

ECONOMIC AND COMMUNITY DEVELOPMENT COMMITTEE

FINDINGS OF FACT

City Council Bill No: 21-0051

MOTION OF THE CHAIR OF THE ECONOMIC AND COMMUNITY DEVELOPMENT 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:

Rezoning - 4900 Boston Street

Upon finding as follows with regard to:

(1) Population changes;

According to the American Community Survey data from the U.S. Census Bureau, the census tract that includes the Property (Census Tract 2606.05) is estimated to have slightly increased its population since the enactment of Transform Baltimore from 4,606 in 2017 to 4,947 in 2019. This population growth demonstrates a turn from strictly industrial uses in the area and a need for more commercial options.

(2) The availability of public facilities;

The area is well-served by public utilities and services and no negative impacts are expected as a result of rezoning the Property.

(3) Present and future transportation patterns;

The Property is located adjacent the I-95 corridor, providing direct access for industrial and commercial users without interfering with local travel routes.

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

The proposed rezoning is consistent with the existing light industrial and commercial character of the surrounding neighborhood.

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

The Planning Commission does not concur with the recommendation of its departmental staff, and instead adopts the facts submitted by the applicant, with consideration for testimony and facts presented in the meeting held on April 22, 2021. The Planning Commission also took notice of the relatively small size of the subject parcel, various commercial land uses in the immediate vicinity, and a nearby Planned Unit Development (PUD) that allowed a drive-through restaurant. Therefore, the Planning Commission unanimously recommends that City Council Bill #21-0051 be passed by the City Council. The Board of Municipal Zoning Appeals defers to the Planning Commission. The City agencies to which the bill was referred made the following recommendations:

Planning Commission	Favorable
Board of Municipal and Zoning Appeals (BMZA)	Defers to Planning
Department of Transportation	No Objection
City Solicitor	Favorable / Comments
Department of Housing and Community Development	Defers to Law Department
Baltimore Development Corporation	Opposed
Finance	Defers to BMZA and Planning Commission

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

The proposed rezoning will support the Comprehensive Plan by supporting its goal of retaining and attracting businesses in growth sectors by permitting the Property to be redeveloped in a manner that will create new jobs.

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

The surrounding properties have a mix of uses including both industrial and commercial. Notably, the Property itself has a commercial use that pre-dates Transform Baltimore, as do two of the other properties at the intersection—both are gas-station/convenience stores.

The surrounding properties are used as such: to the north is heavy industrial; the west is a gasoline filling station; the southwest is heavy industrial; the south is another gasoline filling station; and to the east is I-895.

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

All of the surrounding properties are also zoned I-2 like the subject property.

The Property is located within mere blocks of an IMU-1 Zoning District to the west and a C-4 Zoning District to the east. As stated above, the Property itself is surrounded by various industrial and non-industrial uses and thus the transitional proposed IMU-2 zoning classification is most appropriate.

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

The Property, which is a mere 0.61 acres, is too small for the general industrial uses permitted in the I-2 Zoning District. In order to make best use of the lot, the Property must be rezoned to a more suitable 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;

Since the 2017 comprehensive zoning, the area immediately east of the Property has continued to grow, with the expansion of commercial uses along the Boston Street corridor. The rezoning of this Property to the IMU-2 District is consistent with this shift, as it creates an appropriate transition between the commercial uses west of this site and the industrial uses to the east and south.

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

- (12) For a rezoning based on a MISTAKE 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:

An "error [or mistake] 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." *Boyce v. Sembly*, 25 Md. App. 43, 51 (1975) (citations omitted). "Thus, in order to establish error based upon a failure to take existing facts or events reasonably foreseeable of fruition into account, it is necessary not only to show the facts that existed at the time of the comprehensive

zoning but also which, if any, of those facts were not actually considered by the Council.” Id. at 52.

The Property sits on the northeast corner of the intersection of Boston Street and Ponca Street. As discussed previously, the Property’s commercial use pre-dated Transform Baltimore, as a permit was issued for use as a “motor vehicle rental establishment” on June 26, 2014, and this use remained in place throughout the Transform Baltimore comprehensive rezoning process. See Exhibit 2 attached to Caroline Hecker’s memorandum dated April 26, 2021.

Moreover, the properties on two of the three other corners of the intersection where this Property is located also have commercial uses. The property known as 4901 Boston Street, at the southeast corner of Boston and Ponca, is currently used as a Wawa gas station/convenience store as approved by the BMZA in Appeal No. 2011-77, well in advance of the comprehensive rezoning. In addition, the property known as 1200 Ponca Street, at the northwest corner of Boston and Ponca, is used as a Royal Farms gas station/convenience store, which was approved by the BMZA in Appeal No. 2016-243 prior to Transform Baltimore.

The City Council failed to consider the existing commercial uses on three of the four corners of this intersection when it rezoned this entire area to the I-2 Zoning District under Transform Baltimore. As these commercial uses were of record at the time that Transform Baltimore was enacted, the industrial zoning of the Property was a mistake. Moreover, the Property is too small to be redeveloped for the types of general industrial uses that are permitted in the I-2 District, further demonstrating that it was a mistake to zone this Property I-2. Even if the City Council had wanted to preserve the industrial character of this area, then rezoning this Property and the other properties at this intersection to a transitional zone such as the IMU District would have been more appropriate.

SOURCE OF FINDINGS (Check all that apply):

- [X] Planning Report – Planning Commission, Agency Report, Dated April 23, 2021 which includes the Planning Department, Staff Report, Dated April 22, 2020
- [X] Testimony presented at the Committee hearing

Oral – Witness:

- Matthew DeSantis, Planning Department
- Hilary Ruley, Law Department
- Caroline Hecker, Representative for the Applicant
- Luis Cardona, Baltimore Development Corporation
- Zeke Cohen, Councilmember

Written:

- Planning Commission, Agency Report, Dated April 23, 2021 which includes the Department of Planning, Staff Report – Dated April 22, 2021
- Department of Transportation, Agency Report – Dated June 17, 2021
- Board of Municipal and Zoning Appeals, Agency Report – Dated June 17, 2021
- Law Department, Agency Report – Dated May 3, 2021
- Department of Housing and Community Development, Agency Report – Dated June 16, 2021
- Baltimore Development Corporation, Agency Report – Dated April 26, 2021
- Department of Finance, Agency Report - Dated April 23, 2021
- Caroline Hecker, Memorandum – Dated April 22, 2021

COMMITTEE MEMBERS VOTING IN FAVOR

Sharon Green Middleton, Chair
John Bullock
Mark Conway
Ryan Dorsey
Antonio Glover
Odette Ramos
Robert Stokes