



**BALTIMORE CITY COUNCIL
COMMITTEE ON ECONOMIC AND COMMUNITY
DEVELOPMENT**

Mission Statement

On behalf of the Citizens of Baltimore City, the Committee on Economic and Community Development (ECD) is responsible for supporting strong thriving communities ECD will review proposed zoning and land use changes, tackle issues related to economic development, oversee housing policy, and promote equitable economic opportunity for all Baltimore residents.

The Honorable Sharon Green Middleton

PUBLIC HEARING

March 2, 2021

2:15 PM

Virtual Webex Meeting

City Council Bill #21-0011

Rezoning - 2426 Pennsylvania Avenue

CITY COUNCIL COMMITTEES

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John Bullock
Mark Conway
Ryan Dorsey
Antonio Glover
Odette Ramos
Robert Stokes
Staff: Jennifer Coates

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Ryan Dorsey
Danielle McCray
Sharon Green Middleton
Isaac "Yitzy" Schleifer
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James Torrence
Staff: Richard Krummerich



BILL SYNOPSIS

Committee: Economic and Community Development

Bill: 21-0011

Rezoning - 2426 Pennsylvania Avenue

Sponsor: Councilmember Torrence

Introduced: January 11, 2021

Purpose:

For the purpose of changing the zoning for the property known as 2426 Pennsylvania Avenue (Block 0294, Lot 014), as outlined in red on the accompanying plat, from the OR-1/R-MU Zoning District to the C-1-E Zoning District.

Effective: The 30th day after the date it is enacted

Agency Reports

Planning Commission	Favorable
Board of Municipal and Zoning Appeals	
Department of Transportation	No Objection
City Solicitor	Favorable/Comments
Department of Housing and Community Development	
Baltimore Development Corporation	

Analysis

Current Law

Article 32 – Zoning, Zoning District Map Sheet 44. Baltimore City Revised Code (Edition 2000).

Under § 5-508(b)(1) of Article 32 – Zoning, and the State Land Use Article, the City Council may approve a rezoning based on a finding that there was either:

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

Background

The bill would change the zoning for the property known as 2426 Pennsylvania Avenue from the OR-1/R-MU Zoning District to the C-1-E Zoning District. 2426 Pennsylvania Avenue is located in the Penn North neighborhood in west Baltimore. It is approximately 4,800 square feet and is near the SW corner of Pennsylvania Avenue and North Avenue adjacent to the Penn North Metro Station. The property is currently improved with a historic theater building, owned and operated by the Arch Social Club. The Arch Social Club is the oldest known continuously operating African American social club in the United States and the oldest predominately African American social club in Baltimore.

The Penn North neighborhood is known for the historic Pennsylvania Avenue commercial corridor, which was a hub for Black entertainment and businesses. The zoning of the area is a combination of OR-1/R-MU, TOD-1, C-1, C-2, R-8 and OS.

The intended purposes for the property's current and proposed zoning districts, as described in Article 32, are below:

Current Zoning District – OR-1/R-MU

Office-Residential Zoning Districts are intended for areas where there is a mix of office and residential uses. The regulations for these Districts are designed to ensure that office uses remain compatible with residential uses, thereby permitting the area to maintain a more residential character.

R-MU Rowhouse Mixed-Use Overlay Zoning Districts are intended to address those areas of rowhouse development where a mixed-use environment is desired, where some rowhouse structures are used for residential uses and others for first-floor commercial uses. These Overlay

Districts are tied directly to the underlying rowhouse district in order to maintain the existing character of the development and the neighborhood. Commercial uses are restricted to only those uses that are compatible with residential uses.

Proposed Zoning District – C-1-E

The C-1-E Neighborhood Business and Entertainment Zoning District is intended for areas of commercial clusters or pedestrian-oriented corridors of commercial uses that serve the immediate neighborhood and allow for clustering of entertainment uses.

Additional Information

Fiscal Note: Not Available

Information Source(s): Reporting Agencies, Statement of Intent, Bill 21-0011.

Analysis by: Jennifer L. Coates

Direct Inquiries to: 410-396-1260

Analysis Date: February 25, 2021

**CITY OF BALTIMORE
COUNCIL BILL 21-0011
(First Reader)**

Introduced by: Councilmember Torrence

At the request of: The Arch Street Social Club, Incorporated

Address: c/o Alfred W. Barry, III, AB Associates, 201 East Baltimore Street, Suite 1150,
Baltimore, Maryland 21202

Telephone: 410-547-6900

Introduced and read first time: January 11, 2021

Assigned to: Economic and Community Development 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

1 AN ORDINANCE concerning

2 **Rezoning – 2426 Pennsylvania Avenue**

3 FOR the purpose of changing the zoning for the property known as 2426 Pennsylvania Avenue
4 (Block 0294, Lot 014), as outlined in red on the accompanying plat, from the OR-1/R-MU
5 Zoning District to the C-1-E Zoning District.

6 BY amending

7 Article 32 - Zoning

8 Zoning District Map

9 Sheet(s) 44

10 Baltimore City Revised Code

11 (Edition 2000)

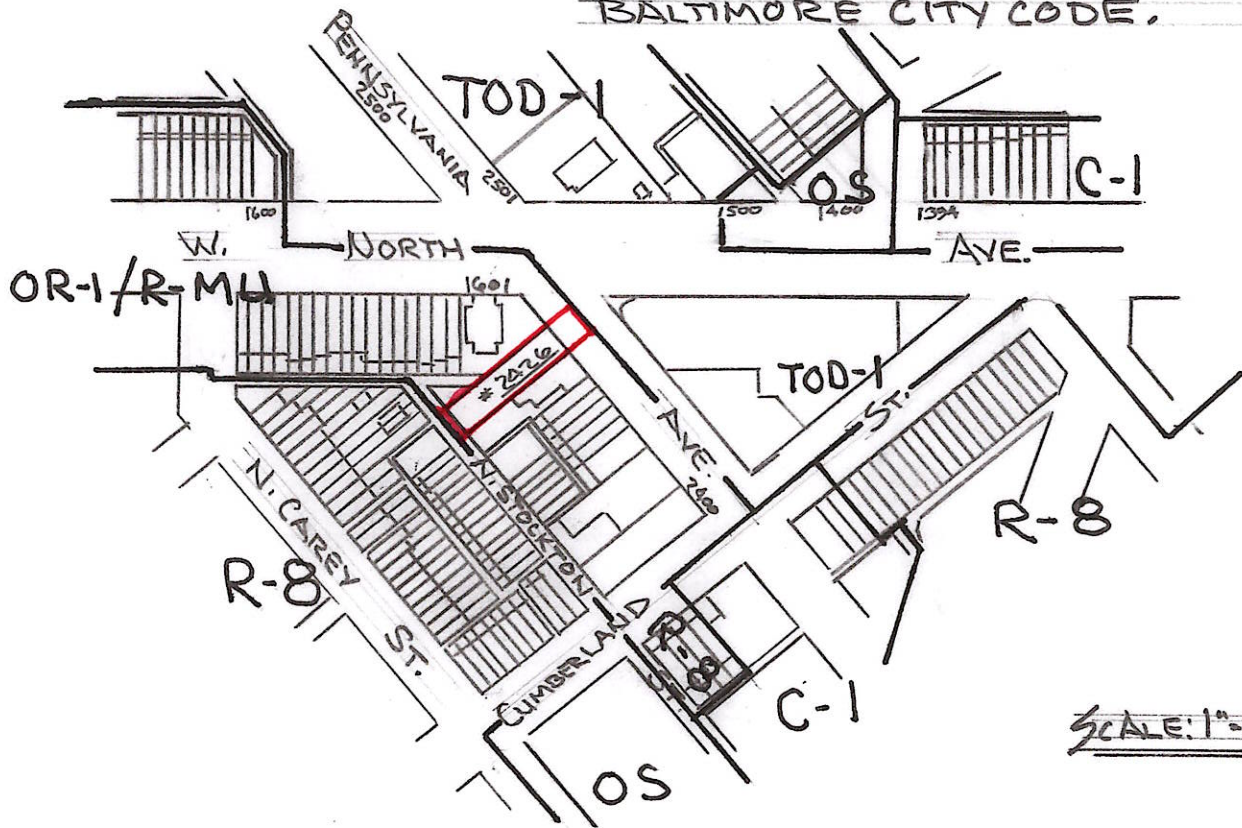
12 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That
13 Sheet 44 of the Zoning District Map is amended by changing from the OR-1/R-MU Zoning
14 District to the C-1-E Zoning District the property known as 2426 Pennsylvania Avenue (Block
15 0294, Lot 014), as outlined in red on the plat accompanying this Ordinance.

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

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

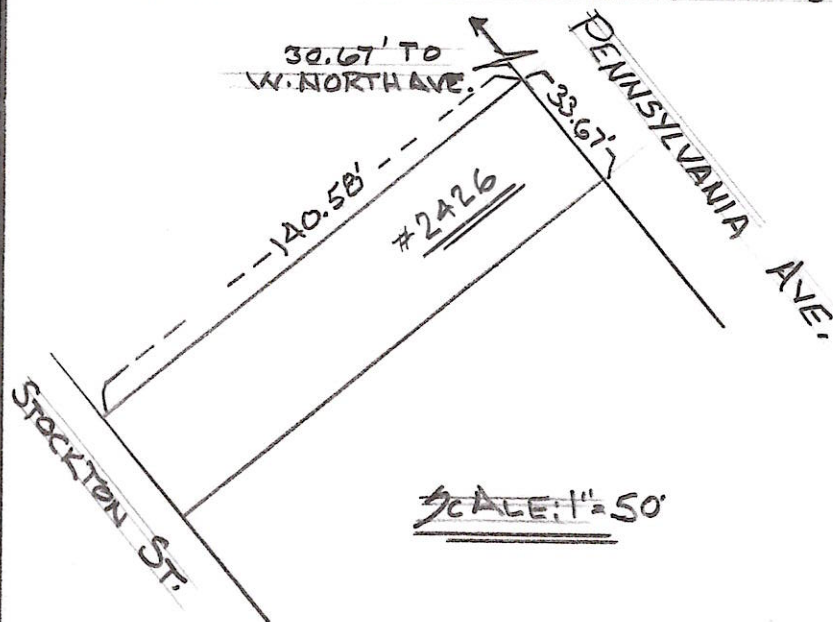
EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

SHEET #44 OF THE ZONING DISTRICT MAPS OF THE
BALTIMORE CITY CODE.



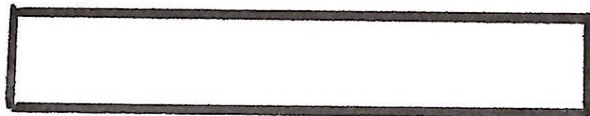
SCALE: 1"=20'

AREA OUTLINED IN RED TO BE CHANGED
FROM: THE OR-1/R-MU ZONING DISTRICT
TO: THE C-1-E ZONING DISTRICT

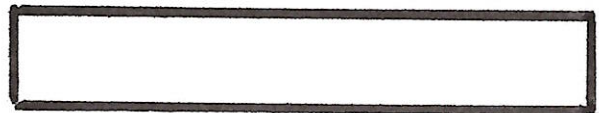


SCALE: 1"=50'

FOR:
THE ARCH SOCIAL CLUB, INC.
% ALFRED W. BARRY, III
AB ASSOCIATES
201 E. BALTIMORE ST. -
SUITE 1150
BALTIMORE, MD. 21202



MAYOR




PRESIDENT CITY COUNCIL

RDS

COMMITTEE ON ECONOMIC AND COMMUNITY DEVELOPMENT

21-0011 AGENCY REPORTS

Planning Commission	Favorable
Board of Municipal and Zoning Appeals	
Department of Transportation	No Objection
City Solicitor	Favorable/Comments
Department of Housing and Community Development	
Baltimore Development Corporation	

F R O M	NAME & TITLE	Steve Sharkey, Director	CITY of BALTIMORE M E M O	
	AGENCY NAME & ADDRESS	Department of Transportation (DOT) 417 E Fayette Street, Room 527		
	SUBJECT	City Council Bill 21-0011		

TO: Mayor Brandon M. Scott
TO: Economic & Community Development Committee
FROM: Department of Transportation
POSITION: **No Objection**
RE: Council Bill – 21-0011

DATE: 2/18/21

INTRODUCTION – Rezoning - 2426 Pennsylvania Avenue

PURPOSE/PLANS – For the purpose of changing the zoning for the property known as 2426 Pennsylvania Avenue (Block 0294, Lot 014), as outlined in red on the accompanying plat, from the OR-1/R-MU Zoning District to the C-1-E Zoning District.

COMMENTS – Council Bill 21-0011 looks to rezone 2426 Pennsylvania Avenue from the OR-1/R-MU Zoning District to the C-1-E Zoning District. Per the City’s Zoning Code, OR-1 Zoning Districts are classified as allowing for office-residential uses, with structure height limits capped at 40 feet. R-MU Zoning Districts are technically rowhouse mixed-use overlay areas, allowing for first-floor commercial uses as permitted by the base Zoning District classification. C-1-E Zoning Districts are classified as pedestrian oriented commercial clusters, with an emphasis on entertainment uses.

AGENCY/DEPARTMENT POSITION – The Department of Transportation foresees no immediate direct fiscal or operational impact resulting from the advancement of Council Bill 21-0011. The Department of Transportation has **no objection** to Council Bill 21-0011.

If you have any questions, please do not hesitate to contact Liam Davis at Liam.Davis@baltimorecity.gov or at 410-545-3207.

Sincerely,

Steve Sharkey
Director

February 18, 2021

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

Re: Mayor and City Council Bill 21-0011 – Rezoning– 2426 Pennsylvania Avenue

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 20-0594 for form and legal sufficiency. The bill would change the zoning for 2426 Pennsylvania Avenue from the OR-1/R-MU Zoning District to the C-1-E Zoning District. It is the same as City Council Bill 20-0594 from last term.

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 is likely little basis to believe that the neighborhood has substantially changed between the comprehensive rezoning of the property on June 5, 2017 and today's date. Although the Planning Department Report ("Report") asserts that there has been substantial change to the neighborhood, it is unclear if that referenced change has taken place since 2017. In fact, the Report indicates that the population of the area has not changed since that time and the historic, commercial and entertainment uses of the area remain the same. For these reasons, the Planning Department believes the selection of OR-1/R-MU was a mistake. Thus, to legally rezone the property the City Council must identify a "mistake" that lead to the inappropriate zoning of the property as OR-1/R-MU.

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

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

Md. Land Use Code Ann., § 10-304(b)(1); Baltimore City Code, Art. 32, § 5-508(b)(2) (citing same factors with (v) being "the recommendations of the City agencies and officials," and (iv) 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." *City 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.").

Regarding rezoning for 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 City Council 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 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 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; 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 Report asserts facts that this property “should have retained commercial zoning and not followed suit of the OR-1/R-MU zoning of this portion of North Avenue” during the last comprehensive rezoning. The Report states that because the prior zoning was B-2-3 and the intent was always on commercial and entertainment venues, it was a mistake to have comprehensively zoned this property OR-1/R-MU because it did not adequately support the 2006 area master plan.

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 or description 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 near the sidewalk or right-of-way for pedestrians to view, 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,

A handwritten signature in blue ink, appearing to read "Hilary Ruley". The signature is fluid and cursive, with the first name "Hilary" being more prominent than the last name "Ruley".

Hilary Ruley
Chief Solicitor

cc: Matthew Stegman
Nina Themelis
Elena DiPietro
Victor Tervalo
Ashlea Brown

FROM	NAME & TITLE	CHRIS RYER, DIRECTOR 	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 TH FLOOR, 417 EAST FAYETTE STREET		
	SUBJECT	CITY COUNCIL BILL #21-0011 / REZONING – 2426 PENNSYLVANIA AVENUE		

TO

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

DATE: January 14, 2021

At its regular meeting of January 15, 2021, the Planning Commission considered City Council Bill #21-0011, for the purpose of changing the zoning for the property known as 2426 Pennsylvania Avenue (Block 0294, Lot 014), as outlined in red on the accompanying plat, from the OR-1/R-MU Zoning District to the C-1-E Zoning District.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report, which recommended approval of City Council Bill #21-0011 and adopted the following resolutions; seven members being present (seven in favor):

RESOLVED, That the Planning Commission concurs with the recommendation of its departmental staff, adopts the findings outlined in the previous staff report, with consideration for testimony and facts presented in that meeting, and recommends that City Council Bill #21-0011 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: Ms. Natasha Mehu, Mayor's Office
 Ms. Nina Themelis, Mayor's Office
 The Honorable Eric Costello, Council Rep. to Planning Commission
 Mr. Colin Tarbert, BDC
 Ms. Livhu Ndou, BMZA
 Mr. Geoffrey Veale, Zoning Administration
 Ms. Stephanie Murdock, DHCD
 Ms. Elena DiPietro, Law Dept.
 Mr. Francis Burnszynski, PABC
 Mr. Liam Davis, DOT
 Ms. Natawna Austin, Council Services
 Mr. Dominic McAlily, Council Services

FROM	NAME & TITLE	CHRIS RYER, DIRECTOR	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 TH FLOOR, 417 EAST FAYETTE STREET		
	SUBJECT	CITY COUNCIL BILL #20-0594 / REZONING – 2426 PENNSYLVANIA AVENUE		

DATE: September 11, 2020

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

At its regular meeting of September 11, 2020, the Planning Commission considered City Council Bill #20-0594, for the purpose of changing the zoning for the property known as 2426 Pennsylvania Avenue (Block 0294, Lot 014), as outlined in red on the accompanying plat, from the OR-1/R-MU Zoning District to the C-1-E Zoning District.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report, which recommended approval of City Council Bill #20-0594 and adopted the following resolution; nine members being present (nine in favor):

RESOLVED, That the Planning Commission concurs with the recommendation of its departmental staff, and recommends that City Council Bill #20-0594 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. Nicholas Blendy, Mayor's Office
 Mr. Matthew Stegman, Mayor's Office
 Ms. Nina Themelis, Mayor's Office
 The Honorable Edward Reisinger, Council Rep. to Planning Commission
 Mr. Colin Tarbert, BDC
 Ms. Livhu Ndou, BMZA
 Mr. Geoffrey Veale, Zoning Administration
 Ms. Stephanie Murdock, DHCD
 Ms. Elena DiPietro, Law Dept.
 Mr. Francis Burnszynski, PABC
 Mr. Liam Davis, DOT
 Ms. Natawna Austin, Council Services
 Mr. Dominic McAlily, Council Services



Bernard C. "Jack" Young
Mayor

PLANNING COMMISSION

Sean D. Davis, Chairman

STAFF REPORT



*Chris Ryer
Director*

September 10, 2020

REQUEST: City Council Bill #20-0594/ Rezoning – 2426 Pennsylvania Avenue

For the purpose of changing the zoning for the property known as 2426 Pennsylvania Avenue (Block 0294, Lot 014), as outlined in red on the accompanying plat, from the OR-1/R-MU Zoning District to the C-1-E Zoning District.

RECOMMENDATION: Approve

STAFF: Tamara Woods

PETITIONERS: Mr. Alfred Barry on behalf of The Arch Social Club, Inc.

OWNER: The Arch Social Club, Inc.

SITE/GENERAL AREA

Site Conditions: 2426 Pennsylvania Avenue is located in the Penn North neighborhood in west Baltimore. It is approximately 4,800 square feet and is found near the SW corner of Pennsylvania Avenue and North Avenue adjacent to the Penn North Metro Station. It is currently improved with a historic theater building, which is currently owned and operated by the Arch Social Club. It is local landmark designation.

General Area: The subject property is located within the Penn North neighborhood in west Baltimore. This neighborhood is known for the historic Pennsylvania Avenue commercial corridor, which was a hub for Black entertainment and businesses, in its heyday. Today it is still a thriving commercial hub, along with North Avenue, for the neighborhood. The zoning of the area is a combination of OR-1/R-MU, TOD-1, C-1, C-2, R-8 and OS.

HISTORY

This property is located on the west side of the 2400 block of Pennsylvania Avenue, just south of North Avenue. For a significant portion of the 20th century, due to racially restrictive housing and property laws and Jim Crow segregation, Pennsylvania Avenue was the African American business district in Baltimore. It thrived with theaters, businesses, social institutions, and houses of worship, and was also a hub of civil rights activism. This activism included the "Buy Where You Can Work" campaign in 1933-1934, which was a boycott against white-owned businesses that did not hire Black people. Following a decline in the later 20th century, Pennsylvania Avenue today has a designated Main Street program, and as of 2019, is the first designated Black Arts and Entertainment District in the country.

The Arch Social Club is housed in the former Schantze's Theatre, designed by Baltimore architect Paul Emmart and built in 1912 as a vaudeville and silent film theatre. In 1938, the property was sold to a new owner, and marked the start of approximately a decade of rapid change. Over the span of eleven years, the property cycled through several different owners, who ran theatres with different concepts, clientele, and names. During this short period of time, the theatre was called the Morgan, Uptown, and Cinema, had two stints as a theatre for African Americans, and at one point served as a theatre for Jewish immigrants, showing Yiddish films and hosting live entertainment. A fire in 1949 ended its use as a theatre. For over two decades, the building then served as an extension of the adjacent seafood restaurant, Wilson's, until it was purchased by the Arch Social Club in 1972. It has served the Arch Social Club as a social hall and entertainment venue for almost fifty years.

The Arch Social Club is the oldest known continuously operating African American social club in the United States and the oldest predominately African American social club in Baltimore. Incorporated in 1912 by Raymond Coates, Jeremiah Hill and Samuel Barney, the club's constitution stated that the purpose of the club was "for social, moral and intellectual uplift of its members and in order that charity may be practiced in a Christian-like spirit and true friendship and brotherly love promoted and maintained." The Arch Social Club was created as an organization that could lend respite and recreation to the African American community with no regard to class distinction and a space for the economic, social and cultural networks to come together.

CONFORMITY TO PLANS

The proposed action would not be inconsistent with any Goal or Objectives of LIVE EARN PLAY LEARN, the Comprehensive Master Plan for Baltimore City.

In 2006, the Planning Commission adopted the Penn North Area Master Plan, of which this subject property is within the bounds. The plan expressly says that "the neighborhood should capitalize on the proximity to the Metro station, presence of undeveloped land, and vacant and blighted housing to build a thriving, mixed-use, mixed-income neighborhood. A zoning study should be conducted to determine the best zoning options for Penn North to: ...

- Encourage a mix of uses that serve the community with retail, entertainment, and employment on Pennsylvania Avenue and North Avenue".

In addition, the Penn North neighborhood is currently a designated Impact Investment Area for the City. The neighborhood is currently working with the Mayor's Sub-Cabinet led by the Department of Housing and Community Development (DHCD) and the Department of Planning on a visioning plan that includes updating and continuing the work of the previously adopted master plan by reimagining key sites, the commercial corridors with the inclusion of the Black Arts and Entertainment lens.

ANALYSIS

The applicant is seeking to rehab the current building, keeping the existing uses, only growing their current programs and entertainment options as were historically and legally allowed in the previous zoning code.

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

(b) *Map amendments.*

(1) *Required findings.*

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

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

(2) *Required findings of fact.*

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

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

(3) *Additional standards – General*

Additional standards that must be considered for map amendments are:

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

Below is the staff's review of the required considerations of §5-508(b)(3) of Article 32 – *Zoning*, where staff finds that this change is in the public's interest.

Maryland Land Use Code – Requirements for Rezoning:

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

- 1. The Plan:** The proposed action would not be in conflict with any of the goals contained in the Comprehensive Master Plan for Baltimore City. Additionally, it would support several identified goals and objectives in the Penn North Area Master Plan as described above.
- 2. The needs of Baltimore City:** A rezoning of this property would better correspond to the City goals of having more opportunities for residents to live, shop and play in the same neighborhood, as well as help rejuvenate the City's commercial corridors.
- 3. The needs of the particular neighborhood:** A rezoning to the C-1-E district would better correspond to the historic and current use of the property and be in line with the goals of the neighborhood and the Black Arts and Entertainment District goals.

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 have not been significant population changes in immediate vicinity of the Penn North neighborhood in the interval between the enactment of the last comprehensive rezoning (2017) and the present time.
- 2. The availability of public facilities;** This site is well-served by public services and utilities, which can also support redevelopment or reuse of this site.
- 3. Present and future transportation patterns;** There would be no negative effect upon present or future transportation patterns in the area as a result of adoption of this bill. A commercial zoning designation that allows live entertainment would support eventual redevelopment of the subject parcel and the Pennsylvania Avenue corridor. In addition, it is adjacent to the Penn Station Metro station, making it ideal for those wishing to use mass transit to come to the site.
- 4. Compatibility with existing and proposed development for the area;** The proposed zoning district is compatible with the existing and proposed development for the area. The site is surrounded by nearby commercial zoning and land uses, transit-oriented development zoning, as well as the current zoning. This change would be compatible with the conditions of the area and other parts of Pennsylvania Avenue that are zoned commercial. The 2400 block of Pennsylvania Avenue is at the intersection of North Avenue where the metro station is located. From a zoning perspective, it had always been zoned as part of North Avenue, which had been zoned B-2-3. The adjacent parts of Pennsylvania Avenue were zoned a combination of B-2-2 and B-3-2.

The block where this property is located is in between the metro station and a C-1 node of Pennsylvania Avenue. While arguably portions of North Avenue were possibly over zoned given the building typologies and the OR-1/R-MU combination makes sense, historically this block and specifically this property were included in the notable portions of the Pennsylvania Avenue commercial corridor and should have retained commercial zoning and not followed suit of the OR-1/R-MU zoning of this portion of North Avenue and even more so given its adjacency to the metro station.

- 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 approval of the rezoning request to the Planning Commission. The BMZA will comment separately on this bill.
- 6. The relation of the proposed amendment to the City's plan.** As noted previously, rezoning of this property to the C-1-E zoning district as recommended by staff would be consistent with the City's plan. In addition, the City has been quite supportive and an advocate for the creation of arts and entertainment districts along our commercial

corridors. This is one of several. Also, as previously mentioned, there is an existing adopted plan from 2006 that recommended a land use plan and rezoning study that focused on a thriving commercial area with entertainment. In addition, as mentioned, planning effort underway that is studying and preparing recommendations to focus on the revitalization of this area and integrating the goals of growing Pennsylvania Avenue as a arts and entertainment area, that it has traditionally been many years ago.

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;**
Existing uses of property within the general area of this site are a mix of residential, light industrial, open space and commercial.
- (ii) the zoning classification of other property within the general area of the property in question;** C-1-E zoning as proposed is not currently found in the area, but nearby there are zones on C-1 further south on Pennsylvania Avenue and along North Avenue. In addition, this parcel is directly across the street from a TOD-1 zoned area. There will be broader discussions through continued master planning discussions about rezoning a portion of the Pennsylvania Avenue corridor to C-1-E.
- (iii) the suitability of the property in question for the uses permitted under its existing zoning classification; and,** The OR-1/ R-MU zoning designation limits the property to be used for its historical and current uses. The property was originally built as a working theater and later became a restaurant. Currently it is a social club and has live entertainment uses. In addition, the property was designated a local landmark based on its history and the building typology as an entertainment venue and the importance of the social history of Pennsylvania Avenue.
- (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.** In 2019, a portion of the Pennsylvania Avenue commercial corridor was designated by the State of Maryland as a Black Arts and Entertainment District. The effort for the designation was a grassroots effort from the neighborhood. In addition, the community has been engaged with the City of Baltimore (various Agencies) in a robust planning effort to not only develop a cohesive revitalization plan that incorporates the goals of the newly designated Arts & Entertainment District, but also, identify specific projects for implementation and opportunities to move forward. Through a current opportunity to restore the building it was found that the current zoning of OR-1/ R-MU for this property.

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. As shown above, the subject site has had a documented entertainment and commercial history dating back to 1912 on one of the most iconic commercial corridors in the City. This combined with the 2006 area master plan that clearly states there should be a land use and zoning study with a focus on commercial and entertainment

for the corridors and that it had a commercial B-2-3 zoning designation, suggest that the current zoning district was selected in error for this property and possibly the entire block.

For the reasons described above, Planning staff considers that there was a mistake in selecting the current OR-1/R-MU zoning classification for the subject property. In addition, there has been substantial change.

Recommendation

Staff recommends that 2426 Pennsylvania Avenue be rezoned to C-1-E and the bill be approved by the Planning Commission to the City Commission.

Notification: The Penn North Community Association, Pennsylvania Avenue Main Street, Black Arts District and City Councilman Leon Pinkett, III have been notified of this action. Additionally, the site has been posted in compliance with Planning Commission guidelines.



Chris Ryer
Director