

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 #19-0372 / ZONING – FELLS POINT HEIGHT OVERLAY DISTRICT		

DATE:

TO

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

August 2, 2019

At its regular meeting of August 1, 2019, the Planning Commission considered City Council Bill #19-0372, for the purpose of establishing a new Fells Point Height Overlay District; specifying height limits allowed in certain areas of the district; providing that the regulations of the underlying zoning districts apply; and generally specifying the regulation of properties within the Overlay District.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report, which recommended disapproval of City Council Bill #19-0372 and adopted the following resolution; eight members being present (seven in favor, with one abstention):

RESOLVED, That the Planning Commission concurs with the recommendation of its departmental staff;

The Planning Department recommends against City Council Bill #19-0372. We are impressed, however by the dedication of the residents to their community and recommend that the CHAP Commission have a work session with community leaders to further understand their concerns. This would be ideal to have outside of their review of a specific project. The Council may want to consider holding CCB #19-0372 for that review.

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. Jeff Amoros, Mayor's Office
 The Honorable Edward Reisinger, Council Rep. to Planning Commission
 The Honorable Zeke Cohen, 1st District
 Mr. Colin Tarbert, BDC
 Mr. Derek Baumgardner, BMZA
 Mr. Geoffrey Veale, Zoning Administration
 Mr. Bob Pipik, 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

August 1, 2019

REQUEST: City Council Bill #19-0372/ Zoning-Fells Point Height Overlay District:
For the purpose of establishing a new Fells Point Height Overlay District; specifying height limits allowed in certain areas of the district; providing that the regulations of the underlying zoning districts apply; and generally specifying the regulation of properties within the overlay district.

RECOMMENDATION: Disapproval

STAFF: Laurie Feinberg

PETITIONER: Councilman Cohen

OWNER: Multiple

SITE/GENERAL AREA

General Area: The overlay covers most of the Fells Point and upper Fells Point communities. It is centered on Broadway, which is the primary north-south commercial corridor and includes an area east to Patterson Park. Much of the area is in the Fells Point Local Historic district. The buildings vary from small two story residential to larger 3-5 story mixed use buildings. For the most part they are red brick attached structures.

HISTORY

In 2007 there was a comprehensive rezoning of this area along with removal of most of the former Urban Renewal Plan and designation as Local Historic District.

CONFORMITY TO PLANS

The proposed zoning overlay is mixed in whether it supports goals, objectives and strategies contained in the Comprehensive Master Plan for the City of Baltimore. For example, Live Goal 1, Objective 1 & 2 may be limited by this bill as would Goal 2, Objective 2 and 3. Goal 2 objectives 1 and 4 may be enhanced.

Goal 1: Build Human and Social Capital by Strengthening Neighborhoods

Objective 1: Expand Housing Choices for all Residents

Objective 2: Strategically Redevelop Vacant Properties Throughout the City

Goal 2: Elevate the Design and Quality of the City's Built Environment.

Objective 1: Improve Design Quality of Baltimore's Built Environment

Objective 2: Streamline and Strengthen the Development Process

Objective 3: Promote Transit Oriented Development (TOD) and Mixed-use Development to Reinforce Neighborhood Centers and Main Streets

Objective 4: Protect and Enhance the Preservation of Baltimore's Historic Buildings and Neighborhoods.

ANALYSIS

The Zoning Code provides for the ability to have overlays that can modify bulk and yard requirements or uses while generally maintaining the characteristics of the underlying district. Existing examples include the Waterfront Overlay District, which has special height and setback requirements for properties along the waterfront while retaining the uses of the underlying zoning district. Another example is the Rowhouse-Mixed-use District, which is intended to maintain the bulk and yard requirements of the underlying residential district but be slightly more permissive with commercial uses.

City Council Bill #19-0372, Fells Point Height Overlay District is to limit height in the District. The overlay proposes two height districts in Fells Point. The Broadway corridor, defined as buildings facing on to Broadway, is proposed for a 50-foot height limit. Under the current C-1 zoning for that corridor, the height limit is 40 feet and up to 60 feet if upper levels are residential.

The remaining overlay area will have a height limit of 40 feet. This area is primarily zoned R-8 with some C-1 zoned properties. The C-1 properties, as on Broadway, have a 60-foot height limit for multi-family. In R-8 the height limit for single-family dwellings is 35 feet and 45 feet for multi-family and 60 feet for multi-family on corner properties.

There is text in this proposal that, if there is a conflict between the overlay and underlying zoning, the lower governs.

For other bulk and yard requirements such as lot area or yard requirements and for uses, the underlying zoning applies. Also, all other provisions of the code remain unchanged, including variance provisions and non-conformities.

This proposal was developed by a group of community leaders and discussed during the final months of the rezoning process. It was not included in the new code when passed in December 2016. Since that time a work group of community members have been refining and revising their proposal, and it was introduced this Spring. The work group met with all nine of the various individual community associations at each of their meetings and received their support.

In addition, as part of the bill process there was an open meeting invitation sent to all property owners to discuss the bill. It was held July 15, 2019 and attended by planning staff.

Neighborhoods such as Fells Point are somewhat unusual and require extra attention in the rezoning process. It has traditional commercial areas that exist directly adjacent to residential often without even alley separation. It is one of the oldest areas of the City with mostly historic buildings and is mixed in architecture and building types and land uses. For these reasons it was challenging to address during the Comprehensive Rezoning process.

As a result of detailed study, work and discussion, we ended up with four major zoning categories used in this area.

- R-8 -High density residential primarily rowhouse
- C-1 - Neighborhood Business District – intended for commercial clusters or pedestrian oriented corridors of commercial uses that serve the immediate neighborhood.
- C-1-E – Neighborhood Business and Entertainment District- This category was formulated with the lower part of Fells Point in mind. It is C-1 in size and general character but permits entertainment as was permitted in Fells Point for many years under prior code.
- C-2- Waterfront Overlay – This is small to medium scale community commercial with waterfront overlay standards and this was only for the waterfront properties. It also reflects the existing Fells Point Waterfront Urban Renewal Plan which was also incorporated into this code.

Given the study that went into the comprehensive rezoning of Fells Point in 2016 staff believe the height, bulk and density requirements for this area are well reasoned and do not need to be changed.

Another consideration includes the impact of density reduction on the commercial areas. Fells Point has seen an increase in commercial vacancies in recent years. This is likely due to a number of factors, including recent construction in Broadway and larger changes in retailing. Since this is a historic district, most of the commercial corridors have historic storefronts and the ground floors of most buildings lend themselves to primarily commercial use, supported by residential upstairs and in surrounding blocks.

Flood Plain regulations may be a consideration as the lower levels of buildings in Fells Point are increasingly not usable.

RECOMMENDATIONS

Members of the greater Fells Point communities have expressed concerns about the character of new or infill projects not fitting into their neighborhood. We heard some residents assert that the Zoning Code permits radically out-of-scale development and adds more cars and congestion. The President of the Fells Prospect Community Association, which supports the bill was quoted in the Baltimore Sun saying the bill will ensure that all new development in the area remains ‘thoughtful’ and retains existing character.

After careful review and consideration, we are not convinced this height overlay is the right tool for the job. The difference between the height permitted by zoning and this proposal is not radically out of scale. The 60-foot number was carefully considered at the time. It translates to five levels, possibly six if carefully designed. Lowering the height limit does not ensure thoughtful design or retaining existing character. That is best done on a project by project basis, which is why it was designated a Local Historic District in 2007. The Commission for Historical

and Architectural Preservation (CHAP) has been carefully reviewing all projects since the establishment of the district. In one case they disapproved a new construction near the 60-foot height limit because they did not think the design was thoughtful or consistent with existing character of the neighborhood. In other cases, they have approved infill projects over the 40-foot height limit (proposed in this bill for non-Broadway properties) after careful review because they believed them to be thoughtful and consistent with neighborhood character.

Traffic and parking are often a challenge in urban areas such as Fells Point, which was built prior to the automobile. This bill will not likely change that. The C-1 zoned areas do not require parking as they were intended to be walkable, Main Street type districts. Additionally, the zoning code has provisions to exempt parking requirements for historic buildings that would require demolition to provide parking. Though our transit system is perfect, the city will become more walkable and provide alternatives to auto use over time.

In addition, we committed in 2016 to regularly review and update our zoning code and we intend to complete an update in 2019. The Planning Department recommends against City Council Bill #19-0372. We are impressed, however by the dedication of the residents to their community and recommend that the CHAP Commission have a work session with community leaders to further understand their concerns. This would be ideal to have outside of their review of a specific project. The Council may want to consider holding CCB #19-0372 for that review. We believe that the review process of the CHAP Commission is the most effective tool to retain the existing character of the neighborhood and that a dialogue between the Commission and the community, without an impending project to be reviewed, would be very helpful.

ZONING STANDARDS

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 not in the public's interest, in that it will create an arbitrary height limit that removes flexibility in development, potentially limiting property value.

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:** *Generally, the zoning code is the master and this bill arbitrarily removes height and density potential.*
2. **The needs of Baltimore City:** *This would stifle development in this district and does not address the needs of Baltimore City.*
3. **The needs of the neighborhood:** *Though this bill was initiated by some community leaders, we are not convinced it addresses the unique needs of Fells Point. There are a number of vacant lots and buildings and this will not further likelihood of reuse or redevelopment.*

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:

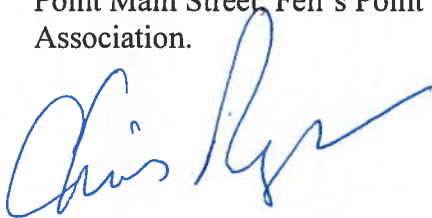
1. **Population changes;** *The population has not changed significantly*
2. **The availability of public facilities;** *This area is well served by public infrastructure which won't be impacted either way.*
3. **Present and future transportation patterns;** *The street network exists providing an adequate access for police and fire services.*
4. **Compatibility with existing and proposed development for the area;** *We have received several letters of concern that this will negatively impact existing and proposed development.*
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.** *This bill is for a general area not specific project but based on concerns received from property owners it appears it might stymie future redevelopment*

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; *no impact on use of the property as this is just a height overlay.***
- (ii) **the zoning classification of other property within the general area of the property in question; *This bill does not change use mix, only height and density.***
- (iii) **the suitability of the property in question for the uses permitted under its existing zoning classification; and *This does not apply as there is no change in use.***
- (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 trend is for development within the existing code, therefore this is restricting the potential for some of the properties.***

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. We find that neither was the Zoning a mistake or that there has been substantial change in this area.

Notification: Mailed notice was sent to property owners of record in the Overlay District and the following community associations: Fell’s Point Task Force, Fell’s Point Residents Association, Fell’s Point Community Organization, Friends of Fountain Street, The Preservation Society, Fells Prospect Community Association, Upper Fell’s Point Improvement Association, Fell’s Point Main Street, Fell’s Point District, Douglass District, and the Washington Hill Community Association.



Chris Ryer
Director