


FROM	NAME & TITLE	LAURIE FEINBERG, ACTING 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 #18-0299 / REZONING – REZONING – 2501-13, 2515, AND 2525 WEST FRANKLIN STREET AND 330 NORTH WARWICK AVENUE		

DATE: November 30, 2018

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

At its regular meeting of November 29, 2018, the Planning Commission considered City Council Bill #18-0299, for the purpose of changing the zoning for the property known as 2501-13 West Franklin Street (Block 2207, Lot 001), as outlined in green on the accompanying plat, from the C-2 Zoning District to the C-3 Zoning District, and changing the zoning for the properties known as 2515, and 2525 West Franklin Street (Block 2207, Lots 002 and 006), and 330 North Warwick Avenue (Block 2207, Lot 010), as outlined in blue on the accompanying plat, from the I-1 Zoning District to the C-3 Zoning District.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report which recommended disapproval of City Council Bill #18-0299 and adopted the following resolution seven members being present (seven in favor):

RESOLVED, That the Planning Commission does not concur with the recommendation of its departmental staff, adopted the findings of fact presented by the applicant, and therefore recommends that City Council Bill #18-0299 be passed by the City Council as introduced.

If you have any questions, please contact Mr. Eric Tiso, Division Chief, Land Use and Urban Design Division at 410-396-8358.

LF/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. Kyron Banks, 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. Josh Taylor, DOT  
 Ms. Natawna Austin, Council Services  
 Mr. Ervin Bishop, Council Services  
 Ms. Caroline Hecker, Attorney for Applicant



Catherine E. Pugh  
Mayor

## PLANNING COMMISSION

Sean D. Davis, Chairman

### STAFF REPORT



Laurie Feinberg  
Acting Director

November 29, 2018

**REQUEST:** City Council Bill #18-0299/ Rezoning – Rezoning – 2501-13, 2515, and 2525 West Franklin Street and 330 North Warwick Avenue:

For the purpose of changing the zoning for the property known as 2501-13 West Franklin Street (Block 2207, Lot 001), as outlined in green on the accompanying plat, from the C-2 Zoning District to the C-3 Zoning District, and changing the zoning for the properties known as 2515, and 2525 West Franklin Street (Block 2207, Lots 002 and 006), and 330 North Warwick Avenue (Block 2207, Lot 010), as outlined in blue on the accompanying plat, from the I-1 Zoning District to the C-3 Zoning District.

**RECOMMENDATION:** Disapproval

**STAFF:** Eric Tiso, AICP

**PETITIONER:** McDonald's USA, LLC, c/o Caroline L. Hecker, Esq.

**OWNER:** The Kolker Family Limited Partnership, and Eren Investments, LLC

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

Site Conditions: These properties are located on the southwestern corner of the intersection of West Franklin Street and North Warwick Avenue. They are currently improved with a warehouse building with a restaurant (330 North Warwick Avenue), and a McDonald's restaurant (2501 West Franklin Street). The other two properties are used as a surface parking lot and materials storage.

General Area: These properties are located in the Penrose/Fayette Street Outreach neighborhood, on the boundary with the Rosemont community. These properties are located in a wedge of commercial and industrial properties between West Franklin Street and the rail line, while areas to the north and south are residential areas.

#### **HISTORY**

There are no previous legislative or Planning Commission actions regarding this site.

#### **ANALYSIS**

Background: This rezoning was brought about by the desire of the property owners to redevelop the properties as a new McDonald's restaurant and retail stores with associated parking. The existing C-2 zoning on the McDonald's property is appropriate for that use, and the I-1 Industrial zoning would also allow for retail goods establishment. The desire to rezone these properties is at least in part intended to avoid Design Manual requirements that apply to the C-2 district.

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 is designed to defeat the requirements of the Design Manual. The proposed C-3 district was chosen for these properties as the nearest zoning category that would allow for the form of development the applicants want, as opposed to selecting a zoning designation to guide the trend of development in the neighborhood – which is the exact reverse of how zoning is intended to work.

**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:** These properties were previously zoned M-2-1 and B-3-3 under the prior zoning code. Under the comprehensive rezoning of the City in 2017, three of the properties were zoned I-1 for industrial use, and the McDonald's property is now C-2 commercial. The townhomes on the north side of West Franklin Street are zoned R-7, and the properties across North Warwick Street to the east are now zoned TOD-2.

2. **The needs of Baltimore City:** The increase in intensity from C-2 to C-3 brings additional land uses with greater potential impact on adjacent residential uses that are either not now permitted in the C-2, or where the means of approval become easier. Simultaneously, rezoning to avoid the applicable Design Manual development form requirements will lead to the development of these properties as a highway-oriented strip retail development, as opposed to the intended community commercial developments under the existing C-2 district designation.
3. **The needs of the particular neighborhood:** Staff understands that this is a successful location for the McDonald's restaurant, and that they would benefit from replacing the existing building with a new restaurant. The existing building edge is also located very close to the property boundary, such that the drive-through lane is on the adjacent parcel. Attempts were made to acquire more land, which would lead to a subdivision that might provide a better layout for the building, but were unsuccessful. Staff understands that the proposed rezoning of the adjacent properties will in part provide enough increased value to satisfy the adjacent warehouse property owner's needs to allow for a development deal to work.

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 recent significant changes in population that would call for an increased intensity of commercial use in this location, or the establishment of a new commercial node. Staff notes that immediately south of this site is a newly-built senior care residential facility that itself received a single-property rezoning in order for it to be built under the former zoning code (it is now TOD-2).
2. **The availability of public facilities;** This site is well served by existing utilities which will not be affected by this proposed rezoning.
3. **Present and future transportation patterns;** The proposed rezoning may increase the impact on the adjacent residential neighborhood by increasing traffic to the potential new commercial node on these properties. The West Baltimore MARC Station is located two blocks to the east on West Franklin Street.
4. **Compatibility with existing and proposed development for the area;** West Franklin Street is a significant street in this area, but it is lined with attached homes on its northern side. This boundary condition between residential neighborhood and older commercial uses warrants care in how future commercial uses should be developed in the area. The Design Manual encourages more neighborhood-scale commercial uses and design, that are more compatible with adjacent residential use, and that will bring more walk-to commercial uses. The proposed C-3 is intended for areas where highway-oriented, drive-to commercial uses are desired. This shift in development and design intensity will only increase the likelihood of negative impacts to the adjacent residential areas - more so than the existing potential for community commercial 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.** These properties were zoned C-2 and I-1 as part of the comprehensive rezoning of the City, and staff believes that those were appropriate designations for this area. While we could understand an increase in the area of the C-2 zone, especially if the warehouse operation leaves, an increase in intensity to C-3 zoning is not warranted.

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;** Residential uses existing to the north and south, a small gas station is to the east, and a vacant parcel (previously proposed for a place of worship) is to the west. The increase in commercial intensity to C-3 will only increase the potential impact on the surrounding properties in the area.
- (ii) **the zoning classification of other property within the general area of the property in question;** The properties to the north are zoned R-7 residential. The properties to the east, and immediately adjacent to the south are TOD-2. The properties to the west are I-1 industrially zoned. All of these designations either do not permit commercial uses, or only to a lower intensity and extent than the proposed C-3 for the subject properties.
- (iii) **the suitability of the property in question for the uses permitted under its existing zoning classification; and** Staff would support a modest increase in C-2 designation in this area, which would allow for the mix of uses desired for the redevelopment that is contemplated.
- (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 most significant change in this immediate area has been the designation of TOD-2 zoning under the comprehensive rezoning of the City for the properties to the east, across North Warwick Avenue, which also included the adjacent parcel to the south. Those properties were previously zoned M-2-1 for industrial use. The current TOD-2 designation will allow for high-density residential development, with supporting commercial uses.

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. Staff does not see that either a mistake was made, or a significant change has occurred in the past year and a half since the last comprehensive rezoning of the City. For these reasons, Staff recommends disapproval of this bill.

Notification: The Western Community Improvement Association has been notified of this action.

A handwritten signature in blue ink, consisting of several fluid, connected strokes.

**Laurie Feinberg**  
**Acting Director**



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## MEMORANDUM

TO: BALTIMORE CITY PLANNING COMMISSION

FROM: CAROLINE L. HECKER  
ADAM D. BAKER

CC: 2501-13, 2515, AND 2525 W. FRANKLIN STREET AND 330 N. WARWICK AVENUE (COLLECTIVELY, THE "PROPERTY")

RE: CCB # 18-0299 – REZONING OF 2501-13, 2515, AND 2525 W. FRANKLIN STREET AND 330 N. WARWICK AVENUE PROPOSED FINDINGS OF FACT

DATE: NOVEMBER 29, 2018

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The City Council has the authority to change the zoning classification of a property as part of a comprehensive rezoning process or upon 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. MD. CODE ANN., Land Use § 10-304(b)(2); Baltimore City Code, Article 32 – Zoning § 5-508(b)(1). Here, there was a mistake in the 2017 rezoning of the property as C-2 and I-1 in that the City Council did not consider the trend in development along this portion of W. Franklin Street towards large scale retail and shopping center development and away from smaller scale retail development and industrial uses which are no longer consistent with the area. This mistake should be corrected by rezoning the Property to C-3.

In connection with the finding that there was a mistake in the existing zoning classification, both Section 5-508(b) of the Zoning Code and Section 10-304 of the Maryland Land Use Article require the City Council to make findings of fact that address:

- (i) Population Change
  - The American Community Survey produced by the Census Bureau estimates that the population for the Census tract containing the Property has decreased since the 2010 census from 2,969 to 2,968 people in 2013.
- (ii) The availability of public American Community Survey facilities;
  - There are adequate public facilities to serve the Property. To the extent that additional utilities are required, the developer will install such facilities as part of the redevelopment of the site.
- (iii) Present and future transportation patterns;

- The Property is located on the southwest corner of the intersection of W. Franklin Street and N. Warwick Avenue, approximately two blocks west of the West Baltimore MARC Station. Access to the Property is provided directly from W. Franklin Street and from N. Warwick Avenue. The proposed rezoning of the Property to permit the commercial redevelopment will not have a negative impact on the transportation patterns of the area surrounding the Property.
- (iv) Compatibility with existing and proposed development for the area;
- Per Section 10-205(a)(1) of the Zoning Code, the C-3 Zoning District is “intended for more intensive commercial uses and key commercial nodes that require additional controls, particularly for shopping centers and larger retail establishments.” The existing buildings on the Property are too old and ill-suited to serve the needs of modern commercial users. The proposed development of the Property is in line with the intent of the C-3 Zoning District. It is also in synch with the vision for the area articulated in the West Baltimore MARC Station Area Master Plan, which calls for “large scale economic development” and a “transition from primarily industrial to more mixed-use character” for the area in which the property is located. West Baltimore MARC Station Area Master Plan, pp. 4 and 6.
- (v) The recommendations of the Baltimore City Planning Commission and the Board of Municipal and Zoning Appeals;
- For the above reasons, we request the Baltimore City Planning Commission recommend the rezoning of the Property to C-3. The Board of Municipal and Zoning Appeals has not yet commented on this bill, and will do so separately.
- (vi) The proposed amendment’s consistency with the City’s Comprehensive Master Plan.
- The City’s LiveEarnPlayLearn Master Plan specifically identifies the need to “promote active, well-defined places near transit stations so as to create amenities” for transit riders and the surrounding community. Comprehensive Master Plan, Appendices, p. 209. The current zoning on the Property does not allow for the type and intensity of development which is envisioned for this area both in the Comprehensive Master Plan as well as the West Baltimore MARC Station Area Master Plan.
    - The proposed rezoning of the Property to C-3 will allow for the redevelopment of the Property for commercial uses including a redesigned McDonald’s restaurant and one or two additional retail establishments.
  - Moreover, the Zoning Code itself indicates that the C-3 Zoning District “is intended for more intensive commercial uses and key commercial nodes that require additional controls, particularly for shopping centers and larger retail establishments.” § 10-205(a).



- This type of zoning is appropriate for the Property as it is in close proximity to the West Baltimore MARC station and will accommodate the redevelopment of the Property with the new McDonald's restaurant and other retail uses.

Section 5-508(b)(3) of the Zoning Code also mandates that additional standards be considered for map amendments:

- (i) Existing uses of property within the general area of the property in question;
  - The Property is located on the south side of W. Franklin Street in an area that was formerly industrial, but beginning to be converted to more mixed-use in character. There is an existing fuel service station to the east of the Property on the other side of N. Warwick Street which is zoned TOD-2. To the north of the Property across W. Franklin Street is the Rosemont neighborhood, which predominately consists of R-7 zoning. There are several commercial retail uses to the east and west of the Property on W. Franklin Street (Crazy Down Home Chicken and Seafood, CVS, 7-Eleven, Price Busters Discount Furniture). In addition, 300 North Warwick, which is located directly to the south of the Property, is currently being redeveloped from a warehouse to an 80-unit mixed income apartment building. Lastly, the American Ice Co. building located at 2100 W. Franklin Street was recently awarded the Heritage Structure Rehabilitation Tax Credit by the Maryland Historic Trust to redevelop the dilapidated property. The redevelopment plans include converting the building to a mixed-use space with an art gallery, restaurant and event space.
- (ii) The zoning classification of other property within the general area of the property in question;
  - The Property is surrounded by a mix of industrial, commercial, residential and mixed-use zoning. Directly to the south and west of the property lies a large swath of I-1 zoning. The residential neighborhood across W. Franklin Street from the Property is zoned R-7. Directly to the east of the Property is TOD-2 zoning. In addition, there are several C-2 zoned properties along W. Franklin Street. The proposed C-3 zoning is consistent with the blend of zoning in the area and it permits the type of development envisioned in both the City's Comprehensive Master Plan as well as the West Baltimore MARC Station Area Master Plan.
- (iii) The suitability of the property in question for the uses permitted under its existing zoning classification; and
  - The Property is currently zoned C-2 and I-1. The C-2 zoning "is intended for areas of small to medium scale commercial use, typically along urban corridors, that are designed to accommodate pedestrians and, in some instances, automobiles." The I-1 zoning "is intended to provide for a wide variety of light manufacturing, fabricating, processing, wholesale distributing, and warehousing uses." The Property is along a stretch of W. Franklin Street

which is proposed to “transition from primarily industrial to more mixed-use character.” West Baltimore MARC Station Master Plan, p. 6. The area and the Property are unable to make this transition under the current zoning.

- (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 Property was placed in its present zoning classification when Transform Baltimore became effective on June 5, 2017. The general trend of development in the vicinity has been with residential, commercial and mixed-use development. 300 North Warwick, directly to the south of the Property, is currently being redeveloped from a warehouse to a \$22 million mixed income apartment building with 80 units. In addition, the American Ice Co. building located at 2100 W. Franklin Street was recently awarded an historic tax credit to redevelop the existing building on the property to a mixed-use space with an art gallery, restaurant and event space.