


<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 #20-0621 / REZONING REZONING – 2 EAST WELLS STREET		

**TO**

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

DATE: October 9, 2020

At its regular meeting of October 8, 2020, the Planning Commission considered City Council Bill #20-0621, for the purpose of changing the zoning for the property known as 2 East Wells Street (Block 1030, Lot 082), as outlined in red on the accompanying plat, from the R-8 Zoning District to the C-2 Zoning District.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report which recommended amendment and approval of City Council Bill #20-0621 and adopted the following resolution nine members being present (nine in favor):

RESOLVED, That the Planning Commission concurs only in part with the recommendation of its departmental staff, adopts many of the findings outlined in the staff report, with consideration for testimony and facts presented in the meeting, including a presentation of facts by the applicant's counsel, and recommends that City Council Bill #20-0621 be passed by the City Council rezoning the subject property to the C-2 district.

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  
Mr. Joe Woolman, Esq.



Bernard C. "Jack" Young  
Mayor

## PLANNING COMMISSION

Sean D. Davis, Chairman

### STAFF REPORT



Chris Ryer  
Director

October 8, 2020

**REQUEST:** City Council Bill #20-0621/ Rezoning – 2 East Wells Street:

For the purpose of changing the zoning for the property known as 2 East Wells Street (Block 1030, Lot 082), as outlined in red on the accompanying plat, from the R-8 Zoning District to the C-2 Zoning District.

**RECOMMENDATION:** Amendment and Approval, with the following amendment:

- That the property is instead rezoned to the OR-2 District.

**STAFF:** Eric Tiso

**PETITIONER:** Wells CRP Building, LLC, c/o Joseph R. Woolman III, Esq.

**OWNER:** Wells CRP Building, LLC

### **SITE/GENERAL AREA**

Site Conditions: 2 East Wells Street is located on the northwest corner of the intersection with Marshall Street, just west of the intersection with South Charles Street. This site contains approximately 71,000 sqft, and is improved with a four- and five-story mixed-used development that includes 154 dwelling units, an internal parking garage, and some small retail space on the Wells Street frontage. Riverside Park is two blocks to the east.

General Area: This property is located on the southern edge of the South Baltimore neighborhood, which is bordered on the south by East Wells Street and I-95, on the east by Light Street, on the north by East Ostend Street, and on the west by Race Street. This neighborhood is largely residential in nature, with smaller corner commercial uses scattered throughout the area. A few larger commercial uses are found on the edges, along major streets.

### **HISTORY**

- Ord. #13-121, dated April 25, 2013, rezoned this property from the M-2-2 industrial district to R-8 residential district, under the previous zoning code that was comprehensively rewritten in 2017.

### **ANALYSIS**

Background: This building was approved in 2013, and involved a rezoning of the property from the former M-2-2 industrial zone to the R-8 residential zone. At the time, the zoning code allowed multi-family buildings with more than 50 units to have accessory shops, so long as it did not exceed 5% of the gross floor area of the building, and they were accessed from within the building (*i.e.* not from an external entry). Uses were limited to the following: "... dining room,

cocktail lounge, drug store or pharmacy, newsstand, retail food shops, beauty shops, barber shops, and similar personal service shops primarily for the occupants of the building;”

The building management are in search of potential new tenants, and would like to expand the potential range of commercial uses within the building.

Comparison of Districts:

As part of the evaluation of this proposal, staff considered the existing zoning for this property, and what it provides, as compared to the request zone, and finally as compared to an alternate option. When discussing how various uses are approved, the entries from the use tables at the back of the code are shorter, where (P) indicates permitted by right, (CB) indicates conditional use with approval by the Board of Municipal and Zoning Appeals (BMZA), and (CO) indicates conditional use with approval by Ordinance from the Mayor and City Council. They’ll be used below for brevity.

*Present Zone (R-8):* As it stands now, the R-8 district provides accessory non-residential uses as was available under the prior zoning code, when this building was built. We note that a rezoning was required at that time, and those are the conditions that the applicants asked for (as opposed to a commercial district). Looking at *Zoning §14-327*, we find it similar to the prior code:

*§14-327 Multi-family dwellings – Accessory non-residential uses.*

A multi-family dwelling containing 50 or more dwelling units in the R-8, R-9, R-10, and OR-2 Districts may contain the following non-residential uses: (1) Offices. (2) Personal service establishments. (3) Retail goods establishments – no alcoholic beverage sales. (4) Restaurants.

*Proposed Zone (C-2) and Alternate Option (C-1):* Since this proposed rezoning comes in parallel with a proposal for C-1 across the intersection, it would be useful to compare the two. There are some land uses that either become available in C-2 that aren’t available in C-1, or that become easier to get (permitted vs. conditional). What makes this case somewhat odd, is that we’re not considering a wider area for rezoning, or something prospective. Instead, this is a rezoning for a single property that is designed to get a more advantageous use mix. We note that as a practical matter, this is an existing building that is relatively new (built in 2013), so it’s unlikely that some of the additional uses enabled by the change in zoning will locate here (such as motor vehicle dealerships). There are a few differences that would be plausible for this building, and those uses can be controversial in some neighborhoods. Among them are:

Use	C-1	C-2
Carry-out food shops	CB	P
Health Care Clinics	CB	P
Taverns	CB	P
Live Entertainment (accessory to a restaurant, tavern, art studio, or art gallery)	CB	CB

Either the C-1 or C-2 district would be satisfactory by bulk standards, with perhaps only minor nonconformities around some yard setbacks, but this is an existing building that’s unlikely to be expanded or modified in a significant way, so those nonconformities aren’t significant.

*Alternation Option (OR-2):* OR zones are similar in the use mix for larger multi-family buildings, but they also permit neighborhood commercial establishments (NCE). They include the following uses: (1) Art galleries – no live entertainment or dancing. (2) Arts studios. (3) Day care centers: adult or child. (4) Offices. (5) Personal services establishments. (6) Restaurants – no live entertainment or dancing. (7) Retail goods establishments – no alcoholic beverage sales. Items 4-7 on that list overlap with the non-residential uses allowed in R-8. OR zones also allow Health Care Clinics as (P) similar to the C-1 or C-2 above. Most of the other uses allowed are not likely for this existing building.

Bulk requirements in OR districts have lot area requirements of 550 sqft of lot area per dwelling unit in OR-1, as compared to 200 sqft per unit in OR-2. The density of OR-2 would be a better fit here, since the building has 154 dwelling units on about 71,000 sqft pf land (461± sqft per dwelling). Height should not be a problem for either option, and in either case, minor setback variances may create some minor nonconformities, but this isn't significant for an existing building, as in C-1 or C-2 above.

*Recommended Option:* Staff recommends an alternate designation of OR-2.

The primary difference in the options above appears to distill to whether or not the goal of this rezoning is to allow for taverns and/or live entertainment uses. If that's the goal, then either a C-1 or C-2 option would be necessary, with preference to C-1, since it would at least provide for a conditional use process where the BMZA could apply specific limits as needed. On the other hand, staff points out that we normally don't select zoning districts for specific uses.

The OR-2 option is a reasonable fit for this building since OR 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." (*Zoning* §12-201). Compared to the existing R-8 district, which is "... intended to accommodate and maintain the traditional form of urban rowhouse development typical of may of the City's inner neighborhoods, which contain continuous, block-long rowhouse development built to or only modestly set back from the street." (*Zoning* §9-204).

#### Required Findings:

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 the change as proposed is not in the public's interest, but that an alternate designation of OR-2 would be more appropriate.

**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:** There is no clear mandate for the proposed zoning. There is a presumption that the comprehensive rezoning of the City adequately took into consideration the broad patterns of development here and elsewhere. It appears that the purpose for the rezoning is motivated solely by a desire for additional land use options.
- 2. The needs of Baltimore City:** It is common for multi-family buildings of this scale to have active first-floor uses, which is supported by the existing zoning. There is not a clear demand for additional commercial uses, and certainly not one that is of City-wide importance.
- 3. The needs of the particular neighborhood:** Again, ground-floor commercial uses active street-fronts, which is important in this neighborhood's context. The existing zoning, and even the alternate option of OR-2 provide for that activation with a range of uses that would support walkable commercial tenants that would be attractive to the community in the area. The potential impacts of heavier commercial uses, mostly that of a tavern and/or live entertainment uses, would be more appropriate on a commercial street, not in a stand-alone commercial parcel.

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 been several new multi-family developments (either new construction or renovations) in the past decade or so in this area, which displaced prior industrial uses. This particular building alone brought an additional 154 units to the neighborhood.
2. **The availability of public facilities;** This area is served by City utilities that are adequate for a wide range of uses and density. Neither this request, nor our alternate option will be negatively impacted.
3. **Present and future transportation patterns;** This area is a part of the City's street grid, and neither rezoning option will negatively impact transportation or traffic patterns.
4. **Compatibility with existing and proposed development for the area;** As discussed in the range of zoning options above, either C-1 or the request C-2 commercial zones bring a slightly higher potential for negative impacts to the surrounding residential area. The existing R-8 zoning, or the OR-2 alternate option will support the existing use mix allowed in this building today.
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 that the Planning Commission adopt the findings proposed above and that a recommendation for OR-2 be sent to the City Council. The BMZA has not yet commented on this bill, but will do so separately.
6. **The relation of the proposed amendment to the City's plan.** There does not appear to be a significant reason to support rezoning of this building, beyond enabling a wider use mix for this individual building.

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;** The subject property is already built and has 154 dwelling units and ground-floor commercial. There are several other multi-family buildings in the immediate area along Wells Street. The longer-standing residential neighborhood is composed of rowhomes between these larger buildings, stretching to the north.
- (ii) **the zoning classification of other property within the general area of the property in question;** Staff notes that CCB #20-0619, also on the Planning Commission's agenda at this same hearing proposes rezoning of 1900, 1904, 1910, and 1916 Light Street from the R-8 district to the C-1 district. Those lots are diagonally across the intersection to the southeast of 2 East Wells Street. Many of the blocks surrounding this site are also zoned R-8, with limited exceptions. An existing auto repair business at 1830 South Charles Street one block to the west is zoned IMU-1. Across the street from that shop at 1900 South Charles is an I-1 parcel that has been proposed for redevelopment as self-storage.

Two blocks to the east, the National Federation for the Blind headquarters is zoned OR-2. The railway and the I-95 corridor are zoned I-2.

**(iii)the suitability of the property in question for the uses permitted under its existing zoning classification; and** This building was rezoned under the old zoning code in 2013, which admittedly was in the early phases of the comprehensive rezoning of the City after the initial maps were created, but the proposed zoning map and future zoning district details were also available. This property was developed following a rezoning to R-8 from the prior M-2-2. The present zoning designation is appropriate, though it could be reasonable to suggest that the building might have been a better fit under OR-2.

**(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.** The recent trend in the area has been for additional residential development, either as new construction, or through rehabilitation and renovation of existing buildings.

Per §5-508(b)(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. Staff concedes it may have been a mistake to not zone this building as OR-2 during the comprehensive rezoning of the City, but we do not think it appropriate for the proposed C-2.

Notification: The South Baltimore Neighborhood Association and Councilman Costello have been notified of this action.



**Chris Ryer**  
**Director**