

<b>FROM</b>	NAME & TITLE	CHRIS RYER, DIRECTOR	CITY of BALTIMORE <b>MEMO</b>	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 <sup>TH</sup> FLOOR, 417 EAST FAYETTE STREET		
	SUBJECT	CITY COUNCIL BILL #19-0322 / REZONING – 1818 EAST PRATT STREET		

**TO**

DATE:

March 8, 2019

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

At its regular meeting of March 7, 2019, the Planning Commission considered City Council Bill #19-0322, for the purpose of changing the zoning for the property known as 1818 East Pratt Street from the R-8 Zoning District to the C-1 Zoning District.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report which recommended disapproval of City Council Bill #19-0322, heard additional testimony and adopted the following resolution, eight members being present (six in favor, one opposed, and one abstention):

RESOLVED, That the Planning Commission does not concur with the recommendation of its Departmental staff, and instead finds that there was a mistake in assigning this property R-8 zoning at the time of the Comprehensive Rezoning of the City in 2017, where the Mayor and City Council did not at that time take notice of the existing commercial use of this property, and that this business had been in continuous operation for an extensive period of time. Therefore, the Commission recommends that City Council Bill #19-0322 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.

CR/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. Jeff Amoros, 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  
 Mr. Tyrell Dixon, DCHD  
 Ms. Elena DiPietro, Law Dept.  
 Mr. Francis Burnszynski, PABC  
 Mr. Frank Murphy, DOT  
 Ms. Eboni Wimbush, DOT  
 Ms. Natawna Austin, Council Services  
 Mr. Ervin Bishop, Council Services  
 Mr. Melvin Kodenski, esq., for STT Inc.



Catherine E. Pugh  
Mayor

## PLANNING COMMISSION

Sean D. Davis, Chairman

### STAFF REPORT



Chris Ryer  
Director

March 7, 2019

**REQUEST:** City Council Bill #19-0322/ Rezoning – 1818 East Pratt Street:

For the purpose of changing the zoning for the property known as 1818 East Pratt Street (Block 1745, Lot 026), as outlined in red on the accompanying plat, from the R-8 zoning District to the C-1 Zoning District.

**RECOMMENDATION:** Disapproval

**STAFF:** Martin French

**PETITIONER:** Councilmember Sneed, at the request of STT, Inc.

**OWNER:** Subhi Abu-Khdeir

#### **SITE/GENERAL AREA**

Site Conditions: This property is located at the northwest corner of the intersection with Durham Street, measures approximately 29'4" by 75', and is currently improved with a three-story semi-detached residential mixed-use structure covering approximately 90% of the now-consolidated lot. Consolidation of 1816 and 1818 East Pratt Street occurred in 1998. The property formerly known as 1816 East Pratt Street was used as a multi-family dwelling containing three dwelling units according to the Police Survey of 1931; it was in use as a liquor store in 1942, and received a Certificate of Occupancy for a tavern on February 10, 1958. The original 1818 East Pratt Street was given a Certificate of Occupancy for a tavern and one dwelling unit on September 9, 1960. On September 26, 1995 a new Certificate of Occupancy for a tavern with accessory package goods liquor store was issued due to a change of operator; on April 28, 1998 the Board of Municipal and Zoning Appeals approved appeal no. 133-98X for a carry-out food shop "in conjunction with cut-rate liquor" [store] for the premises just consolidated. This use was renewed on September 8, 2009 for the consolidated property.

General Area: This property is in the Upper Fells Point National Register Historic District, a mid- to late-19<sup>th</sup> Century area in which single-family attached houses, shop-houses on some blocks of major streets, and residential mixed-use structures predominate. There are also scattered institutional and commercial structures.

#### **HISTORY**

There are no previous legislative or Planning Commission actions specifically regarding this site. The Upper Fells Point Historic District was certified to the National Register of Historic Places on December 21, 2007.

## CONFORMITY TO PLANS

The proposed rezoning action does not support the goals, objectives and strategies contained in the Comprehensive Master Plan for the City of Baltimore. One of the objectives expressed in the Master Plan for the new zoning code was consistency of zoning with existing land use, community character, City plans and projects, and City economic development goals (Master Plan, p. 15). In this regard, the structure of which this property is a part is a group of houses, and in a community defined by its attached housing and residents as residential for over 150 years, for which the R-8 zoning is appropriate. Use of the property in part as a liquor store makes it a site of an “alcohol outlet” which in turn means nonconforming status under the new TransForm Baltimore zoning code which continued the zoning of the property as R-8, a zoning in effect since April 1971. One of the goals of the comprehensive rezoning process was reduction of nonconforming alcohol outlets, particularly those in Residential zoning districts. It appears that, in the context of a rezoning which could have the practical effect of extending operation of a liquor store at this location, the proposed action would prevent implementation of the requirement that nonconforming retail goods establishments stop selling liquor (alcoholic beverages) within two years of the June 5, 2017 effective date of the new zoning code. It would thereby also conflict to a certain extent with LIVE Goal 2, Objective 3, Strategy 4: Ensure all residents are within 1.5 miles of quality groceries and neighborhood services, in that possible conversion of this liquor store to a food store or other retail goods establishment with no alcohol sales would not be encouraged.

## ANALYSIS

This property continued to be zoned R-8 effective June 5, 2017, reflecting the residential character of the block of houses to which this property is the east end and of the housing on both sides of the 1800 block (and blocks further east) of Pratt Street. Three blocks west of this property the zoning changes from R-8 to C-1, reflective of the residential mixed-use attached dwellings and commercial structures that predominate along the historic Broadway commercial corridor running from the Fells Point waterfront to Lombard Street. The Planning Commission, in developing the map for the new TransForm Baltimore zoning code, carefully studied the existing conditions of this area and concluded that this combination of R-8 zoning throughout Fells Point and Upper Fells Point’s traditionally residential areas and C-1 zoning to its west, three blocks distant, should remain, with the property lines behind the Broadway properties continuing to define the north-to-south boundary between the Residential District (R-8) and the Commercial (C-1) District. The Mayor and City Council concurred with the Planning Commission’s recommendations in adopting the new Zoning Code and its map which became effective on June 5, 2017.

Below are the approval standards under §5-508(b) of Article 32 – *Zoning* for proposed zoning map amendments:

(b) *Map amendments.*

(1) *Required findings.*

As required by the State Land Use Article, the City Council may approve the legislative authorization based on a finding that there was either:

- (i) a substantial change in the character of the neighborhood where the property is located; or
- (ii) a mistake in the existing zoning classification.

(2) *Required findings of fact.*

In making the determination required by subsection (b)(1) of this section, the City Council must also make findings of fact that address:

- (i) population changes;
- (ii) the availability of public facilities;
- (iii) present and future transportation patterns;
- (iv) compatibility with existing and proposed development for the area;
- (v) the recommendations of the City agencies and officials; and
- (vi) the proposed amendment's consistency with the City's Comprehensive Master Plan.

(3) *Additional standards – General*

Additional standards that must be considered for map amendments are:

- (i) existing uses of property within the general area of the property in question;
- (ii) the zoning classification of other property within the general area of the property in question;
- (iii) the suitability of the property in question for the uses permitted under its existing zoning classification; and
- (iv) the trend of development, if any, in the general area of the property in question, including changes, if any, that have taken place since the property in question was placed in its present zoning classification.

Below is the staff's review of the required considerations of §5-508(3) of Article 32 – *Zoning*, where staff finds that this proposed change is not in the public's interest, in that it would make the corner residential mixed-use structure and its current first floor level liquor store usable in its entirety as a commercial establishment physically attached to a row of dwellings. There would be no public street or alley to separate the non-residential use from its residential neighbor, which is part of a row of attached dwellings.

It has only been twenty months since the property was placed in its present zoning classification. There had been no significant change in this general area since the previous version of the Zoning Code was adopted in 1971, other than standard turn-over in commercial enterprises in the non-residential properties on Broadway. Residential use of this block and nearby residentially-developed blocks has remained firm. The zoning of the subject property (R-8) that continued in effect on June 5, 2017 is reflective of its use as residential property as well as of its physical attachment to a row of dwellings. The property's commercial use became nonconforming in 1971 and has continued to be nonconforming for over 47 years.

All other parts of the block of dwelling structures to which this end-of-row structure is attached are used residentially. Properties both north, south, west, and east of this property are used residentially. Properties three blocks distant (west of this property, on Broadway) are predominantly non-residential in use, which is reflected in their C-1 zoning that became effective June 5, 2017.

The R-8 zoning that was re-affirmed effective June 5, 2017 allows residential use, but does not allow the liquor store because liquor stores are not among the Neighborhood Commercial Establishments allowed as conditional uses under the TransForm Baltimore zoning code. Because the liquor store remained in place after June 5, 2017, it is classified as a nonconforming use by the new Zoning Code. The structure in which it is located is suitable for residential use, like the row of dwellings to which it is attached, and its street level commercial space is suitable for use as a Neighborhood Commercial Establishment such as a restaurant, retail goods establishment, personal services establishment, or offices.

**Maryland Land Use Code – Requirements for Rezoning:**

The Maryland Land Use Code requires the Planning Commission to study the proposed changes in relation to: 1. The plan; 2. The needs of Baltimore City; and 3. The needs of the particular neighborhood in the vicinity of the proposed changes (*cf.* Md. LAND USE Code Ann. 2012, §10-305). In reviewing this request, the staff finds that:

1. **The Plan:** This action does not advance the goals, objectives or strategies contained in the Comprehensive Master Plan also known as LIVE EARN PLAY LEARN.
2. **The needs of Baltimore City:** This action is not needed to serve either a comprehensive redevelopment strategy or a Mayoral initiative.
3. **The needs of the particular neighborhood:** This action does not help to meet the needs of the central and northeastern portions of the larger Fells Point neighborhood.

Similarly, the Land Use article requires the City Council to make findings of fact (*cf.* Md. LAND USE Code Ann. 2012, §10-304). The findings of fact include:

1. **Population changes;** *There is not likely to be a noticeable population change between June 5, 2017 and the effective date of this proposed action.*
2. **The availability of public facilities;** *Public facilities are expected to remain unchanged.*
3. **Present and future transportation patterns;** *These are expected to remain unchanged.*
4. **Compatibility with existing and proposed development for the area;** *The proposed action would be incompatible with existing development in the area, as elaborated upon previously. There are no proposed development plans for the area that would call for this action.*
5. **The recommendations of the Planning Commission and the Board of Municipal and Zoning Appeals (BMZA);** *For the above reasons, the Planning Department will recommend disapproval of the rezoning request to the Planning Commission. The BMZA has not yet commented on this bill.*
6. **The relation of the proposed amendment to the City's plan.** *As continuation of the R-8 zoning that became effective June 5, 2017 is consistent with the City's Comprehensive Master Plan, which the Planning Commission previously determined in recommending the new zoning districts map to the Mayor and City Council, there is no obvious relationship of this proposed amendment to the City's plan.*

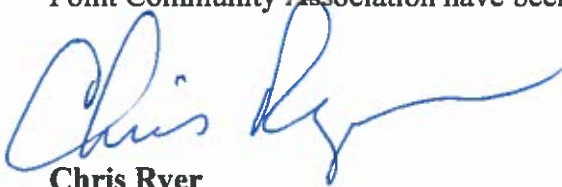
There are additional standards under §5-508(b)(3) that must be considered for map amendments. These include:

- (i) **existing uses of property within the general area of the property in question;** *On both sides of Pratt Street, and on both sides of the north-south cross streets within three blocks of this property, uses are residential or, on main streets like Pratt Street, residential mixed-use reflecting the historic development pattern of the Fells Point area. Institutional uses such as churches or schools have been associated with residential use.*

- (ii) **the zoning classification of other property within the general area of the property in question;** *This property is a part of an extensive residential area extending from behind the commercial uses on Broadway, three blocks west of it, to Highlandtown a mile away on the east, and to the Johns Hopkins Hospital and Medical Institutions urban campus four blocks north of it. This zoning classification is reflective of the historic residential nature of this area.*
- (iii) **the suitability of the property in question for the uses permitted under its existing zoning classification; and** *As described above, this property is suitable for uses permitted under the R-8 zoning classification, including Neighborhood Commercial Establishment uses, in accordance with the terms of the current Zoning Code.*
- (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.** *This property is part of a designated historic district, in which development trends have generally been associated with restoration of existing structures, including adaptive re-use.*

Per §5-508(1) of Article 32 – *Zoning*, and as required by the State Land Use Article, the City Council may approve the legislative authorization based on a finding that there was either: (i) a substantial change in the character of the neighborhood where the property is located; or (ii) a mistake in the existing zoning classification. There is not likely to be substantial change in neighborhood character between June 5, 2017 and the effective date of the proposed amending ordinance. The current zoning classification of R-8 is based upon the physical characteristics of the existing structure (an end-of-row dwelling with a nonconforming commercial use of one level) and of the dwellings to which it is attached, as well as the residential character of the community on both sides of Pratt Street. As such, there was no mistake in classifying the subject property as R-8, even though the change has made continuation of the existing liquor store use on the street level of the premises continue to be nonconforming.

Notification: Fells Point Main Street, Upper Fells Point Improvement Association, Fell’s Point Residents’ Association, Fountain Street Association, Douglass District Association, Fells Point District Association, Washington Hill Community Association, Lamb of Life Baptist Church, Fells Point Task Force, Broadway Area Business Association, Fells Prospect, Inc., and Fells Point Community Association have been notified of this action.



**Chris Ryer**  
**Director**