

FROM	NAME & TITLE	THOMAS J. STOSUR, DIRECTOR
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 TH FLOOR, 417 EAST FAYETTE STREET
	SUBJECT	CITY COUNCIL BILL #17-0107 / Zoning – Conditional Use Retail Goods Establishment (with Alcoholic Beverages Sales) – 3601-3605 Park Heights Avenue

CITY of
BALTIMORE
MEMO



DATE: September 29, 2017

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

At its regular meeting September 28, 2017, the Planning Commission considered City Council Bill #17-0107, for the purpose of permitting, subject to certain conditions, the establishment, maintenance, and operation of a retail goods establishment (with alcoholic beverages sales) on the property known as 3601-3605 Park Heights Avenue, as outlined in red on the accompanying plat.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report, which recommended disapproval of City Council Bill #17-0107. Three members voted to approve the bill and three members voted to disapprove the bill. The Planning Commission therefore is unable to recommend approval or disapproval of City Council Bill #17-0107.

If you have any questions, please contact Mr. Wolde Ararsa, Division Chief, Land Use and Urban Design Division, at 410-396-4488.

TJS/WA

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. David Tanner, BMZA~~
Mr. Geoffrey Veale, Zoning Administration
Ms. Sharon Daboin, DHCD
Ms. Lindsay Wines, DOT
Ms. Elena DiPietro, Law Dept.
Ms. Natawna Austin, Council Services
Mr. Paul Plymouth, Council President's Office
Mr. Francis Burnszynski, PABC
Mr. Kwan Lee



Catherine E. Pugh
Mayor

PLANNING COMMISSION

Wilbur E. "Bill" Cunningham, Chairman

STAFF REPORT



Thomas J. Stosur
Director

September 28, 2017

REQUEST: City Council Bill #17-0107/ Zoning – Conditional Use Retail Goods Establishment (with Alcoholic Beverages Sales) – 3601-3605 Park Heights Avenue:

For the purpose of permitting, subject to certain conditions, the establishment, maintenance, and operation of a retail goods establishment (with alcoholic beverages sales) on the property known as 3601-3605 Park Heights Avenue, as outlined in red on the accompanying plat.

RECOMMENDATION: Disapproval

STAFF: Martin French

PETITIONERS: Councilmember Middleton, at the request of Robinson's Food and Variety Market, Inc. c/o Kwan Lee

OWNERS: Kwan Young Lee and Jeong Sug Lee

SITE/ GENERAL AREA

Site Conditions: This property is located at the northeast corner of the intersection of Park Heights Avenue and Ulman Avenue, measures approximately 45' by 102', and is currently improved with a two-story formerly porch-front middle-and-end-of-row residential mixed-use building covering approximately 75% of the consolidated lot. This structure was built in 1915 as three single-family dwellings; by the mid-1930s, with the porches enclosed, no. 3601 was being used as a pharmacy and drug store and one dwelling unit; no. 3603 was being used as a tailor's shop and one dwelling unit; and no. 3605 was being used as a delicatessen and lunchroom and one dwelling unit. In July of 1980 the Board of Zoning Appeals approved consolidation of the stores and three dwellings (appeal no. 374-80X), subject to the condition that the liquor store authorized (Robinson's) was limited in floor area to the floor area of the pharmacy and drug store that it replaced. Entrance to the liquor store is on the corner of the building, from both Park Heights Avenue and Ulman Avenue; the other two storefront entrances (now closed) are on Park Heights Avenue.

General Area: This property is in the southern portion of a predominantly residential area known as Park Heights that is comprised primarily of two-story attached and semi-detached dwellings with some non-residential uses such as churches and small retail establishments present, of which the subject property is an example. This southern portion of the larger Park Heights area developed from 1915 onward as an in-city suburban-style neighborhood made possible by an electric street-car line on Park Heights Avenue, and has been designated as the Park Heights National Register Historic District. Two blocks northeast of this property is a large multi-story Federally-subsidized multi-family development for senior citizens built

in 1979. Across Ulman Avenue, on the southeast corner of Park Heights and Ulman Avenues, is a new playground for children.

HISTORY

The original Urban Renewal Plan for Park Heights was approved by Ordinance no. 304 dated April 16, 1973. By Ordinance no. 113 dated June 30, 1976, the second amendment to that Plan added 3601, 3603, 3605, and all other properties on the east side of the 3600 block of Park Heights Avenue to the list of properties to be acquired by purchase or condemnation. The property that is subject of this bill was never actually acquired under this Plan. Over thirty years later, a replacement Urban Renewal Plan for Park Heights was approved by Ordinance no. 08-93 dated December 11, 2008. This Plan was last amended by Ordinance no. 14-297 dated October 1, 2014. The replacement Urban Renewal Plan, although containing lists of many properties to be acquired and disposed of, does not list any properties on the east side of the 3600 block of Park Heights Avenue other than 3633 Park Heights Avenue, reflecting the focus of the new Plan on commercial and mixed-use revitalization in portions of Park Heights north of this property. The Plan's Exhibit 1E, Land Use Plan map, designates this property as "Neighborhood Business" – surrounded by blocks and properties designated as "Medium Density Residential". The Plan's text states: "In the area designated as Neighborhood Business on the Land Use Plan, uses shall be limited to those uses permitted and conditional under the B-1 category of the Zoning Code of Baltimore City" (Plan, Land Use Plan, Permitted Uses, B.4.). The B-1 zoning district formerly covering this property did not permit either liquor stores: package goods, or taverns, although it did permit drug stores and pharmacies (§§ 6-206 through 6-209 of the former Code).

The Board of Zoning Appeals, in approving appeal no. 374-80X, noted that the liquor store: package goods license had been approved by the Liquor Board in June 1971, and thus ratified creating this nonconforming use in a B-1 zoning district that had actually included this property from April 1971 onward.

CONFORMITY TO PLANS

The proposed use does not support the goals, objectives and strategies contained in the Comprehensive Master Plan for the City of Baltimore. With respect to community character, the structure of which this property is a part is a group of houses, part of a community defined by its row-housing and semi-detached housing and the residents as residential. Use of the property in part as a liquor store (or to use the new terminology of the new Zoning Code (Article 32), a retail goods establishment with alcoholic beverages sales) makes it a site of an "alcohol outlet". One of the goals of the comprehensive rezoning process was reduction of nonconforming alcohol outlets, particularly those in Residential zoning districts. Even if the C-1 zoning proposed separately for this location is adopted, the Park Heights Urban Renewal Plan still places this property in a land use category that excludes alcoholic beverages sales by either liquor stores (as takeout package goods) or taverns (as either takeout package goods sold over the bar, or alcoholic beverages consumed on premises).

ANALYSIS

Background: The owner intends to continue to use the property as it has been used since 1971, whether the use is considered nonconforming or not. Requested approval of conditional use as a retail goods establishment with alcoholic beverages sales is contingent upon prior enactment of City Council Bill 17-0106, which would rezone this property from the R-6 Rowhouse and Multi-Family Residential Zoning District to the C-1 Neighborhood Business Zoning District.

Conditional Use: Per §5-406 {"Approval standards"} of Article 32 – *Zoning*:

(a) *Limited criteria for denying.*

Neither the Board of Municipal and Zoning Appeals, nor the City Council, as the case may be, may approve a conditional use unless, after public notice and hearing and on consideration of the standards required by this subtitle, it finds that:

- (1) the establishment, location, construction, maintenance, or operation of the conditional use would not be detrimental to or endanger the public health, safety, or welfare;
- (2) the use would not be precluded by any other law, including an applicable Urban Renewal Plan;
- (3) the authorization would not be contrary to the public interest; and
- (4) the authorization would be in harmony with the purpose and intent of this Code.

Below is the staff's review of §5-406(b) {"Required considerations"} of Article 32 – *Zoning*:

The establishment, location, maintenance and operation of the conditional use would merely continue for an indefinite period of time an existing nonconforming use. During the lengthy process of community involvement and official review of the new Zoning Code (Article 32) when it was in its development stage, a consensus was reached across Baltimore communities that continuation of nonconforming alcoholic beverages sales establishments, particularly those that had been nonconforming since 1971 (as this property had), was inimical to neighborhood revival and revitalization and therefore a definite period of time had to be designated, after which those establishments could continue as retail goods establishments without alcoholic beverages sales. Properties such as the one that is the subject of this bill would be able to continue their operations as a new land use, a Neighborhood Commercial Establishment. This concept was endorsed by the Planning Commission and adopted by the Mayor and City Council, and became effective on June 5th of this year.

To the extent that the Park Heights community and its elected officials agreed on this concept in designating this property as one on which a Neighborhood Commercial Establishment could be a reasonable land use, while continuation of a package goods liquor store would continue to be associated with neighborhood problems associated with this location, this bill does not meet the first required finding cited above.

This particular use is precluded by the Park Heights Urban Renewal Plan's Land Use provisions that designate this property as "Neighborhood Business" and then stipulate that allowed uses are limited to those permitted or conditional under the erstwhile B-1 zoning category, a category which prohibited both liquor stores: package goods, and taverns, both types of land use being alcoholic beverages sales land uses. Therefore, staff find that the proposed conditional use (Retail Goods Establishment, with Alcoholic Beverages Sales) is inconsistent with the applicable Urban Renewal Plan, and therefore does not meet the second required finding cited above.

Similarly, Planning staff could not determine that the proposed conditional use would not be contrary to the public interest, given the very recent expression of that interest in the new Zoning Code and associated zoning maps adopted recently and effective just three months ago. Likewise, as the Zoning Code provides for continuing commercial use of the property, the proposed action is not readily recognizable as in harmony with the purpose and intent of the Code, including “to promote and protect public health, welfare, and quality of life for current and future generations”.

Notification: Planning staff notified the Cottage/ Park Heights/ Violet/ Springhill/ Ulman Avenues Non-Profit Association, Development Corporation of Northwest Baltimore, Fellowship Outreach Corporation, Inc., Northwest Zoning Committee, Northwest District Police-Community Relations Council, Park Heights Community Council, and Park Heights Renaissance, Inc. of this matter.



Thomas J. Stosur
Director