feet by 4 feet in size, placed at a prominent location, and at least one sign must be visible from each of the property's street frontages. City Code, Art., §5-601(d). The published and mailed notices must be given at least 15 days before the hearing; the posted notice must be at least 30 days before the public hearing. Baltimore City Code, Art. 32, §5-601(e), (f).

The bill is the appropriate method for the City Council to review the facts and make the determination as to whether the legal standard for rezoning has been met. Assuming the required findings are made at the hearing and that all procedural requirements are satisfied, the Law Department can approve the bill for form and legal sufficiency.

Very truly yours,

Hilary Ruley
Chief Solicitor

cc: Andre M. Davis, City Solicitor
Karen Stokes, Director, Mayor's Office of Government Relations
Kyron Banks, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Victor Tervala, Chief Solicitor
Ashlea Brown, Assistant Solicitor
Avery Aisenstark

Baltimore
Development Corporation

MEMORANDUM

TO: Honorable President and Members of the City Council
Attention: Natawna B. Austin, Executive Secretary

FROM: William H. Cole, President and CEO

DATE: July 19, 2018

SUBJECT: City Council Bill No. 18-0269
Rezoning – 5601 Eastern Avenue

The Baltimore Development Corporation (BDC) has been asked to comment on City Council Bill No. 18-0269, a Bill for the purpose of changing the zoning for the property known as 5601 Eastern Avenue (Block 6694, Lot 028), from the I-2 Zoning District to the C-3 Zoning District.

The City needs to change the underlying zoning to match recent substantial changes to the character of the surrounding neighborhoods.

This Bill will allow for the transformation of the former PEMCO industrial site into Yard 56, a $100 million, mixed-use development featuring over two million square feet of residential, retail, hotel and office space. BDC acknowledges that through several years of extensive outreach, the developer has connected with the neighboring communities, and they strongly support this project.

BDC supports this proposed ordinance and respectfully requests that City Council Bill# 18-0269 be given favorable consideration by the City Council.

cc: Kyron Banks

F

36 S. Charles St. Suite 2100 Baltimore, MD 21201 410.837.9305 P 410.837.6363 F BaltimoreDevelopment.com

City of Baltimore

City Council
City Hall, Room 408
100 North Holliday Street
Baltimore, Maryland
21202

Meeting Minutes - Final

Land Use and Transportation Committee

Wednesday, August 1, 2018 | **1:15 PM** | **Du Burns Council Chamber, 4th floor, City Hall**

18-0269

CALL TO ORDER

INTRODUCTIONS

ATTENDANCE

Present 6 - Member Edward Reisinger, Member Sharon Green Middleton, Member Mary Pat Clarke, Member Ryan Dorsey, Member Leon F. Pinkett III, and Member Robert Stokes Sr.

Absent 1 - Member Eric T. Costello

ITEMS SCHEDULED FOR PUBLIC HEARING

18-0269 **Rezoning - 5601 Eastern Avenue**

For the purpose of changing the zoning for the property known as 5601 Eastern Avenue (Block 6694, Lot 028), as outlined in red on the accompanying plat, from the I-2 Zoning District to the C-3 Zoning District.

Sponsors: Zeke Cohen, President Young

A motion was made by Member Dorsey, seconded by Member Clarke, that the bill be recommended favorably. The motion carried by the following vote:

Yes: 6 - Member Reisinger, Member Middleton, Member Clarke, Member Dorsey, Member Pinkett III, and Member Stokes Sr.

Absent: 1 - Member Costello

ADJOURNMENT

THIS MEETING IS OPEN TO THE PUBLIC

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor

OFFICE OF COUNCIL SERVICES

LARRY E. GREENE, Director
415 City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202
410-396-7215 / Fax: 410-545-7596
email: larry.greene@baltimorecity.gov

HEARING NOTES

Bill: 18-0269

Rezoning – 5601 Eastern Avenue

Committee: Land Use and Transportation
Chaired By: Councilmember Edward Reisinger

Hearing Date: August 1, 2018
Time (Beginning): 1:30 PM
Time (Ending): 1:50 PM
Location: Clarence "Du" Burns Chamber
Total Attendance: ~18
Committee Members in Attendance:
Reisinger, Edward, Chairman
Middleton, Sharon, Vice Chair
Dorsey, Ryan
Pinkett, Leon
Stokes, Robert
Clarke, Mary Pat

Bill Synopsis in the file?	☒ yes	☐ no	☐ n/a
Attendance sheet in the file?	☒ yes	☐ no	☐ n/a
Agency reports read?	☒ yes	☐ no	☐ n/a
Hearing televised or audio-digitally recorded?	☒ yes	☐ no	☐ n/a
Certification of advertising/posting notices in the file?	☒ yes	☐ no	☐ n/a
Evidence of notification to property owners?	☒ yes	☐ no	☐ n/a
Final vote taken at this hearing?	☒ yes	☐ no	☐ n/a

Motioned by: ..... **Councilmember** Dorsey, Ryan
Seconded b..... **Councilmember** Clarke, Mary Pat
Final Vote: ..... **Favorable**

Major Speakers

(This is not an attendance record.)

- Mr. Martin French, Department of Planning
- Mr. Josh Taylor, Department of Transportation
- Mr. Derrick Baumgardner, Board of Municipal Zoning Appeals
- Ms. Hilary Ruley, Department of Law
- Ms. Sharon DaBoin, Department of Housing and Community Development
- Mr. Al Barry, representative for the applicant

Major Issues Discussed

1. Mr. French presented the Planning Commission's report and information from the Department of Planning's staff report. He provided background information about past rezoning for the property. He indicated that during the Transform Baltimore comprehensive rezoning process the property was rezoned to I-2 by mistake. The site was a brownfield site. Commercial and retail development is being planned for the site.
2. Agency reports were read. Agency representatives testified in support of their respective agency's position on the bill.
3. Mr. Al Barry provided general information about the development project for the site and answered general questions. He stated that $100 million was being invested in the development project. He also indicated that the project would be completed in phases. He explained that certain zoning code text amendments were needed for the existing planned unit development (PUD) because the new zoning code required a replacement PUD, but the industrial zoning did not change with the previous Council's approval for commercial zoning for this and other sites. The zoning code does not allow PUD's in industrial districts. He also indicated that the community supported the rezoning and project.
4. Councilman Reisinger asked if an economic impact statement would be prepared. Mr. Barry stated that one could be prepared.
5. Mr. Pinkett asked why the rezoning did not get included in the Transform Baltimore comprehensive rezoning process. Mr. French indicated that the proposed recommendation during the Transform Baltimore process was for commercial use, but by the time final mapping was completed the property had been rezoned to I-2. PUDs are not allowed in industrial districts.
6. The committee discussed the bill.
7. The committee approved finding of facts for the bill.
8. The committee voted to recommend the bill favorably.
9. The hearing was adjourned.

Further Study

Was further study requested? ☐ Yes ☒ No

If yes, describe.

Committee Vote:

Reisinger, Edward, Chairman.....**Yea**
Middleton, Sharon, Vice Chair.....**Yea**
Clarke, Mary Pat.....**Yea**
Costello, Eric .....**Absent**
Dorsey, Ryan .....**Yea**
Pinkett, Leon.....**Yea**
Stokes, Robert:.....**Yea**

Jennifer L. Coates, Committee Staff JLC Date: August 1, 2018
cc: Bill File
OCS Chrono File

CITY OF BALTIMORE
CITY COUNCIL HEARING ATTENDANCE RECORD

Committee: Land Use and Transportation			**Chairperson:** Edward Reisinger
Date: August 1, 2018	**Time:** 1:15 PM		**Place:** Clarence "Du" Burns Chambers
Subject: Ordinance - Rezoning - 5601 Eastern Avenue			**CC Bill Number:** 18-0269

PLEASE PRINT

IF YOU WANT TO TESTIFY PLEASE CHECK HERE

FIRST NAME	LAST NAME	ST. #	ADDRESS/ORGANIZATION NAME	ZIP	EMAIL ADDRESS	TESTIFY	WHAT IS YOUR POSITION ON THIS BILL? FOR	AGAINST	(*) LOBBYIST: ARE YOU REGISTERED IN THE CITY YES	NO
John	Doe	100	North Charles Street	21202	Johndoenbmore@yahoo.com	√	√	√	√	√
AL	BARRY	201	EAST BALTO ST.	21202	ab.balto@yahoo.com	✓	✓		✓	
Josh	Taylor		DOT	21202	josh.taylor@baltimorecity.gov		✓			
Martin	French		Planning			✓	✓			
Sharon	Dobson		HCD							

(*) NOTE: IF YOU ARE COMPENSATED OR INCUR EXPENSES IN CONNECTION WITH THIS BILL, YOU MAY BE REQUIRED BY LAW TO REGISTER WITH THE CITY ETHICS BOARD. REGISTRATION IS A SIMPLE PROCESS. FOR INFORMATION AND FORMS, CALL OR WRITE: BALTIMORE CITY BOARD OF ETHICS, C/O DEPARTMENT OF LEGISLATIVE REFERENCE, 626 CITY HALL, BALTIMORE, MD 21202. TEL: 410-396-4730: FAX: 410-396-8483.

City of Baltimore

City Council
City Hall, Room 408
100 North Holliday Street
Baltimore, Maryland
21202

Meeting Agenda - Final

Land Use and Transportation Committee

Wednesday, August 1, 2018 | **1:15 PM** | **Du Burns Council Chamber, 4th floor, City Hall**

18-0269

CALL TO ORDER

INTRODUCTIONS

ATTENDANCE

ITEMS SCHEDULED FOR PUBLIC HEARING

18-0269 **Rezoning - 5601 Eastern Avenue**
For the purpose of changing the zoning for the property known as 5601 Eastern Avenue (Block 6694, Lot 028), as outlined in red on the accompanying plat, from the I-2 Zoning District to the C-3 Zoning District.

Sponsors: Zeke Cohen, President Young

ADJOURNMENT

THIS MEETING IS OPEN TO THE PUBLIC

BALTIMORE CITY COUNCIL
LAND USE AND TRANSPORTATION COMMITTEE

Mission Statement

On behalf of the Citizens of Baltimore City, the mission of the Land Use and Transportation Committee is to review and support responsible development and zoning initiatives to ensure compatibility with the aim of improving the quality of life for the diverse population of Baltimore City.

The Honorable Edward Reisinger
Chairperson

PUBLIC HEARING

Wednesday, August 1, 2018
1:15 PM
Clarence "Du" Burns Council Chambers

City Council Bill # 18-0269

Rezoning - 5601 Eastern Avenue

CITY COUNCIL COMMITTEES

BUDGET AND APPROPRIATIONS
Eric Costello – Chair
Leon Pinkett – Vice Chair
Bill Henry
Sharon Green Middleton
Brandon M. Scott
Isaac "Yitzy" Schleifer
Shannon Sneed
Staff: Marguerite Currin

EDUCATION AND YOUTH
Zeke Cohen – Chair
Mary Pat Clarke – Vice Chair
John Bullock
Kristerfer Burnett
Ryan Dorsey
Staff: Matthew Peters

EXECUTIVE APPOINTMENTS
Robert Stokes – Chair
Kristerfer Burnett– Vice Chair
Mary Pat Clarke
Zeke Cohen
Isaac "Yitzy" Schleifer
Staff: Marguerite Currin

HOUSING AND URBAN AFFAIRS
John Bullock – Chair
Isaac "Yitzy" Schleifer – Vice Chair
Kristerfer Burnett
Bill Henry
Shannon Sneed
Zeke Cohen
Ryan Dorsey
Staff: Richard Krummerich

JUDICIARY AND LEGISLATIVE INVESTIGATIONS
Eric Costello – Chair
Mary Pat Clarke – Vice Chair
John Bullock
Leon Pinkett
Edward Reisinger
Brandon Scott
Robert Stokes
Staff: Matthew Peters

LABOR
Shannon Sneed – Chair
Robert Stokes – Vice Chair
Eric Costello
Bill Henry
Mary Pat Clarke
Staff: Samuel Johnson

LAND USE AND TRANSPORTATION
Edward Reisinger - Chair
Sharon Green Middleton – Vice Chair
Mary Pat Clarke
Eric Costello
Ryan Dorsey
Leon Pinkett
Robert Stokes
Staff: Jennifer Coates

PUBLIC SAFETY
Brandon Scott – Chair
Ryan Dorsey – Vice Chair
Kristerfer Burnett
Shannon Sneed
Zeke Cohen
Leon Pinkett
Isaac "Yitzy" Schleifer
Staff: Richard Krummerich

TAXATION, FINANCE AND ECONOMIC DEVELOPMENT
Sharon Green Middleton – Chair
Leon Pinkett – Vice Chair
Eric Costello
Edward Reisinger
Robert Stokes
Staff: Samuel Johnson
- *Larry Greene* ***(pension only)***

Rev. 04/30/18

CITY OF BALTIMORE
CATHERINE E. PUGH, Mayor

OFFICE OF COUNCIL SERVICES
LARRY E. GREENE, Director
415 City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202
410-396-7215 / Fax: 410-545-7596
email: larry.greene@baltimorecity.gov

BILL SYNOPSIS

Committee: Land Use and Transportation

Bill 18-0269

Rezoning – 5601 Eastern Avenue

Sponsor: *Councilmember Reisinger*
Introduced: *June 25, 2018*

Purpose:

For the purpose of changing the zoning for the property known as 5601 Eastern Avenue (Block 6694, Lot 028), as outlined in red on the accompanying plat, from the I-2 Zoning District to the C-3 Zoning District.

Effective: 30th day after enactment

Hearing Date/Time/Location: August 1, 2018 /1:15 p.m./Clarence "Du" Burns Chambers

Agency Reports

Planning Commission	Favorable
Board of Municipal and Zoning Appeals	
Department of Transportation	
Department of Law	Favorable with Suggestions
Department of Housing and Community Development	
Baltimore Development Corporation	

Analysis

Current Law

Article 32 – Zoning; Zoning District Map; Sheet 59; Baltimore City Revised Code; (Edition 2000)

Background

CC Bill 18-0269, if approved, would rezone the property located at 5601 Eastern Avenue (Block 6694, Lot 028) from the I-2 Zoning District to the C-3 Zoning District. Descriptions of the current and proposed zoning districts as allowed under Article 32 are below:

Current Zoning District – I-2

§ 11-205. I-2 General Industrial District.

(a) Intent.

The I-2 General Industrial Zoning District is intended to provide for a wide variety of general manufacturing, fabricating, processing, wholesale distributing, and warehousing uses.

Proposed Zoning District – C-3

§ 10-205. C-3 General Commercial District.

(a) Areas for which intended.

(1) The C-3 General Commercial Zoning District is intended for more intensive commercial uses and key commercial nodes that require additional controls, particularly for shopping centers and larger retail establishments.

(2) The C-3 District accommodates larger developments that may require significant parking, such as shopping centers and large-scale mixed-use development.

The property, which lies on the south side of Eastern Avenue, is situated directly across the street from the Johns Hopkins Bayview hospital. It is bounded on the east by Bonsal Street, on the west by Umbra Street and on the south by I-95. Greektown and Bayview neighborhoods are adjacent to the site.

The former industrial site is owned by TRP-MCB 5601 Eastern LLC. The site was previously used by corporations for heavy manufacturing of waste porcelain and glass, which was disposed of on certain sections of the parcel. The owner is working with the Maryland Department of the Environment to perform proper mitigation. Buildings, on the once improved lot, have recently been demolished.

The 5601 Eastern Avenue Planned Unit Development (PUD), established in 2015, is a mixed-use commercial and residential development. The PUD's development plan proposes to create a new mixed use development that includes low and high density options which will be built in phases. The Planning Commission approved the Final Design for the LA Fitness Center on the site on May 4, 2017.

Rezoning the property from I-2 to C-3 may be granted based on findings of either substantial change in the character of the neighborhood or that there was a mistake in the existing zoning classification. According to the Planning Commission, the rezoning is consistent with the existing zoning in the area. The proposed development plans are also in-line with the goals and objectives of the Baltimore City Comprehensive Master Plan LIVE EARN PLAY LEARN's EARN to redevelop vacant properties.

Additional Information

Fiscal Note: Not Available

Information Source(s): Department of Planning Report

Analysis by: Jennifer L. Coates JLC Direct Inquiries to: (410) 396-1260
Analysis Date: July 26, 2018

CITY OF BALTIMORE
COUNCIL BILL 18-0269
(First Reader)

Introduced by: Councilmember Cohen, President Young
At the request of: TRP-MCB 5601 Eastern, LLC
Address: c/o AB Associates, 201 East Baltimore Street, Suite 1150, Baltimore, Maryland 21202
Telephone: 410-547-6900
Introduced and read first time: June 25, 2018
Assigned to: Land Use and Transportation Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Board of Municipal and Zoning Appeals, Planning Commission, Department of Housing and Community Development, Baltimore Development Corporation, Department of Transportation

A BILL ENTITLED

AN ORDINANCE concerning

Rezoning – 5601 Eastern Avenue

FOR the purpose of changing the zoning for the property known as 5601 Eastern Avenue (Block 6694, Lot 028), as outlined in red on the accompanying plat, from the I-2 Zoning District to the C-3 Zoning District.

BY amending
Article 32 - Zoning
Zoning District Map
Sheet 59
Baltimore City Revised Code
(Edition 2000)

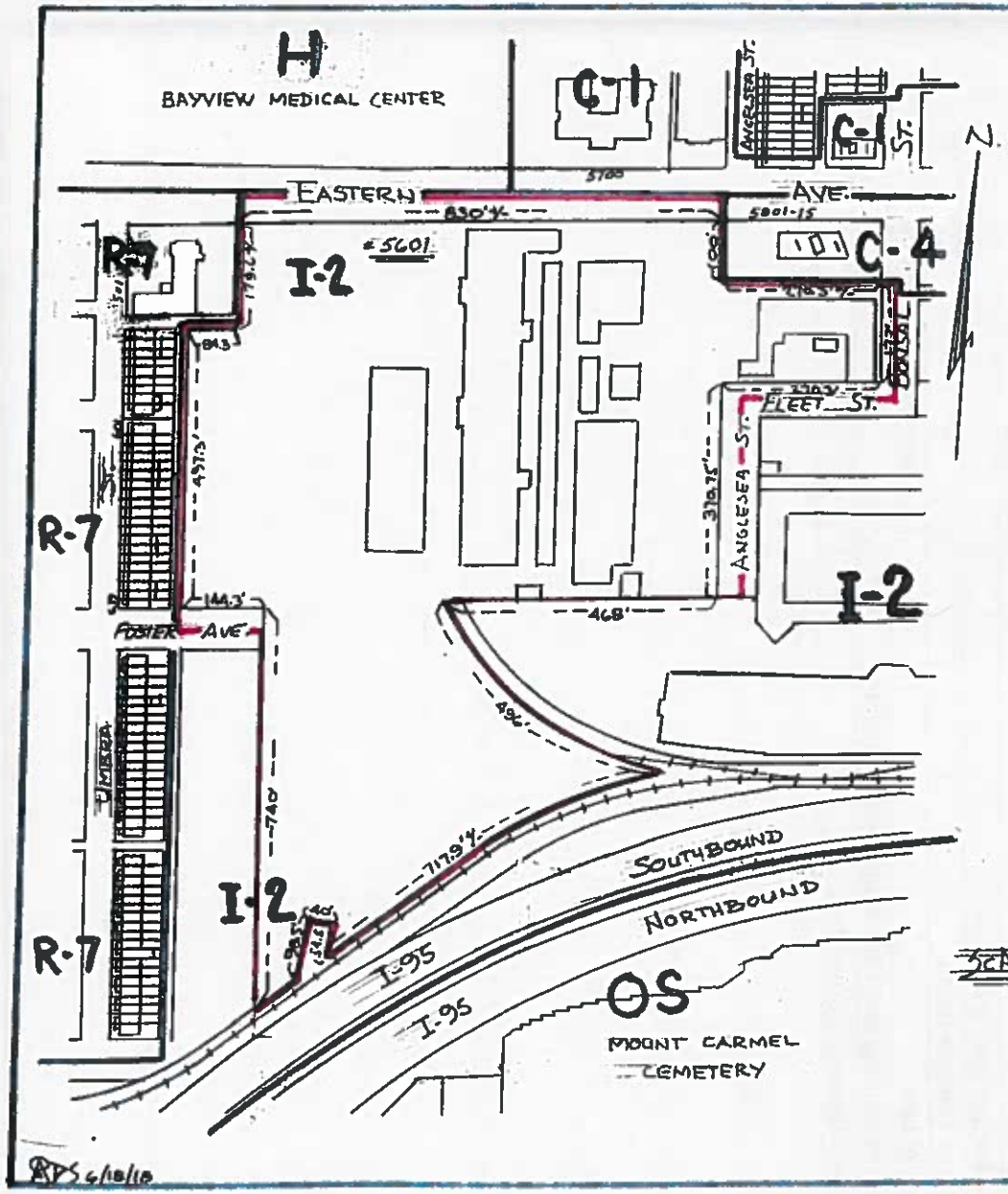
SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That Sheet 59 of the Zoning District Map is amended by changing from the I-2 Zoning District to the C-3 Zoning District the property known as 5601 Eastern Avenue (Block 6694, Lot 028), as outlined in red on the plat accompanying this Ordinance.

SECTION 2. AND BE IT FURTHER ORDAINED, That as evidence of the authenticity of the accompanying plat and in order to give notice to the agencies that administer the City Zoning Ordinance: (i) when the City Council passes this Ordinance, the President of the City Council shall sign the plat; (ii) when the Mayor approves this Ordinance, the Mayor shall sign the plat; and (iii) the Director of Finance then shall transmit a copy of this Ordinance and the plat to the Board of Municipal and Zoning Appeals, the Planning Commission, the Commissioner of Housing and Community Development, the Supervisor of Assessments for Baltimore City, and the Zoning Administrator.

SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the 30th day after the date it is enacted.

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

SHEET NO. 59 OF THE ZONING DISTRICT MAPS OF ARTICLE 30 OF THE BALTIMORE CITY CODE, 1966 EDITION, AS AMENDED BY ORDINANCE NUMBERS 16-581 AND 17-015 AS APPROVED.



NOTE:

IN CONNECTION WITH THE PROPERTY KNOW AS NO. 5601 EASTERN AVENUE, THE APPLICANT WISHES TO REQUEST TO CHANGE THE ZONING OF THE AFOREMENTIONED PROPERTY FROM THE I-2 ZONING DISTRICT TO THE C-3 ZONING DISTRICT AS OUTLINED IN RED ON THIS PLAT.

WARD: 26
SECTION: 1
BLOCK: 6694
LOT: 28/49

SCALE: 1" = 200'

MAYOR

PRESIDENT CITY COUNCIL

RPS 6/18/18

LAND USE AND TRANSPORTATION COMMITTEE

BILL 18-0269

AGENCY REPORTS

Planning Commission	Favorable
Board of Municipal Zoning Appeals	
Department of Transportation	
Department of Law	Favorable With Suggestions
Department of Housing and Community Development	
Baltimore Development Corporation	

FROM		
NAME & TITLE	THOMAS J. STOSUR, DIRECTOR	CITY of BALTIMORE **MEMO**
AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8TH FLOOR, 417 EAST FAYETTE STREET	
SUBJECT	CITY COUNCIL BILL #18-0269 / REZONING 5601 EASTERN AVENUE	

TO

DATE: July 12, 2018

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

At its regular meeting of July 12, 2018, the Planning Commission considered City Council Bill #18-0269, for the purpose of changing the zoning for the property known as 5601 Eastern Avenue, from the I-2 Zoning District to the C-3 Zoning District.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report which recommended approval of City Council Bill #18-0269 and adopted the following resolution nine members being present (seven in favor and two recusals):

> RESOLVED, That the Planning Commission concurs with the recommendation of its departmental staff, and recommends that City Council Bill #18-0269 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.

TJS/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. Kyron Banks, 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
Ms. Elena DiPietro, Law Dept.
Mr. Francis Burnszynski, PABC
Ms. Katelyn McCauley, DOT
Ms. Natawna Austin, Council Services
Mr. Ervin Bishop, Council Services
Mr. Alfred Barry, AB Associates

Catherine E. Pugh
Mayor

PLANNING COMMISSION

Sean D. Davis, Chairman

STAFF REPORT

Thomas J. Stosur
Director

July 12, 2018

REQUEST: City Council Bill #18-0269/Rezoning - 5601 Eastern Avenue
For the purpose of changing the zoning for the property known as 5601 Eastern Avenue (Block 6694, Lot 028), as outlined in red on the accompanying plat, from the I-2 Zoning District to the C-3 Zoning District.

RECOMMENDATION: Approval

STAFF: Tamara Woods

OWNER/PETITIONER: TRP-MCB 5601 Eastern LLC

SITE/GENERAL AREA
General Area:
The existing 5601 Eastern Avenue Planned Unit Development (PUD) is located in the Pulaski Industrial Area, which is adjacent to the Greektown and Bayview neighborhoods of southeast Baltimore. The site is situated on the south side of Eastern Avenue, across from the Johns Hopkins Bayview Hospital and is bounded by Bonsal Street to the east, Umbra Street to the west and I-95 bounds the site to the south.

Site Conditions:
The subject parcel, 5601 Eastern Avenue, is approximately 20 acres (871,751 square feet). The site was improved with several warehouse buildings that are that have recently been demolished. Within the 20 acres there are significant grade changes, most notably from an upper section fronting Bonsal Street that is roughly 19 feet higher in elevation than that fronting Eastern Avenue. There is also a significant slope from Eastern Avenue to the rear of the site. In addition to the physical characteristics of the site, there are also environmental challenges.

For many years, the Pemco Corporation, as well as other corporations, held this site to manufacture glass and porcelain. Throughout the time it was used for heavy manufacturing waste porcelain and glass, known as "frit," was disposed of in the western portion of the site. The owner is currently working with the Maryland Department of the Environment to do proper mitigation.

HISTORY

- Ordinance 15-379 was signed by the Mayor on June 24, 2015 to rezone 5601 Eastern Avenue from the M-3 zoning district to the B-2-3 zoning district.
- Ordinance 15-380 was signed by the Mayor on June 24, 2015 to establish the 5601 Eastern Avenue Planned Unit Development.
- On May 4, 2017, the Planning Commission approved the Final Design for the LA Fitness.
- On December 21, 2017, the Planning Commission approved the Final Design proposed retail and site for the Eastern side of the site, as well as a Phase I Signage Package.
- On May 31, 2018, the Planning Commission approved a major subdivision for 5601 Eastern Avenue.

ANALYSIS

Project Overview and Background: The 5601 Eastern Avenue Planned Unit Development (PUD) is a mixed-use commercial and residential development. The development plan proposes the creation of a new mixed use development that includes both a low density and high density option that would be built in phases. As stated before, this site is a former industrial site. The proposed land uses and density in the PUD are based on a 2015 rezoning which rezoned the site from M-3 to B-2-3.

In 2016, the City Council of Baltimore approved a new zoning code which went into effect on June 5, 2017. The subject parcel was rezoned back to an industrial zoning category, I-2. The underlying zoning is being requested to be rezoned back to a commercial category to support the existing PUD and to support a request to repeal and replace the PUD under City Council Bill #18-0270. A PUD cannot be established in the I-2 zoning category.

City Council Bill #18-0269/Rezoning -5601 Eastern Avenue

The requested C-3 zoning district is a neighborhood business district designation that allows for high density residential and commercial development that is in keeping with the previous 2015 rezoning and the current PUD.

In completing its analysis, the Department of Planning Staff not only studied the request based on the Maryland Land Use Article, but also the character of the site.

Rezoning Standards for Review

According to Maryland Land Use Article, Division I, Title 10 (Baltimore City Zoning), any proposed zoning changes must be referred to the Baltimore City Planning Commission and to the Board of Municipal and Zoning Appeals (BMZA), which must study the proposed changes in relation to:

1. *The plan* – The Baltimore City Comprehensive Master Plan is not so specific as to recommend land use and/or zoning changes for the properties in question. But as stated previously, this request is in-line with the goals and objectives of LIVE EARN PLAY LEARN to redevelop vacant properties. In addition, the rezoning is in line with the current redevelopment plan in place for the approved PUD.

2. *The needs of Baltimore City* - The proposed C-3 zoning district supports the City's master plan goal to strengthen neighborhoods and strategically redevelop vacant properties throughout the City.
3. *The needs of the particular neighborhood in the vicinity of the proposed changes* - The proposed C-3 zoning district also supports the specific neighborhood needs to provide additional housing choice for existing residents as well as potential new residents by implementing a long-term vision of creating a mixed-use neighborhood that allows people to live, work and play in the same neighborhood.

Once the Planning Commission and BMZA report their findings and recommendations to the Mayor and City Council, the City Council shall make the following findings of fact:

1. *Population change* - Per our Neighborhood Statistical Area Map (neighborhood map), this parcel lies within the Pulaski Industrial Area, but is adjacent to the Greektown and Bayview neighborhoods. The majority of the statistical area lies well to the north of the site and does not impact this site. There are not many residents due to the nature of the land use. That being said, there were 82 people living in the area in 2000 and 153 persons by the 2010 Census representing a 50% increase. As for the immediately impacted neighborhoods, the Greektown neighborhood experienced an 11.7% population increase between the 2000 and 2010 Census. The Bayview neighborhood experienced a 4% population increase between the 2000 and 2010 Census.
2. *Availability of public facilities* - The properties are well served by City services, with no expected impacts as a result of rezoning.
3. *Present and future transportation problems* - This site is located on a major street that is closely monitored by the Department of Transportation. There should not be a negative transportation impact expected as a result of this development.
4. *Compatibility with existing and proposed development for the area* - The rezoning proposal is consistent with the existing zoning in the area. The subject parcel is adjacent to a large C-4 zoning district which exists along the south side of Eastern Avenue and the west side of Dundalk Avenue. The resulting massing is compatible with the existing development. The proposed residential component will be taller than what currently exists in the adjacent residential areas, but the proposed massing is both consistent and compatible with the institutional buildings on the north side of Eastern Avenue. The proposed uses and density are consistent with the area.
5. *Recommendations of the Baltimore City Planning Commission and the BMZA* - For the above reasons, the Planning Department will recommend approval of the rezoning request to the Planning Commission. The BMZA has not yet commented on this bill.
6. *Relationship of the proposed amendment to Baltimore City's plan* - As mentioned above, the proposed zoning changes are compatible with LIVE EARN PLAY LEARN, the City's Master Plan and existing PUD.

The City Council may grant the change to the zoning classification based on a finding that there was either a substantial change in the character of the neighborhood where the property is located, or that there was a mistake in the existing zoning classification. In this case, the Planning Department Staff believes the reversion of 5601 Eastern Avenue back to industrial was a mistake.

In 2012, the administration introduced a bill for a new zoning code, including both maps and text. In addition, in 2013, the Planning Commission made its recommendation on text and map changes to this bill. The subject property was zoned industrial and introduced to retain its industrial zoning. The current redevelopment proposal was not in place at that time. As previously noted, in 2015 this property was rezoned from M-3 to B-2-3 at the same time that the existing PUD was established to make way for a mixed-use redevelopment of the site.

In 2016, the Planning Department sent a list of properties that had been rezoned since the zoning code introduction and Planning Commission recommendation to Legislative Reference and City Council to be reflected in the final maps of the new zoning code. This property, was included on that list as having been rezoned from M-3 to B-2-3. Somehow, this change was not reflected in the new zoning maps with a comparable commercial zoning, but I-2 an, industrial category. The parcel should be rezoned to C-3 to reflect the clear legislative intent of the 2015 rezoning and establishment of the PUD, which was passed by the same City Council that approved the new zoning code in 2016.

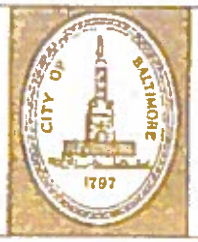
Notifications:

In advance of a hearing on this matter, staff notified the Community Leaders of Bayview, representatives from the following associations: the Bayview Community Association, Southeast Neighborhoods Development (SEND) Southeast CDC, the Greater Greektown Neighborhood Alliance and City Councilman Zeke Cohen.

Thomas J. Stosur
Director

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

ANDRE M. DAVIS, City Solicitor
101 City Hall
Baltimore, Maryland 21202

July 25, 2018

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 18-0269 – Rezoning – 5601 Eastern Avenue

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 18-0269 for form and legal sufficiency. The bill would change the zoning for 5601 Eastern Avenue from the I-2 Zoning District to the C-3 Zoning District.

The City Council may 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); Baltimore City Code, Art. 32, §§5-508(a) and (b)(1). There would appear to be no basis to believe that the neighborhood has substantially changed between the comprehensive rezoning of the property on June 5, 2017 and today's date. Therefore, to legally rezone the property the City Council must identify a "mistake" that lead to the inappropriate zoning of the property as I-2.

In determining whether to rezone on the basis of mistake, the City Council is required to make findings of fact, for each property, on the following matters:

(1) population change;
(2) the availability of public facilities;
(3) the present and future transportation patterns;
(4) compatibility with existing and proposed development;
(5) the recommendations of the Planning Commission and the Board of Municipal and Zoning Appeals; and
(6) the relationship of the proposed amendment to the City's plan.

Md. Land Use Code Ann., §10-304(b)(1); *see also*, Baltimore City Code, Art. 32, §5-508(b)(2) (citing same factors with (v) being "the recommendations of the City agencies and officials," and (vi) being "the proposed amendment's consistency with the City's Comprehensive Master Plan.").

Article 32 of the City Code also requires Council to consider:

(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.

Baltimore City Code, Art. 32, §5-508(b)(3).

The Mayor and City Council's decision regarding a piecemeal rezoning is reviewed under the substantial evidence test, and should be upheld "if reasoning minds could reasonably reach the conclusion from facts in the record." *Cty. Council of Prince George's Cty. v. Zimmer Dev. Co.*, 444 Md. 490, 510 (2015) (*quoting*, *Cremins v. Cnty. Comm'rs of Washington Cnty.*, 164 Md.App. 426, 438 (2005)); *see also White v. Spring*, 109 Md. App. 692, 699, *cert. denied*, 343 Md. 680 (1996) ("the courts may not substitute their judgment for that of the legislative agency if the issue is rendered fairly debatable"); *accord Floyd v. County Council of Prince George's County*, 55 Md.App. 246, 258 (1983) ("'substantial evidence' means a little more than a 'scintilla of evidence.'").

With regard to rezoning on the basis of mistake, it is "firmly established that there is a strong presumption of the correctness of original zoning and of comprehensive rezoning." *People's Counsel v. Beachwood I Ltd. Partnership*, 107 Md. App. 627, 641 (1995) (*quoting Wells v. Pierpont*, 253 Md. 554, 557 (1969)). To sustain a piecemeal change, there must be substantial evidence that "the Council failed to take into account then existing facts . . . so that the Council's action was premised . . . on a misapprehension." *White*, 109 Md. App. at 698 (citation omitted). In other words, "[a] conclusion based upon a factual predicate that is incomplete or inaccurate may be deemed in zoning law, a mistake or error; an allegedly aberrant conclusion based on full and accurate information, by contrast, is simply a case of bad judgment, which is immunized from second-guessing." *Id.* "Error 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[,]" [and] "by showing that events occurring subsequent to the comprehensive zoning have proven that the Council's initial premises were incorrect." *Boyce v. Sembly*, 25 Md. App. 43, 51 (1975) (citations omitted). "Thus, unless there is probative 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, the presumption of validity accorded to comprehensive zoning is not overcome and the question of error is not 'fairly debatable.'" *Id.* at 52.

A finding of mistake, however, absent a regulatory taking, merely permits the further consideration of rezoning, it does not mandate a rezoning. *White*, 109 Md. App. at 708. Rather, a second inquiry "regarding whether, and if so, how, the property is reclassified," is required. *Id.* at 709. This second conclusion is due great deference. *Id.* (after a prior mistake has been established and accepted as fact by a legislative zoning entity, that entity's decision as to whether to rezone, and if so, how to reclassify, is due the same deference the prior comprehensive rezoning was due).

In sum, the Land Use and Transportation Committee (the "Committee") is required to hold a quasi-judicial public hearing with regard to the bill wherein it will hear and weigh the evidence as presented in: (1) the Planning Report and other agency reports; (2) testimony from the Planning Department and other City agency representatives; and (3) testimony from members of the public and interested persons. After weighing the evidence presented and submitted into the record before it, the Committee is required to make findings of fact for each property with regard to the factors in §§10-304 and 10-305 of the Land Use Article and § 5-508 of Article 32 of the Baltimore City Code. If, after its investigation of the facts, the Committee makes findings which support: (1) a mistake in the comprehensive zoning; and (2) a new zoning classification for the properties, it may adopt these findings and the legal requirements for granting the rezoning would be met.

Here, the Planning Department Report states that the facts support a finding of mistake in the property's current zoning under Transform because it had been on a 2016 list to be rezoned to commercial under Transform and somehow it was not so rezoned. However, it is Planning's understanding that the clear legislative intent under Transform was to have a C-3 zoning.

Finally, certain procedural requirements apply to this bill beyond those discussed above because a change in the zoning classification of a property is deemed a "legislative authorization." Baltimore City Code, Art. 32, §5-501(2)(iii). Specifically, notice of the City Council hearing must be given by publication in a newspaper of general circulation in the City, by posting in a conspicuous place on the property and by first-class mail, on forms provided by the Zoning Administrator, to each person who appears on the tax records of the City as an owner of the property to be rezoned. Baltimore City Code, Art. 32, §5-601(b). The notice of the City Council hearing must include the date, time, place and purpose of the hearing, as well as the address of the property and the name of the applicant. Baltimore City Code, Art. 32, §5-601(c). The posted notices must be at least 3 feet by 4 feet in size, placed at a prominent location, and at least one sign must be visible from each of the property's street frontages. City Code, Art., §5-601(d). The published and mailed notices must be given at least 15 days before the hearing; the posted notice must be at least 30 days before the public hearing. Baltimore City Code, Art. 32, §5-601(e), (f).

The bill is the appropriate method for the City Council to review the facts and make the determination as to whether the legal standard for rezoning has been met. Assuming the required findings are made at the hearing and that all procedural requirements are satisfied, the Law Department can approve the bill for form and legal sufficiency.

Very truly yours,

Hilary Ruley
Chief Solicitor

cc: Andre M. Davis, City Solicitor
Karen Stokes, Director, Mayor's Office of Government Relations
Kyron Banks, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Victor Tervala, Chief Solicitor
Ashlea Brown, Assistant Solicitor
Avery Aisenstark

CITY OF BALTIMORE
COUNCIL BILL 18-0269
(First Reader)

Introduced by: Councilmember Cohen, President Young
At the request of: TRP-MCB 5601 Eastern, LLC
Address: c/o AB Associates, 201 East Baltimore Street, Suite 1150, Baltimore, Maryland 21202
Telephone: 410-547-6900
Introduced and read first time: June 25, 2018
Assigned to: Land Use and Transportation Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Board of Municipal and Zoning Appeals, Planning Commission, Department of Housing and Community Development, Baltimore Development Corporation, Department of Transportation

A BILL ENTITLED

AN ORDINANCE concerning

Rezoning – 5601 Eastern Avenue

FOR the purpose of changing the zoning for the property known as 5601 Eastern Avenue (Block 6694, Lot 028), as outlined in red on the accompanying plat, from the I-2 Zoning District to the C-3 Zoning District.

BY amending
Article 32 - Zoning
Zoning District Map
Sheet 59
Baltimore City Revised Code
(Edition 2000)

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SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the 30th day after the date it is enacted.

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

INTRODUCTORY*

CITY OF BALTIMORE
COUNCIL BILL ____

APPROVED FOR FORM
STYLE, AND TEXTUAL SUFFIENCY
6-20-18
DEP'T LEGISLATIVE REFERENCE

Introduced by: Councilmember Cohen
At the request of: TRP-MCB 5601 Eastern, LLC
Address: c/o AB Associates, 201 East Baltimore Street, Suite 1150, Baltimore, Maryland 21202
Telephone: 410-547-6900

A BILL ENTITLED

AN ORDINANCE concerning

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SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on the 30th day after the date it is enacted.

* WARNING: THIS IS AN UNOFFICIAL, INTRODUCTORY COPY OF THE BILL.
THE OFFICIAL COPY CONSIDERED BY THE CITY COUNCIL IS THE FIRST READER COPY.

STATEMENT OF INTENT

FOR

5601 Eastern Avenue

{Address}

1. **Applicant's Contact Information:**
   Name: MCB Real Estate c/o AB Associates
   Mailing Address: 201 E. Baltimore St. #1150
   Baltimore, MD 21202
   Telephone Number: (410) 547-6900
   Email Address: ababalt@yahoo.com

2. **All Proposed Zoning Changes for the Property:**
   Rezone above property from I-2 to C-3

3. **All Intended Uses of the Property:**
   Residential, office, hotel, commercial

4. **Current Owner's Contact Information:**
   Name: TRP-MCB 5601 Eastern, LLC
   Mailing Address: 2701 N. Charles St #404
   Baltimore, MD 21218
   Telephone Number: (410) 547-6900
   Email Address:

5. **Property Acquisition:**

   The property was acquired by the current owner on 4/14/2014 by deed recorded in the Land Records of Baltimore City in Liber 16154 Folio 0059.

6. **Contract Contingency:**

   (a) There is ____ is not X a contract contingent on the requested legislative authorization.

   (b) If there is a contract contingent on the requested legislative authorization:

   (i) The names and addresses of all parties to the contract are as follows *{use additional sheet if necessary}*:

(ii) The purpose, nature, and effect of the contract are: _____

7. **Agency:**

(a) The applicant is ____ is not __X__ acting as an agent for another.

(b) If the applicant is acting as an agent for another, the names of all principals on whose behalf the applicant is acting, including the names of the majority stockholders of any corporation, are as follows *{use additional sheet if necessary}*: _____

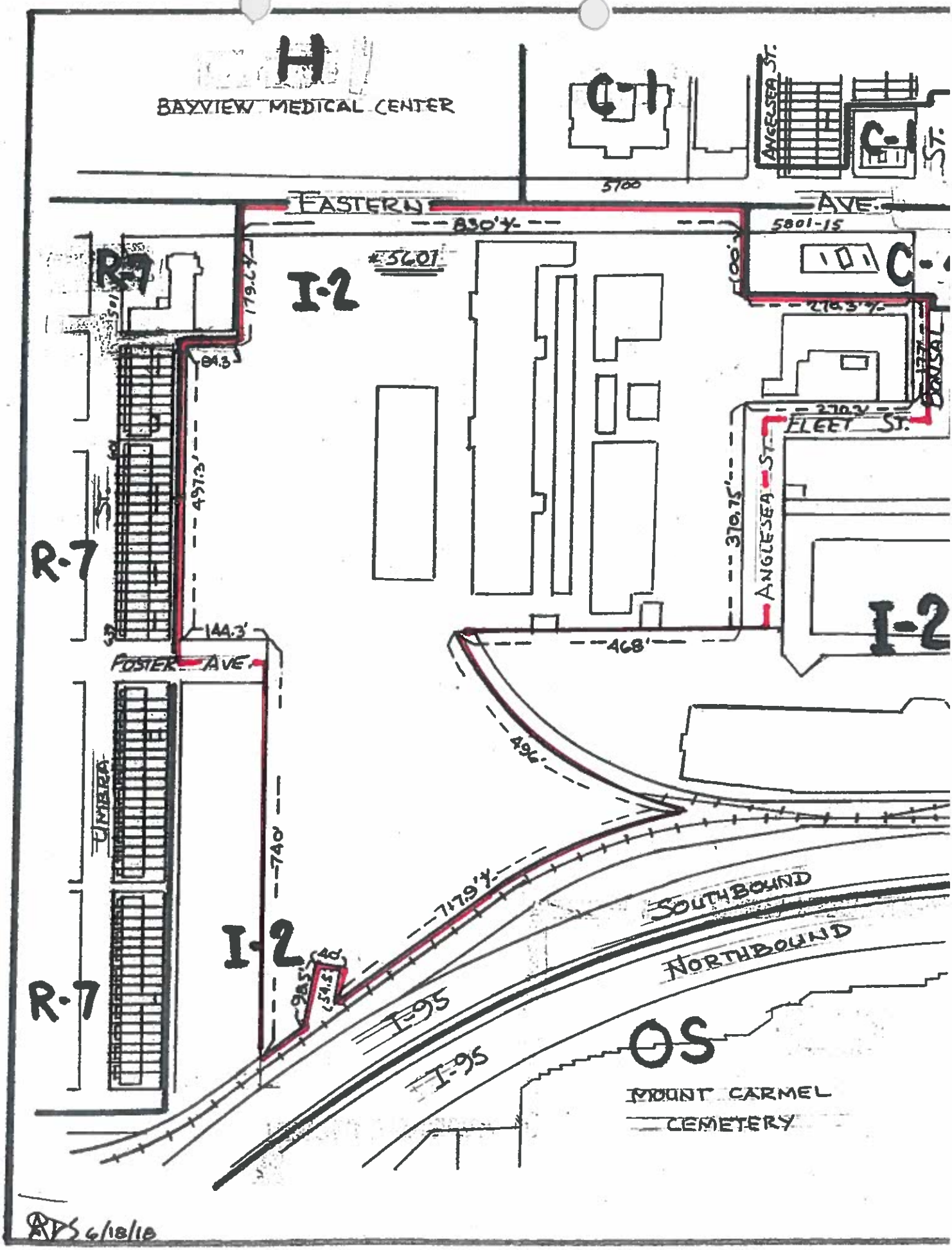
AFFIDAVIT

I, Alfred W. Barry III, solemnly affirm under the penalties of perjury that the information given in this Statement of Intent is true and complete to the best of my knowledge, information, and belief.

Applicant's signature

6/18/2018

Date


H
BAYVIEW MEDICAL CENTER
C-1
C-1
ANGLESEA ST.
ST.
5700
EASTERN
AVE.
830'±
5801-15
#5601
R-7
I-2
179.2'±
84.3
C-
210.3'±
DONSAT
270.3'
FLEET ST.
497.3'
R-7
ST.
370.75'
ANGLESEA ST.
I-2
144.3'
468'
FOSTER AVE.
496'
UMBRA
740'
717.9'±
SOUTHBOUND
NORTHBOUND
I-2
Ad.
98.5'
154.5'
R-7
I-95
I-95
OS
MOUNT CARMEL
CEMETERY

RDS 6/18/18

SHEET NO. 59 OF THE ZONING DISTRICT MAPS OF ARTICLE 30 OF THE BALTIMORE CITY CODE, 1966 EDITION, AS AMENDED BY ORDINANCE NUMBERS 16-581 AND 17-015 AS APPROVED.

N.

NOTE:

IN CONNECTION WITH THE PROPERTY KNOW AS NO. 5601 EASTERN AVENUE, THE APPLICANT WISHES TO REQUEST TO CHANGE THE ZONING OF THE AFOREMENTIONED PROPERTY FROM THE I-2 ZONING DISTRICT TO THE C-3 ZONING DISTRICT AS OUTLINED IN RED ON THIS PLAT.

WARD: 26
SECTION: 1
BLOCK: 6694
LOT: 28/49

SCALE: 1" = 200'

MAYOR

PRESIDENT CITY COUNCIL

ACTION BY THE CITY COUNCIL

FIRST READING (INTRODUCTION) JUN 25 2018 20 ____

PUBLIC HEARING HELD ON August 1, 20 18

COMMITTEE REPORT AS OF August 6, 20 18

✓ FAVORABLE ____ UNFAVORABLE ____ FAVORABLE AS AMENDED ____ WITHOUT RECOMMENDATION

Edward R. Rosen
Chair

COMMITTEE MEMBERS:

COMMITTEE MEMBERS:

SECOND READING: The Council's action being favorable (unfavorable), this City Council bill was (was not) ordered printed for Third Reading on:

AUG 06 2018 20 ____

____ Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING AUG 06 2018 20 ____

____ Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING (ENROLLED) ____ 20 ____

____ Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING (RE-ENROLLED) ____ 20 ____

WITHDRAWAL ____ 20 ____

There being no objections to the request for withdrawal, it was so ordered that this City Council Ordinance be withdrawn from the files of the City Council.

President

Chief Clerk

1050-10-2