
CITY OF BALTIMORE

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April 7, 2026

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

Re: City Council Bill 25-0142 - Rezoning – 3605 Hickory Avenue

Dear President and City Council Members:

The Law Department reviewed City Council Bill 25-0142 for form and legal sufficiency. The bill changes the zoning for the property known as 3605 Hickory Avenue (Block 3539, Lot 003), from the R-7 Zoning District to the IMU-1 Zoning District. The ordinance would take effect on the date of its enactment.

Standards for Rezoning

The Mayor and City Council may permit a piecemeal rezoning only 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 Land Use Art., § 10-304(b)(2); Baltimore City Code, Art. 32, §§ 5-508(a) and (b)(1).

The “change-mistake” rule is a rule of the either/or type. The “change” half of the “change-mistake” rule requires that, in order for a piecemeal Euclidean zoning change to be approved, there must be a satisfactory showing that there has been significant and unanticipated change in a relatively well-defined area (the “neighborhood”) surrounding the property in question since its original or last comprehensive rezoning, whichever occurred most recently. The “mistake” option of the rule requires a showing that the underlying assumptions or premises relied upon by the legislative body during the immediately preceding original or comprehensive rezoning were incorrect. In other words, there must be a showing of a mistake of fact. Mistake in this context does not refer to a mistake in judgment.

Mayor and Council of Rockville v. Rylyns Enterprises, Inc., 372 Md. 514, 538-39 (2002).

Legal Standard for Change

“It is unquestioned that the City Council has the power to amend its City Zoning Ordinance whenever there has been such a change in the character and use of a use district since the original enactment that the public health, safety, morals, or general welfare would be promoted by a change in the regulations.” *Cassel v. Mayor and City Council of Baltimore*, 195 Md. 348, 354 (1950). The Mayor and City Council must find facts of a substantial change in the character and the use of the district since the comprehensive rezoning of the property on June 5, 2017, and that the rezoning will promote the “public health, safety, morals, or general welfare” and not merely advantage the property owner. *Id.* at 354.

To constitute a substantial change, courts in Maryland want to see facts of a “significant and unanticipated change in a relatively well-defined area.” *Rylins Enterprises*, 372 Md. at 538. The “‘neighborhood’ must be the immediate neighborhood of the subject property, not some area miles away; and the changes must occur in that immediate neighborhood of such a nature as to have affected its character.” *Clayman v. Prince George’s County*, 266 Md. 409, 418 (1972). The changes are required to be physical. *Anne Arundel County v. Bell*, 442 Md. 539, 555 (2015) (citing *Montgomery County v. Woodward & Lothrop*, 280 Md. 686, 712–13 (1977)). However, those physical changes cannot be infrastructure such as sewer or water extension or road widening. *Clayman*, 266 Md. at 419. And the physical changes have to be shown to be unforeseen at the time of the last rezoning. *County Council of Prince George’s County v. Zimmer Development Co.*, 444 Md. 490, 512 (2015). Contemplated growth and density are not sufficient. *Clayman*, 266 Md. at 419.

In determining whether the change benefits only the property owner, courts look, in part, to see if a similar use exists nearby of which the community could easily take advantage. *Cassel*, 195 Md. at 358 (three other similar uses only a few blocks away lead to conclusion that zoning change was only for private owner’s gain).

Legal Standard for Mistake

To sustain a piecemeal change on the basis of a mistake in the last comprehensive rezoning, 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 v. Spring*, 109 Md. App. 692, 698, (1996) (citation omitted). In other words, “[a] conclusion based on 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.

The Supreme Court of Maryland (formerly the Court of Appeals of Maryland) has said it is not sufficient to merely show that the new zoning would make more logical sense. *Greenblatt v. Toney Schloss Properties Corp.*, 235 Md. 9, 13-14 (1964). Nor are courts persuaded that the fact that a more profitable use of the property could be made if rezoned is evidence of a mistake in its current zoning. *Shadynook Imp. Ass'n v. Molloy*, 232 Md. 265, 272 (1963). Courts have also been skeptical of finding a mistake when there is evidence of careful consideration of the area during the past comprehensive rezoning. *Stratakis v. Beauchamp*, 268 Md. 643, 653-54 (1973).

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.*

Spot Zoning

The City must find sufficient facts for a change or mistake because “Zoning is permissible only as an exercise of the police power of the State. When this power is exercised by a city, it is confined by the limitations fixed in the grant by the State and to the accomplishment of the purposes for which the State authorized the city to zone.” *Cassel*, 195 Md. at 353.

In piecemeal rezoning bills, like the bill under review, if there is not a factual basis to support the change or the mistake, then rezoning is considered illegal spot zoning. *Id.* at 355. Spot zoning “has appeared in many cities in America as the result of pressure put upon councilmen to pass amendments to zoning ordinances solely for the benefit of private interests.” *Id.* It is the “arbitrary and unreasonable devotion of a small area within a zoning district to a use which is inconsistent with the use to which the rest of the district is restricted.” *Id.* It is “therefore, universally held that a ‘spot zoning’ ordinance, which singles out a parcel of land within the limits of a use district and marks it off into a separate district for the benefit of the owner, thereby permitting a use of that parcel inconsistent with the use permitted in the rest of the district, is invalid if it is not in accordance with the comprehensive zoning plan and is merely for private gain.” *Id.*

However, “a use permitted in a small area, which is not inconsistent with the use to which the larger surrounding area is restricted, although it may be different from that use, is not ‘spot zoning’ when it does not conflict with the comprehensive plan but is in harmony with an orderly growth of a new use for property in the locality.” *Id.* The example given was “small districts within a residential district for use of grocery stores, drug stores and barber shops, and even gasoline filling stations, for the accommodation and convenience of the residents of the residential district.” *Id.* at 355-356. Therefore, the Mayor and City Council must show how the contemplated use is consistent with the character of the neighborhood. *See, e.g., Tennison v. Shomette*, 38 Md. App. 1, 8 (1977) (cited with approval in *Ryllys*, 372 Md. at 546; *accord Mayor and City Council of Baltimore v. Byrd*, 191 Md. 632, 640 (1948)).

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.” *Zimmer Dev. Co.*, 444 Md. at 510 (*quoting Cremins v. Cnty. Comm’rs of Washington Cnty.*, 164 Md. App. 426, 438 (2005)); *see also White*, 109 Md. App. at 699 (“the courts may not substitute their judgment for that of the legislative agency if the issue is

rendered fairly debatable”); 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.’”).

Findings of Fact

The City Council is required to make the following findings of fact in determining whether to permit rezoning based on mistake or change in the character of the neighborhood:

- (i) population change;
- (ii) the availability of public facilities;
- (iii) the present and future transportation patterns;
- (iv) compatibility with existing and proposed development;
- (iv) the recommendations of the Planning Commission and the Board of Municipal and Zoning Appeals; and
- (v) the relationship of the proposed amendment to the City’s plan.

Md. Code, Land Use, § 10-304(b)(1); Baltimore City Code, Art. 32, § 5-508(b)(2).

Article 32 of the City Code requires the Council to consider the following additional factors:

- (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).

Planning Commission Recommendation

The Planning Commission Staff Report (“Report”) takes the position that this rezoning is justified based on a mistake in the zoning designation of the subject property at the time of the last comprehensive rezoning in 2017. The Report notes that prior to 2017 the subject property was zoned R-7, as was much of the surrounding neighborhood. During the 2017 comprehensive rezoning much of the rest of the neighborhood was downzoned to R-6 while the subject property remained in R-7 zoning. The Report states:

Maintaining the higher-intensity residential zoning acknowledges that the property is unlike others in the area; however, the residential zoning designation fails to acknowledge the industrial history of the structure and the difficulties associated with converting it to residential use.

The IMU zoning districts were purposefully created with the intention of encouraging the reuse of formerly industrial structures for neighborhood-compatible uses. The property is a textbook example of such a site, as it is adjacent to residential lots but can accommodate

enclosed, low-intensity industrial uses that allow the building to be put to productive use while minimizing impacts on surrounding residences.

The Industrial-Mixed Use (I-MU) zoning designation was added to the City's Zoning Code in the comprehensive 2017 rezoning and was "intended to encourage the reuse of older industrial buildings for light industrial use, as well as a variety of non-industrial uses." Baltimore City Code, Art. 32, § 11-203(a)(1). In 2019, the I-MU zoning district was redesignated as IMU-1 and an IMU-2 zoning district, which prohibited all residential uses, was added. Baltimore City Ordinance 19-244.

The Report notes that the subject property is a former industrial building that the current owner proposes to use as a liquor distillery and restaurant. The building is vacant. A distillery is not a permitted or conditional use in the present R-7 zoning district but is permitted in the proposed IMU-1 (Industrial Mixed Use) district as an Industrial: Light use. Baltimore City Code, Art. 32, Tbl. 9-301, 11-301. The property is improved with a two-story building containing approximately 18,000 square feet of gross floor area. The site is located in the Robert Poole/ACCE and Independence INSPIRE Plan area. As a result, the subject property is within half a mile of the Robert Poole building which houses the Academy for College and Career Exploration and the Independence Local School No. 1 which together serve students from grades 6-12.

The subject parcel is the only one in the immediate area that is zoned R-7. The property is surrounded on all sides by R-6 zoning, which consists primarily of neighborhoods of rowhouse and duplex structures. At the southern tip of the property is an area of C-1 zoning known as "The Avenue." There is no IMU-1 zoning in the area surrounding the subject property. The property is one of the only large non-residential structures on Hickory Avenue. The last authorized use of the property in 2015 was as a manufacturing facility for leather pet products and as a warehouse. These uses are nonconforming with the existing R-7 zoning.

The 2024 Comprehensive Master Plan for the City of Baltimore designates the property as Residential: Higher Density. The Report states that the proposed rezoning does not conform to that designation. However, later in the Report, in the required findings of fact under Section 5-508 it is stated that the proposed rezoning to IMU-1 is consistent with the Master Plan "as it aligns with the Zoning Code's stated purpose of the district, which is to encourage the reuse of formerly industrial properties for neighborhood-compatible uses." This second statement indicating conformance with the Master Plan is not consistent with the designation of the property as higher density residential in the Master Plan.

The City Zoning Code states that IMU-1 is intended to encourage the reuse of older industrial buildings, that are often surrounded by residential and non-industrial uses, for light industrial use and a variety of non-industrial uses. Baltimore City Code, Art. 32 § 11-203(a). The IMU-1 district permits a variety of residential uses. Baltimore City Code, Art. 32 § 11-203(b)(1)(i); Baltimore City Zoning Table 11-301. The Report notes that the proposed use of the property aligns with the requirements for IMU-1 zoning. There is no definition for or reference to a distillery in the Zoning Code. The distillery operations appear to come under the definition for Industrial: Light in Section 1-308(b) of Article 32 of the City Code. Both light industrial uses and use as a restaurant are permitted uses in the IMU-1 zoning district. Baltimore City Zoning Table 11-301.

The Report also notes the close proximity of the subject property to the 36th Street commercial district which contains entertainment and restaurant uses. The Report notes that

permitting the property to be rezoned and used for a distillery and restaurant will bring another compatible use to the area. The Report contains an equity analysis which notes the rezoning would allow the reuse of a vacant industrial property and would support local economic activity and employment opportunities while maintaining compatibility with surrounding residential uses.

Process

The City Council is required to hold a quasi-judicial public hearing with regard to the bill where 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. Md. Code, Land Use, § 10-303(b)(1). After weighing the evidence presented and submitted into the record before it, the Council is required to make findings of fact for each property about the factors in Sections 10-304 and 10-305 of the Land Use Article of the Maryland Code and Section 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 or a change in the character of the surrounding neighborhood; and (2) a new zoning classification for the property, it may adopt these findings and the legal requirements for granting the rezoning would be met.

Additionally, 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 or description of the boundaries of the area affected by the proposed rezoning, 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 near the sidewalk or right-of-way for pedestrians and motorists to view, and at least one sign must be visible from each of the property’s street frontages. Window mounted signs must be posted inside the window glass. 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); see also Md. Code, Land Use, § 10-303 (procedural requirements).

Council Bill 25-0142 is the appropriate method for the City Council to review the facts and determine whether the legal standard for rezoning has been met. If the required findings are made at the hearing and that all procedural requirements are satisfied, the Law Department approves the bill for form and legal sufficiency.

Sincerely yours,



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