**Introduced by:** Councilmember Cohen

**At the request of:** Chester Street Properties, LLC
Address: c/o Justin A. Williams, Esquire, Rosenberg | Martin | Greenberg LLP, 25 South Charles Street, Suite 21st Floor, Baltimore, Maryland 21201
Telephone: 410-727-6600

**Prepared by:** Department of Legislative Reference **Date:** March 14, 2019

**Referred to:** LAND USE AND TRANSPORTATION Committee

Also referred for recommendation and report to municipal agencies listed on reverse.

CITY COUNCIL 19-0356

A BILL ENTITLED

AN ORDINANCE concerning

**Zoning Map Amendment – 123 South Chester Street**

FOR the purpose of amending the Zoning District Map for the R-8 zoned property known as 123 South Chester Street (Block 1748, Lot 041), as outlined in red on the accompanying plat, to apply a Rowhouse Mixed-Use Overlay District (R-MU) designation; and providing for a special effective date.

BY amending
Article 32 - Zoning
Zoning District Map
Sheet 57
Baltimore City Revised Code
(Edition 2000)

****The introduction of an Ordinance or Resolution by Councilmembers at the request of any person, firm or organization is a courtesy extended by the Councilmembers and not an indication of their position.**

## Agencies

- [ ] Baltimore City Public School System
- [ ] Baltimore Development Corporation
- [x] City Solicitor
- [ ] Comptroller's Office
- [ ] Department of Audits
- [ ] Department of Finance
- [ ] Department of General Services
- [x] Department of Housing and Community Development
- [ ] Department of Human Resources
- [ ] Department of Planning
- [ ] Other: ____________
- [ ] Other: ____________
- [ ] Other: ____________
- [ ] Department of Public Works
- [ ] Department of Real Estate
- [ ] Department of Recreation and Parks
- [x] Department of Transportation
- [ ] Fire Department
- [ ] Health Department
- [ ] Mayor's Office of Employment Development
- [ ] Mayor's Office of Human Services
- [ ] Mayor's Office of Information Technology
- [ ] Office of the Mayor
- [ ] Police Department
- [ ] Other: ____________
- [ ] Other: ____________

## Boards and Commissions

- [ ] Board of Estimates
- [ ] Board of Ethics
- [x] Board of Municipal and Zoning Appeals
- [ ] Comm. for Historical and Architectural Preservation
- [ ] Commission on Sustainability
- [ ] Employees' Retirement System
- [ ] Other: ____________
- [ ] Other: ____________
- [ ] Other: ____________
- [ ] Environmental Control Board
- [ ] Fire & Police Employees' Retirement System
- [ ] Labor Commissioner
- [ ] Parking Authority Board
- [x] Planning Commission
- [ ] Wage Commission
- [ ] Other: ____________
- [ ] Other: ____________
- [ ] Other: ____________

# CITY OF BALTIMORE
## ORDINANCE 19 . 281
## Council Bill 19-0356

Introduced by: Councilmember Cohen
At the request of: Chester Street Properties, LLC
Address: c/o Justin A. Williams, Esquire, Rosenberg | Martin | Greenberg LLP, 25 South Charles Street, Suite 21st Floor, Baltimore, Maryland 21201
Telephone: 410-727-6600
Introduced and read first time: March 18, 2019
Assigned to: Land Use and Transportation Committee

Committee Report: Favorable
Council action: Adopted
Read second time: July 22, 2019

### AN ORDINANCE CONCERNING

1 **Zoning Map Amendment – 123 South Chester Street**

2 FOR the purpose of amending the Zoning District Map for the R-8 zoned property known as 123
3 South Chester Street (Block 1748, Lot 041), as outlined in red on the accompanying plat, to
4 apply a Rowhouse Mixed-Use Overlay District (R-MU) designation; and providing for a
5 special effective date.

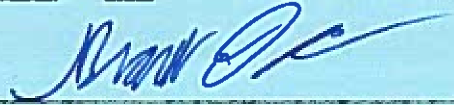
6 BY amending
7 Article 32 - Zoning
8 Zoning District Map
9 Sheet 57
10 Baltimore City Revised Code
11 (Edition 2000)

12 SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That
13 Sheet 57 of the Zoning District Map is amended by applying an R-MU Overlay District
14 designation to the R-8 zoned property known as 123 South Chester Street (Block 1748, Lot 041),
15 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.

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from existing law by amendment.

1 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the date it is
2 enacted.

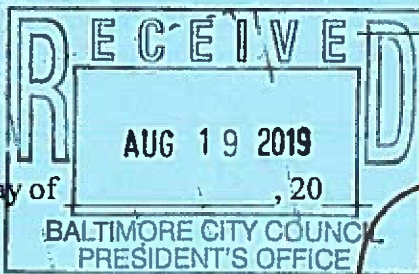


Certified as duly passed this _____ day of ____________, 20___

President, Baltimore City Council

Certified as duly delivered to His Honor, the Mayor,

this _____ day of ____________, 20___




Chief Clerk

Approved this _____ day of ____________, 20___

Mayor, Baltimore City

Approved For Form and Legal Sufficiency
This 13th Day of August 2019.

Chief Solicitor

SHEET NO. 57 OF THE ZONING DISRICT MAP OF THE BALTIMORE CITY ZONING CODE

EAST LOMBARD STREET

SOUTH CHESTER STREET

S DUNCAN ST

R-8

123

EAST PRATT STREET

SCALE: 1" = 100'

The Applicant requests that a Rowhouse Mixed-Use (R-MU) District Overlay be applied to the property known as 123 S. Chester Street, outlined in red, which is currently and will retain its underlying R-8 Zoning District Designation.

CHARMED KITCHEN
123 S Chester Street, Baltimore, MD 21231
Map 01, Section 01, Block 1748, Lot 041

MAYOR

PRESIDENT CITY COUNCIL

Plat Prepared by:
Architecture & Urban Views inc
Virgil Bartram AIA
2011 E Pratt St, Baltimore, MD 21231
410-327-4964

Date: 3/2/19

Applicant:
Chester Street Properties, LLC
c/o Justin Williams
Rosenberg I Martin I Greenberg, LLP
25 S. Charles Street 21st Floor,
Baltimore, MD 21201
410-727-6600

# BALTIMORE CITY COUNCIL
# LAND USE AND TRANSPORTATION
# VOTING RECORD

DATE: July 10, 2019

BILL#: 19-0356

BILL TITLE: Zoning Map Amendment - 123 South Chester Street

MOTION BY: Costello SECONDED BY: Dorsey

☑ FAVORABLE ☐ FAVORABLE WITH AMENDMENTS

☐ UNFAVORABLE ☐ WITHOUT RECOMMENDATION

| NAME | YEAS | NAYS | ABSENT | ABSTAIN |
|---|---|---|---|---|
| Reisinger, Edward, Chair | ☑ | ☐ | ☐ | ☐ |
| Middleton, Sharon, Vice Chair | ☑ | ☐ | ☐ | ☐ |
| Clarke, Mary Pat | ☐ | ☐ | ☐ | ☑ |
| Costello, Eric | ☑ | ☐ | ☐ | ☐ |
| Dorsey, Ryan | ☑ | ☐ | ☐ | ☐ |
| Pinkett, Leon | ☐ | ☐ | ☑ | ☐ |
| Stokes, Robert | ☑ | ☐ | ☐ | ☐ |
| | | | | |
| TOTALS | 5 | | 1 | 1 |

CHAIRPERSON: Edward L Reisinger

COMMITTEE STAFF: Jennifer L. Coates, Initials: JLC

# LAND USE AND TRANSPORTATION COMMITTEE

## FINDINGS OF FACT

MOTION OF THE CHAIR OF THE LAND USE AND TRANSPORTATION COMMITTEE, AFTER A PUBLIC HEARING AT WHICH AGENCY REPORTS AND PUBLIC TESTIMONY WERE CONSIDERED, AND PURSUANT TO SECTIONS 10-304 AND 10-305 of the MARYLAND LAND USE ARTICLE AND SECTION 5-508 Of THE BALTIMORE CITY CODE, THE CITY COUNCIL ADOPTS THESE FINDINGS OF FACT CONCERNING THE REZONING OF:

**CITY COUNCIL BILL NO: 19-0356**

**ZONING MAP AMENDMENT - 123 SOUTH CHESTER STREET**

Upon finding as follows with regard to:

(1) Population changes;

The census tract that includes the Property (Census Tract 105) is estimated to have decreased its population from 2,252 in 2010 to 1,712 in 2017, according to estimates of the U.S. Census Bureau's American Community Survey. To the extent the estimate is accurate, it demonstrates a need to make the neighborhood more conducive to attracting people to stay in place. Walkable community amenities, such as outdoor seating at a neighborhood cafe is an example of attractive amenity.

(2) The availability of public facilities;

The area is well-served by public utilities and services, and will remain so for the foreseeable future.

(3) Present and future transportation patterns;

The application of the R-MU Overlay District to the Property will not adversely impact present or future transportation patterns. The Butchers Hill neighborhood has been a pioneer in installing curb bump-outs that provide traffic calming (as well as stormwater management) and make the neighborhood more walkable. The ability to provide outdoor dining will incrementally increase the walkability of the area.

(4) Compatibility with existing and proposed development for the area;

The proposed map amendment will not negatively impact existing or proposed development. As indicated in §12-208 of the Zoning Code, the R-MU Overlay District is tied directly to the underlying rowhouse district in order to maintain the existing character of the development and the neighborhood.

(5) The recommendations of the City agencies and officials, including the Baltimore City Planning Commission and the Board of Municipal and Zoning Appeals;

- According to a memorandum, dated April 18, 2019, the Planning Commission does not concur with the recommendation of its departmental staff, and instead recommends that City Council Bill #19-0356 be passed by the City Council, with the attached (Memorandum from Justin Williams - Dated 4/18/19) facts to support the rezoning.

- According to a Department of Planning staff report dated April 18, 2019, the department recommends disapproval of this bill.

- According to a memorandum, dated June 11, 2019, the Board of Municipal and Zoning Appeals reviewed the legislation and concurs with the report and recommendation of the Planning Department staff recommending disapproval of City council Bill no. 19-0356.

- According to a memorandum, dated April 29, 2019, the Department of Transportation has no objection to City Council bill 19-0356.

- According to a letter, dated June 11, 2019, the City Solicitor comments that the bill is the appropriate method for the City Council to review the facts and make the determination as to whether the legal standards has been met and whether the rezoning amounts to spot zoning. Assuming the required findings are made at the hearing and that all procedural requirements are satisfied, including facts presented at the hearing that rule out spot zoning and establish that the original zoning was based on erroneous facts, the Law Department could approve the bill for form and legal sufficiency.

(6) The proposed amendment's relationship to and consistency with the City's Comprehensive Master Plan.

The proposed rezoning is consistent with the City's LiveEarnPlayLearn Master Plan by activating the streetscape and promoting walkable neighborhood amenities.

(7) Existing uses of property within the general area of the property in question;

The property is located along a fairly busy neighborhood corridor on Pratt Street. Along Chester Street, the uses are residential, while along Pratt Street, the character of development is residential mixed-use reflecting the historical development pattern of the Fells Point area with a number of corner restaurants and taverns. Many of these establishments offer outdoor seating now because they are grandfathered prior to the enactment of Transform Baltimore. There are also institutional uses such as churches and schools in the vicinity. These uses will not be impacted by the application of the R-MU Overlay District.

(8) The zoning classification of other property within the general area of the property in question;

The Property is located in the middle of an extensive residentially-zoned area; however, as indicated above, the existing uses in this neighborhood are varied and would likely be suited for an R-MU Overlay Zoning District as well.

(9) The suitability of the property in question for the uses permitted under its existing zoning classification;

The R-8 Zoned Property is suited for its current uses, which include a restaurant/cafe and dwelling units. With as much as 13' of sidewalk space along Chester Street, the Property is well-suited to provide outdoor dining.

(10) 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 classification;

The Property is located within a historic district, in which development trends have been associated with the adaptive re-use of existing structures. Thus many rowhomes that have historically been utilized as storefronts will be able to repurpose them as cafe/restaurants with neighborhood commercial establishment conditional use authorization from the Zoning Board. However, they are not permitted to conduct outdoor dining.

(11) For a rezoning based on a SUBSTANTIAL CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD, the following facts establish the substantial change since the time of the last comprehensive rezoning:

(12) For a rezoning based on a MISTAKE in the existing zoning classification, the following facts establish that at the time of the last comprehensive zoning the Council failed to consider then existing facts, or projects or trends which were reasonably foreseeable and/or that events occurring subsequent to the comprehensive zoning have proven that the Council's initial premises were incorrect:

A map amendment is warranted for 123 S. Chester Street as there was a mistake in the 2017 comprehensive rezoning of the Property that failed to include an R-MU Overlay District as the Mayor and City Council failed to take notice of the existing and proposed commercial use of the Property. The Planning Commission recently found a mistake for this reason when it recommended the rezoning of the 1818 E. Pratt Street, located +1,000 feet west of the Property, to C-1. As indicated in the Planning Staff Memorandum, the Planning Commission found:

> a mistake in assigning this property R-8 zoning at the time of the Comprehensive Rezoning of the City in 2017, where the Mayor and City Council did not at that time take notice of the existing commercial use of this property, and that this business had been in continuous operation for an extensive period of time.

**See Exhibit 3 – Planning Department Memo – CCB #19-322 (emphasis added)**

The Land Use Committee subsequently voted that the bill be recommended favorably.

Here, had the Mayor and City Council taken notice of the proposed commercial use of the Property as Charmed Kitchen, it would have considered the general trend in neighborhood restaurant/cafés where they seek to activate streetscapes and promote walkability by providing outdoor dining as an amenity to their patrons.

The Court of Appeals has previously ruled that the failure of the Baltimore City Council to anticipate a development trend was sufficient to be regarded as an error in the original zoning. In Pressman v. City of Baltimore, 222 Md. 330 (1960), the Court of Appeals ruled that the failure of the zoning ordinance map to anticipate the need for or trend toward shopping centers requiring a sufficient depth from a roadway to accommodate stores and parking should be regarded as an error in the original zoning, particularly when "strip zoning" is no longer favored. See Exhibit 4 – Pressman v. City of Baltimore. Here, the City Council failed to provide the zoning map designation necessary to accommodate the trend of neighborhood restaurants/cafés providing outdoor dining.

<u>SOURCE OF FINDINGS</u> (Check all that apply):

[ X ] Planning Report – Mr. Chris Ryer, Director, Department of Planning – memorandum – Dated Aril 18, 2019

[X ] Testimony presented at the Committee hearing

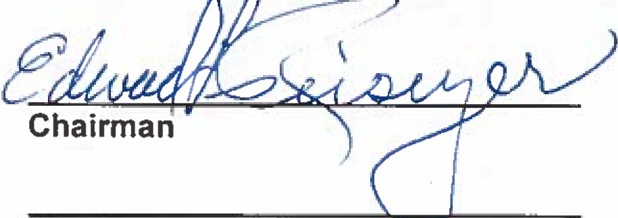
Oral – Witness Name:

- Councilmember Zeke Cohen, Sponsor of the Bill
- Mr. Justin Williams, Esquire, Representative for the Applicant
- Mr. Eric Tiso, Department of Planning
- Mr. Bob Pipik, Department of Housing and Community Development
- Ms. Livhu Ndou, Board of Municipal Zoning Appeals
- Mr. Liam Davis, Department of Transportation
- Ms. Hilary Ruley, Department of Law

Written:

- Mr. Justin Williams, Esquire, Rosenberg Martin Greenberg, Memorandum – Dated April 18, 2019 and July 10, 2019
- Planning Commission, Agency Report – Dated April 18, 2019
- Department of Planning Staff Report – Dated April 18, 2019
- Department of Transportation, Agency Report – Dated June 29, 2019
- Board of Municipal Zoning Appeals, Agency Report – Dated June 11, 2019
- Law Department, Agency Report – Dated June 11, 2019
- Department of Housing and Community Development, Agency Report – Dated March 29, 2019

**LAND USE AND TRANSPORTATION COMMITTEE:**



**Chairman**

**Member**

**Member**

**Member**

**Member**

**Member**

**Member**

**Member**

**The Daily Record**
11 East Saratoga Street
Baltimore, MD 21202-2199
(443) 524-8100
http://www.thedailyrecord.com

**Order #:** 11754718
**Case #:**
**Description:**

PUBLIC HEARING ON BILL NO. 19-0356

## PUBLISHER'S AFFIDAVIT

We hereby certify that the annexed advertisement was published in **The Daily Record**, a daily newspaper published in the State of Maryland 1 times on the following dates:

6/18/2019

Darlene Miller, Public Notice Coordinator
(Representative Signature)

---

**BALTIMORE CITY COUNCIL**
**PUBLIC HEARING ON BILL NO. 19-0356**

The Land Use and Transportation Committee of the Baltimore City Council will meet on Wednesday, July 10, 2019 at 1:10 p.m. in the City Council Chambers, 4th floor, City Hall, 100 N. Holliday Street to conduct a public hearing on City Council Bill No. 19-0356.

**CC 19-0356 ORDINANCE - Zoning Map Amendment - 123 South Chester Street**

FOR the purpose of amending the Zoning District Map for the R-8 zoned property known as 123 South Chester Street (Block 1748, Lot 041), as outlined in red on the accompanying plat, to apply a Rowhouse Mixed-Use Overlay District (R-MU) designation; and providing for a special effective date.

BY amending
Article 32 - Zoning
Zoning District Map
Sheet 57
Baltimore City Revised Code
(Edition 2000)

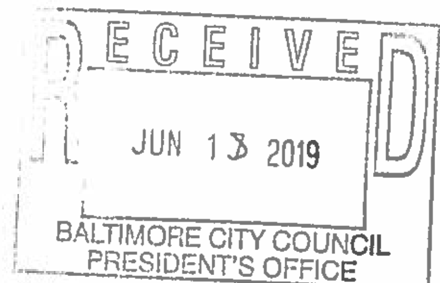
NOTE: This bill is subject to amendment by the Baltimore City Council.

Applicant: Chester Street Properties, LLC

For more information, contact committee staff at (410) 396-1260.

EDWARD REISINGER
Chair

je18



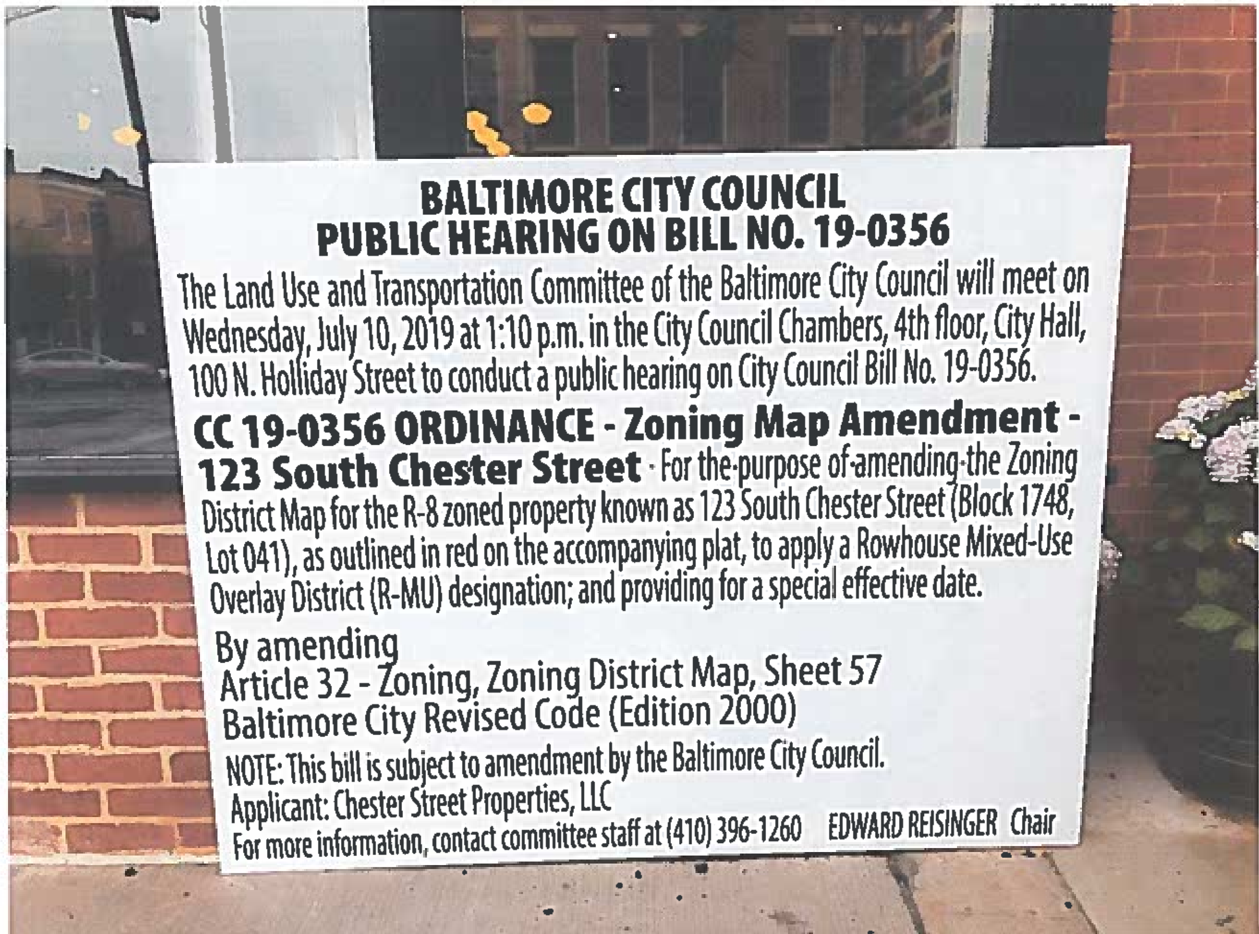
ATTACHMENT C

# Baltimore City Council

## Certificate of Posting - Public Hearing Notice

## City Council Bill No.: 19-0356

*6/13/2019*

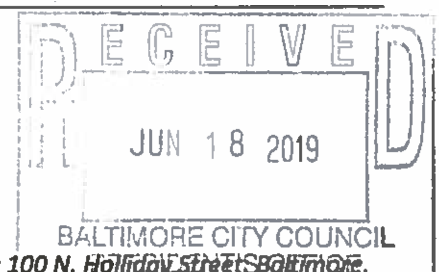



*(Place a picture of the posted sign in the picture box below.)*

**Address: 123 South Chester Street**

**Date Posted:6/10/2019**

**Name: Martin Ogle**
**Address: 9912 Maidbrook Road**
**Telephone: 443-629-3411**




- *Email to: Natawnab.Austin@baltimorecity.gov*
- *Mail to: Baltimore City Council; c/o Natawna B. Austin; Room 409, City Hall; 100 N. Holliday Street; Baltimore, MD 21202*

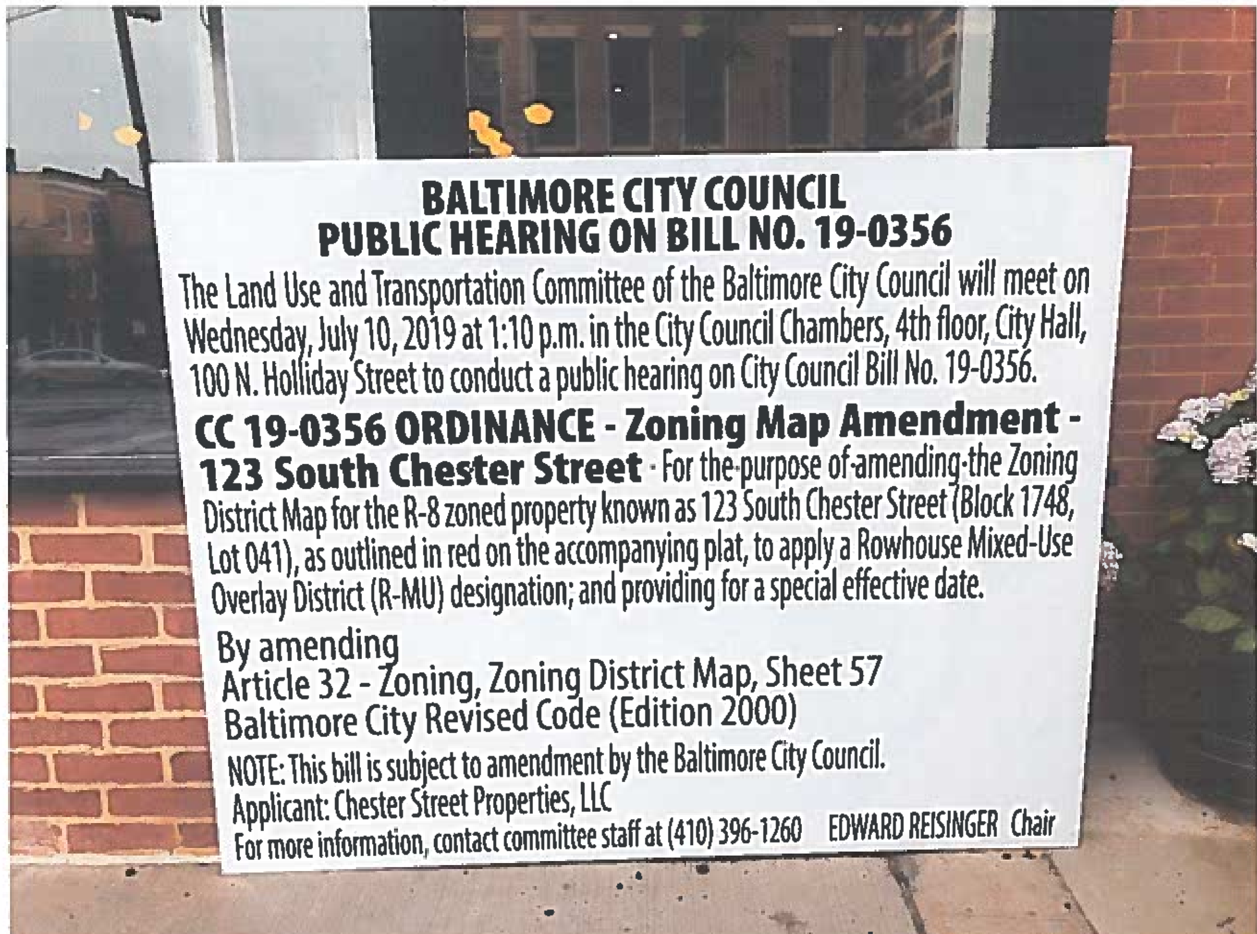
ATTACHMENT C

# Baltimore City Council

## Certificate of Posting - Public Hearing Notice

## City Council Bill No.: 19-0356

*6/13/2019*




*(Place a picture of the posted sign in the picture box below.)*

**Address: 123 South Chester Street**

**Date Posted:6/10/2019**

---

**Name: Martin Ogle**

**Address: 9912 Maidbrook Road**

**Telephone: 443-629-3411**

- *Email to: Natawnab.Austin@baltimorecity.gov*
- *Mail to: Baltimore City Council; c/o Natawna B. Austin; Room 409, City Hall; 100 N. Holliday Street; Baltimore, MD 21202*

**The Daily Record**
11 East Saratoga Street
Baltimore, MD 21202-2199
(443) 524-8100
http://www.thedailyrecord.com

Order #: 11737206
Case #:
Description:

PUBLIC HEARING ON BILL NO. 19-0356

# PUBLISHER'S AFFIDAVIT

We hereby certify that the annexed advertisement was published in **The Daily Record**, a daily newspaper published in the State of Maryland 1 times on the following dates:

5/21/2019

Darlene Miller, Public Notice Coordinator
(Representative Signature)

---

**BALTIMORE CITY COUNCIL**
**PUBLIC HEARING ON BILL NO. 19-0356**

The Land Use and Transportation Committee of the Baltimore City Council will meet on Wednesday, June 12, 2019 at 1:05 p.m. in the City Council Chambers, 4th floor, City Hall, 100 N. Holliday Street to conduct a public hearing on City Council Bill No. 19-0356.

**CC 19-0356 ORDINANCE - Zoning Map Amendment - 123 South Chester Street**

FOR the purpose of amending the Zoning District Map for the R-8 zoned property known as 123 South Chester Street (Block 1748, Lot 041), as outlined in red on the accompanying plat, to apply a Rowhouse Mixed-Use Overlay District (R-MU) designation; and providing for a special effective date.

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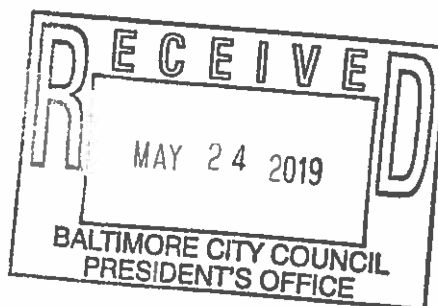
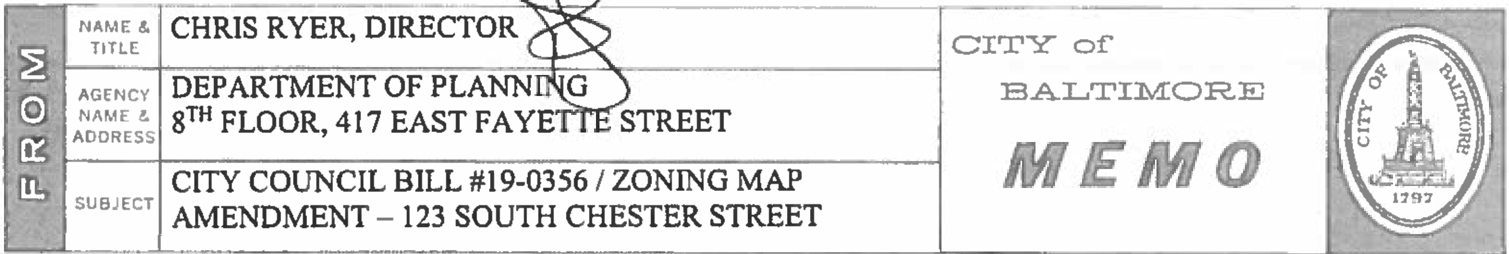
NOTE: This bill is subject to amendment by the Baltimore City Council.
Applicant: Chester Street Properties, LLC
For more information, contact committee staff at (410) 396-1260.

EDWARD REISINGER
Chair

my21





FROM

NAME & TITLE: CHRIS RYER, DIRECTOR

AGENCY NAME & ADDRESS: DEPARTMENT OF PLANNING
8TH FLOOR, 417 EAST FAYETTE STREET

SUBJECT: CITY COUNCIL BILL #19-0356 / ZONING MAP AMENDMENT – 123 SOUTH CHESTER STREET

CITY of BALTIMORE

MEMO

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

DATE: April 18, 2019

At its regular meeting of April 18, 2019, the Planning Commission considered City Council Bill #19-0356, for the purpose of amending the Zoning District Map for the R-8 zoned property known as 123 South Chester Street (Block 1748, Lot 041), as outlined in red on the accompanying plat, to apply a Rowhouse Mixed-Use Overlay District (R-MU) designation; and providing for a special effective date.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report which recommended disapproval of City Council Bill #19-0356 and adopted the following resolution eight members being present (seven in favor):

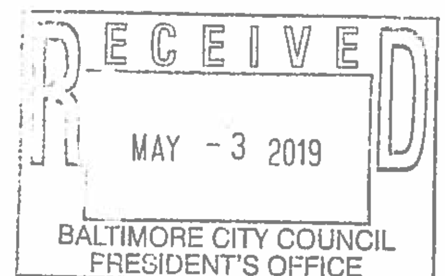
> RESOLVED, That the Planning Commission does not concur with the recommendation of its departmental staff, and instead recommends that City Council Bill #19-0356 be passed by the City Council, with the attached facts to support the rezoning.

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

CR/ewt

attachments

cc: Mr. Pete Hammen, Chief Operating Officer
Ms. Karen Stokes, Mayor's Office
Mr. Colin Tarbert, Mayor's Office
Mr. Jeff Amoros, 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. Liam Davis, DOT
Ms. Natawna Austin, Council Services
Mr. Ervin Bishop, Council Services
Mr. Justin Williams, Esq.



Catherine E. Pugh
Mayor

**PLANNING COMMISSION**

*Sean D. Davis, Chairman*

**STAFF REPORT**

Chris Ryer
Director

**April 18, 2019**

**REQUEST:** City Council Bill #19-0356/ Zoning Map Amendment – 123 South Chester Street: For the purpose of amending the Zoning District Map for the R-8 zoned property known as 123 South Chester Street (Block 1748, Lot 041), as outlined in red on the accompanying plat, to apply a Rowhouse Mixed-Use Overlay District (R-MU) designation; and providing for a special effective date.

**RECOMMENDATION:** Disapproval

**STAFF:** Eric Tiso

**PETITIONER:** Chester Street Properties, LLC, c/o Justin A. Williams, Esq.

**OWNER:** Chester Street Properties, LLC

**SITE/GENERAL AREA**

Site Conditions: This property is located on the northeastern corner of the intersection with East Pratt Street. The R-8 zoned lot is improved with a three-story structure that has been recently completely renovated for use as a restaurant to be known as Charmed Kitchen.

General Area: This property is located on the southern edge of the Butcher's Hill neighborhood, on the border with Upper Fells Point, which is predominantly residential in character, with rowhomes as the predominant form housing stock. There are occasional commercial or institutional uses dotted throughout, normally at intersections. Patterson Park is located two blocks to the east.

**HISTORY**

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

**ANALYSIS**

The Rowhouse Mixed-Use Overlay District may be applied to rowhouse dwellings in the R-5 through R-10 districts as well as the OR Districts. This Overlay District allows the rowhouse dwelling to be used for a limited amount of non-residential uses, which is the same as allowed for Neighborhood Commercial Establishments (NCEs) in residential districts (*Zoning* §12-1001). The primary difference is that the R-MU overlay allows for outdoor dining as a conditional use (*Zoning* §12-1003) that can be approved by the Board of Municipal and Zoning Appeals (BMZA). In this case, the applicant is interested in the outdoor dining use.

The principal concern with this proposal is with the required minimum size of an R-MU Overlay District. This district may only be applied to a minimum of (1) 50% of the blockface; or (2) two opposing corner lots (*Zoning* §12-1002). The Zoning Code defines *Blockface* to mean all of one side of a given street between two consecutive intersecting streets (§1-303.h). In this case, since the application does not proposed to include an opposite corner, then the requirement of 50% of a blockface must be met. As this property alone does not constitute at least 50% of the length between East Pratt and East Lombard Streets, and is not at least 50% of the length between East Pratt and South Duncan Streets, then this singular property cannot be zoned with the R-MU Overlay District for lack of meeting the required minimum size of the district. For that reason, staff recommends disapproval of this bill.

Notification: The Butchers Hill Association has been notified of this action.

**Chris Ryer**
**Director**

**Justin A. Williams**
**25 South Charles Street, 21st Floor**
**Baltimore, Maryland 21201**
**P: (410) 727-6600/F: (410) 727-1115**
**jwilliams@rosenbergmartin.com**

Rosenberg
Martin
Greenberg LLP

MEMORANDUM

TO: BALTIMORE CITY PLANNING COMMISSION

FROM: JUSTIN WILLIAMS

CC: CHESTER STREET PROPERTIES, LLC

RE: CCB # 19-0356 – ZONING MAP AMENDMENT – 123 S. CHESTER STREET
PROPOSED FINDINGS OF FACT

DATE: APRIL 18, 2019

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

**(i) Population Change**

The census tract that includes the Property (Census Tract 105) is estimated to have decreased its population from 2,252 in 2010 to 1,712 in 2017, according to estimates of the U.S. Census Bureau's American Community Survey. To the extent the estimate is accurate, it demonstrates a need to make the neighborhood more conducive to attracting people to stay in place. Walkable community amenities, such as outdoor seating at a neighborhood café is an example of attractive amenity.

**(ii) The availability of public facilities;**

The area is well-served by public utilities and services, and will remain so for the foreseeable future.

**(iii) Present and future transportation patterns;**

The application of the R-MU Overlay District to the Property will not adversely impact present or future transportation patterns. The Butchers Hill neighborhood has been a pioneer in installing curb bump-outs that provide traffic calming (as well as stormwater management) and make the neighborhood more walkable. The ability to provide outdoor dining will incrementally increase the walkability of the area.

**(iv) Compatibility with existing and proposed development for the area;**

The proposed map amendment will not negatively impact existing or proposed development. As indicated in § 12-208 of the Zoning Code, the R-MU Overlay District is tied directly to the underlying rowhouse district in order to maintain the existing character of the development and the neighborhood.

**(v) The recommendations of the Baltimore City Planning Commission and the Board of Municipal and Zoning Appeals;**

The Planning Commission is urged to make a favorable recommendation on this bill.

The Board of Municipal and Zoning Appeals has not yet commented on this bill.

**(vi) The proposed amendment's consistency with the City's Comprehensive Master Plan.**

The proposed rezoning is consistent with the City's LiveEarnPlayLearn Master Plan by activating the streetscape and promoting walkable neighborhood amenities.

Section 5-508(b)(3) of the Zoning Code also mandates that the following 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 along a fairly busy neighborhood corridor on Pratt Street. Along Chester Street, the uses are residential, while along Pratt Street, the character of development is residential mixed-use reflecting the historical development pattern of the Fells Point area with a number of corner restaurants and taverns. Many of these establishments offer outdoor seating now because they are grandfathered prior to the enactment of Transform Baltimore. There are also institutional uses such as churches and schools in the vicinity. These uses will not be impacted by the application of the R-MU Overlay District.

**(ii) The zoning classification of other property within the general area of the property in question;**

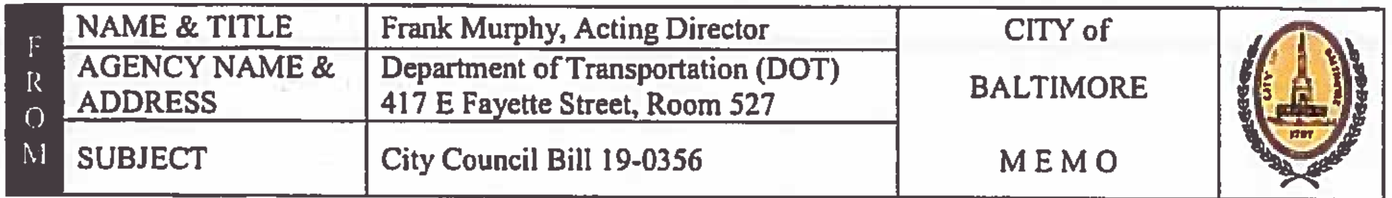
The Property is located in the middle of an extensive residentially-zoned area; however, as indicated above, the existing uses in this neighborhood are varied and would likely be suited for an R-MU Overlay Zoning District as well.

**(iii) The suitability of the property in question for the uses permitted under its existing zoning classification; and**

The R-8 Zoned Property is suited for its current uses, which include a restaurant/café and dwelling units. With as much as 13' of sidewalk space along Chester Street, the Property is well-suited to provide outdoor dining.

**(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 is located within a historic district, in which development trends have been associated with the adaptive re-use of existing structures. Thus many rowhomes that have historically be utilized as storefronts will be able to repurpose them as café/restaurants with neighborhood commercial establishment conditional use authorization from the Zoning Board. However, they are not permitted to conduct outdoor dining.



| F R O M | | | |
|---|---|---|---|
| NAME & TITLE | Frank Murphy, Acting Director | CITY of BALTIMORE MEMO | |
| AGENCY NAME & ADDRESS | Department of Transportation (DOT) 417 E Fayette Street, Room 527 | | |
| SUBJECT | City Council Bill 19-0356 | | |

TO: Ex Officio Mayor Young
TO: Land Use and Transportation Committee
FROM: Department of Transportation
POSITION: No Objection
RE: Council Bill – 19-0356

DATE: 4/29/19

**INTRODUCTION** – Zoning Map Amendment - 123 South Chester Street.

**PURPOSE/PLANS** – For the purpose of amending the Zoning District Map for the R-8 zoned property known as 123 South Chester Street (Block 1748, Lot 041), as outlined in red on the accompanying plat, to apply a Rowhouse Mixed-Use Overlay District (R-MU) designation; and providing for a special effective date.

**COMMENTS** – This bill is a zoning map amendment that proposes providing 123 South Chester Street Rowhouse Mixed-Use Overlay District (R-MU) designation. The bill's statement of intent indicates that the zoning map amendment is being pursued for the purposes of allowing 123 South Chester Street to operate in a mixed-use manner, including a ground floor restaurant and upper level dwelling units. The bill as proposed should have no fiscal or operational impact on the Department of Transportation.

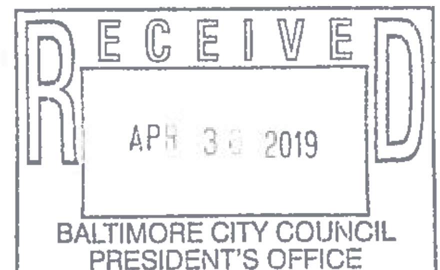
**AGENCY/DEPARTMENT POSITION** – The Department of Transportation has no objection to City Council bill 19-0356.

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

Sincerely,

Frank Murphy
Acting Director

no objection



CITY OF BALTIMORE

BOARD OF MUNICIPAL AND
ZONING APPEALS

DEREK J. BAUMGARDNER, Executive Director
417 E. Fayette Street, Suite 922
Baltimore, Maryland 21202

June 11, 2019

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

**Re: <u>CC Bill #19-0356</u> Zoning Map Amendment – 123 South Chester Street**

Ladies and Gentlemen:

City Council Bill No. 19-0356 has been referred by your Honorable Body to the Board of Municipal and Zoning Appeals for study and report.

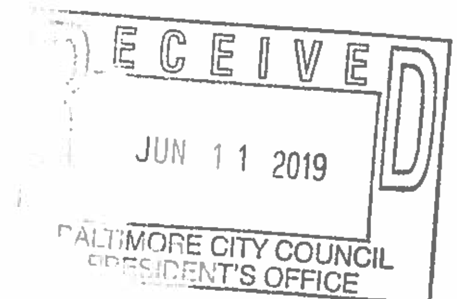
The purpose of City Council Bill No. 19-0356 is to amend the Zoning District map for the R-8 zoned property known as 123 South Chester Street (Block 1748, Lot 041) to apply a Rowhouse Mixed-Use Overlay District (R-MU) designation; and providing for a special effective date.

The BMZA has reviewed the legislation and concurs with the report and recommendation of the Planning Department staff recommending disapproval of City Council Bill No. 19-0356.

Sincerely,

Derek J. Baumgardner
Executive Director

CC: Mayor's Office of Council Relations
City Council President
Legislative Reference




UP

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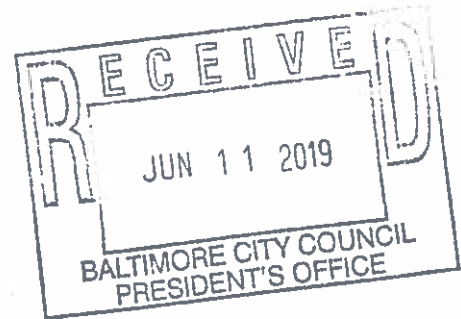
CITY OF BALTIMORE

BERNARD C. "JACK" YOUNG,
Mayor

DEPARTMENT OF LAW
ANDRE M. DAVIS, CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

June 11, 2019




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

Re: City Council Bill 19-0356 – Zoning Map Amendment – 123 South Chester Street

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 19-0356 for form and legal sufficiency. The bill would amend the zoning district map for the R-8 zoned property known as 123 South Chester Street to apply a Rowhouse Mixed-Use Overlay District (R-MU) designation and providing for a special effective date.

Although the rowhouse mixed-use overlay district may be applied to rowhouse dwellings in R-8, it may only be applied to a minimum of 50 percent of the blockface or two opposing corner lots. Art. 32, § 12-1001 (a) and § 12-1002. According to the staff report, the property does not meet this requirement. See, Staff Report, p.2.

Contrary to its staff report, **the Planning Commission has recommended approval of the bill based on the facts presented by the applicant. The proposed findings of fact by the applicant do not establish that the property meets the requisite size, nor do the proposed findings of fact establish that the zoning during Transform was based on erroneous facts as required to legally rezone the property.**

The City Council may permit this map amendment 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 would appear to be no basis to believe that the neighborhood has substantially changed between the comprehensive rezoning of the property on June 5, 2017 and today's date. Therefore, to legally rezone the property the City Council must identify a "mistake" that led to the inappropriate zoning of the property as R-8.

Favorable w/ comments

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

(1) population change;
(2) the availability of public facilities;
(3) the present and future transportation patterns;
(4) compatibility with existing and proposed development;
(5) the recommendations of the Planning Commission and the Board of Municipal and Zoning Appeals; and
(6) the relationship of the proposed amendment to the City's plan.

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

<u>Mistake in the Current Zoning Classification</u>

With regard to rezoning on the basis of 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 Land Use and Transportation Committee (the "Committee") 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 Committee is required to make findings of fact for each property with regard to the factors in §§10-304 and 10-305 of the Land Use Article and § 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.

Spot Zoning

**This could amount to spot zoning.**

The law with respect to spot zoning is well settled. In *Tennison v. Shomette*, 38 Md. App. 1, 8 (1977), the Court of Special Appeals explained that spot zoning occurs when a small area in a district is placed in a zoning classification which is different from the surrounding properties. The *Tennison* court reasoned that generally "spot zoning is not invalid per se", but that "its validity depends on the facts of each individual case."

It has also long been held by the courts that although spot zoning is illegal if inconsistent with an established comprehensive plan and is made solely for the "benefit of private interests", it can also be a valid exercise of the police power where the zoning is in harmony with the comprehensive plan and bears a substantial relationship to the public health, safety, and general welfare. *Cassell v. Mayor of Baltimore*, 195 Md. 348 (1950). (Emphasis added.) **According to the staff report, this zoning change is being requested because the applicant is interested in the option of outdoor dining.** Staff Report, p. 1.

The general rule set forward in *Tennison* has long been followed by the courts, and must be applied with respect to Bill 19-0356. It was cited with approval by the Court of Appeals in *Mayor and City Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 546-47 (2002). The court there cited both *Tennison* and *Cassel v. Mayor and City Council of Baltimore*, 195 Md. 348 (1949), stating that spot zoning is the "arbitrary and unreasonable devotion of a small area within a zoning district to a use which is inconsistent with the use to which the rest of the district is restricted." The court also noted that "a spot zoning ordinance which singles out a parcel of land within the limits of a use district and marks it off into a separate district for the benefit of the owner, thereby permitting a use of that parcel inconsistent with the use permitted in the rest of the district, is invalid if not in accordance with the comprehensive zoning plan and is merely for private gain." *Id.* (Emphasis in original.) The *Rylyns* court also noted that if a use is permitted in a small area and is not inconsistent with the use of the larger surrounding area even though it may be different from that use, it is not spot zoning if it does not conflict with the comprehensive plan but is in harmony with the orderly growth of a new use for the other property in that locality.

*Hewitt v. County Comm'rs of Baltimore County*, 220 Md. 48 (1959), is also instructive. In that case, although the Court of Appeals agreed with the rationale expressed in the above-cited cases, it nonetheless stated that it has "consistently rejected spot zoning" and "has repeatedly referred to the statutory requirement ... that zoning shall be in accordance with a comprehensive plan." The *Hewitt* court thus ruled that the request of the owner there to rezone property located in a residential zoning district for commercial use constituted invalid spot zoning. The court found that such rezoning amounted to an arbitrary and unreasonable devotion of small area for a use inconsistent with the uses restricted to the rest of the district. As a result, the court concluded

that the rezoning was for the sole benefit of the private interest of the property owner and was not in accordance with the comprehensive plan.

**The facts suggest that this is impermissible spot zoning for private gain unless there is testimony establishing that the map amendment is for the public good and in accordance with the comprehensive plan.**

Procedural Requirements

In addition, the Baltimore City Code, Art. 32, § 5-506 states that "The Planning Commission must consider the referred bill in a public hearing. Notice of the public hearing must be given in accordance with Title 5, Subtitle 6 {"Notices"} of this Code. Except as provided in subsection (e)(2) of this section, the hearing must be concluded no more than 60 days from the Commission's receipt of the referred bill."
§ 5-506(e) states that

> "(1) If an agency fails to submit its written report and recommendations within the period specified by this section, the City Council may proceed without that report and recommendations.
> (2) However, the applicant may waive this time limit and consent to an extension of the reporting period by giving written notice of the waiver and consent to the President of the City Council, with copies to the Board of Municipal and Zoning Appeals, the Planning Commission, and the Zoning Administrator."

Certain procedural requirements apply to this bill because a zoning map amendment 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 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, 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 has been met and whether the rezoning amounts to spot zoning. Assuming the required findings are made at the hearing and that all procedural requirements are satisfied, **including facts presented at the hearing that rule out spot zoning and establish that the original zoning was based on erroneous facts**, the Law Department could approve the bill for form and legal sufficiency. **However, if the property does not meet**

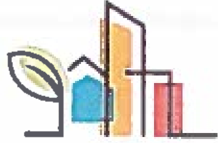
**the required minimum size for an R-MU Overlay as the Staff Report states, the bill cannot be approved.**

Sincerely yours,

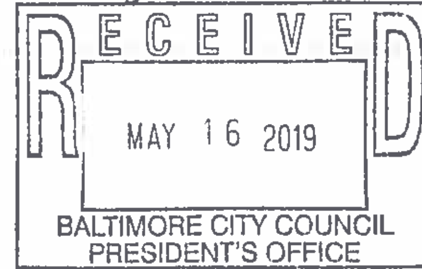
Ashlea H. Brown
Assistant Solicitor

cc: Andre M. Davis, City Solicitor
Jeff Amoros, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor
Victor Tervala, Chief Solicitor
Hilary Ruley, Chief Solicitor

no objection



BALTIMORE CITY
DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT




# MEMORANDUM

To: The Honorable President and Members of the Baltimore City Council
c/o Natawna Austin, Executive Secretary

From: Michael Braverman, Housing Commissioner MEB

Date: May 14, 2019

Re: **City Council Bill 19-0356, Zoning Map Amendment – 123 Chester Street**

---

The Department of Housing and Community Development (DHCD) has reviewed City Council Bill 19-0356, for the purpose of amending the Zoning District Map for the R-8 zoned property known as 123 South Chester Street, to apply a Rowhouse Mixed-Use Overlay District (R-MU) designation; and providing for a special effective date.

The R-MU Zoning District will allow the occupant of the property, a restaurant known as Charmed Kitchen, to apply for outdoor seating as a conditional use. The Department of Planning Staff recommended disapproval of the bill. The Zoning Code specifies that the R-MU Zoning District may only be applied to a minimum of 50% of the blockface or two opposing corner lots. According Planning Department Staff, neither of those conditions was met. There was also disagreement between the Planning Department Staff and the applicant's attorney regarding whether alleys constitute "streets" under the City Code. If so, the requirement that the R-MU Zoning District may only be applied to a minimum of 50% of the blockface would be met in this instance.

At its regular meeting of April 18, 2019, the Planning Commission resolved not to concur with the recommendation of its departmental staff for disapproval of the bill. In their opinion, outdoor seating at this location is consistent with the character of neighborhood.

DHCD has reviewed City Council Bill 19-0356 and has no objections to the passage of the bill.

MB:td

cc: Mr. Jeffrey Amoros, *Mayor's Office of Government Relations*

Butchers Hill Association
27 S. Patterson Park Avenue
Baltimore, Maryland 21231
www.butchershill.org

March 3, 2019

Zeke Cohen
100 Holliday Street
Suite 500
Baltimore, Maryland 21202

Re: Charmed Kitchen
123 S. Chester Street
Baltimore, Maryland 21231

Dear Councilman Cohen,

I am writing on behalf of the executive committee of the Butchers Hill Association in regard to the requested zoning change for Charmed Kitchen, located at 123 S. Chester Street. The neighborhood association wholeheartedly supports this change.

We specifically support the following changes:

- rezoning of 121 and 123 S. Chester to a Row House Mixed Use Overlay District
- conditional use of outdoor seating under the Row House Mixed Use Overlay District regulations for Charmed Kitchen
- extension of Charmed Café (Charmed Kitchen) liquor license to cover the outdoor seating at Charmed Kitchen, pursuant to the MOU signed between BHA and Charmed Kitchen

Andrew Crummey, owner of Charmed Café, is currently serving on the board of the Butchers Hill Association. As such he has abstained from all committee votes in matters relating to the new restaurant. The remainder of the board is unanimous in its approval and support.

If I can provide additional information on our support of this change, please don't hesitate to contact me.

Sincerely,

Beth Braun

Beth Braun
President, Butchers Hill Association
butchershillpresident@gmail.com
240-353-6333

received
7-10-19 JKC
Justin Willis

David and Pat Phoebus

200 South Chester Street

Baltimore, Md. 21231

March 4, 2019

Councilman Zeke Cohen

1st District, Baltimore City Council

100 N. Holliday St.—STE 522

Baltimore, Md. 21202

Dear Councilman Cohen:

We are writing in support of the outdoor seating proposal for Charmed Kitchen at 123 South Chester Street. We have lived diagonally across the intersection from this property for forty years and we have been very active in the Butchers Hill Association that entire time. Charmed Kitchen has been a welcomed and successful new addition to our neighborhood. It is part of a total renovation of a corner property that was once a small corner grocery store, but now consists of the Charmed Kitchen and two very nice apartments above Charmed Kitchen. Since we live across the street we are sensitive to potential issues/problems that this proposed outdoor seating might create, especially if alcohol, the need for constant monitoring, and/ or excessive noise is involved. We are convinced that the Charmed Kitchen outdoor seating operation will be as appropriate and well monitored as its indoor operation. The owners have a good working relationship with the Butchers Hill Community and also have a thoughtful Memorandum of Understanding signed by all parties. Section 5, parts a, b, and c directly address the Outdoor Dining issue. We do not foresee any problems that would cause us undue concern with the outdoor seating operation of Charmed Kitchen and we support the outdoor seating.

Sincerely,

David and Pat Phoebus

410-327-1610

Andrew Crummey <andrew.crummey@gmail.com>

## Outdoor seating @ Charmed - Support requested

**Arch Watkins** <archwatkins99@gmail.com> Fri, Mar 1, 2019 at 3:58 PM
To: Andrew Crummey <andrew.crummey@gmail.com>, Arch Watkins <arch.watkins@oldlinespirits.com>, "Thomson, Joshua" <Joshua.Thomson@baltimorecity.gov>

We have no objection

**From:** Andrew Crummey
**Sent:** Friday, March 1, 2019 11:38 AM
**To:** Arch Watkins; Thomson, Joshua; Arch Watkins
**Subject:** Outdoor seating @ Charmed - Support requested

Arch,

We are proceeding with a zoning change in order to get outdoor seating for Charmed and it requires the councilpersons office to spearhead it. They have requested evidence of neighbor support and since you are immediately adjacent would you confirm your support by replying to this email? i have cc'd Joshua Thompson with Councilman Cohen's office.

Thanks in advance

Andrew-

Andrew Crummey <andrew.crummey@gmail.com>

## Outdoor seating at Charmed Kitchen

**Salah Dagher <salah_dagher@hotmail.com>** Mon, Mar 4, 2019 at 7:17 PM
To: Andrew Crummey <andrew.crummey@gmail.com>, "Thomson, Joshua" <Joshua.Thomson@baltimorecity.gov>
Cc: Samar Hajj <samar.hajj@gmail.com>

Hi Andrew;

Thank you for the follow up e-mail. Please note that I am in support of outdoor seating for Charmed Kitchen.

Please let me know if more is needed on my end

Best Regards

Salah Dagher & Samar Hajj
2101 East Pratt Street
Baltimore; MD
21231

---

**From:** Andrew Crummey <andrew.crummey@gmail.com>
**Sent:** Monday, March 4, 2019 6:57 PM
**To:** salah_dagher@hotmail.com; Thomson, Joshua
**Subject:** Outdoor seating at Charmed Kitchen

Sal,
Following up on our conversation this evening. We are pursuing outdoor dining at Charmed Kitchen. the hours will be governed by the MOU signed with the Neighborhood association.

I have cc'd Joshua Thompson with councilman Zeke's office who is working on this. Would you replay all and verify that you are in support of the outdoor seating at Charmed kitchen?

Joshua, Sal and his family live at 2101 E Pratt St. directly across from Charmed.

Thank you in advance
Andrew-
301-613-9831

**Justin A. Williams**
**25 South Charles Street, 21st Floor**
**Baltimore, Maryland 21201**
**P: (410) 727-6600/F: (410) 727-1115**
**jwilliams@rosenbergmartin.com**

Rosenberg Martin Greenberg LLP

MEMORANDUM

TO: LAND USE COMMITTEE, BALTIMORE CITY COUNCIL

FROM: JUSTIN A. WILLIAMS

CC: CHESTER STREET PROPERTIES, LLC

RE: CCB # 19-0356 – ZONING MAP AMENDMENT – 123 S. CHESTER STREET ARGUMENTS IN SUPPORT OF MAP AMENDMENT

DATE: JULY 10, 2019

**Background**

This firm represents Chester Street Properties, LLC, the owner of the property located at 123 S. Chester Street (the "Property"). It also owns the adjacent parcel at 121 S. Chester Street. Chester Street Properties is comprised of Andrew and Lindsay Crummey, who have lived in the Butchers Hill neighborhood for nearly a decade. The Property, which had a long history of commercial use, was acquired in January 2017 when it went on the market as Crummeys desired to maintain a local community gathering space. At the time it was acquired, the commercial space was used as a small corner store, Ronnie's Market. Ronnie's decided to close the market sooner than originally anticipated, which caused the Crummeys to move up their redevelopment plans more quickly so that the casual gathering space for neighbors could be preserved.

Following acquisition of the Property, they have invested nearly $500,000 to rehabilitate the Property and obtained the Zoning Board's approval in Appeal No. 2017-289 to use the first floor as a restaurant and basement as a "neighborhood commercial establishment," and continue the existing dwelling units on the upper floors. Pursuant to the Zoning Board's approval and the Liquor Board's approval of the transfer of a Class B liquor license, the Crummeys have opened Charmed Kitchen, a small urban corner restaurant-bakery-bar.

After being open for nearly a year, the concept has been very well-received as a community gathering spot. *See* **Exhibit 1 – Baltimore Post Examiner Review**. Neighborhood patrons have been asking when Charmed Kitchen will be able to have outdoor seating. However, under the Property's R-8 Zoning Classification, outdoor seating is not permitted. To accommodate the community's desire to add outdoor seating as an amenity, and for the reasons outlined below, the Land Use Committee should vote to favorably recommend CCB # 19-356 to amend the zoning map to apply an R-MU (Rowhouse – Mixed Use) Overlay District designation to the Property.



received 7-10-19 JRC

Justin Williams

**Change/Mistake Rule Applicability**

As an "overlay district," the R-MU Overlay District should probably not be subject to the change-mistake rule, but should probably be permitted in the same way floating zones are in other jurisdictions around the State, in which compliance with applicable regulatory prerequisites is all that is required. ***See* Exhibit 2 - *Mayor and Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514 (2002).**[1] However, the Zoning Code's procedures for implementing a map amendment only contemplate the ability to amend the zoning map based 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. Baltimore City Code, Article 32 – Zoning § 5-508(b)(1).

**Argument for Mistake**

A map amendment is warranted for 123 S. Chester Street as there was a mistake in the 2017 comprehensive rezoning of the Property that failed to include an R-MU Overlay District as the Mayor and City Council failed to take notice of the existing and proposed commercial use of the Property. The Planning Commission recently found a mistake for this reason when it recommended the rezoning of the 1818 E. Pratt Street, located ±1,000 feet west of the Property, to C-1. As indicated in the Planning Staff Memorandum, the Planning Commission found:

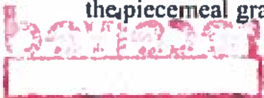
> a mistake in assigning this property R-8 zoning at the time of the Comprehensive Rezoning of the City in 2017, where the Mayor and City Council did not at that time take notice of the existing commercial use of this property, and that this business had been in continuous operation for an extensive period of time.
>
> ***See* Exhibit 3 – Planning Department Memo – CCB #19-322 (emphasis added)**

The Land Use Committee subsequently voted that the bill be recommended favorably.

Here, had the Mayor and City Council taken notice of the proposed commercial use of the Property as Charmed Kitchen, it would have considered the general trend in neighborhood restaurant/cafés where they seek to activate streetscapes and promote walkability by providing outdoor dining as an amenity to their patrons.

The Court of Appeals has previously ruled that the failure of the Baltimore City Council to anticipate a development trend was sufficient to be regarded as an error in the original zoning. In *Pressman v. City of Baltimore*, 222 Md. 330 (1960), the Court of Appeals ruled that the failure of the zoning ordinance map to anticipate the need for or trend toward shopping centers requiring a sufficient depth from a roadway to accommodate stores and parking should be regarded as an error in the original zoning, particularly when "strip zoning" is no longer favored. ***See* Exhibit 4 – *Pressman v. City of Baltimore.*** Here, the City Council failed to provide the zoning map designation necessary to accommodate the trend of neighborhood restaurants/cafés providing outdoor dining.

[1] "The change-mistake rule does not apply, in any event, to changes in zoning made in a comprehensive rezoning, or the piecemeal grant of a floating zone." *Id.* at 539.



**The Application of the R-MU Overlay to One Property is Not Spot Zoning**

The application of the R-MU Overlay District to one Property would not be an instance of invalid spot zoning. As the Court of Appeals in *Rylyns Enterprises* reiterated, "spot zoning is not invalid *per se*. Rather, its validity depends on the facts of each individual case."[2] ***See*** **Exhibit 2.** The Court also quoted, with approval, a leading zoning case explaining the concept of spot zoning:

> It is, therefore, universally held that a 'spot zoning' ordinance, which singles out a parcel of land within the limits of a use district and marks it off into a separate district for the benefit of the owner, thereby permitting a use of that parcel inconsistent with the use permitted in the rest of the district, is invalid if it is not in accordance with the comprehensive zoning plan and is merely for private gain. *On the other hand, it has been decided that a use permitted in a small area, which is not inconsistent with the use to which the larger surrounding area is restricted, although it may be different from that use, is not 'spot zoning' when it does not conflict with the comprehensive plan but is in harmony with an orderly growth of a new use for property in the locality.* The courts have accordingly upheld the creation of small districts within a residential district for use of grocery stores, ... and even gasoline filling stations, for the accommodation and convenience of the residents of the residential district.[3]

Here, the R-MU Overlay District regulations are specifically designed to be compatible with the underlying R-8 Zoning, and the purpose for the application to the Property is for the accommodation and convenience of residents of the residential district.

**The R-MU Overlay Will Comply with the Minimum Size of District Provision**

The application of the R-MU Overlay District to the Property will meet the requirement in §12-1002, which states that the R-MU Overlay District may only be applied to a minimum of: (1) 50% of the blockface; or (2) two opposing corner lots. Based on a plain reading of the Zoning Code definitions, 123 S. Chester Street comprises over 50% of its blockface.[4] ***See*** **Exhibit 5 – Tax Map.**

> "Blockface" is defined in §1-303(h) "as all of 1 side of a given street between 2 consecutive intersecting streets."
>
> The term "street" is defined in §1-314(s) as "any street, boulevard, road, highway, alley, lane, sidewalk, footway, or other way that is owned by the city or habitually used by the public." ***See*** **Exhibit 6 – Zoning Code Excerpts.**

Accordingly, the blockface at issue is the portion of the block along Chester Street between E. Pratt Street and the 10' alley. As indicated on the tax map, the blockface is 100' and 123 S. Chester Street comprises ±67' of that blockface or 67% of the blockface.

---

[2] *Rylyns*, 372 Md. at 546, quoting *Tennison v. Shonnette*, 38 Md.App. 1, 8 (1977).
[3] *Id.* at 546-47, quoting *Cassel v. Mayor and City Council of Baltimore*, 195 Md. 348, 353-56 (1950)(emphasis added in Opinion).
[4] *See e.g., Rylyns*, 372 Md. at 550 quoting *Mayor of Baltimore v. Chase*, 360 Md. 121, 128 (2000) ("[w]e begin our inquiry with the words of the statute and, ordinarily, when the words of the statute are clear and unambiguous, according to their commonly understood meaning, we end our inquiry there also.").

While the face of the block on which the R-MU Overlay District is proposed to be applied is smaller than what may be referred to as the "city block" or the "100 block of Chester Street." There are other instances in the Zoning Code where more specialized terminology is used in connection with defining the minimum sizes of blocks. For example, in order to be eligible for the City Council to designate an Area of Special Signage Control, the area must have "at least 600 linear feet of street frontage." §17-502(b)(1). In order to have an area zoned as an Educational Campus District, the area "must encompass at least the smaller of (1) 2 acres of land; or (2) the entire city block on which it is situated." §12-505(2). ***See* Exhibit 6 – Zoning Code Excerpts**.

# Exhibit 1

# Charmed Kitchen: Doing it all!

The lucky locals of Upper Fells, Butchers Hill and those around Patterson Park have the recently opened, bakery, restaurant and bar, Charmed Kitchen. They are open 7 days a week from early 6:30 a.m. for takeout Ceremony coffees and the bakery's offerings from croissants, bagels to Danish pastries. At 9 a.m., seated breakfast service starts (omelets, waffle, and more) and lunch kicks in at 11 a.m. The grueling schedule continues Wednesday through Sundays with happy hour, small plates, dinner service and full bar in the evening hours.

Passion is the word that best describes Christa Bruno (chef) and Shadee Holden (baker) and their combined visions for this small, urban corner restaurant-bakery-bar, Charmed Kitchen.

Bruno started her love of food by her Italian grandmother's side. She continued the journey working in restaurants in Baltimore, Maine and Milan as well as a popular personal chef/caterer in Los Angeles. You may remember Christa from Pazza Luna Restaurant that was in Locus Point.

Holden, a Jersey boy, whose early restaurant apprenticeships started at 13 years of age and eventually garnered him a scholarship to Johnson & Wales University. His degrees both in Culinary and Pastry Arts and work experience in fine dining restaurants both in Philadelphia and Baltimore were foundation to move forward with his love of baking. Both chef and baker are alumni of Baltimore's fine dining Italian restaurant, Sotto Sopra.

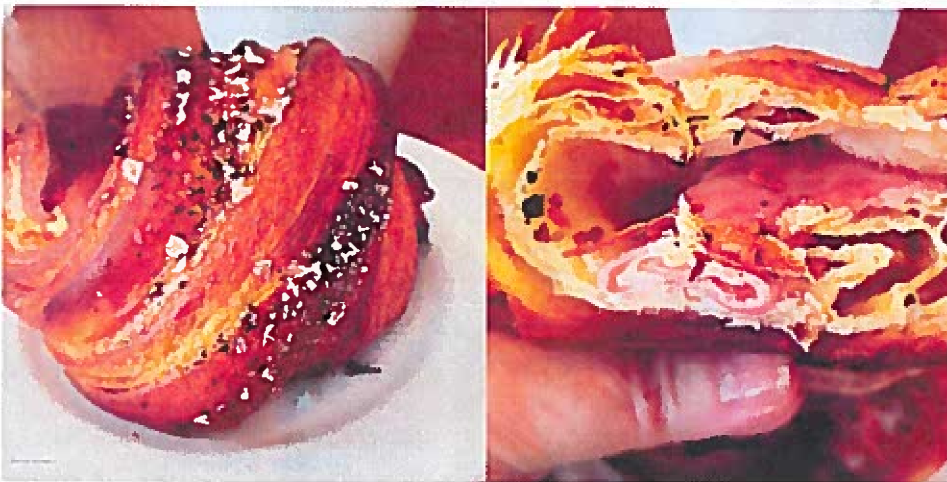
Christa says, "Shadee's whole wheat, sour dough baguette is the neighborhood crack, we can't make enough." Also pictured in their photograph is the vegan loaf made of brown rice, red quinoa, flax seed and oats and the Sicilian loaf with tahini and sesame seeds.

I popped in mid-morning for their specialty croissant-of-the-day: ham and cheese. The golden exterior, topped with coarse salt was the tease; the real treat was the buttery, flaky interior. Top that off with my chai latte and it was perfect for my late morning breakfast.

321
Shares

Charmed Kitchen has two special events coming up:

February 26th Tequila & Mezcal Tasting Dinner and March 12th, An Art Opening – paintings by Adrienne Williams. Get more details at their Facebook Page /events



(https://www.facebook.com/pg/charmedkitchen/events/?ref=page_internal)

Like Christa's nonna – Charmed Kitchen will always have something cooking.

Charmed Kitchen

123 South Chester Street

Baltimore Md 21231

443 627 8369

www.charmedkitchen.com (http://www.charmedkitchen.com)

info@charmedkitchen.com (mailto:info@charmedkitchen.com)

Social Media: @charmedkitchen

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Shares

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Ad

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# Exhibit 2

KeyCite Yellow Flag - Negative Treatment
Distinguished by City of Bowie v. Mie Properties, Inc., Md., May 4, 2007

372 Md. 514
Court of Appeals of Maryland.

The MAYOR AND COUNCIL OF ROCKVILLE et al.
v.
RYLYNS ENTERPRISES, INC.

No. 43, Sept. Term, 2001.
|
Argued Nov. 5, 2001.
|
Reargued April 5, 2002.
|
Decided Dec. 31, 2002.

Synopsis
Challenger sought judicial review of city zoning ordinance changing the zoning classification of landowner's property, which had been recently annexed by city. The Circuit Court, Montgomery County, Martha G. Kavanaugh, J., reversed and remanded. Mayor, city council, and landowner appealed. The Court of Special Appeals affirmed. Certiorari was granted. The Court of Appeals, Harrell, J., held that: (1) city was required to obtain pre-annexation jurisdiction's approval to rezone the annexed land within five years of the annexation; (2) city engaged in illegal conditional zoning and illegal contract zoning; and (3) the land retained its pre-annexation zoning classification.

Affirmed.

Cathell, Judge, filed a dissenting opinion in which Bell, Chief Judge, joined.

Attorneys and Law Firms

**472 *520 Paul T. Glasgow (Kristin M. Koger of Venable, Baetjer and Howard, LLP, on brief; David D. Freishtat, Cara A. Frye of Shulman, Rogers, Gandal, Pordy & Ecker, P.A., on brief), Rockville, for Petitioners.

Frederick C. Sussman, Council, Baradel, Kosmerl & Nolan, P.A., Annapolis, brief and appendix of Amicus Curiae Maryland Municipal League, Inc. filed on behalf of Petitioners.

Charles W. Thompson, Jr., County Atty., Karen F. Henry, Assoc. County Atty., Rockville, Linda M. Schuett, County Atty., Annapolis, Roger L. Fink, County Atty., LaPlata, Sean D. Wallace, County Atty., Steven M. Gilbert, Principal Counsel, Upper Marlboro, Kimberly Millender, County Atty., Timothy C. Burke, Asst. County Atty., Westminster, John S. Mathias, County Atty., Frederick, brief for Amici Curiae, Anne Arundel County, Carroll County, Charles County, Frederick County, Montgomery County, and Prince George's County filed on behalf of Petitioners.

Stephen J. Orens (Helen "Lynn" Primo of DuFour & Kohlhoss, Chtd., on brief), Bethesda, for Respondent.

Adrian R. Gardner, General Counsel, Michele M. Rosenfeld, Debra Yerg Daniel, Assoc. General Counsel, brief for Amicus *521 Curiae, The Maryland-National Capital Park and Planning Comm. filed on behalf of Respondent.

Argued before BELL, C.J., and ELDRIDGE, RAKER, WILNER, CATHELL, HARRELL and BATTAGLIA, JJ.

Opinion

HARRELL, Judge.

According to Respondent, Rylyns Enterprises, Inc. (Rylyns), this case presents an unusual situation where a land use restriction demanded by Montgomery County, Maryland, during municipal annexation proceedings by the City of Rockville required the City to impose improper "conditional **473 zoning" on the annexed property. The Court of Special Appeals, in an unreported opinion, held that the municipality's imposition, at the insistence of the County, of a condition limiting the use of the newly annexed property more restrictively than allowed by the City zoning ordinance for the zoning district in which the property was placed was tantamount to improper conditional zoning. The intermediate appellate court also held that the zoning reclassification, in light of the limitation, constituted illegal "spot zoning." We shall affirm that judgment based on the Court's holding as to impermissible conditional zoning, although we shall employ somewhat different reasoning.





I.

The material facts of this case are not in dispute. They must be considered against the backdrop of Maryland Code (1957, 1998 Repl.Vol.), Article 23A, § 9(c), which restricts the zoning classification into which a municipality may place newly annexed property for a period of five years following annexation unless permission is obtained first from the pre-annexation county. That restriction provides, in pertinent part:

> (1) ... no municipality annexing land may for a period of five years following annexation, place that land in a zoning classification which permits a land use substantially different from the use for the land specified in the current and duly adopted master plan or plans or if there is no adopted or approved master plan, the adopted or approved general *522 plan or plans of the county or agency having planning and zoning jurisdiction over the land prior to its annexation without the express approval of the board of the county commissioners or county council of the county in which the municipality is located.
>
> (2) If the county expressly approves, the municipality, without regard to the provisions of Article 66B, § 4.05(a) of the Code, may place the annexed land in a zoning classification that permits a land use substantially different from the use for the land specified in the current and duly adopted master plan or general plan of the county or agency having planning and zoning jurisdiction over the land prior to its annexation.

On 14 May 1997, Louis Fanaroff, Stanford Steppa, and Elaine Steppa (the "Owners"), owners of the subject property located in Montgomery County abutting the City of Rockville and situated in the northwest quadrant of the intersection of Gude Drive and Southlawn Lane, filed a Petition for Annexation (the Petition) of the property into the City. At the time the Petition was filed, the subject property was zoned I-2 (Heavy Industrial) as defined in the Montgomery County Zoning Ordinance. I-2 was the zone recommended for the property in the County's approved and adopted Upper Rock Creek Master Plan (the "County Master Plan"). The Petition requested that, upon annexation, the property be rezoned to the City's I-1 (Service Industrial) zone, consistent with the zoning of adjacent properties located within the City's boundaries. The Owners intended to erect and operate a gasoline service station on the subject property, a use allowed under the City's I-1 zone with the grant of a special exception. The County's I-2 zone did not allow a gasoline service station under any circumstances.

At a public hearing concerning the proposed annexation and rezoning, held on 17 December 1997 by the Mayor and Council of Rockville, Richard Durishin, the controlling owner of Rylyns, testified against the proposed rezoning. Mr. Durishin claimed to oppose the proposed I-1 rezoning because the loss of the I-2 classification of **474 the subject property would reduce *523 the "scarce stock" of I-2 zoned property in Montgomery County, a concern also expressed later by some County authorities. Mr. Durishin acknowledged that he was the operator of a gasoline filling station located across Gude Drive from the subject property.

On the day following the City's hearing, the City's Planning Staff issued a final report recommending annexation of the subject property and its placement in the City's I-1 zone. The report pointed out that the City's 1993 Master Plan recommended that the property (should it be annexed) be placed in the City's I-1 zone and that the surrounding properties within the City also were zoned I-1.

On 15 January 1998, the Montgomery County Planning Board considered the proposed rezoning of the subject property. It noted significant differences between the County's I-2 zone and the City's I-1 zone. Among other concerns, the Board fretted that a change in zoning might trigger the need to improve the intersection of Southlawn Lane and Gude Drive.

The County Council's Planning, Housing and Economic Development Committee, on 13 July 1998, recommended, by a vote of 3-0, that the full County Council disapprove the request to rezone the subject property. In a memorandum, dated 18 July 1998, to the County Council, the County Planning Board indicated, based on its review of the proposed annexation and rezoning of the property, that the proposed use of the subject property for a gasoline station was not an appropriate use for the property, as it was not allowed under the County's I-2 zone. Upon consideration of these recommendations, the County Council, on 28 July 1998, adopted Resolution No. 13-1384 disapproving the request of the Owners and the City to rezone the property to the City's I-1 zone.





Seven months later, in a 8 February 1999 memorandum to the County Council, its Planning, Housing and Economic Development Committee announced that, at the request of a County Council member, it had re-examined the Owners' petition for annexation and rezoning and concluded that it *524 would support the rezoning of the subject property from the County's I-2 zone to the City's I-1 zone, "provided the City restrict the retail use of the site...." On 23 February 1999, the County Council adopted Resolution No. 14-57 approving the City's proposal to rezone the property on condition that "the City prohibits the retail use of the site, except for a gasoline service station."[1]

On 20 July 1999, the Mayor and Council of Rockville entered into a written annexation agreement with the Owners regarding the subject property. The agreement, among other things, provided that the property could not be used for any retail purpose, other than a gasoline service station. There was no mention in the agreement of the requirement in the City Zoning ordinance that a special exception was required in the City's I-1 zone in order to operate a gasoline service station. The Mayor and Council adopted Annexation Resolution No. 13-99 on 26 July 1999, enlarging and extending the boundaries of the City of Rockville by annexing the subject property.

A week later, the Mayor and Council adopted Zoning Ordinance No. 10-99, placing **475 the property in the City's I-1 zoning classification. Zoning Ordinance No. 10-99 specifically stated that "the Mayor and Council of Rockville, having fully considered the matter, has determined to place the annexed property in the City's I-1 zone, under certain conditions to be set forth in an annexation agreement, so as to promote the health, security, and general welfare of the community of the City of Rockville." The annexation of the property and its placement in the City's I-1 zone became effective on 9 September 1999.

Upset with this result, Rylyns filed a petition with the Circuit Court for Montgomery County seeking judicial review *525 of City Zoning Ordinance No. 10-99. No direct judicial review of Annexation Resolution No. 13-99 was sought. On 17 March 2000, the Circuit Court reversed Rockville's adoption of Zoning Ordinance 10-99, holding that the manner in which the subject property was rezoned constituted improper conditional and spot zoning, and remanded the case to the Mayor and Council. The Mayor and Council, and the Owners, appealed to the Court of Special Appeals, which affirmed the judgment of the Circuit Court. The Mayor and Council of Rockville and the Owners petitioned this Court for a writ of certiorari, which, on 22 June 2001, we granted. *Rockville v. Rylyns*, 364 Md. 534, 774 A.2d 408 (2001).

The Petitioners initially presented two questions to this Court:

1. Does a limitation in an annexation agreement restricting certain uses on newly annexed property constitute conditional zoning?

2. Did the placement of newly annexed property by the City, in a zone that permitted a land use substantially different from the use for the land specified in the current and duly adopted master plan of Montgomery County, with the approval of the Montgomery County Council pursuant to Art. 23A, § 9(c)(2), constitute invalid spot zoning?

After initial briefing and argument, we set the case in for reargument, on our own initiative, inviting the Maryland Municipal League, the Maryland Association of Counties and the Maryland National Capital Park and Planning Commission to file amici briefs. We requested that the parties and amici address additional issues that we framed as follows:

3. Prior to 1975 there was no subsection (c)(2) of Art. 23A, § 9(c) and subsection (c) had no provisions in respect to county approval. At that time Art. 23A, § 9(c), as relevant to the case at bar, provided that a municipal corporation for a period of five years after annexation could not

> *526 'place that [annexed] land in a different zoning classification which permits a land use substantially different from the use specified in the current and duly adopted master plan or plans of the county or agency having planning and zoning jurisdiction over the land prior to annexation.'





In 1975, subsequent to two 1974 Court of Appeals's decisions in which the above language was mentioned, Senate Bill 864 was introduced. As introduced, the bill contained the same language above through the phrase 'current and duly adopted master plan or plans' but then added a provision at the very end of the subsection creating an exception based upon county approval i.e. 'without the express approval of the county.'

The bill, however, was amended during its progress through the Senate. As relevant to the instant case, the amendment added immediately after the phrase 'duly adopted master plan or plans,' the phrase 'or if there is not an **476 adopted and approved master plan, the adopted or approved general plan or plans' of the county.

a) In view of the legislative history of Md.Code (1957, 1998 Repl.Vol.), Art. 23A, § 9(c) (1 and 2) (and particularly Chapter 613, Laws 1975, and Chapter 450, Laws 1988), may a municipality which has planning and zoning authority and has a current and duly adopted master plan covering land within its jurisdiction, zone the annexed property upon annexation irrespective of the land use proposed for such property by the county's current and duly adopted master plans or general plans?

b) If the answer to the above question is yes, does Section 9(c)(2) apply in such cases?

4. Under what circumstances do the provisions of Md.Code (1957, 1998 Repl.Vol., 2001 supp.), Art. 66B, Section 4.01(c) ('may impose such additional conditions, restrictions, or limitations') (which was first enacted in 1970 subsequent to the *Carole Highlands Citizens Ass'n, Inc. v. Board of County Comm'rs of Prince Georges County*, 222 Md. 44, 158 A.2d 663 (1960) and *Baylis v. City of* *527 *Baltimore*, 219 Md. 164, 148 A.2d 429 (1959) cases), and Rockville City Code (2000) Section 25-126 ('may impose additional restrictions, conditions or limitations') (enacted after the enactment of the State statute) authorize conditional zoning by the City?

a) What is the effect, if any, of *Prince George's County v. Collington Corporate Center I Limited Partnership*, 358 Md. 296, 747 A.2d 1219 (2000), which upheld conditional zoning in Prince George's County, on this issue?

b) Do the above provisions authorize the City's actions in the present case?

5. What zoning classification, if any, would the subject property have if the Court were to rule that the I-1 Zoning was invalid? Is there a state or City statute covering the situation?

II.

As a prelude to considering these questions, it may be useful to refresh our collective memories as to the core concepts, terms, and procedures underlying the planning and zoning principles potentially implicated by, or related to, the issues in this case. This framework of planning and zoning principles forms a "flexibility continuum," a continuum within which the present controversy must be placed. Planning and zoning turns on the dynamic interplay between certainty and consistency in the application of land use plans and zoning ordinances on the one hand, and on the other the need for zoning authorities to have flexibility in applying those plans and ordinances to accommodate changing and/or unforseen circumstances.

A. Planning and Zoning

There exists a distinction between zoning and what commonly is called land use planning, both as a practical matter *528 and as a function of different statutory grants of power and delegations of duties.[2] For the **477 purposes of this case, the statutes controlling the exercise of the planning function are found primarily in Maryland Code (1957, 1998 Repl.Vol., 2002 Supp.), Article 66B, §§ 3.01-3.09 and those controlling the exercise of the zoning function are found primarily in Md.Code (1957, 1998 Repl.Vol., 2002 Supp.), Art. 66B §§ 4.01–4.08.[3]

*529 Plans are long term and theoretical, and usually contain elements concerning transportation and public facilities, recommended zoning, and other land use recommendations and proposals.[4] Zoning, **478 however, is a more finite term, and its *530 primary objective is the immediate regulation of property use through the use of use classifications, some relatively rigid and some more flexible.[5] *Howard County v. Dorsey*

292 Md. 351, 361–62, 438 A.2d 1339, 1345–46 (1982); *Washington County Taxpayers Ass'n. v. Board of County Comm'rs of Washington County*, 269 Md. 454, 455–57, 306 A.2d 539, 540–41 (1973); *Norbeck Village Joint Venture v. Montgomery County Council*, 254 Md. 59, 65–67, 254 A.2d 700, 704–05 (1969). We repeatedly have noted that plans, which are the result of work done by planning commissions and adopted by ultimate zoning bodies, are advisory in nature and have no force of law absent statutes or local ordinances linking planning and zoning.[6] Where the latter exist, however, they serve to elevate the status of comprehensive plans to the level of true regulatory device. *531 *Richmarr Holly Hills v. American PCS, L.P.*, 117 Md.App. 607, 635–51, 701 A.2d 879, 893–901 (1997); *see also Boyds Civic Ass'n v. Montgomery County Council*, 309 Md. 683, 699–700, 526 A.2d 598, 606 (1987); *Coffey v. Maryland National Capital Park & Planning Comm'n*, 293 Md. 24, 27–30, 441 A.2d 1041, 1042–44 (1982); *Board of County Comm'rs of Cecil County v. Gaster*, 285 Md. 233, 239–47, 401 A.2d 666, 669–73 (1979); *Aspen Hill Venture v. Montgomery County Council*, 265 Md. 303, 314–15, 289 A.2d 303, 309 (1972); *Floyd v. County Council of Prince George's County*, 55 Md.App. 246, 258–60, 461 A.2d 76, 83 (1983). In those instances where such a statute or ordinance **479 exists, its effect is usually that of requiring that zoning or other land use decisions be consistent with a plan's recommendations regarding land use and density or intensity.

**B. Original, Comprehensive, and Piecemeal Zoning and the Police Power.**

In *Harbor Island Marina, Inc. v. Board of County Comm'rs of Calvert County*, 286 Md. 303, 312–13, 407 A.2d 738, 743 (1979), we noted that:

> '[t]he purpose of the zoning law is to promote the health, safety, and general welfare of the public. Md.Code (1957, 1978 Repl.Vol.), Art. 66B, §§ 4.01, and the Act vests in the counties the full measure of power which the State could exercise in pursuit of this objective.' See *Cassey v. City of Baltimore*, 201 Md. 130, 135, 93 A.2d 74, 76 (1952). 'The very essence of zoning is territorial division according to the character of the land and ... [its] peculiar suitability for uses, *and uniformity of use within the zone*.' *Heath v. M. & C.C. of Baltimore*, 187 Md. 296, 305, 49 A.2d 799, 804 (1946) (emphasis added).

The exercise of these broad powers[7] is, in the main, through the implementation of what is known as the planning and *532 zoning process. In theory, and usually in practice, long study and consideration is given to the location of various human activities as they are distributed on the geographic plain, and analysis is made as to where particular types of growth are likely to occur, and where it would be best to allow growth to occur in reference to all of the other land use activities in the area or region in question. Ideally, growth then may be planned in a manner that allows for the expansion of economic activities and opportunities in the area or region for the benefit of its residents, while at the same time attempting to maintain the quality of life of the region, all without unduly disturbing the reasonable expectations of the citizenry as to the permissible uses they may make of real property. As is the case with most human endeavors, particularly those involving multiple and complex variables, the results of the planning and zoning process are sometimes less than perfect, particularly from the subjective point of view of the property owner who finds that his or her desired use for a property is different from that of the relevant planning and zoning authority.

Zoning authorities in Maryland implement their plans and determinations regarding appropriate land use zoning categories primarily through three processes: 1) original zoning; 2) comprehensive rezoning; and 3) piecemeal rezoning. As will be discussed in more detail, *infra*, a fundamental distinction between original zoning, comprehensive zoning, and piecemeal zoning is that the first two are purely legislative processes, while piecemeal rezoning is achieved, usually at the request of the property owner, through a quasi-judicial process leading to a legislative act. *Montgomery County v. Woodward & Lothrop, Inc.*, 280 Md. 686, 711–13, 376 A.2d 483, 497–98 (1977); *Richmarr*, 117 Md.App. at 636, 701 A.2d at 893–94. The quasi-judicial process must observe the requirements of Art. 66B, § 4.05.

*533 Because the power to regulate land use necessarily places the local government in **480 the position of potentially circumscribing a citizen's rights or expectations as to the desired use for a given piece of real property, our appellate courts repeatedly have identified the source of those powers and set forth the minimum procedures necessary to insure that these powers are exercised in an appropriate manner. In *White v. Spring*, 109 Md.App. 692, 696–97, 675 A.2d 1023, 1025 (1996), the Court of Special Appeals succinctly stated that, absent a confiscatory regulation or result,





> [o]riginal zonings (including master planning) and comprehensive rezoning are limited only by the general boundaries of the ... appropriate procedural and due process considerations. A legislative body establishes zoning policy through its adoption of master plans, comprehensive zoning and comprehensive rezoning. So long as (1) the appropriate procedural criteria are met, (2) the due process limitations have been duly addressed, (3) the policy is designed to achieve a valid public purpose, and (4) the police power is not otherwise exceeded, comprehensive zoning and comprehensive rezoning-i.e., the conclusions of the legislative bodies, cannot be a mistake, except where it is proven by substantial evidence that the information relied upon by the legislative entity was wrong, i.e., a mistake.

*See also Mraz v. County Comm'rs of Cecil County*, 291 Md. 81, 88–89, 433 A.2d 771, 776 (1981); *Greenax v. Lal der Zoning Bd.*, 27 Md.App. 266, 277, 340 A.2d 385, 391 (1975).[8]

**C. Euclidean Zones**[9]

"Zoning is concerned with dimensions and uses of land or structures ..." *Friends of the Ridge v. Baltimore Gas & *534 Elec. Co.*, 352 Md. 645, 655, 724 A.2d 34, 39 (1999). Euclidean zoning is a fairly static and rigid form of zoning named after the basic zoning ordinance upheld in *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 47 S.Ct. 114, 71 L.Ed. 303 (1926).[10] As explained in *Rouse–Fairwood Dev. Ltd. P'ship v. Supervisor of Assessments for Prince George's County*, 138 Md.App. 589, 623, 773 A.2d 535, 555 (2001):

The term 'Euclidean' zoning describes the early zoning concept of separating incompatible land uses through the establishment of fixed legislative rules...." 1 ZIEGLER, RATHKOPF'S THE LAW OF ZONING AND PLANNING (4th Ed. Rev 1994), § 1.01(c), at 1–20 ("Rathkopf's"). Generally, by means of Euclidean zoning, a municipality divides an area geographically into particular use districts, specifying certain uses for each district. "Each district or zone is dedicated to a particular purpose, either residential, commercial, or industrial," and the "zones appear on the municipality's official zoning map." 5 Rathkopf's, § 63.01, at 63–1–2. In this way, the municipality "provides the basic framework for implementation of land use controls at the local level." 1 Rathkopf's, § 1.01(c), at 1–22.

**481 Euclidian zoning is designed to achieve stability in land use planning and zoning and to be a comparatively inflexible, self-executing mechanism which, once in place, allows for little modification beyond self-contained procedures for predetermined exceptions or variances. This relative inflexibility is reflected in the requirement, found in Art. 66B, § 4.02, of regulatory uniformity within zoning districts.[11]

***535 D. The Zoning Process in Greater Depth**

**1. Original and Comprehensive Zoning**

As noted, *supra*, the act of zoning either may be original or comprehensive (covering a large area and ordinarily initiated by local government) or piecemeal (covering individual parcels, lots, or assemblages, and ordinarily initiated by the property owner). The requirements which must be met for an act of zoning to qualify as proper comprehensive zoning are that the legislative act of zoning must: 1) cover a substantial area, 2) be the product of careful study and consideration, 3) control and direct the use of land and development according to present and planned future conditions, consistent with the public interest, and, 4) set forth and regulate all permitted land uses in all or substantially all of a given political subdivision, though it need not zone or rezone all of the land in the jurisdiction. *Mraz*, 291 Md. at 88–89, 433 A.2d at 776; *Woodward & Lothrop, Inc.*, 280 Md. at 702, 376 A.2d at 492–93; *County Council for Montgomery County v. District Land Corp.*, 274 Md. 691, 699–700, 337 A.2d 712, 717 (1975); *Norbeck*, 254 Md. at 65–66, 254 A.2d at 704–05; *Scull v. Coleman*, 251 Md. 6, 9–11, 246 A.2d 223, 224–25 (1968); *Greenax*, 27 Md.App. at 277, 340 A.2d at 391.





The motives or wisdom of the legislative body in adopting an original or comprehensive zoning enjoy a strong presumption of correctness and validity. *Norbeck*, 254 Md. at 65–66, 254 A.2d at 704–05. The zoning so established may be changed thereafter by the zoning authority only by the adoption of a subsequent comprehensive rezoning, or, in the case of a piecemeal Euclidean zoning application, upon a showing that *536 there was a mistake in the prior original or comprehensive zoning or evidence that there has been a substantial change in the character of the neighborhood since the time the original or comprehensive zoning was put in place. *Stratakis v. Beauchamp*, 268 Md. 643, 652–53, 304 A.2d 244, 249 (1973); *Anne Arundel County v. Maryland Nat'l Bank*, 32 Md.App. 437, 440, 361 A.2d 134, 136 (1976). As will be discussed *infra* when we address piecemeal zoning, the impact of this presumption often has been felt to be unduly harsh to the landowner who finds that planned uses of a property are no longer allowed under the zoning classification into which the land has been placed. The presumption performs, however, and perhaps somewhat ironically, a critically essential function to the benefit of the property owner. Because zoning necessarily impacts the economic uses to which land may **482 be put, and thus impacts the economic return to the property owner, the requirement that there be uniformity within each zone throughout the district is an important safeguard of the right to fair and equal treatment of the landowners at the hands of the local zoning authority. Frankly put, the requirement of uniformity serves to protect the landowner from favoritism towards certain landowners within a zone by the grant of less onerous restrictions than are applied to others within the same zone elsewhere in the district, and also serves to prevent the use of zoning as a form of leverage by the local government seeking land concession, transfers, or other consideration in return for more favorable zoning treatment.

Rigidity is not without its drawbacks. No planning and zoning scheme, regardless of how well-studied and designed, can accommodate all of the minute geographical differences found in a given region, or anticipate all of the future changes or desired uses to which the lands subject to zoning conceivably and appropriately may be put, or uses to which owners, in the free exercise of their property interests, may wish their land to be put. In response to the imperfect nature of planning and zoning and the need for greater flexibility in responding to the impacts of these imperfections, various mechanisms have been designed and incorporated into the *537 planing and zoning process to allow for changes in the uses allowed within a given zone while at the same time retaining the safeguards of the requirement of uniformity within zones. This is the *raison d'etre* for floating zones, variances, conditional uses/special exceptions, and even non-conforming uses. Of some of these vehicles, the venerable scribe of Maryland zoning jurisprudence, Stanley D. Abrams, Esquire, notes:

> A special exception or conditional use refers to a permissive land use category authorized by a zoning or administrative body pursuant to the existing provisions of the zoning law and subject to guides, standard and conditions for such special use which is permitted under provisions of the existing zoning law. A variance refers to administrative relief which may be granted from the strict application of a particular development limitation in the zoning ordinance (i.e., setback, area and height limitations, etc.). The principle of a nonconforming use protects the vested rights of property owner against changes in the zoning ordinance which may impair or prohibit the owner's existing use of his property.

Stanley D. Abrams, Guide to Maryland Zoning Decisions, § 11.1 (3d ed., Michie 1992).[12] While these mechanisms give increased flexibility to zoning regulatory schemes, protection against abuse is provided by the fact that the specific requirements and available alternatives for each mechanism must be spelled out in detail as a part of the comprehensive zoning *538 ordinance, and thus cannot be "made-up" out of **483 convenience or expediency on a case-by-case basis.[13]

**2. Piecemeal Zoning**

As was pointed out *supra*, the requirement that restrictions within a zone apply uniformly to all of the properties within that zone throughout the district serves





to protect land owners from arbitrary use of zoning powers by zoning authorities. Though at first seemingly contradictory, it is for this reason that the motives or wisdom of the legislative body in adopting an original or comprehensive zoning enjoy a strong presumption of correctness and validity. *Norbeck*, 254 Md. at 65–66, 254 A.2d at 704–05. As a consequence, the original or comprehensive zoning may be changed (unless by a subsequent comprehensive zoning) only by a subsequent piecemeal zoning, which in the case of a Euclidean zone may be granted only upon a showing of change or mistake as previously discussed. *Stratakis*, 268 Md. at 652–53, 304 A.2d at 249; *Richmarr*, 117 Md.App. at 635–37, 701 A.2d at 893–94. This requirement, known as the "change-mistake rule," like the rule of uniformity within zones, endeavors to serve the important function of preventing the arbitrary use and/or abuse of the zoning power.

The "change-mistake" rule is a rule of the either/or type. The "change" half of the "change-mistake" rule requires that, in order for a piecemeal Euclidean zoning change to be approved, there must be a satisfactory showing that there has been significant and unanticipated change in a relatively well-defined area (the "neighborhood") surrounding the property in question since its original or last comprehensive rezoning, whichever occurred most recently. The "mistake" option of the rule requires a showing that the underlying assumptions or premises relied upon by the legislative body during the immediately preceding original or comprehensive *539 rezoning were incorrect. In other words, there must be a showing of a mistake of fact. Mistake in this context does not refer to a mistake in judgment. Additionally, even where evidence of a change or mistake is adduced, there is no reciprocal right to a change in zoning, nor is there a threshold evidentiary standard which when met compels rezoning. Even with very strong evidence of change or mistake, piecemeal zoning may be granted, but is not required to be granted, except where a failure to do so would deprive the owner of all economically viable use of the property. *See Mayor and Council of Rockville v. Stone*, 271 Md. 655, 660–64, 319 A.2d 536, 540–41 (1974); *Burgess v. 103–29 Ltd. P'ship*, 123 Md.App. 293, 298–99, 718 A.2d 613, 616 (1998); *People's Counsel for Baltimore County v. The Prosser Co., Inc.*, 119 Md.App. 150, 179, 704 A.2d 483, 498 (1998); *The Bowman Group v. Dawson Moser*, 112 Md.App. 694, 699–702, 686 A.2d 643, 646–47 (1996); *People's Counsel for Baltimore County v. Beachwood I Ltd. P'ship*, 107 Md.App. 627, 638–59, 670 A.2d 484, 489–500 (1995); *Boyce v. Sembly*, 25 Md.App. 43, 49–53, 334 A.2d 137, 141–44 (1975). In Maryland, the change-mistake rule applies to all piecemeal zoning applications involving Euclidian zones, including those involving conditional zoning.[14] The change-mistake rule does not apply, in any **484 event, to changes in zoning made in a comprehensive rezoning, or the piecemeal grant of a floating zone.[15]

***541 3. Special Exceptions/Conditional Uses**

**485 Another mechanism allowing some flexibility in the land use process, without abandoning the uniformity principle, is the "special exception" or "conditional use."[16] As was noted *supra*, the City of Rockville's I–1 zoning classification does not allow for the operation of a gasoline service station except upon the grant of a special exception. During the legislative process of defining zones and identifying the permitted uses for each zone, the local legislature also identifies additional uses which may be conditionally compatible in each zone, but which should not be allowed unless specific statutory standards assuring compatibility are met by the applicant at the time separate approval of the use is sought. "The special exception use is a valid zoning mechanism that delegates to an administrative Board limited authority to allow enumerated *542 uses which the legislature has determined to be permissible absent any fact or circumstance negating the presumption." *Schultz v. Pritts*, 291 Md. 1, 11, 432 A.2d 1319, 1325 (1981).[17] Put another way, a special exception use is an additional use which the controlling zoning ordinance states will be allowed in a given zone unless there is showing that the use would have unique adverse affects on the neighboring properties within the zone. *Rockville Fuel & Feed Co. v. Board of Appeals of the City of Gaithersburg*, 257 Md. 183, 188–91, 262 A.2d 499, 502–03 (1970); *Cadem v. Nanna*, 243 Md. 536, 541, 221 A.2d 703, 707 (1966); *Anderson v. Sawyer*, 23 Md.App. 612, 617–18, 329 A.2d 716, 720–21 (1974).

The disqualifying adverse effect or effects must be more than mere annoyance. Classifying such uses as special exceptions or conditional uses (as opposed to permitted uses) assumes that those uses will include some adverse impacts. *Mossburg v. Montgomery County*, 107 Md.App. 1, 7–11, 666 A.2d 1253, 1256–58 (1995). As we pointed out in **486 *Schultz*, 291 Md. at 11, 432 A.2d at 1325 (1981): "[t]he appropriate standard to be used in determining whether a requested special exception use

would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone."

Because special exceptions are legislatively-created within the comprehensive zoning regulatory scheme, they enjoy the presumption of correctness and are an appropriate *543 tool for the exercise of a local government's police powers. *Brandywine Enterprises, Inc. v. Prince George's County Council*, 117 Md.App. 525, 700 A.2d 1216 (1997). Because of this presumption, special exception applications are not governed by the "change-mistake Rule." *Cadem*, 243 Md. at 543, 221 A.2d at 707.

**4. Conditional Zoning**

Another important zoning mechanism is "conditional zoning." At one time, in most States, conditional zoning was improper. This, as late as the 1950's, was also the case in Maryland. Some states, either by case law and/or statute, approved, however, some level of conditional zoning. Particularly illustrative for our purposes is the case of *Collard v. Village of Flower Hill*, 52 N.Y.2d 594, 600–01, 439 N.Y.S.2d 326, 421 N.E.2d 818, 821 (1981), where the Court stated:

> Probably the principal objection to conditional rezoning is that it constitutes illegal spot zoning, thus violating the legislative mandate requiring that there be a comprehensive plan for, and that all conditions be uniform within, a given zoning district. When courts have considered the issue (see, e.g., *Baylis v. City of Baltimore*, 219 Md. 164, 148 A.2d 429; *Houston Petroleum Co. v. Automotive Prods. Credit Ass'n*, 9 N.J. 122, 87 A.2d 319; *Hausmann & Johnson v. Berea Bd. of Appeals*, 40 Ohio App.2d 432, 320 N.E.2d 685), the assumptions have been made that conditional zoning benefits particular landowners rather than the community as a whole and that it undermines the foundation upon which comprehensive zoning depends by destroying uniformity within use districts. Such unexamined assumptions are questionable. First, it is a downward change to a less restrictive zoning classification that benefits the property rezoned and not the opposite imposition of greater restrictions on land use. Indeed, imposing limiting conditions, while benefitting surrounding properties, normally adversely affects the premises on which the conditions are imposed. Second, zoning is not invalid per se merely because only a single parcel is involved or benefitted (*Matter of Mahoney* *544 *v. O'Shea Funeral Homes*, 45 N.Y.2d 719, 408 N.Y.S.2d 470, 380 N.E.2d 297); the real test for spot zoning is whether the change is other than part of a well-considered and comprehensive plan calculated to serve the general welfare of the community. Such a determination, in turn, depends on the reasonableness of the rezoning in relation to neighboring uses-an inquiry required regardless of whether the change in zone is conditional in form. Third, if it is initially proper to change a zoning classification without the imposition of restrictive conditions notwithstanding that such change may depart from uniformity, then no reason exists why accomplishing that change subject to condition should automatically be classified as impermissible spot zoning.
>
> **487 ... If modification to a less restrictive zoning classification is warranted, then *a fortiori* conditions imposed by a local legislature to minimize conflicts among districts should not in and of themselves violate any prohibition against spot zoning. (citation omitted).

As we will address in more detail *infra*, it is clear that Maryland now approves of at least limited conditional zoning, as codified in Art. 66B, § 4.01(c).[12] As we pointed out in *545 *Attman/Glazer P.B. Co. v. Mayor & Aldermen of Annapolis*, 314 Md. 675, 687, n. 8, 552 A.2d 1277, 1284, n. 8 (1989):

> Conditional zoning, once roundly condemned, appears to be in the ascendancy. In Maryland, the concept has evolved indirectly through the use of various zoning devices such as planned developments, and has found at least limited favor with the state legislature. *See* Article 66B, §§ 4.01(b) permitting a county or municipal corporation to impose certain conditions at the time of zoning or rezoning land, under certain circumstances. *See also People's Counsel v. Mockard*, 73 Md.App. 340, 343–45, 533 A.2d 1344 (1987); and *Bd. of Co. Comm'rs v. H. Manny Holtz, Inc.*, 65 Md.App. 574, 579–86, 501 A.2d 489 (1985) (holding that §§ 4.01(b) of Article 66B authorizes the imposition of conditions applicable to structural and architectural character of the land and improvements thereon, and does not authorize conditional use rezoning). We need not, and do not, offer an opinion concerning the intermediate appellate court's interpretation of the scope of § 4.01(b).[13]





**5. Spot Zoning**

Although we need not, and therefore shall not, decide whether the City of Rockville's grant of the I-1 zone for the subject property constitutes illegal spot zoning because we decide the case on other grounds, we shall describe briefly the principles of spot zoning so that the potential nexus between it and conditional zoning may be appreciated. In *Tennison v. Shomette*, 38 Md.App. 1, 8, 379 A.2d 187, 192 (1977), the Court of Special Appeals pointed out that

> **488 *546 [s]pot zoning occurs when a small area in a District is placed in a different zoning classification than the surrounding property.... Spot zoning is not invalid *per se*. Rather, its validity depends on the facts of each individual case ... while spot zoning is illegal if it is inconsistent with an established comprehensive plan and is made solely for the benefit of a private interest, it is a valid exercise of the police power where the zoning is in harmony with the comprehensive plan and there is a substantial relationship to the public health, safety and general welfare.

*See also Mraz*, 291 Md. at 88, 433 A.2d at 775.

We discussed the concept of "spot zoning" in the case of *Cassel v. Mayor and City Council of Baltimore*, 195 Md. 348, 73 A.2d 486 (1950), at one time considered a leading case on the topic. There, we said:

> Zoning is permissible only as an exercise of the police power of the State. When this power is exercised by a city, it is confined by the limitations fixed in the grant by the State and to the accomplishment of the purposes for which the State authorized the city to zone....
>
> 'Spot zoning,' the *arbitrary* and *unreasonable* devotion of a small area within a zoning district to a use which is inconsistent with the use to which the rest of the district is restricted, has appeared in many cities in America as the result of pressure put upon councilmen to pass amendments to zoning ordinances solely for the benefit of private interests.... It is, therefore, universally held that a 'spot zoning' ordinance, which singles out a parcel of land within the limits of a use district and *marks it off into a separate district* for the benefit of the owner, thereby permitting a use of that parcel inconsistent with the use permitted in the rest of the district, is invalid *if it is not in accordance with the comprehensive zoning plan and is merely for private gain.*
>
> *547 *On the other hand, it has been decided that a use permitted in a small area, which is not inconsistent with the use to which the larger surrounding area is restricted, although it may be different from that use, is not 'spot zoning' when it does not conflict with the comprehensive plan but is in harmony with an orderly growth of a new use for property in the locality.* The courts have accordingly upheld the creation of small districts within a residential district for use of grocery stores, ... and even gasoline filling stations, for the accommodation and convenience of the residents of the residential district.

*Id.* at 353–56, 73 A.2d at 488–90 (emphasis added) (citations omitted).

**6. Contract Zoning**

A final zoning concept we shall mention briefly in this primer is "contract zoning." It occurs when an agreement is entered between the ultimate zoning authority and the zoning applicant/ property owner which purports to determine contractually how the property in question will be zoned, in derogation of the legal prerequisites for the grant of the desired zone. Absent valid legislative authorization, it is impermissible because it allows a property owner to obtain a special privilege not available to others. *Wakefield v. Kraft*, 202 Md. 136, 142–44, 96 A.2d 27, 29–30 (1953), disrupts the comprehensive nature of the zoning plan, and, most importantly, impermissibly derogates the exercise of the municipality's powers. *Attman/Glazer*, 314 Md. at 685–86, 552 A.2d at 1282–83; **489 *Baylis v. City of Baltimore*, 219 Md. 164, 169–70, 148 A.2d 429, 433 (1959); *Beachwood*, 107 Md.App. at 668–75, 670 A.2d at 504–08. Agreements between the landowner and governmental agencies who do not wield the final zoning authority or entities extrinsic to the formal zoning process, such as civic associations, however, may be permissible. *Funger v. Mayor & Council of the Town of Somerset*, 249 Md. 311, 328, 239 A.2d 748, 757 (1968); *Rodriguez v. Prince George's County*, 79 Md.App. 537, 553, 558 A.2d 742, 750 (1989).





***548 III.**

Having surveyed generally the relevant zoning mechanisms, concepts, and principles potentially implicated by the case *sub judice*, we now shall employ them in our analysis of the relevant facts. We address the necessary certiorari issues in a different order than they were raised chronologically in this case because logic dictates that we do so.

**A.**

**Article 23A, § 9(c)(1) and (2)**

Maryland Code (1957, 1998 Repl.Vol.), Article 23A, § 9(c)(1) and (2) provides as follows:

> (c) *Limitations on charter amendments; effect of annexation.*—(1) A municipal corporation which is subject to the provisions of Article XI-E of the Maryland Constitution may not amend its charter or exercise its powers of annexation, incorporation or repeal of charter as to affect or impair in any respect the powers relating to sanitation, including sewer, water and similar facilities, and zoning, of the Washington Suburban Sanitary Commission or of the Maryland National Capital Park and Planning Commission. *Except* that where any area is annexed to a municipality authorized to have and having then a planning and zoning authority, the municipality shall have exclusive jurisdiction over planning and zoning and subdivision control within the area annexed; provided nothing in this exception shall be construed or interpreted to grant planning and zoning authority or subdivision control to a municipality not authorized to exercise that authority at the time of such annexation; and further provided, that no municipality annexing land may for a period of five years following annexation, *place that land in a zoning classification which permits a land use substantially different from the use for the land specified in the current and duly adopted master plan or plans or if there is no adopted or approved master plan, the adopted or approved general plan or plans of the county or agency having planning and zoning jurisdiction over the* *549 *land prior to its annexation* without the express approval of the board of county commissioners or county council of the county in which the municipality is located.
>
> (2) If the county expressly approves, the municipality, without regard to the provisions of Article 66B, § 4.05(a) of the Code, may place the annexed land in a zoning classification that permits a land use substantially different from the use for the land specified in the current and duly adopted master plan or general plan of the county or agency having planning and zoning jurisdiction over the land prior to its annexation. (emphasis added).

The Owners argue that the language "duly adopted master plan or plans or if there is no adopted or approved master plan, the adopted or approved general plan or plans of the county or agency having planning and zoning jurisdiction over the land prior to its annexation" should be interpreted to mean that the General Assembly **490 intended that, upon annexation of new lands into the City of Rockville, the City is to look first to its own land use plans, if any, to determine zoning consistency. That is to say, the Owners' position is that the statutory consistency requirement is met if the new zoning is consistent with Rockville's own plan, and consistency with the plan or plans of the pre-annexation jurisdiction is not required. Given the language of the statute, as well as its legislative history, we do not conclude that to be the case.

In *Mazor v. Department of Correction*, 279 Md. 355, 360–61, 369 A.2d 82, 86–87 (1977), we set out the six principal tenets of statutory interpretation:

> [1] The cardinal rule of construction of a statute is to ascertain and carry out the real intention of the Legislature.
>
> [2] The primary source from which we glean this intention is the language of the statute itself.
>
> [3] In construing a statute, we accord the words their ordinary and natural signification.





> *550 [4] If reasonably possible, a statute is to be read so that no word, phrase, clause, or sentence is rendered surplusage or meaningless.
>
> [5] Similarly, wherever possible an interpretation should be given to statutory language which will not lead to absurd consequences.
>
> [6] Moreover, if the statute is part of a general statutory scheme or system, the sections must be read together to ascertain the true intention of the Legislature. (citations omitted).

As noted, absurd results in the interpretive analysis of a statute are to be shunned. This Court stated in *D & Y, Inc. v. Winston*, 320 Md. 534, 538, 578 A.2d 1177, 1179 (1990), that "construction of a statute which is unreasonable, illogical, unjust, or inconsistent with common sense should be avoided." (citations omitted). *See also Blandon v. State*, 304 Md. 316, 319, 498 A.2d 1195, 1196 (1985) ("[R]ules of statutory construction require us to avoid construing a statute in a way which would lead to absurd results."); *Erwin and Shafer, Inc. v. Pabst Brewing Co.*, 304 Md. 302, 311, 498 A.2d 1188, 1192 (1985) ("A court must shun a construction of a statute which will lead to absurd consequences.").

We recently reiterated when recourse to legislative history is necessary in *Liverpool v. Baltimore Diamond Exchange, Inc.*, 369 Md. 304, 316–18, 799 A.2d 1264, 1271–72 (2002), stating that:

> In *Mayor of Baltimore v. Chase*, 360 Md. 121, 128, 756 A.2d 987, 991 (2000), we instructed,
>
> > Of course, the cardinal rule is to ascertain and effectuate legislative intent. To this end, we begin our inquiry with the words of the statute and, ordinarily, when the words of the statute are clear and unambiguous, according to their commonly understood meaning, we end our inquiry there also.
>
> * * * * * *
>
> *551 We have acknowledged that, in ascertaining a statute's meaning, we must consider the context in which a statute appears. In this regard we have instructed:
>
> > When the statute to be interpreted is part of a statutory scheme, it must be interpreted in that context. That means that, when interpreting any statute, the statute as a whole must be construed, interpreting each provision of the statute in the context of the entire statutory scheme. Thus, statutes on the same subject are to be **491 read together and harmonized to the extent possible, reading them so as to avoid rendering either of them, or any portion, meaningless, surplusage, superfluous or nugatory. *Whiting-Turner Contracting Co. v. Fitzpatrick*, 366 Md. 295, 302–03, 783 A.2d 667, 671 (2001) (internal quotations omitted) (citations omitted).
>
> On the other hand, "where the meaning of the plain language of the statute, or the language itself, is unclear, 'we seek to discern legislative intent from surrounding circumstances, such as legislative history, prior case law, and the purposes upon which the statutory framework was based.'" We recently explained the rules applicable when the terms of a statute are ambiguous:
>
> > "When the words of a statutory provision are reasonably capable of more than one meaning, and we examine the circumstances surrounding the enactment of a legislative provision in an effort to discern legislative intent, we interpret the meaning and effect of the language in light of the objectives and purposes of the provision enacted. Such an interpretation must be reasonable and consonant with logic and common sense. In addition, we seek to avoid construing a statute in a manner that leads to an illogical or untenable outcome.

We defined the term "ambiguity" as "reasonably capable of more than one meaning," and further explained that,

> 'language can be regarded as ambiguous in two different respects: 1) it may be intrinsically unclear ..., or 2) its *552 intrinsic meaning may be fairly clear, but its application to a particular object or circumstance may be uncertain.' Thus, a term which is unambiguous in one context may be ambiguous in another.

(Some internal citations omitted).

Although we shall conclude that no rational argument can be made to suggest that the language in Art. 23A, § 9(c)(1) refers to plans other than those of the pre-annexation zoning authority, a plain meaning approach does not yield this conclusion as the ready answer. A fair reading of the statute in its historical development, however, supports no other conclusion. Applying the interpretational rules to the pertinent statute, we first look to the language of the statute itself. Art. 23A, § 9(c) grants to the annexing municipality exclusive zoning powers, but then sets forth a number of threshold conditions or exceptions, the most important of which for our present purpose is:

> that no municipality annexing land may for a period of five years following annexation, *place that land in a zoning classification which permits a land use substantially different from the use for the land specified in the current and duly adopted master plan or plans or if there is no adopted or approved master plan, the adopted or approved general plan or plans of the county or agency having planning and zoning jurisdiction over the land prior to its annexation* without the express approval of the board of county commissioners or county council of the county in which the municipality is located. (emphasis added).

The language of the clause is arguably ambiguous. As written, there are two possible plain meaning interpretations of the language.

Under the first of these, the annexing municipality is directed, as the Owners argue, to look to its own land use plans first, and only if it has none is it required to look to the plans of the pre-annexation jurisdiction. This interpretation is made possible theoretically by Maryland Code **492 (1957, 1998 Repl.Vol., 2002 Supp.), Article 66B § 3.05(a)(2)(i), which provides *553 that a municipality's master plan should "include any areas outside of its boundaries which, in the commission's judgment, bear relation to the planning responsibilities of the commission." Without Art. 66B, § 3.05(a), the annexing municipality would have no plan of its own to refer to, and it would be clear that the language in Art. 23A, § 9 refers solely to the plans of the pre-annexation jurisdiction. The Owners' literal interpretation is that if the annexing jurisdiction's plan includes a land use recommendation for an area originally outside of its jurisdiction in anticipation of its possible future annexation, then it may look first to its own municipal plan and is only required to look to the county plan if there is no municipal plan, or the municipal plan failed to make an anticipatory use recommendation covering the annexed area. For the reasons set forth *infra*, this interpretation is not persuasive as its logical support requires a degree of intellectual "cherry-picking" from both the overall pertinent statutory scheme and its legislative history.

The second possible interpretation is that the General Assembly merely was acknowledging the hierarchy of local governmental planning and the differing terminology used to identify those various land use plans by the various jurisdictions. Under this interpretation, the language may be read to require the annexing municipality to look to the duly adopted "master plan or plans" of the county or other jurisdiction having planning and zoning jurisdiction over the land prior to its annexation, and if the county has no duly adopted "master plan or plans," then the annexing municipality must look to the county's general plan or plans. Under this interpretation, the terms "plan" or "plans" always refers to the land use recommendations of the pre-annexation jurisdiction, and renders the land use plans of the annexing municipality, for purposes of determining zoning consistency at the time of annexation, not relevant.





Given the historical development of Article 23A, § 9, discussed *infra*, we conclude that the latter interpretation is correct. As we pointed out in *Maryland National Capital Park and Planning Comm'n v. Mayor and Council of Rockville*, *554 272 Md. 550, 561, 325 A.2d 748, 754–55 (1974), discussing the legislative purpose of this section as it existed at that time:

> A major objective of Chapter 116 [Laws 1971—amending Art. 23A, § 9] is to preserve the integrity of the Master Plan adopted by the jurisdiction or commission having planning power immediately prior to annexation. In enacting Chapter 116, the General Assembly validly could have considered that the planning and zoning functions frequently involve large areas, and not merely the land being annexed; and, therefore, that a substantial change in the zoning of an annexed tract might well be disruptive to the planning for the surrounding areas. Thus, the statute is rationally related to a legitimate state objective, and is not arbitrary or unreasonable. (citations omitted).

*See also Northeast Plaza Associates v. President and Comm'rs of the Town of North East*, 310 Md. 20, 28–31, 526 A.2d 963, 967–69 (1987). Thus, we have held that the purpose of the section as previously enacted was to limit the power of municipalities and preserve the zoning of the pre-annexation jurisdiction for a period of five years,[20] and there is nothing in *555 the **493 subsequent history of this section to suggest the General Assembly subsequently intended otherwise.

The interpretation that the language in question is meant to limit, or to put it more precisely, delay, the exclusive zoning authority of an annexing municipality is buttressed when we view § 9 as a whole, and as part of the larger statutory scheme. It is "well settled" that "the title of an act is relevant to ascertainment of its intent and purpose...." *MTA v. Balto. Co. Revenue Auth.*, 267 Md. 687, 695–696, 298 A.2d 413 (1973). Article 23A, § 9 is titled **Definitions and limitations.** As such, one legitimately may expect that the legislative intent is to define and limit the powers of annexing municipalities, rather than to expand them. Reinforcing this expectation is the fact that § 9(c) is specifically titled **Limitations on charter amendments; effect of annexation.** Again, one would expect that the contents of this sub-section are intended to set forth limits or to withhold from municipalities, *556 under certain circumstances, the ability to exercise zoning power in certain annexation situations.

Further reinforcing the view that the pertinent language is meant to refer only to the plans of the pre-annexation jurisdiction is the fact that Md.Code (1957, 1998 Repl.Vol., 2002 Supp.), **494 Article 66B, § 1.00(h)(2)[21] specifically recognizes that a local government planning document may be called by different names when it states that " 'Plan' includes a general plan, master plan, comprehensive plan, or community plan adopted in accordance with §§ 3.01 through 3.09 of this article." Thus, in light of the above, when § 9(c)(1) is read together with § 9(c)(2), it becomes clear that the language in both sub-sections refers only to the plans of the pre-annexation county. As six Maryland counties[22] put it in their *Amici Curiae* brief:

> ... [T]he "county or agency having planning and zoning jurisdiction" modifier, contrary to [the Owners'] suggestion, applies to *both* "master" plans and "general" plans. While the sentence at the end of subsection (c)(1) might possibly be strained to say, as [the Owners] urge, that the "master plan or plans" language refers to any kind of master plan-including Rockville's, which extends beyond City boundaries-the sentence in subsection (c)(2) clearly means that the "master" plan or "general" plan to be followed is that of the *557 "county or agency having planning and zoning jurisdiction over the land prior to its annexation." (Brief at 13).

Reading the language of § 9(c)(1) as including reference to the plan of an annexing municipality, as urged by the Owners, renders the sub-section effectively a nullity, as any municipality wishing to avoid the five year rule could do so relatively easily by adopting its own contrarian plan, assuming that it was fully empowered to do so. We note, however, that this is not what the General Assembly said, and there is no indication that this is what it meant. Not





even the City of Rockville endorses the Owners' argument in this regard.

We turn now to examine the relevant legislative history. As we pointed out in *Prince George's County v. Mayor and City Council of Laurel*, 262 Md. 171, 177–78, 277 A.2d 262, 265–66 (1971), Chapter 423, Laws 1955, a progenitor of Art. 23A, § 9(c), operated to prohibit municipalities in Montgomery and Prince George's counties from exercising annexation or zoning powers if to do so would interfere with the powers exercised by the Maryland National Capital Park and Planing Commission. This balance of power briefly shifted toward the municipalities with the passage of Chapter 197, Laws 1957, when the Legislature created an exception to the prohibition created by Chapter 423, by providing that:

> Except that where any area is annexed to a municipality authorized to have and having then a planning and zoning authority, the said municipality shall have exclusive jurisdiction over planing and zoning within the area annexed....

This provision represents the highwater mark of municipal power under this section, **495 and is the last instance where municipalities with zoning and planning authority wielded relative autonomy with respect to the initial zoning of annexed lands.

In 1971 this autonomy ceased. As we previously pointed out in *Northeast*, 310 Md. at 28–29, 526 A.2d at 967–68; *M-NCPPC v. Mayor and Council of Rockville*, 272 Md. 550, 561, 325 A.2d 748, 754–55 (1974); and *558 *City of Gaithersburg v. Montgomery County, Maryland*, 271 Md. 505, 511–13, 318 A.2d 509, 512–13 (1974), the General Assembly enacted Chapter 116, Laws 1971[23] to limit the power of municipalities to zone annexed property. The statute specifically stated that:

> ... no municipality annexing land may for a period of five years following annexation, place such land in a zoning classification which permits a land use substantially different from the use for such land specified in the *current and duly adopted master plan or plan of the county or agency having planing and zoning jurisdiction over such land prior to its annexation*. (emphasis added).

This language was modified by Chapter 33, Laws 1972, which removed the word "plan" and replaced it with the word "plans." There can be no doubt, from the language of the statute as it existed in 1971 and 1972, that the terms "plan" or "plans" found in Chapters 116 and 33, respectively, refer to the plan or plans of the pre-annexation county jurisdiction, and not those of the annexing municipality. That the clause "of the county or agency having planning and zoning jurisdiction over the land prior to annexation" follows immediately after the terms "master plan or plan (later 'plans')" makes this point indisputable. The use of multiple terms for the concept of a plan merely indicates the General Assembly's recognition that the political subdivisions of the State use more than one term to identify their land use "plan" or their internal hierarchy of plans.[24] Nothing in subsequent amendments to this section reasonably can be taken to have altered this meaning.

*559 Chapter 613, Laws 1975, made two relevant changes to Art. 23A, § 9(c). First, language was added which clarified that the amendments of Chapter 33, Laws 1972, had been intended to acknowledge the different terminology used by the various jurisdictions to identify their land use "plans." Second, apparently in response to our decisions in *Maryland Nat'l Capital Park and Planning Comm'n v. Mayor and Council of Rockville*, 272 Md. 550, 325 A.2d 748 (1974) and *City of Gaithersburg v. Montgomery County*, 271 Md. 505, 318 A.2d 509 (1974), where we held municipal rezoning actions invalid on the ground of inconsistency with county master plan recommendations, Chapter 613 provided a means where the five year limitation on the annexing jurisdiction's ability to change the zoning of the annexed property could be waived if express county approval were obtained. As a result of the adoption of Chapter 613, Art. 23A, § 9(c), read:

> ... or if there is no adopted or approved master plan, the adopted or approved **496 general plan or plans of the county or agency having planning and zoning jurisdiction over the land prior to its annexation *without the express approval of the*





> *Board of County Commissioners or County Council of the county in which the municipality is located.* (emphasis added).

The last change that lead to the statute in its current form occurred in 1988 when Chapter 450 (House Bill (H.B.) 667) repealed and reenacted the statute with new subsection (c)(2). It was a direct response to our opinion in *Northeast*. In *Northeast*, we held that the change-mistake requirements of Article 66B, § 4.05(a), applied even where county approval of the municipality's annexation and rezoning had been obtained. In *Northeast*, we stated that:

> By ch. 613 of the Acts of 1975, the General Assembly again amended § 9(c) to allow 'substantially different' rezoning of annexed land without regard to the five-year limitation, if the municipality obtained the express approval of the appropriate county. As amended, therefore, nothing in § 9(c) purports to preclude a municipality from rezoning annexed land when, as here, it obtains the county's express *560 consent.... *But nothing in § 9(c) eliminates the requirement that the municipality comply with the pertinent provisions of Art. 66B, and with its own charter, when it engages in the process of zoning newly annexed land.*

*Id.* at 29, 526 A.2d at 968 (emphasis added) (footnote omitted).

Chapter 450, Laws of 1988, added subsection (c)(2) to abrogate our holding in *Northeast* by making clear that county approval eliminated not only the five year limitation, but the change-mistake rule as well. There is, however, nothing in the changes made by Chapter 450 to indicate that the Legislature intended a change in its established position regarding consistency with a county's land use plan recommendation for annexed lands and thereby granting additional powers to annexing municipalities by redefining the meaning of "master plan or plans" to include, exclusively or otherwise, reference to the plan or plans of the annexing municipality. Given the history of the provision, such an interpretation would be cut from whole cloth and without support either in the language of the statute or its evolution.

For example, the Floor Report of the Economic and Environmental Affairs Committee regarding H.B. 667, in relevant part, provided:

> This bill addresses ... *Northeast* ..., which held that when a municipality rezones land as part of an annexation, a municipality must comply with the ... 'change/mistake rule'.... Historically, the zoning of annexed property has been viewed as original zoning.... In 1975, the General Assembly passed legislation enabling a municipality to substantially alter the land use of annexed land with the express approval of the county....

In the course of proceedings leading to a favorable report by the Constitutional and Administrative Law Committee on the bill, the Attorney General, in a letter dated 18 March 1988, observed:

> The bill is designed to overrule the decision of the Court of Appeals in *Northeast Plaza v. Town of North East*, 310 Md. 20, 526 A.2d 963 (1987), which held that a municipality's *561 power to rezone annexed land to a substantially different use was subject to the requirements of § 4.05(a) of Article 66B-the statutory embodiment of the "change or mistake rule" for rezoning.
>
> As a result of House Bill 667, as amended, § 9(c) would establish two different **497 regulations for municipal rezoning in annexed areas. If a county expressly approved the zoning change, the municipality would not have to show a change or mistake to rezone. If the county did not approve, the municipality would have to wait five years before it could change to a

substantially different use in the annexed areas; and even after the five-year period, it would have to show a change or mistake, as provided in § 4.05(a) of Article 66B in order to rezone.

We agree with the Attorney General. The proper interpretation of § 9(c) is that a municipality may not zone, for a five year period, newly annexed lands to a zone substantially different from the pre-annexation jurisdiction's plan recommendation, without the express approval of the pre-annexation jurisdiction. Where that approval is forthcoming, the municipality may zone without regard to the change-mistake rule, though it still must comply with the remaining provisions of Art. 66B and with its own local zoning ordinance. Where that approval is not forthcoming, the municipality must zone in compliance with the pre-annexation jurisdiction's plan and then wait five years before considering a substantially different zone, which zone will require, if a Euclidean zone, compliance with the change-mistake rule or, in the case of a floating or PUD zone, satisfaction of the applicable regulatory pre-requisites.

B.

1. Under what circumstances do the provisions of Md.Code (1957, 1998 Repl.Vol., 2001 Supp.), Art. 66B, Section 4.01(c) ('may impose such additional conditions, restrictions, or limitations') (which was first enacted in 1970 subsequent to the *Carole Highlands* and *Baylis cases* ), and Rockville City Code (2000) Section 25-126 ('may *562 impose additional restrictions, conditions or limitations') [enacted after the enactment of the State statute) authorize conditional zoning by the city?

   a) What is the effect, if any, of *Prince George's County v. Collington Corporate Center I Limited Partnership*, 358 Md. 296, 747 A.2d 1219 (2000), which upheld conditional zoning in Prince George's County, on this issue?

2. Does a limitation in an annexation agreement restricting certain uses on newly annexed property constitute conditional zoning?

3. Do the above provisions authorize the City's actions in the present case?

As was pointed out, *supra*, Maryland is among those states that have relaxed the earlier prohibition against all forms of conditional zoning. In respect to the rule in effect at the time of *Montgomery County v. National Capital Realty Corp.*, 267 Md. 364, 374, 297 A.2d 675, 680-81 (1972), we quoted in that case extensively from 3 Rathkopf, *Zoning and Planning*, 74-79:

> The general rule in these jurisdictions in which the validity of such covenants[25] has been litigated is that they are illegal. The basis of such rule is that the rezoning of a particular parcel of land upon conditions not imposed by the zoning ordinance generally in the particular district into which the land has been rezoned is *prima facie* evidence of "spot zoning" in its most maleficent aspect, is **498 not in accordance with a comprehensive plan and is beyond the power of the municipality.
>
> Legislative bodies must rezone in accordance with a comprehensive plan, and in amending the ordinance so as to confer upon a particular parcel a particular district designation, it may not curtail or limit the uses and structures *563 placed or to be placed upon the lands so rezoned differently from those permitted upon other lands in the same district. Consequently, where there has been a concatinated rezoning and filing of a "declaration of restrictions" the general view (where the question has been litigated) is that both the zoning amendment and the restrictive covenant are invalid for the reasons expressed above.

For additional cases discussing this older view in Maryland, see *Carole Highlands Citizens Ass'n, Inc. v. Board of County Comm'rs of Prince Georges County*, 222 Md. 44, 47-48, 158 A.2d 663, 665-66 (1960) and *Baylis*, 219 Md. at 169-70, 148 A.2d at 432-33, where, quoting from *Wakefield v. Kraft*, 202 Md. 136, 149, 96 A.2d 27, 32-33 (1953), we said:

> If the decision of the County Commissioners was that the area called for the status of Commercial A, any of the nineteen uses permitted under that classification had a rank and force equal to any other. The County Commissioners are not a Planning Board, nor have they a right to exact conditions, or promises of a particular use in return for deciding that the public interest justifies that an area should be zoned commercial....





> ... There seem to be three chief reasons for the rule stated in these cases: that rezoning based on offers or agreements with the owners disrupts the basic plan, and thus is subversive of the public policy reflected in the overall legislation, that the resulting 'contract' is nugatory because a municipality is not able to make agreements which inhibit its police powers, and that restrictions in a particular zone should not be left to extrinsic evidence.

At the time *Wakefield*, *Baylis*, and *Carole Highlands* were decided, the sole State statutory authority granting zoning power to municipalities was found in Maryland Code (1957, 1967 Repl.Vol.), Article 66B, Sections 1-Grant of Power and 2-Districts. Section-2 provided, as relevant here, that "All such regulations shall be uniform for each class or kind of buildings throughout each district...." This provision is retained today, now codified as Art. 66B, § 4.02.

*564 Subsequent to the *National Capital*, *Carole Highlands*, *Baylis*, and *Wakefield* cases, the Legislature, in 1970, enacted a new section 4.01 of Art. 66B, relevant to the issue before us, as a part of a general recodification. Chapter 672, Laws 1970 (Senate Bill 356). It granted to covered counties and municipal corporations the power to impose conditions upon rezoning. It, in effect, authorized "conditional zoning" in certain circumstances. It stated, in relevant part:

> (B) The local legislative body of a county or municipal corporation, upon the zoning or rezoning of any land ... may impose such additional restrictions, conditions, or limitations as may be deemed appropriate to preserve, improve, or protect the general character and design of the lands and improvements being zoned or rezoned, or of the surrounding or adjacent lands and improvements, and may, upon the zoning or rezoning of any land or lands, retain or reserve the power and authority to approve or disapprove the design of buildings, construction, landscaping, or other improvements, alterations, and changes made or to be made on the subject land or lands **499 to assure conformity with the intent and purpose of this article and of the jurisdiction's zoning ordinance. The powers provided in 4.01(B) shall be applicable only if the local legislative body adopts an ordinance which shall include enforcement procedures and requirements for adequate notice of public hearings and conditions sought to be imposed.

These provisions remain the same to the present date, although rearranged as a part of another recodification in 2000. Section 4.01 was divided into several sections. Current subsection (c) (with its several subsections) contains the same provisions first enacted in 1970. Art. 66B, § 4.01(c). Accordingly, since at least 1970, Maryland has joined those states retreating from the across-the-board prohibition against conditional zoning, and, as a result, not all conditional zoning in Maryland is impermissible.

This conclusion is supported when the available legislative history is examined. In 1966, the General Assembly created a commission to examine the planning and zoning provisions and *565 to make recommendations. In 1969 the report was forwarded to the Legislature. As recommended, a new Art. 66B, Section 4.01, was to be created as a part of a general recodification of Maryland's planning and zoning provisions. Nevertheless, certain changes were intended to be substantive.

Section 4.01 was clearly an intended substantive change to permit, so long as certain requirements were met, conditional zoning in those Maryland jurisdictions to which Art. 66B applied, which, through the "zoning" provisions of the Express Powers Act,[26] applied to charter counties as well as municipalities. The recodification began with the Legislature creating the Maryland Planning and Zoning Law Study Commission. As we indicated, the Commission reported back to the Legislature in 1969. Accordingly, its recommendations were first considered in the 1970 Session.





In respect to the Commission, the records of the General Assembly reflect, in a document entitled REPORT TO THE GENERAL ASSEMBLY OF 1970—PROPOSED BILLS—SPECIAL COMMITTEE REPORTS, VOLUME II, Minutes and Reports of Special Committees to the Legislative Council of Maryland, that the Commission report was presented on Wednesday, 12 November 1969, to the Legislative Council. It was described to the Council by the Study Commission Chairman, Senator Goodloe E. Byron, in relevant part, as follows:

> Under revised Article 66B, counties can have conditional zoning. Further, the Commission has attempted to provide for periodically updating of all plans.
>
> With the assistance of a research man, the Commission will prepare an analysis and a commentary explaining each change as revised Article 66B is in preparation.

*566 The report was referred, without change, to the Judiciary Committee. Whether Senator Byron misspoke when he mentioned only "counties," or did not realize that Art. 66B also applied to municipalities, or whether it was later decided not to limit its application to counties, is unclear. In any event, the analysis in the Commission's report made no distinction between **500 counties and municipalities, nor did the resulting statute.

As did some of the commentators at the time, the Commission referred to the changing conception of the utility of conditional zoning. It stated, as relevant to the case *sub judice*:

> *Paragraph 2 of Section 4.01 gives to the local legislative body the powers of "conditional zoning." "Since 1960, some courts have recognized that the attachment of conditions to zoning might be a highly desirable means of minimizing the adverse effects of zoning changes. Their decisions reveal a tendency to inject needed flexibility into the American zoning system." Shapiro, R. The Case for Conditional Zoning* 41 Temple L.Q. 267 (1968) at 287. *"A distinction should be made between this type of zoning and that commonly referred to as contract zoning." The latter type of zoning was discussed in Baylis v. City of Baltimore*, 219 Md. 164, 148 A.2d 429 (1959) *where "the ordinance made the reclassification conditional upon the execution of an agreement." Yokley clarifies this distinction in his commentary on Church v. Town of Islip*, 8 N.Y.2d 254, 203 N.Y.S.2d 866, 168 N.E.2d 680 (1960), *where he concludes that though "contract zoning will not be permitted, conditional zoning may be valid if not bargained for in the sense that zoning is granted in return for the condition."* 2 Yokley, Zoning Law and Practice (3rd edition 1965) §§ 11. *Therefore, under conditional zoning the usual requirements for reclassification must be met before the powers enunciated in this section are available to the local legislative body. It is believed that this provision avoids previous constitutional pitfalls but still permits the planning commission to provide for the orderly development using controls similar to* *567 *those already found in the subdivision regulations (Section 5.00). Several variations of this provision already exist at the local level, such as the Carroll and Frederick County provisions* .... (emphasis and quotations in the original. *See* Final Report- Legislative Recommendations, Maryland Planning and Zoning Law Study Commission, December, 1969, at 28-29.)

It is clear that conditional zoning is not prohibited in Maryland if local governments comply with the statutory requirements of Section 4.01. Article 66B applies to non-charter/home rule counties and to municipal corporations. Charter counties, should they choose to implement it, likewise have the power to do whatever is permitted under Art. 66B. Contrary to the argument advanced by the Dissent, it is also clear that allowing conditional zoning to limit otherwise permissible uses was not the intention, either of the Commission, or of the statutes as subsequently adopted by the Legislature.[27] The Commentary Notes of the Commission clearly state that "*under conditional zoning the usual requirements for reclassification must be met before the powers enunciated in this section are available to the local legislative body. It is believed that this provision avoids previous constitutional pitfalls but still permits the planning* **501 *commission to provide for the orderly development using controls similar to those already found in the subdivision regulations (Section 5.00).*" *Id.* (emphasis in original). This language indicates that the intent was to allow jurisdictions to fashion supplementary conditions in the placement of a given property in a Euclidean zone, not in derogation of the uses allowed in that zone. Corresponding to this language in the Commission's Report, *568 the powers retained by the zoning authority after zoning are clearly set forth in Article 66B, § 4.01. The statute now reads:





> On the zoning or rezoning of any land, a local legislative body may retain or reserve the power to approve or disapprove the *design* of buildings, construction, landscaping or other improvements, alteration and changes made or to be made on the land being zoned or rezoned to assure conformity with the intent and purpose of this article and of the local jurisdiction's zoning ordinance.
>
> (Emphasis added).

These powers to control design, layout, siting, and appearance are similar to those powers governing subdivisions, found in Article 66B, § 5.03. Article 66B, § 4.01 provides that it is permissible to impose those conditions "appropriate to preserve, improve, or protect the *general character and design of the lands and improvements* being zoned or rezoned, or the surrounding or adjacent lands and improvements." (emphasis added). The statute says nothing about utilizing conditions to limit permissible "uses," and therefore grants no such power. As the Court of Special Appeals correctly pointed out in *Bd. of County Comm'rs of Washington County v. H. Manny Holtz, Inc.*, 65 Md.App. 574, 582-83, 501 A.2d 489, 492-93 (1985), conditional zoning which acts as a limitation as to otherwise permissible uses is not permitted under Art. 66B. Furthermore, municipal zoning authorities are not permitted under Art. 66B to enter into contracts which inhibit the proper exercise of the municipality's governmental powers.[28]

The Court of Special Appeals in its opinion in the present case was correct in relying upon *Rodriguez v. Prince George's* *569 *County*, 79 Md.App. 537, 558 A.2d 742 (1989). In *Rodriguez*, the Court of Special Appeals found that:

> The applicant was offering a deal to the District Council: in order to induce the Council to approve its application for reclassification, the applicant would agree in advance to exclude from the scope of the approval certain uses expressly permitted in the approved zone.

79 Md.App. at 553, 558 A.2d at 750. In response, the court in *Rodriguez* held that "[a]lthough there appears to be no impediment to an applicant entering into private covenants with other parties to lessen their opposition to an application, or to garner their support for it, such offerings cannot be made to the legislative body authorized to grant or deny the application." *Id.*

Although the reasoning in *Rodriguez* is apt to apply in the case at bar, a better predicate exists in *Bd. of County Comm'rs of Washington County v. H. Manny Holtz, Inc.*, 65 Md.App. 574, 582-83, 501 A.2d 489, 492-93 (1985). *Holtz* involved the rezoning of a tract of land by the Board of County Commissioners of Washington County. **502 As a condition of the rezoning, the Commissioners imposed restrictions prohibiting uses otherwise permitted under the zoning granted. In holding that the action of the Commissioners constituted illegal conditional zoning, the intermediate appellate court was required to interpret Art. 66B, §§ 4.01(a) and (b) and 4.02, holding that "[o]ur reading of § 4.01(a) and (b) leads us to conclude that it does not authorize conditional use rezoning. This is further bolstered by the requirements of § 4.02." *Id.* at 582, 501 A.2d at 493. We adopt that interpretation insofar as Euclidean zones are concerned. The court found that:

> Section 4.01(b) permits local legislative bodies to impose "additional restrictions, conditions or limitations" on the design and construction of buildings and landscaping on the subject or adjacent tract. The plain meaning of this subsection is clear. The language referring to "restrictions, conditions, and limitations" applies only to the structural and architectural character of the land and the improvements thereon. "Conditions, restrictions or limitations" on use are *570 neither explicitly provided for in this subsection nor can they be implied therefrom.

*Id.* at 582, 501 A.2d at 492. The Court then noted that this interpretation was dictated by the language of § 4.02, explaining that:

Section 4.02 requires uniformity within the class or development in a district. Hence, it necessarily prohibits conditional use zoning. The allowance of conditional use rezoning by appellant flies directly in the face of this section and the mandated uniformity.

Section 4.02 must be construed in relation to § 4.01. Under the broad grant of power to (re)zone conferred under § 4.01(a), the local legislative body is permitted under § 4.02 to divide the county into divisible components, provided there is uniformity within those districts. The regulations and restrictions that must be uniform include the use of buildings and land. Hence, where, as here, the legislative body has predetermined the acceptable categories of uses in a given district, to conditionally restrict some of those uses violates the mandate of § 4.02. If we were to authorize the Board of County Commissioners through rezoning to limit or restrict the permitted uses of certain tracts within a zone, the Board would have the power to destroy the uniformity of that district.

65 Md.App. at 583, 501 A.2d at 491.

The dissenting opinion (Dissent, op. at 519) brushes aside the import of § 4.02, forgetting the very rules of statutory construction in whose name it laments. It bears repeating (see *supra* at 490–91) that in *Liverpool v. Baltimore Diamond Exchange, Inc.*, 369 Md. 304, 316–18, 799 A.2d 1264, 1271–72 (2002), we instructed, citing *Mayor of Baltimore v. Chase*, 360 Md. 121, 128, 756 A.2d 987, 991 (2000):

> We have acknowledged that, in ascertaining a statute's meaning, we must consider the context in which a statute appears. In this regard we have instructed:
>
> > When the statute to be interpreted is part of a statutory scheme, it must be interpreted in that context. That *571 means that, when interpreting any statute, the statute as a whole must be construed, interpreting each provision of the statute in the context of the entire statutory scheme. Thus, statutes on the same subject are to be read together and harmonized to the extent possible, reading them so as to avoid rendering either of them, or any portion, meaningless, surplusage, superfluous or nugatory. (internal quotations omitted) (citations omitted).

**503 Contrary to the assertions of the Dissent here (Dissent, op. at 524–26), the reasoning in *Manny Holtz* reflects the analysis required by the principles of statutory interpretation overlooked by the Dissent. Unlike the Dissent here, the Court of Special Appeals in *Manny Holtz* recognized that § 4.02 remained unchanged by the Legislature, and that, had the Legislature intended the reach of conditional zoning to include uses, amendments to the uniformity requirements of § 4.02 would be required. *See, e.g. County Council of Prince George's County v. Collington Corp. Center I Ltd. P'ship*, 358 Md. 296, 303, 747 A.2d 1219, 1222 (2000). Because the Legislature did not amend § 4.02, *Manny Holtz* correctly declined to extend the authority to zone with conditions to include uses where there existed no indication of such an intent on the part of the Legislature.[29]

In the case *sub judice*, the Planning Staff of the City, in its final report on the appropriate zone for the subject property upon annexation, noted that the Land Use Plan component of the City's 1993 Master Plan recommended service industrial uses for the subject property, consistent with uses permitted in the City's I–1 zone. Thus, at least facially, the imposition of the I–1 zone was consistent with the City's *572 Plan. Upon a further examination of the City's I–1 zone, however, one notes there are a number of commercial retail uses also permitted, as a matter of right. See n. 1, *supra*. Gasoline service stations, however, are only allowed in the I–1 zone with the grant of a special exception. It is because the City endeavors to foreclose, by limitation pertaining only to the subject property of this case, all of the otherwise permitted commercial retail uses, and impliedly those commercial retail uses, other than a gasoline service station, allowed by special exception, in the I–1 Zone that we hold City Zoning Ordinance No. 10–99 to be impermissible conditional zoning.

The Court of Special Appeals, in its opinion in this case, correctly noted as irrelevant the fact that the condition pertinent to this case was explicit only in the annexation agreement. City Zoning Ordinance No. 10–99 makes reference to the annexation agreement containing the land use limitation. That is sufficient to indicate that Zoning Ordinance No. 10–99 was passed with the intended legal effect that the use condition limit the I–1 zone granted. *Carole Highlands*, 222 Md. at 46–48, 158 A.2d at 664–66. As the Court of Special Appeals further pointed out, "[t]he fact that the implicit conditions in the [zoning] ordinance





were made explicit in the annexation agreement does not make them solely a part of that agreement." The court continued by observing that:

> although municipalities are authorized to enter into annexation agreements that zone a subject property, they may not exercise that authority in a manner that violates the prohibitions set forth in Article 66B, § 4.01. The applicants in *Rodriguez* offered to limit the permissible uses of the subject property in order to induce the council's approval of their application [citation omitted]. Here, the Mayor and Council eliminated all but one of the permissible retail uses of the **504 subject property to accommodate Mr. Fanaroff's efforts to have a gas station. The effect in both cases is the formation of a distinct mini-district that undermines uniformity. (citation omitted).

Pursuant to § 4.01 of Art. 66B, Rockville has enacted within its zoning ordinance only one provision to implement the *573 power to zone with conditions, although in a form substantially different than the Prince George's County ordinance construed in *Rodriguez*, and then only in the context of the grant of "local amendment applications." That ordinance provision, now codified as Rockville City Code, Chp. 25 (Zoning and Planning), Article III (Amendments), Division 2 (Map Amendments), § 25–126 (Supplement 2002), reads as follows:

> "Sec. 25–126. **Grant of local amendment application with conditions–Authorized.**
>
> The Council may impose additional restrictions, conditions or limitations upon the grant of any application for a local amendment to the zoning map pursuant to the authority contained in State law. (Rockville, Md., Code of Ordinances ch. 25, art. III, div. 2, § 25–126 (2002)).

The Dissent (Dissent, op. at 527, n. 17 and 540) seems to concede, as it must, that the City's act of zoning of the subject property at the time of annexation was an act of original zoning, insofar as the initial exercise of the municipality's zoning power is concerned.[30] In fact, Rockville City Code, Ch. *574 25, Art. III, Div. 1 (Amendments—"Generally"), § 25–99, defines such zoning as original zoning. Further, § 25–99(c) states, in relevant part, that "[t]he provisions of *division 2* [Map Amendments] of this article [III] shall not apply to procedures under this section [original zoning]." (emphasis added). The section relied upon by the City, the Owners, and the Dissent to support the City's invocation of the conditional zoning power authorized by Art. 66B, § 4.01, § 25–126, is contained in *division 2*. Thus, it appears that the City does not purport, in acts of original zoning, to possess the authority to attach conditions of any kind, even if such were authorized **505 by State law. Rockville City Code, § 25–126 applies only to local amendment applications, i.e., piecemeal zoning (Rockville, Md., Code of Ordinances Ch. 25, Art. III, Div. 2, § 25–116 (2002)), and does not apply to cases of original zoning upon annexation. (Rockville, Md., Code of Ordinances Ch. 25, Art. III, Div. 1, § 25–99(c)(2002)).

Under our reasoning, however, it makes no difference how the City's action is characterized, piecemeal zoning ("local map amendment") or original zoning, because there is no grant of authority from the State for conditional use zoning.[31] *575 The Dissent's focus on the language of municipal ordinances in its discussion of this and prior cases, such as *Rodriguez* (Dissent, op. at 522–24), in the absence of a grant of authority for imposing conditional use zoning from the State, places the statutory cart before the horse.[32] Absent a grant of authority from the State, the language of a local ordinance is irrelevant and therefore interpreting a local ordinance as properly authorizing conditional use zoning would be in error.

Accordingly, we answer the first question posed in Petitioners' original briefs: "Does a limitation in an annexation agreement restricting certain uses on newly annexed property constitute conditional zoning?" by saying "yes", and, under the circumstances here present, such conditional zoning is impermissible conditional use zoning. While by this holding we make clear that any conditional use zoning is impermissible, we note also that,





on the facts and circumstances of the present case, it is impermissible contract zoning as well.

In the case of *Attman/Glazer*, we held that:

> the mayor and alderman could not by agreement lawfully bind themselves to a future zoning or conditional use decision. We do so on the familiar premise that a municipality may not contract away the exercise of its zoning powers. *Baylis v. City of Baltimore*, 219 Md. 164, 170, 148 A.2d 429 (1959); 10 McQuillin, *Municipal Corporations* § 29.07 (3d ed 1981); 2 Anderson, *American Law of zoning 3d*, § 9.21 (1986); 4 Yokley, *Zoning Law and Practice*, § 25–11 (4th ed 1979)

*576 *Id.* at 684–85, 552 A.2d at 1282. This position was revisited recently by the Court of Special Appeals in *Beachwood* where the court noted that Maryland's treatment of contract zoning is consistent with the definition of "illegal contract zoning" **506 set out in Arden H. Rathkopf and Daren A. Rathkopf, 2 *The Law of Zoning and Planning*, § 29A.03[b] at 29A–25, which the court quoted as follows:

> Illegal contract rezoning is said to involve the process by which a local government enters into an agreement with a developer whereby the government exacts a performance or promise from the developer in exchange for its agreement to rezone the property. The developer may agree to restrict development of the property, make certain improvements, dedicate a portion of land to the municipality, or make payments to the municipality. Numerous state court decisions have held such express or implied agreement invalid as illegal contact zoning. (Footnotes omitted).

*Beachwood*, 107 Md.App. at 669, 670 A.2d at 505. Additionally, we reiterate that in *Rodriguez*, discussed *supra*, the Court of Special Appeals held that "[a]lthough there appears to be no impediment to an applicant entering into private covenants with other parties to lessen their opposition to an application, or to garner their support for it, such offerings cannot be made to the legislative body authorized to grant or deny the application." *Rodriguez*, 79 Md.App. at 553, 558 A.2d at 750.[33] Upon examination of the record in the present case, it is clear that the City's action represents not only impermissible conditional use zoning, but also impermissible contract zoning. The act of zoning was accomplished through the passage of City Zoning Ordinance No. 10–99, which, in pertinent part, provided:

> *577 WHEREAS, the [County Council's Planning, Housing and Economic Development] Committee agreed to support rezoning of the site from the County's I–2 zone to the City's I–1 zone under certain conditions; and
>
> WHEREAS, on February 23, 1999, the District [County] Council reviewed Annexation Petition ANX97–0124 and agreed with the comments and recommendations of the Planning, Housing and Economic Development Committee; and
>
> WHEREAS, by Resolution No. 14–57, the County Council for Montgomery County, sitting as a District Council, approved City of Rockville Annexation Petition No. ANX97–0124, and its rezoning from the County's I–2 zone to the City's I–1 zone, under certain conditions; and
>
> WHEREAS, the Mayor and Council of Rockville, having fully considered the matter, has determined to place the annexed property in the City's I–1 zone, under certain conditions to be set forth in an annexation agreement, so as to promote the health, security and general welfare of the community of the City of Rockville.

As was pointed out *supra*, this language alone, referencing the use limiting conditions contained in





the annexation agreement as a basis for the zoning action, is sufficient, in our view, to make this a case of impermissible conditional use zoning.

When we look to the annexation agreement, we note that the agreement is "by and between Louis H. Fanaroff, surviving tenant by the entirety of a one-half interest in the subject property, Stanford C. Steppa and Elaine B. Steppa, hereinafter collectively called 'Owners,' and The Mayor **507 and Council of Rockville, Maryland...." This is the same 'Mayor and Council of Rockville, Maryland,' that passed Zoning Ordinance No. 10–99. Therefore, the Owners made a contract, containing an illegal condition, with the legislative body authorized to grant or deny the desired I–1 zone, making this a case of impermissible contract zoning.

It matters not whether the agreement was a part of the zoning or annexation processes. Our appellate cases consistently have held that it is the identity of the contracting *578 parties that is the critical issue. As the Court of Special Appeals made clear in *Beachwood*:

> The Maryland cases have treated "contract zoning" narrowly as a situation wherein the developer of property enters into an express and legally binding contract with **the ultimate zoning authority**. In such circumstances, the Maryland cases have not hesitated to hold such contact zoning to be null and void. Part of the reason why the governmental authority may not enter into such a contract is because the governmental unit may not bargain away its future use of the police power.

*Beachwood*, 107 Md.App. at 668–69, 670 A.2d at 505. *See also Attman/Glazer*, 314 Md. at 686–87, 552 A.2d at 1283–84. On the facts of this case, the zoning of the subject property by the City of Rockville involved the placement of use limitations on the zoning which constituted impermissible conditional use zoning, and the mechanism used by the City of Rockville to place those impermissible conditions on the property further constituted impermissible contract zoning.[34]

C.

**What zoning classification, if any, would the subject property have if the Court were to rule that the I–1 zoning was invalid? Is there a state or city statute covering the situation?**

Having determined that the actions of the City of Rockville in zoning the land to the City's I–1 zone were *579 improper, it remains to be determined what then is the current zoning classification of the subject property.[35] Our reading of the relevant **508 statutes and case law indicates that the subject property retains the zoning classification it enjoyed prior to annexation, at least until such time as the City of Rockville acts properly to rezone it if it remains a part of the City. The Owners, the City of Rockville, and Rylyns, urge that the land be declared "unzoned" until further zoning action is taken by the City of Rockville.[36] For the reasons set forth below, we find this position unpersuasive and not supported by the statutes or our prior holdings in this area.

The essential underpinning of their arguments is that the language of Art. 23A, § 9(c)(1) provides, in part, that "where any area is annexed to a municipality authorized to have and having then a planning and zoning authority, the municipality shall have exclusive jurisdiction over planning and zoning and subdivision control within the area annexed[.]" Similar language appears in Md.Code (1957, 1998 Repl.Vol.), Art. 23A, § 19. Apparently these parties feel that the foregoing statutory provisions dictate that the property will remain unzoned until Rockville takes action necessary to zone it properly, in compliance with Art. 23A, § 9(c)(1) & (2), because only Rockville *580 is empowered by statute to make a zoning determination now that it has annexed the subject property.

The parties attempt to bolster this argument by citing to our cases interpreting these statutory provisions and upholding the proposition that a county's zoning ordinances and regulations previously applicable to a property will have no effect on it once the area is annexed by a municipality authorized to have, and in fact having, planning and zoning authority, such as Rockville. *See Maryland Nat'l Capital Park and Planning Comm'n v. Mayor and Council of Rockville*, 272 Md. 550, 557–58, 325 A.2d 748, 753 (1974); *Prince George's County v. Mayor and*

*City Council of Laurel*, 262 Md. 171, 190, 277 A.2d 262, 272 (1971); *Beshore v. Town of Bel Air*, 237 Md. 398, 410–11, 206 A.2d 678, 685 (1965).

The argument is not compelling because it fails to recognize that the exclusive municipal powers to zone set forth in the relevant statutes are limited at the threshold by Art. 23A, § 9 and, when read together with other relevant statutes, a condition of "unzoned" land is not contemplated. Art. 23A, § 9(c)(2) states that:

> if the county expressly approves, the municipality, without regard to the provisions of Article 66B, § 4.05(a) of the Code, [the change-mistake rule], may place the annexed land in a zoning classification that permits a land use substantially different from the use for the land specified in the current and duly adopted master plan or general plan of the county or agency having planning and zoning jurisdiction over the land prior to its annexation.

As set forth persuasively in the *Amici* briefs of the six counties and the Maryland National Capital Park and Planning Commission, § 9(c)(2) "clearly sets forth the legislature's intention to relieve municipalities from the requirement of proving change/mistake to permit a land use substantially different from the use for the land specified in the Master Plan applicable to the property prior to annexation *if* the municipality receives express county approval. The logical conclusion based on the plain language of this section is that if *581 express county approval is not received, then, after the five-year limitation period, the municipality must prove change/mistake," unless the municipality rezones the newly annexed piece of land to a floating **509 zone or as a part of a comprehensive rezoning of a larger surrounding area. For the change/mistake rule to be relevant, and the statute makes clear that it is, then some form of prior zoning would have to be in effect, and as the statute clearly indicates, that zoning is the one assigned by the pre-annexation jurisdiction, which in this case is that of Montgomery County.

Nowhere does the relevant statutory scheme provide that an annexing jurisdiction's failure to comply with the provisions of § 9 results in the property becoming akin to a "stateless person" for zoning purposes. On the contrary, as we stated in *Maryland Nat'l Capital Park and Planning Comm'n v. Mayor and Council of Rockville*, 272 Md. at 561, 325 A.2d at 754, the whole purpose of this section is to "preserve the integrity of the Master Plan adopted by the jurisdiction ... having planning power immediately prior to annexation." Were we to find that the land became a zoning cipher, the five-year limitation under § 9 would be toothless and meaningless, as it would allow municipalities to undo indirectly that which they cannot accomplish directly. We think that this was not the intent of the Legislature. The language of § 9 clearly indicates that it is intended that the pre-annexation zoning remain in effect until: 1) the annexing municipality grants a new zone substantially consistent with the pertinent plan recommendation of the pre-annexation jurisdiction; or 2) the pre-annexation jurisdiction grants permission for the annexing municipality to establish a substantially inconsistent zone; or 3) the five year period expires. *Id.* *See also Northeast*, 310 Md. at 28–30, 526 A.2d at 967–68; *City of Gaithersburg v. Montgomery County*, 271 Md. at 511–13, 318 A.2d at 512–13. In the present case, the subject property is zoned I-2, in accordance with the Montgomery County Zoning Ordinance, until one of the aforesaid three scenarios comes to pass.

JUDGMENT AFFIRMED. COSTS TO BE EVENLY DIVIDED BY PETITIONERS.

*582 Dissenting Opinion by CATHELL, Judge in which BELL, Chief Judge joins.

I dissent. It is difficult to disagree with such a well-written, comprehensive opinion on general land use principles that has so much in it with which I agree. However, because it also has holdings in it with which I disagree, I shall overcome the difficulty. As to the determinative questions presented to this Court, I believe the relevant statutory interpretations made by the majority, and the ultimate decisions here rendered, are wrong.

I first, and primarily, dissent from the majority's holding that conditional zoning, as contemplated by the 1970 Enabling Act and subsequent local statutes, was not, and is not, intended to apply to conditions that limit uses within districts. The majority essentially asserts that the





Conversely, how does the zoning inspector of Rockville enforce a statute or zoning district classification that does not exist within the municipality? When the county zoning administrator takes an *638 alleged violating property owner before one of its administrative bodies or into court the defendant will allege that he is within the city and thus cannot violate a county zoning ordinance's district classification because the municipality's zoning power is, under State statutes, exclusive. If such a property owner is taken before the city's administrative bodies or to court by the city zoning inspector, the property owner will allege that the city zoning inspector has no authority to prosecute violations of county statutes and county district classifications and that he is violating no municipal ordinance. As importantly, how does a property owner in the annexed area seek variance or special exception relief from the constraints of the county I– **543 2 classification? Does he or she apply to the authorities in the county in respect to property not within county jurisdiction because it is "exclusively" within the jurisdiction of the city? Does he or she apply to the authorities in the city for relief from the constraints of a zoning district not in the city's zoning classifications? If it can ever be figured out who to apply to for relief, which entity's procedural requirements control? If the county's ordinance says re-applications for relief after a denial of a request must wait two years and the city's ordinance says one year, how long does the applicant have to wait? If it is claimed that the provisions of the county I-2 district, in relation to a particular parcel in annexed territory, constitute a unconstitutional taking, which governmental entity is sued? The county or the city? Which one is 'taking' it. There may well be many other irreconcilable situations? Not only are the interpretations of the majority, in my view, incorrect, the result, by any reasonable standard, is, I suggest, clearly absurd. To go where the majority's opinion on this issue takes this court is, in my view, to ignore any reasonable interpretation of the words "or" and "exclusive."

For all the reasons expressed herein, I would reverse the holding of the Court of Special Appeals.

Chief Judge BELL joins in this dissent.

All Citations

372 Md. 514, 814 A.2d 469

Footnotes

1 The City's I–1 zone allows approximately 100 permitted uses and 16 additional uses with the grant of a special exception (Rockville, Md., Code of Ordinances, ch. 25, art. VII, div. 2, § 25–296 (2002)). A variety of commercial retail uses are included in these enumerations, such as antique, garden supply, paint and wallpaper, photographic supply, and pet grooming activities, to name a few.

2 For a detailed discussion of the relationship between planning and zoning in Maryland, see *Nottingham Village, Inc. v. Baltimore County*, 266 Md. 339, 354–55, 292 A.2d 680, 688 (1972); *Richmarr Holly Hills v. American PCS, L.P.*, 117 Md.App. 607, 635–51, 701 A.2d 879, 893–901 (1997); *People's Counsel v. Beachwood I Ltd. P'ship*, 107 Md.App. 627, 658–68, 670 A.2d 484, 499 (1995); Stanley D. Abrams, *A Perfect Union: The Wedding of Planning and Zoning in Maryland*, 13 Maryland Bar Journal 8 (Spring 1980). *See also Pattey v. Board of County Comm'rs for Worcester County*, 271 Md. 352, 360–61, 317 A.2d 142, 147 (1974); *Chapman v. Montgomery County Council*, 259 Md. 641, 644, 271 A.2d 156, 158 (1970); *Board of County Comm'rs for Prince George's County v. Edmonds*, 240 Md. 680, 684–88, 215 A.2d 209, 211–13 (1965).

3 Tracing the entire panoply of related enabling statutes in Maryland is a tad complex. The provisions empowering municipal corporations in Maryland are contained in Maryland Code (1957, 1998 Repl.Vol.), Article 23A, and with regard to home rule powers specifically, Art. 23A, § 9. Similar provisions detailing the powers for non-charter counties are found in Maryland Code (1957, 1998 Repl.Vol., 2002 Supp.), Article 25. Further complicating the matter, the authority of the counties of Montgomery and Prince George's are controlled by Maryland Code (1957, 1998 Repl.Vol., 2002 Supp.), Article 28. The land use provisions of Maryland Code (1957, 1998 Repl.Vol., 2002 Supp.), Article 66B pertain primarily to Art. 23A municipalities and Art. 25 non-charter counties, although certain provisions apply to Maryland Code (1957, 1998 Repl.Vol.), Art. 25A charter counties, as well as to Montgomery and Prince George's Counties, Art. 66B, §§ 1.02 and 7.03, and also to the City of Baltimore, Art. 66B, §§ 2.01–2.13 and 14.02.

As we pointed out in *Montgomery County v. Revere Nat'l Corp.*, 341 Md. 366, 383–84, 671 A.2d 1, 9–10 (1996):





> Unlike most other home rule chartered counties in Maryland which receive their basic zoning authority from Article XI–A of the Maryland Constitution, the Express Powers Act, Code (1957, 1994 Repl.Vol.), Art. 25A, §§ 5(x), and their county charters, the exclusive source of Montgomery [and Prince George's] County's zoning authority is the Regional District Act, Code (1957, 1993 Repl.Vol., 1995 Supp.), Art. 28; Maryland Code (1957, 1998 Repl.Vol., 2002 Supp.). Art. 66B, relating to zoning, is generally not applicable to chartered counties. *See* Art. 66B, §§ 7.03 [and § 1.02].

*See also* W. Peter Moser, *County Home Rule–Sharing the State's Legislative Power with Maryland Counties*, 28 Md. L.Rev. 327 (1968).

4 *See* D. Brennen Keene, (Student) Comment, *Transportation Conformity and Land-use Planning: Understanding the Inconsistencies*, 30 U. Rich. L.Rev. 1135, 1353–54 (1996):

> The framework in which land-use decisions are made under the Euclidean model begins with the master plan. The plan has four principal characteristics:
>
> First, it is future-oriented, establishing goals and objectives for future land use and development, which will be attained incrementally over time through regulations, individual decisions about zoning and rezoning, development approval or disapproval, and municipal expenditures for capital improvements such as road construction and the installation of municipal utilities.
>
> Second, planning is continuous, in that the plan is intended not as a blueprint for future development which must be as carefully executed as the architect's design for a building or the engineer's plan for a sewer line, but rather as a set of policies which must be periodically reevaluated and amended to adjust to changing conditions. A plan that is written purely as a static blueprint for future development will rapidly become obsolete when circumstances change.
>
> Third, the plan must be based upon a determination of present and projected conditions within the area covered by the plan. This requirement ensures that the plan is not simply a list of hoped-for civic improvements ....
>
> And fourth, planning is comprehensive.... The courts have recognized this role of planning, in defining planning as concerned with "the physical development of the community and its environs in relation to its social and economic well being for the fulfillment of the rightful common destiny, according to a 'master plan' based on 'careful and comprehensive surveys and studies of present conditions and the prospects of future growth of the municipality,' and embodying scientific teachings and creative experience."
>
> This process, referred to as the "rational planning process," requires four steps: "data gathering, setting of policies, plan implementation, and plan re-evaluation." The product of rational planning does not lead to a plan "effective for all time," but rather is re-evaluated so as to judge its success in reaching the policies behind the plan. Final adoption of the plan requires approval by the particular legislative body in that locality.
>
> In a majority of states that enable localities to prepare comprehensive plans, the plan serves merely as guidance for the governing body to make zoning decisions and does not have the force of law. The trend, however, has been towards making the plan a dispositive document for zoning decisions.

*See also supra* n. 2.

5 *See Transportation Conformity and Land-use Planning: Understanding the Inconsistencies*, 30 U. Rich. L.Rev. at 1355–56:

> Zoning, in theory, is the process whereby the comprehensive plan is put into effect. The local legislative body that makes zoning decisions divides districts within the locality into zones, and the legislative body defines, *inter alia*, the height, building size, lot size, population density, location, and use of buildings that are permissible in the particular zone. The designation of these zoning districts disallows the development of property within the zone unless the landowner would suffer an undue hardship, whereby the landowner may be able to obtain a variance from the zoning ordinance from the legislative body or a quasi-judicial body known as a board of zoning appeals.
>
> Often, state enabling statutes require the zoning to be "in accordance with a comprehensive plan." Courts have grappled with the meaning of the "in accordance" requirement, especially where the enabling statute does not require the drafting of a comprehensive plan. In those states, the courts have been willing to divine a plan from the zoning ordinance itself. However, other states require the preparation of a comprehensive plan before the adoption of a zoning ordinance. In these states, "not only does this mean that the plan and regulations promulgated under it must be consistent, it also means ... that any development orders and permits issued must be consistent with the local plan."

6 *See supra*. n. 2

7 The extent of governmental powers generally as related to zoning, in light of Maryland's Constitution, is discussed in *Goldman v. Crowther*, 147 Md. 282, 292–96, 128 A. 50, 54–55 (1925). *See also Jack Lewis, Inc. v. Baltimore*, 164 Md. 146, 152–53, 164 A. 220, 223 (1933); *Pocomoke City v. Standard Oil Co.* 162 Md. 368, 375–78 159 A. 902, 904–905 (1932).





8 For an in depth history and description of the planning and zoning functions authorized by Art. 66B, see *Board of County Comm'rs of Cecil County v. Gaster*, 285 Md. 233, 239–47, 401 A.2d 666, 669–73 (1979).

9 This zoning term is relevant to the present case because both the County's I–2 zone and the City's I–1 zone would be classified as Euclidean zones, versus floating zones (also called planned unit development (PUD) zones). Floating zones, alluded to later in this opinion for contrast purposes only (see n. 15), involve a different set of analytical assumptions than do Euclidean zones.

10 For Maryland constitutional limitations on Euclidean zoning, see *Goldman*, 147 Md. at 292–96, 128 A. at 54–55. *See also Jack Lewis, Inc.*, 164 Md. at 152–53, 164 A. at 223.

11 Art. 66B, § 4.02 states:

> (a) *Districts Created*.—A local legislative body may divide the local jurisdiction into districts of any number, shape, and area that the local legislative body considers best suited to execute the purposes of this article.
>
> (b) *Uniformity of regulations*.—(1) Within the districts created, the local legislative body may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures or land.
>
> (2) All regulations shall be uniform for each class or kind of development throughout each district, but the regulations in one district may differ from those in other districts.

12 For a thorough explanation of the variance process as applied in Maryland, see *Anderson v. Board of Appeals*, 22 Md.App. 28, 38–40, 322 A.2d 220, 226–27 (1974); *See also Alviani v. Dixon*, 365 Md. 95, 112–16, 775 A.2d 1234, 1244–46 (2001); *White v. North*, 356 Md. 31, 736 A.2d 1072 (1999); *Belvoir Farms Homeowners Ass'n, Inc. v. North*, 355 Md. 259, 734 A.2d 227 (1999); *Montgomery County v. Merlands Club*, 202 Md. 279, 96 A.2d 261 (1953). Because the concept of non-conforming uses addresses uses in existence before an original zoning or comprehensive zoning occurs which subsequently would prohibit that use, an issue not present in the case before us, we shall not elaborate further here on this zoning tool. For a thorough discussion of non-conforming uses, *see County Comm'rs of Carroll County v. Zent*, 86 Md.App. 745, 587 A.2d 1205 (1991).

13 *See West Montgomery County Citizens Ass'n. v. Maryland National Capital Park and Planning Comm'n*, 309 Md. 183, 522 A.2d 1328 (1987).

14 "Conditional zoning" is a distinct zoning tool not to be confused with the "conditional use" or "special exception" mechanisms discussed later in this opinion.

15 At the far end of the flexibility continuum of zoning categories from Euclidean zones are "floating" or planned unit development zones. Dissatisfaction with the relative inflexibility of Euclidian zoning gave rise to the use of "floating zones," the use of which is authorized in Maryland by Md.Code (1957, 1998 Repl.Vol., 2002 Supp.), Article 66B, § 10.01(a)(8). In the case of *Eschinger v. Bus*, 250 Md. 112, 118–119, 242 A.2d 502, 505–506 (1968), we quoted Russell R. Reno, *Non Euclidean Zoning: the Use of the Floating Zone*, 23 Md. L.Rev. 105, 107 (1963), as follows:

> In recent years a new device in zoning has developed which provides the machinery for the establishment of small tracts for use as a shopping center, a garden apartment or a light industry in accordance with a comprehensive plan for the entire municipality, and at the same time leaves the exact location of each tract to be determined in the future as demanded for a shopping center, a garden apartment or a light industry develops in a specific area. This device is the creation of special use districts for these various uses, which at the time are unlocated districts, but which can be located by a petition of a property owner desiring to develop his specific tract for any of these special uses. Such unlocated special zoning districts are popularly referred to as "floating zones," in that they float over the entire municipality until by application of a property owner one of these special zones descends upon his land thereby reclassifying it for the special use. The zoning ordinance is carefully drawn so as to impose restrictive use limitation upon the owner in these special use zones in order to protect the adjoining residential areas. Usually there is a minimum lot requirement with large set-back restrictions for the structures, both from the streets and from the adjoining residences. Also in the case of light industry, limitations exist as to architecture of the buildings with requirements as to landscaping."

Professor Reno pointed out (pp. 118–19–20) that:

> In both the Rodgers case [*Rodgers v. Village of Tarrytown*, 302 N.Y. 115, 96 N.E.2d 731 (1951) ] and the *Huff* case [*Huff v. Bd. of Zoning Appeals*, 214 Md. 48, 133 A.2d 83 (1957) ] there was a complete system of established use districts covering the entire municipal area, with a single floating zone for a specialized use superimposed upon these established districts. Thus, in both cases where the floating zone device was upheld, there existed a comprehensive zoning plan for the municipality to which the floating zone was merely a special exception applicable to the entire plan, analogous to special exceptions applicable to individual zones. This raises the question as to whether the legality of the floating zone device is dependent upon the existence of an established Euclidean zoning system over which the floating zone is superimposed.

* * *

From these cases we can conclude that the most liberal courts still interpret the zoning power to mean Euclidean zoning with the creation of established territorial use districts. The advent of the floating device created a supplementary device similar to the special exception to give greater flexibility to the established use districts but cannot be used as a substitute for the accepted method of Euclidean zoning.

In order to prevent floating zones from becoming a tool with which to circumvent the prohibition on illegal forms of conditional and spot zoning, we consistently have held that:

... the floating zone is subject to the same conditions that apply to safeguard the granting of special exceptions, i.e., the use must be compatible with the surrounding neighborhood, it must further the purposes of the proposed reclassification, and special precautions are to be applied to insure that there will be no discordance with existing uses. These precautions include such restrictions as building location and style, the percentage of the area covered by the building, minimum green area, minimum and maximum area of the use, minimum setback from streets and other uses, requirement that a site plan be approved, and a provision for revocation of the classification if the specified restrictions are not complied with.

*See also Bigenho v. Montgomery County Council*, 248 Md. 386, 391, 237 A.2d 53, 56–57 (1968); *Aubinoe v. Lewis*, 250 Md. 645, 244 A.2d 879 (1968); *Tauber & Gould v. Montgomery County Council*, 244 Md. 332, 336–37, 223 A.2d 615, 618 (1966); *Knudsen v. Montgomery County Council*, 241 Md. 436, 217 A.2d 97 (1966); *Beall v. Montgomery County Council*, 240 Md. 77, 212 A.2d 751 (1965); *Costello v. Sieling*, 223 Md. 24, 161 A.2d 824 (1960); *Huff v. Bd. of Zoning Appeals of Baltimore County*, 214 Md. 48, 133 A.2d 83 (1957).

In a floating zone case, the zoning authority must make an express determination based upon specific findings of fact and legal conclusions that the application meets each of the statutory criteria and each of the stated purposes of the zone requested. *Colao v. County Council of Prince George's County*, 109 Md.App. 431, 456–57, 675 A.2d 148, 161 (1996); *Floyd v. County Council of Prince George's County*, 55 Md.App. 246, 257–59, 461 A.2d 76, 82–83 (1983). "This showing replaces the usual proof of change or mistake; and the requirement likens a floating zone case to a special exception case.... The zoning agency in a floating zone case must find, just as it does in a special exception case, that compatibility is shown by the applicant's conformance to express ordinance standards." *Hochman*, 117 Md.App. at 640, 701 A.2d at 895.

16 In Maryland, the terms "special exception" and "conditional use" are synonymous. *Hofmeister v. Frank Realty Company*, 35 Md.App. 691, 698, 373 A.2d 273, 277 (1977); *but see Cromwell v. Ward*, 102 Md.App. 691, 699, n. 5, 651 A.2d 424, 428 n. 5 (1995). A "conditional use" however, is not to be confused with "conditional zoning," discussed *infra*.

17 *See also Alviani v. Dixon*, 365 Md. 95, 112–114, 775 A.2d 1234, 1244–45 (2001); *Croswell v. Baltimore Aviation Service, Inc.*, 257 Md. 712, 719–21, 264 A.2d 838, 842–43 (1970); *Montgomery County v. Merlands Club, Inc.*, 202 Md. 279, 287–91, 96 A.2d 261, 264–65 (1953); *Hayfields, Inc. v. Valleys Planning Council, Inc.*, 122 Md.App. 616, 639–41, 716 A.2d 311, 322–23 (1998); *Mossburg v. Montgomery County*, 107 Md.App. 1, 7–11, 666 A.2d 1253, 1256–58 (1995); *Sharp v. Howard County Bd. of Appeals*, 98 Md.App. 57, 73–83, 632 A.2d 248, 256–60 (1993).

18 Maryland Code (1957, 1998 Repl.Vol.2002 Supp.), Article 66B, § 4.01(c) provides:

(c) *Construction of Powers.* —(1) On the zoning or rezoning of any land under this article, a local legislative body may impose any additional restrictions, conditions, or limitations that the local legislative body considers appropriate to preserve, improve, or protect the general character and design of:

(i) The lands and improvements being zoned or rezoned; or

(ii) The surrounding or adjacent lands and improvements.

(2) On the zoning or rezoning of any land, a local legislative body may retain or reserve the power to approve or disapprove the design of buildings, construction, landscaping, or other improvements, alterations, and changes made or to be made on the land being zoned or rezoned to assure conformity with the intent and purpose of this article and of the local jurisdiction's zoning ordinance.

(3) The powers provided in this subsection shall apply only if the local legislative body adopts an ordinance which shall include enforcement procedures and requirements for adequate notice of public hearings and conditions sought to be imposed.

19 Contrary to the assertions of the Dissent (Dissent, op. at 523–25), the mere fact that, in the proper exercise of judicial restraint, the Court declined in *Altman/Glazer* to address an issue does not mean that it in any way rejected the Court of Special Appeals's holding concerning that issue. It merely means exactly what a plain language reading offers, the issue was left *open* until such future time as that issue must be decided by this Court. The case *sub judice* presents a proper set of circumstances for us to reach that which was unnecessary for us to reach in *Altman/Glazer* and, thus, we shall do so, *infra*.





20 In *City of Gaithersburg v. Montgomery County*, 271 Md. 505, 511–13, 318 A.2d 509, 512–13 (1974), we pointed out that:

The legislative history of Chapter 116 lends support to the view that the General Assembly intended the statute to apply to municipalities throughout the State. Chapter 116 was first introduced as House Bill 83 at the 1971 session of the General Assembly. After passing the House, it was read for the first time in the Senate and referred to the Committee on Judicial Proceedings. Throughout this stage, the bill's title provided in part (Journal of Proceedings of the Senate of Maryland, Regular Session 1971, p. 146):

"... to provide that a municipal corporation having planning and zoning authority shall assume exclusive jurisdiction over planning and zoning within an area annexed five years after the area is finally annexed by it over which the Maryland National Capital Park and Planning Commission had jurisdiction prior to the annexation."

The Senate Judicial Proceedings Committee, however, deleted the reference in the title to the Maryland National Capital Park and Planning Commission, and re-wrote the title as follows (Senate Journal, *supra*, p. 1227):

"to provide that no municipal corporation annexing land may, for a period of five years following annexation, place such land in a zoning classification which permits a land use substantially different from the use for such land specified in the current and duly adopted master plan or plan of the county or agency having planning and zoning jurisdiction over such land prior to its annexation."

The Committee's amendment was adopted, and the bill was finally enacted in that form. Senate Journal, *supra*, pp. 1260–1261, 1356, 1400, 1474–1475; Journal of Proceedings of the House of Delegates of Maryland, Regular Session 1971, pp. 1978, 2156–2157. This action, re-writing the title and deleting the reference to areas "over which the Maryland National Capital Park and Planning Commission had jurisdiction prior to annexation," suggests a realization by the General Assembly that Art. XI–E of the Constitution required that the Act apply to all municipalities in the State. This legislative intent, disclosed by the title of Chapter 116, confirms the scope of the language of the Act itself. It is "well settled" that "the title of an act is relevant to ascertainment of its intent and purpose...." *MTA v. Balto. Co. Revenue Auth.*, 267 Md. 687, 695–696, 298 A.2d 413 (1973).

In sum, principles of statutory construction, the language of Article 23A, § 9 as amended by Chapter 116 of the Laws of Maryland 1971, and the legislative history of the amendment, all lead to the conclusion that the enactment is a limitation upon the home rule powers of *all* municipalities subject to Art. XI–E of the Maryland Constitution. As such, the statutory provisions do not violate Art. XI–E. (emphasis in original).

21 "We consistently have held that Articles 23A and 66B be read together." *Northeast*, 310 Md. at 29, 526 A.2d at 968 (1987). *See also Prince George's County v. Mayor and City Council of Laurel*, 262 Md. 171, 183–84, 277 A.2d 262, 268–69 (1971)("It has been said that the provisions of Article 23A and Article 66B of the Maryland Code are to be read together when their provisions relate to the same subject matter, and especially so when a municipality zones for the first time in the course of annexing land.")(citing *City of Annapolis v. Kramer*, 235 Md. 231, 234, 201 A.2d 333 (1964)).

22 The six counties filing a joint amici brief in the present case were Montgomery, Prince George's, Anne Arundel, Charles, Frederick, and Carroll. The Maryland Municipal League, Inc. and the Maryland–National Capital Park and Planning Commission also filed amici briefs. The Court acknowledges its gratitude for their collective efforts in assisting in these deliberations.

23 Chapter 116 was enacted as an emergency law, apparently in anticipation of our decision in *Prince George's County v. Mayor and City Council of Laurel*, 262 Md. 171, 277 A.2d 262 (1971). As such, the heavy reliance by the Dissent upon the reasoning in *Laurel* to support its interpretation of the current statute (Dissent, op. at 530–31, 541) is erroneous.

24 This recognition is consistent with the language of Art. 66B, § 1.00(h)(2), which, as we noted *supra*, provides that a particular local government planning document may be called by different names, when it states that " 'Plan' includes a general plan, master plan, comprehensive plan, or community plan adopted in accordance with §§ 3.01 through 3.09 of this article.





25 The restrictions in *National Capital Realty* were required by an agreement between Montgomery County and the property owner. The conditions were required by the agreement to be placed in a declaration of restrictions recorded among the land records, with appropriate language making them covenants running with the land.

26 Maryland Code (1957, 1998 Repl.Vol., 1999 Supp.), Art. 25A, §§ 5(U), (X), (BB), and (EE). *See also* Municipal Express Powers Act, Md Code (1957, 1998 Repl.Vol., 1999 Supp.), Art. 23A, §§ 2, 2B. *See also Mayor and Council of Forest Heights v. Frank*, 291 Md. 331, 339–51, 435 A.2d 425, 430–35 (1981); *but see Frank Krasner Enters. v. Montgomery County*, 166 F.Supp.2d 1058, 1061 n. 3 (2001).

27 It is important to note that the Commission dedicated only a few paragraphs of its 122 page Report to issues involving § 4.01. The Dissent attempts to argue that the Commission was responding directly to a selective body of prior Maryland cases (Dissent, op. at 511–15, 521–22), but offers no support for this assertion other than that it is the Dissent's view. In fact, there is no evidence to that effect, and as the Dissent quietly admits, the Commission only mentions in passing one (*Bayts*) of the many cases that the Dissent asserts the Commission was focused upon intently.

28 *Bd. of County Comm'rs of Washington County v. H. Manny Holtz*, 65 Md.App. 574, 583–84 n. 3, 501 A.2d 489, 493–94 n. 3 (1985); *See also Attman/Glazer*, 314 Md. at 687 n. 8, 552 A.2d at 1284 n. 8; *Montgomery County v. Nat'l Capital Realty Co.*, 267 Md. 364, 373–76, 297 A.2d 675, 680–82 (1972); *Carole Highlands*, 222 Md. at 46–48, 158 A.2d at 664–65; *Bayts*, 219 Md. at 169–70, 148 A.2d at 433.

29 We further point out that the Dissent's argument that a zoning authority's limitation of permissible uses does not violate the "uniformity" requirement (Dissent, op. at 511, 523), misses the point. As we explained in some detail, *supra*, the purpose of the uniformity requirement is not to make development on every property in the zone look the same. The purpose of the uniformity requirement is to protect the rights of the property owner and to insure fair and equal treatment by local authorities of those similarly situated within a given Euclidean zone throughout the given jurisdiction.

30 The Dissent erroneously conflates original zoning with the "piecemeal" rezoning process (Dissent, op. at 527–28). Worse, it implies (without benefit of citation to a location in the Majority opinion where such may be found) that the Majority mis-labels the City's zoning act as a "comprehensive rezoning" (Dissent, op. at 527, n. 17). Neither assertion is grounded in fact or law.

The City's piecemeal rezoning process for a single tract of property is, as described in Ch. 25, Art. III, Div. 2 § 116(1) of the City Code of Ordinances, the "local amendment" process. The procedure and standards for the processing and action on a local amendment application are prescribed in Divisions 1 and 2 of Article III. Within that framework, and specifically at § 25–99, it is made clear, as noted *supra*, that the provisions of Division 2 governing local amendment applications do not apply to original zoning of land annexed to the City. It is also evident, from an examination of the record in this case, that the Owners did not apply for a local amendment, as that term and process are given substance by the City ordinance, but rather availed themselves of the process to seek original zoning at annexation as governed by § 25–99 and Articles 23A and 66B of the Md.Code. Accordingly, the Dissent's characterization of the City's zoning of the subject property as having been accomplished through a piecemeal or local amendment process is wrong.

At no place in the Majority opinion is the City's act of zoning in this case described as a "comprehensive rezoning." This is merely a strawman constructed by the Dissent so it would have something to pounce on, in lieu of coming to grips with the actual attributions made in the Majority opinion. No one would describe the City's action in zoning the subject property as a comprehensive rezoning, given the definition of that term explained *supra*, at 481–83, and in § 25–116(3) of the City Ordinance (a "comprehensive" zoning amendment is defined as "covering the entire City").

31 Municipalities wield only such zoning powers as are granted to them by the Legislature. Here, the Legislature has specifically limited that power. In those cases where approval to the contrary is not forthcoming from the pre-annexation authority, the Legislature has dictated that the annexing municipality's initial zoning of the annexed property be in compliance with the pre-annexation jurisdiction's plan. As a result, despite the fact that the annexing jurisdiction is not free to zone the annexed property as it chooses, its initial act of zoning, though in conformity with the pre-annexation jurisdiction's plan, is an act of original zoning, as the Dissent concedes. As a result of this fact, dictated by the Legislature, the zoning which may occur after the running of the five year period would be an act of piecemeal zoning, unless it is part of a greater comprehensive rezoning.

32 The Dissent's position is not aided by its reliance on *Prince George's County v. Collington Corporate Center I Limited Partnership*, 358 Md. 296, 747 A.2d 1219 (2000)(Dissent, op. at 522–23). The conditions in question in *Collington* were not imposed by Prince George's County as required pre-conditions for zoning, nor were they a part of an instance of impermissible contract zoning. Rather, they were limitations voluntarily placed on the property by a prior property owner as a part of his prior zoning approval. 358 Md. at 302 n. 4, 307, 747 A.2d at 1222 n. 4, 1224.





33 We have pointed out in prior cases that the impermissible influence need not be explicit. Where the record shows that the zoning action would not have taken place but for the understanding that impermissible conditions would be in operation, impermissible conditional use zoning will be struck down. *Carole Highlands*, 222 Md. at 46–48, 158 A.2d at 664–66.

34 The reasoning and holding of this opinion with regard to the impermissible contract zoning presented by this case should not be read to cast wider doubt on the traditional and legitimate contractual undertakings customarily entered into between a property owner desiring to be annexed and a municipality desiring to annex. It is normal for such parties to express in writing certain executory accords, for which they have bargained, governing the anticipated annexation, including the zoning to be assigned at the time of annexation. As long as the portions of such agreements relative to the anticipatory zoning action do not violate other legal requirements, such as the prohibition against conditional use zoning in the present case, the practice of entering into annexation contracts is otherwise unaffected by this holding.

35 We shall answer this question without deciding whether the annexation agreement and annexation resolution otherwise remain valid in the absence of severability provisions. Only the validity of the City's Zoning Ordinance No. 10–99 was at issue in this case. As the validity of the annexation agreement *vel non* and ordinance, are not before this Court, we take no position as to their legal status, although interesting questions in connection with them may exist. *See Dwayne Clay, M.D., P.C. v. GEICO*, 356 Md. 257, 263–64, 739 A.2d 5, 8–9 (1999); *Post v. Bregman*, 349 Md. 142, 161, 707 A.2d 806, 815 (1998); *State Farm Mut. Auto. Ins. Co. v. Nationwide Mut. Ins. Co.*, 307 Md. 631, 643, 516 A.2d 586, 592 (1986); *Maryland–Nat'l Capital Park and Planning Comm'n v. Washington Nat'l Arena*, 282 Md. 588, 605–06, 386 A.2d 1216, 1228–29 (1978); *Riden v. Philadelphia, B. & W.R. Co.*, 182 Md. 336, 346, 35 A.2d 99, 104 (1943); *Campbell v. Johnston*, 134 Md.App. 689, 696–97, 761 A.2d 369, 372–73, *cert. denied*, 363 Md. 206, 768 A.2d 54 (2001).

36 Amicus Curiae Maryland Municipal League, Inc. also takes this position.

1 As Judge Harrell correctly states, "Conditional zoning" even if it relates to conditions such as uses, is a very different concept than the term "conditional use."

2 *Manny Holtz* is solely responsible for the confusion over conditions that limit uses during reclassifications. For over seventeen years we have avoided accepting its interpretation that prohibits conditions that limit uses. *See Attman, infra.* Today, with little independent analysis, the majority states that the Court of Special Appeals was correct and automatically elevates it to a holding of this Court. Because the writer of *Manny Holtz* failed to conduct any analysis and declined to even acknowledge the relevant statutes, a mere statement in that opinion, unsupported by anything, is now likewise declared by this Court to be the law.

3 A gas station is a gas station. Without the reclassification/annexation condition, as a special exception, a gas station can be operated on the subject annexed property within the new district as a permitted use. With the condition, the identical gas station can be operated on the subject annexed property within the new district if it can qualify for a special exception. In my view a permitted use of this nature cannot destroy the "uniformity" of uses within a district.

It is, I respectfully suggest, logically impossible for a use permitted within a district to destroy the statutory uniformity of a district. Allowing a use not permitted within a district might adversely affect the uniformity of a district, but conditional zoning is not concerned with allowing uses not otherwise permitted, but with limiting uses that are permitted. Accordingly, a permitted use simply cannot destroy the uniformity which the statute requires.

4 I use the word "generally" merely as cautionary language in the event that there is some Maryland non-use conditional zoning case, prior to the enabling act, of which I am unaware. I have found none. The majority mentions none.

5 *Wakefield v. Kraft*, 202 Md. 136, 141, 96 A.2d 27, 28–29 (1953). The suggestion of conditional zoning mistakenly emanating from *Wakefield* probably results from the fact that there was a private purchase contract between the property owner and a prospective buyer that was "conditioned" on the property being rezoned. That language has apparently been improperly picked up in some of the subsequent cases.

6 The *Bayts* Court cites several Maryland cases. One, *Huff v. Bd. of Zoning Appeals of Baltimore County*, 214 Md. 48, 57, 133 A.2d 83, 88 (1957), relates to "spot zoning" issues; two, *Marino v. Mayor and City Council of Baltimore*, 215 Md. 206, 215, 137 A.2d 198, 201 (1957); three, *Oursler v. Bd. of Zoning Appeals of Baltimore County*, 204 Md. 397, 408, 104 A.2d 568, 572 (1954), to "variance" or "special exception" issues; four, *Baltimore County v. Missouri Realty Inc.*, 219 Md. 155, 148 A.2d 424 (1959), to the change/mistake rule applicable to reclassifications generally. None of them were pure conditional zoning cases. Thus, at least arguably, *Bayts* is the first, and certainly the seminal, pre 1970's case in Maryland on conditional zoning.

7 In the case at bar all retail uses except gas stations were prohibited.

8 A Planning Commission recommended non-use conditions (limitations) in *Rohde v. County Board of Appeals for Baltimore County and Ortel Realty, Inc.*, 234 Md. 259, 263, 199 A.2d 216, 218 (1964), but the issue of conditional zoning was not raised before this Court. "Despite some possible ambiguity in the order, it is not directly attacked as being conditioned

with regard to the reclassification from one zone to another." In another case apparently decided after the 1968–69 Commission had completed its work and made its recommendations, and shortly after the statute was amended by the Legislature, this Court, in a case apparently decided below before the 1970 amendment was finally passed, upheld the denial of a rezoning that had included recommendations by a local commission for certain non-use conditions. However, the denial below, which we affirmed, had been based on reasons, other than the recommendation for conditional zoning. *Messenger v. Board of County Commissioners for Prince George's County*, 259 Md. 693, 271 A.2d 166 (1970). In any event, no notice of the new 1970 amendments was taken by the Court. This Court decided the case in November of 1970; the advance sheets may not have been published at that time. Even then, however, we recognized that "in Prince George's County, conditional zoning is permitted by statute. See Sec. 59–639 of the Prince George's County Zoning Ordinance." *Messenger*, 259 Md. at 707, 271 A.2d at 173. The Court noted that whereas the applicants had failed to establish the basic prerequisites for the rezoning in the first instance, it would have been "a waste of time and effort" to consider the matter of the conditions recommended.

9 The proceedings before the administrative agency in *National Capital* occurred prior to the enactment of the State enabling statute authorizing conditional zoning. Our opinion does not note the date of the lower court decision. But, it is clear that the statute authorizing conditional zoning was not presented to this Court in that case.

10 In *National Capital*, the Montgomery County Attorney had rendered an opinion that conditional zoning "is not permitted in Montgomery County." The Court took note of that opinion but, as I state above, took no notice of the 1970 amendment to Article 66B, which, for the first time, expressly permitted conditional zoning by local governments that expressly and properly adopt such provisions. Apparently, even by the time of our decision, Montgomery County had not exercised the authority granted by the 1970 Article 66B amendment, and that amendment, if known by Montgomery County, was not brought to the Court's attention in that, with the county's failure to adopt such provisions, the Article 66B amendment, even if applicable because it was enacted while the case was in progress below, was not relevant to the case. More important, as I note, the Court's comments relative to conditional zoning were based on the Court's prior cases, the holdings of which, had been to a large degree superseded by the 1970 amendment to Article 66B. Thus our language in that case, relative to the prohibition of conditional zoning in Maryland was dicta and, by 1972, inaccurate.

11 The concept of "spot zoning" always relates to uses of property; never to such things as set backs, design of buildings, height of buildings; *i.e.*, "yard issues."

12 In this quotation, I omitted the legislative editing marks.

13 Because the language is so clear, I suppose that is why the majority could not get to the position it takes by a "plain meaning" analysis. Because a plain meaning analysis takes it where it does not want to go and because it would lead to a different interpretation than the land use bar in the suburban areas had given the language, the majority, essentially ignores the statute's plain meaning in this case of first impression for this Court.

14 Generally, county zoning provisions do not apply within municipal corporations. While municipalities, other than Baltimore City, may be within the geographical boundaries of counties or regional entities, they are not, contrary to the opinions of some, subservient to county or regional governments unless the State has, by statute, otherwise dictated. Each local municipal entity gets its power directly from the State, not from the county or region in which it is located.

15 As stated, supra, this section is now codified in Maryland Code (1957, 1998 Repl.Vol., 2001 Supp.), Article 66B, Section 4.01(c).

16 The availability of 'conditional zoning' that permits limitations as to uses is, in reality, a tool that can ease the burdens on property owners that seek reclassifications in order to engage in specific projects. Persons who are opposed to any development on a specific piece of property because they want the private property of others to remain open space, often use as a weapon a refrain to legislative bodies, that essentially states: "If you permit the reclassification, there is nothing to prohibit the developer from using the property for any of the uses permitted in the district. Some of these uses could be very detrimental to our properties." Private property owners counter this argument by displaying a willingness to be limited to specific uses and projects.

17 The majority states that the dissent "erroneous[ly] conflates original zoning with the "piecemeal" rezoning process." This dissent to be sure, is a conflation of two tests into a new concept. That is because this is a case of first impression. If one assumes, as even the majority accepts, that there are only two types of Euclidean zoning-piecemeal and comprehensive-the individual application of one property owner for a zoning of one piece of property must be one or the other. It obviously cannot be comprehensive-it is an individual application for a zoning classification for a single, specific parcel. Unless the majority creates a completely new type of zoning, the process here was piecemeal, and the application would be an individual application for which the Rockville statute would have to apply. As to the majority's accusation that the dissent creates a strawman, the appropriate response is "to ask," What is it-the zoning upon an individual combined petition for





annexation and zoning? It has to be subject to some characterization; two are available-piecemeal or comprehensive. Piecemeal is the characterization traditionally associated with individual applications. The majority's opinion rejects that characterization. There is only one left-comprehensive; but the majority knows that trying to characterize the process as comprehensive has as much chance of success as getting a pig to fly. Instead, the majority continues to avoid the real issue by insisting on the difference between "original" zoning and "change/mistake" zoning, arguing in essence that if it is not "change/mistake" zoning it is "original." I agree. If that was the issue rather than a proposition obscuring the issue, the majority would be correct. In essence, the majority has created its own "strawman," one that supports the position it wants to reach.

18 I rely in this portion of my dissent on my perception that the plain meaning of the statute controls. If I believed that the statute was ambiguous, my opinion as to its meaning would constitute pure conjecture and would be no better than the conjecture of the majority. In that event, I would probably concur with the result the majority reaches on this issue.

19 On page 492 the majority also states that a second possible interpretation of the statute is that "the General Assembly merely was acknowledging the hierarchy of local governmental planning and the differing terminology used to identify those various land use plans by the various jurisdictions." There is no hierarchy as between county and municipal plans. They are on equal footing. Both get their zoning power directly from the State-neither gets its power from the other. There is no pecking order.

20 "On February 4, 1966, the Cecil County Commissioners passed a resolution approving the proposed zoning changes." *Northeast*, 310 Md. at 23, 526 A.2d at 965.

21 As Judge Harrell correctly points out, even with the prohibition against other retail uses, there are, according to the use provisions of the Rockville zoning statutes, numerous other uses permitted either as of right or by special exception in the I-1 zone.

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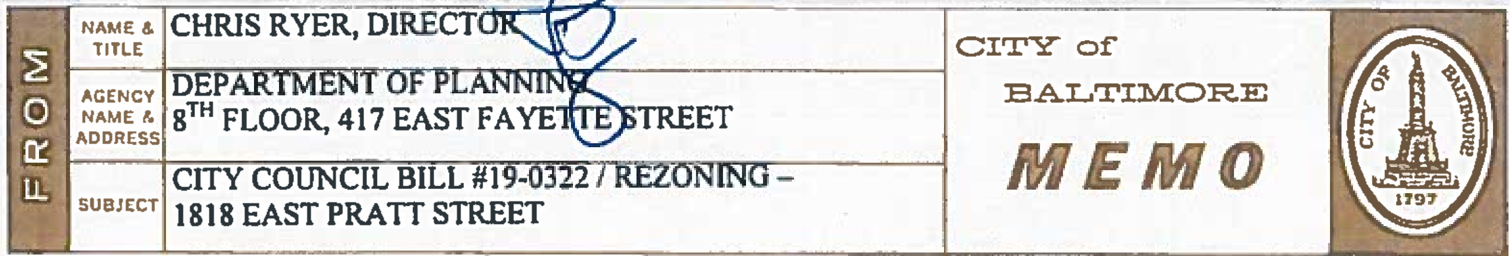
# Exhibit 3




TO

DATE: March 8, 2019

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

At its regular meeting of March 7, 2019, the Planning Commission considered City Council Bill #19-0322, for the purpose of changing the zoning for the property known as 1818 East Pratt Street from the R-8 Zoning District to the C-1 Zoning District.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report which recommended disapproval of City Council Bill #19-0322, heard additional testimony and adopted the following resolution, eight members being present (six in favor, one opposed, and one abstention):

> RESOLVED, That the Planning Commission does not concur with the recommendation of its Departmental staff, and instead finds that there was a mistake in assigning this property R-8 zoning at the time of the Comprehensive Rezoning of the City in 2017, where the Mayor and City Council did not at that time take notice of the existing commercial use of this property, and that this business had been in continuous operation for an extensive period of time. Therefore, the Commission recommends that City Council Bill #19-0322 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. 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. Jeff Amoros, 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. Frank Murphy, DOT
Ms. Eboni Wimbush, DOT
Ms. Natawna Austin, Council Services
Mr. Ervin Bishop, Council Services
Mr. Melvin Kodenski, esq., for STT Inc.

# Exhibit 4

KeyCite Yellow Flag - Negative Treatment
Distinguished by City of Greenbelt v. Bresler, Md., December 7, 1967

222 Md. 330
Court of Appeals of Maryland.

Hyman A. PRESSMAN and Annabelle K. Pressman, his wife, et al.
v.
CITY OF BALTIMORE et al.

No. 217.
|
April 25, 1960.

**Synopsis**

Action to have declared invalid several rezoning ordinances. The Circuit Court of Baltimore, S. Ralph Warnken, J., dismissed the bill, and complainants appealed. The Court of Appeals, Brune, C. J., held that where city council was not bound by recommendations of Planning Commission, to which rezoning ordinance was referred, and agreement between Commission and proponents of ordinance was not referred to in ordinance, and it did not appear that council relied on agreement in passing ordinance, agreement, which imposed conditions on proponents of ordinance but was beyond authority of Commission, was not an agreement between proponents and city and did not affect validity of ordinance.

Appeal dismissed in part as moot; decree affirmed.

**Attorneys and Law Firms**

*333 **380 Robert C. Prem and H. Warren Buckler, Jr., Baltimore (Hyman A. Pressman, Baltimore, on the brief), for appellants.

William L. Marbury and John Martin Jones, Jr., Baltimore (Piper & Marbury, Baltimore, on the brief), for Assoc. Dry Goods Corp., Gorn Brothers, Inc., Hatton Homes, Inc., Walter J. Crismer and Mary J. Crismer.

William W. Cahill, Jr. and Albert L. Sklar, Baltimore (William J. Pittler, Sklar & Sullivan, Leonard Weinberg, Weinberg & Green, Baltimore, on the brief), for Food Fair Properties, Inc.

Francis X. Gallagher, Kenney & Gallagher, Baltimore, on the brief for Associated Catholic Charities, Inc.

Harrison L. Winter, City Sol., James B. Murphy, Asst. City Sol., Baltimore, on the brief for Mayor & City Council of Baltimore and Robert G. Dietrich, Bldg. Inspection Engineer.

Kenneth C. Proctor, Towson, on the brief for Gorn Brothers, Inc.

Before BRUNE, C. J., and HENDERSON, HAMMOND, PRESCOTT and HORNEY, JJ.

**Opinion**

BRUNE, Chief Judge.

This is another shopping center case. It grows out of the proposed establishment of a large regional shopping center and an adjacent neighborhood shopping center. The complainants, now appellants, brought this suit in the Circuit Court of Baltimore City to have declared invalid three ordinances of the Mayor and City Council of Baltimore (the City) rezoning certain tracts of land in that City from Residential to First Commercial use and for injunctive relief to prevent their being carried into effect. The respondents, now appellees, are the City, its Building Inspection Engineer and parties interested as sellers or purchasers of the properties involved or as prospective lessees or occupants of structures to be erected thereon. The complainants, some sixteen in number, are taxpayers of the City and State and are or were *334 (with the exception of one, who is a lessee) owners of property located at varying distances from the subject properties. At the conclusion of the trial, which extended over several days, Judge Warnken delivered an oral opinion in which he upheld the validity of the ordinances; and he later signed a decree declaring them valid and dismissing the bill. The complainants appeal.

The appellees have filed a motion to dismiss the appeal on the ground that the case has become moot. They contend that, among the appellants, only the four owners of the property known as No. 4022 Brookhill Avenue, the Komitzskys and the Pressmans, had standing to contest the rezoning. Their standing was conceded because of the proximity of their house and lot to the rezoned area, this particular property being just across Reisterstown Road from a part of the shopping center site. The owners of

this lot sold it pending the appeal. Two of them say they own other property about two blocks farther away. The appellees did not challenge below the standing of any of the complainants to maintain this suit, though one of them appears to have owned a property over a mile away. Some others hold property within about one to four blocks of the highway opposite the site in question. Because of the absence of any objection below to their right to sue, there has been no determination as to any special damages which they, or any of them, might suffer, which would enable them to maintain this suit in equity **381 to redress what they allege to be a public wrong.

Though the evidence is scanty to show any special damages (cf. Loughborough Development Corp. v. Rivermass, 213 Md. 239, 131 A.2d 461), we think that the appellees' objection as to the interest of most of the opposing parties, made as it is for the first time in this Court, comes too late to warrant a dismissal of the appeal as to them. (It does not raise any question of jurisdiction to hear and determine the case.) See Maryland Rules, Rule 885; Miller, Equity Procedure, Sec. 76. Cf. Close v. Southern Md. Agricultural Ass'n, 134 Md. 629, 108 A. 209. And see Bauernschmidt v. Standard Oil Co., 153 Md. 647, 139 A. 531; Weinberg v. Kracke, 189 Md. 275, 55 A.2d 797; *335 Crozier v. County Comrs. of Prince George's County, 202 Md. 501, 97 A.2d 296, 37 A.L.R.2d 1137; Loughborough Development Corp. v. Rivermass, supra; City of Baltimore v. N. A. A. C. P., 221 Md. 329, 157 A.2d 433; all dealing with standing to sue in equity to redress public wrongs, all but the first of which are directly concerned with zoning matters.

As to two of the complainants, the Komitzskys, it does not appear that they have any further interest in the case since the sale of No. 4022 Brookhill Avenue. The appeal will, therefore, be dismissed as to them. Cf. Windsor Hills Improvement Ass'n v. Mayor & C. C. of Baltimore, 195 Md. 383, 73 A.2d 531. See Alleghany Corporation v. Aldebaran Corporation, 173 Md. 472, 196 A. 418 (case moot because of action after appeal).

The proposed regional shopping center is intended to occupy an area (referred to as Tract One) consisting of about 61 acres. It is dealt with by two of the three ordinances here under attack, Nos. 1929 and 1930. Tract One has a frontage of about 1800 feet on the west side of Reisterstown Road and of about 1400 feet on the north side of Patterson Avenue.[1] Reisterstown Road is a principal four-lane highway, about 80 feet wide, leading from the northwestern suburban area into the City of Baltimore. The subject properties are near the northwestern corner of the city. The proposed neighborhood shopping center (Tract Two), dealt with by Ordinance No. 1931, adjoins Tract One to the north, and has a frontage of about 700 feet on Reisterstown Road and a depth of about 570 feet.[2]

Tract One is owned in part by The Seton Psychiatric Institute, *336 which owns and operates a mental institution on the south side of Patterson Avenue, and in part by Associated Catholic Charities, Inc., both of which are appellees. The latter owns and operates an infant asylum on adjoining land which it owns lying in the relatively narrow strip between Tracts One and Two to the east, Patterson Avenue to the south and the tracts of the Western Maryland Railway to the west. There are some plans under which the use of this asylum may be discontinued. The railway line runs nearly parallel with Reisterstown Road, and a strip along it 200 feet wide is zoned Second Commercial. Land between Tracts One and Two and this strip along the railroad is zoned Residential. Food Fair Properties, Inc. (Food Fair), one of the appellees, proposes to develop the regional shopping center covered by Ordinance No. 1930. Associated Dry Goods Corporation (trading locally as Stewart & Co. and referred to **382 below as 'Stewart's'), another appellee, proposes to build a warehouse in the northwest corner of Tract One (covered by Ordinance No. 1929) and to operate a department store in the regional shopping center. May Department Stores Company proposes to operate another department store in that center. It had participated in the case on the basis of that interest, though it has not been formally made a party.

Tract Two is owned by Gorn Bros., Inc., another appellee, and by others, who have also participated in the case, though they have not formally been made parties. The owners of Tract Two propose to develop it as a neighborhood shopping center.

Along the entire frontage of the subject properties on Reisterstown Road (including the filling station) the zoning classification prior to the passage of the contested ordinances was First Commercial for a depth of 150 feet. The same classification prevailed and continues to prevail for a like depth on the east side of Reisterstown Road opposite Tract One; and, with the exception of one block (on both sides of Brookhill Avenue, where residences have

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been built in a Commercial area), the land is used mainly for commercial purposes, with a few vacant lots.

*337 Opposite Tract Two, the area to the east of Reisterstown Road is zoned Residential and is so used.

South of Patterson Avenue, land along each side of Reisterstown Road is zoned First Commercial for a depth of at least 150 feet on each side for a distance of some two and a half miles. For perhaps a total of a mile and a half of this distance (broken into two parts) the First Commercial zone fronting on the west side of Reisterstown Road backs directly on a Second Commercial zone extending to (and across) the railway line. Immediately to the south of Patterson Avenue (across from Tract One) is an area zoned Residential, roughly 1200 by 1500 feet, extending about four blocks southward and lying between the Second Commercial strip along the railroad and the First Commercial strip along Reisterstown Road.

To the north (actually northwest of the subject properties there is a small area in the City of Baltimore which is zoned Residential. The western boundary of the City is only about 300 feet from Tract Two at its nearest point. It is about 600 feet to that boundary along Reisterstown Road; and just inside the line there is another bit of First Commercial zoning on each side of that highway. Between that area and a point opposite the gasoline station at the south end of Tract Two, land to the east of Reisterstown Road is zoned Residential. All of the appellants reside on or own (or owned) property east of Reisterstown Road-one of them fully a mile away from the subject property.

The basic Baltimore Zoning Ordinance was adopted in 1931. It included a considerable amount of First Commercial strip zoning along major traffic arteries, including Reisterstown Road. This pattern has continued, though the expert testimony in this case makes it clear that such strip zoning is no longer considered good zoning. The actual development in the neighborhood of the subject properties, as shown in this case, seems to confirm present expert views. As a matter of history, zoning has preceded planning in Baltimore, and no land use master plan for the City has yet been promulgated. In these circumstances, the zoning map, as originally adopted and as from time to time amended, has had to do double duty by serving not only as a zoning map, but also as a 'comprehensive *338 plan.'[3] In the trial court the appellants pressed objections to the ordinances in question on the ground that they were invalid because of the absence of a comprehensive land use plan, but they have expressly determined not to press such an **383 objection on appeal and have thereby abandoned it. On the general subject of what constitutes a 'comprehensive plan', see Haar,[4] 'In Accorance with a Comprehensive Plan,' 68 Harvard L.Rev. 1154; County Com'rs of Anne Arundel County v. Ward, 186 Md. 330, 46 A.2d 684, 165 A.L.R. 816; Huff v. Board of Zoning Appeals, 214 Md. 48, 133 A.2d 83; Hewitt v. County Com'rs of Baltimore County, 220 Md. 48, 151 A.2d 144; Trustees of McDonogh Educational Fund and Institute v. Baltimore County, 221 Md. 550, 158 A.2d 637. The appellants likewise expressly disclaim any contention in this Court based upon possible increase in traffic.

The appellants press three other contentions: first, that Ordinances Nos. 1929 and 1930 are invalid because based upon a contract between their sponsors and the City; second, that all three ordinances are invalid because there has been no showing of error in the original zoning plan or of such change in conditions as would warrant a departure from it; and third, in substance, that the ordinances constitute spot zoning passed for the benefit of their sponsors, without reference to a comprehensive zoning plan or the general welfare. We shall not take these questions up in the order stated, but will consider first the questions of original error or change, next the question of spot zoning, and finally the appellants' major contention relating to contract, the facts as to which will be stated when we reach that contention.

This case illustrates, as do a number of others coming to this Court, that shopping centers were not thought of when zoning regulations were first adopted for a number of the subdivisions of this State. There is no serious controversy in this case over the proposition that commercial strip zoning, such as that along Reisterstown Road, has proved undesirable under *339 present day conditions. The shopping and motoring habits of people are quite different today from what they were in 1931. Popular desire or need for large shopping areas and the necessity of adequate off-street parking facilities in connection therewith now seem to be generally recognized. However desirable commercial strip zoning along arterial highways may have appeared in 1931, there is ample evidence in this case to support the view that it has not stood the test of time and experience. Whether this should be regarded as an error in original zoning or the result of changed conditions may be a matter of a choice of words or of approach. In either event, a contention that the action of the legislative

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body in rezoning these properties is devoid of support, simply cannot be sustained. That the rezoning of this one particular area would not correct a more or less citywide error or maladjustment seems of no significance. A correction in part seems preferable to none; and to defer any correction anywhere in the City until a complete correction of all errors or maladjustments of the same kind is made seems completely impractical as a matter both of expense and of dislocation of business, and we know of no rule of law which would require it. It was the appellants' burden on this phase of the case to show lack of error in original zoning and the absence of change in conditions so as to upset the presumption in favor of the validity of the legislative action. No extensive citation of authorities on this point would seem useful. See, among other cases: Eckes v. Board of Zoning Appeals, 209 Md. 432, 121 A.2d 249; Muhly v. County Council for Montgomery County, 218 Md. 543, 147 A.2d 735; Fallon v. City of Baltimore, 219 Md. 110, 148 A.2d 709.

We also find the appellants' contention that the rezoning is invalid spot zoning because it is solely for the benefit of the proponents and hence is not in accordance with a comprehensive zoning plan or the general welfare, is not sustainable. Doubtless the proponents deemed it to their **384 advantage to seek and obtain the rezoning, and it may very well be. Certainly, they would be unlikely to venture the large amounts of money required for the established of shopping centers unless they so believed. However, the very basis of their belief is study *340 and research to satisfy themselves that a public demand for the shopping facilities which they propose to offer exists in the area in question. On the record before us we could not say that the Chancellor was in error in finding that the City Council's action in rezoning these properties was neither arbitrary nor discriminatory in favor of the proponents- in other words, that this is not a case of invalid spot zoning. Quite to the contrary, there is substantial evidence to show that the rezoning will be beneficial to the public and to the neighborhood and will not depress values of nearby properties. See Eckes v. Board of Zoning Appeals, supra; Temmink v. Board of Zonning Appeals, 205 Md. 489, 109 A.2d 85; Loughborough Development Corp. v. Rivermass, supra, 213 Md. at page 242, 131 A.2d at page 463. The absence of a general land use plan does not mean that no change in zoning can be made because it cannot be in accordance with a comprehensive plan, as that term has been applied by this Court practically, and almost necessarily, where, as in Baltimore, zoning has run ahead of planning.

There is here, we may add, no radical departure from what has gone before. True, commercial development has not actually spilled over into an area zoned residential in the area with which we are now concerned; but that signifies little more in this case than that the zoning ordinance has been regarded and adhered to rather than violated. If that fact were enough to prevent revision, zoning would indeed be static. It cannot be so. Muhly v. County Council for Montgomery County, supra, 218 Md. at page 547, 147 A.2d at page 737. Here there is already a 150-foot strip along the main highway which has been zoned since 1931 as Commercial. These lots are deepened-in the case of Tract One very materially, in the case of Tract Two not so much. Stores could be built in the previously existing 150-foot strip; but if this were done, no room, or no adequate room, would be left for parking. The proposed arrangement would move the stores back from the highway and away from the objecting neighbors and would furnish a large parking space. It would almost certainly be a far more pleasing development than an extension of the existing type of commercial strip development along this road in the general neighborhood.

The appellants place their chief emphasis on the contention *341 that Ordinances Nos. 1929 and 1930 are invalid because of an agreement (the Agreement) entered into between the City of Baltimore, acting through its Planning Commission (the Commission) and Food Fair and Stewart's, to which the sellers of Tract One are, in accordance with a stipulation, to be regarded as parties for purposes of this case.

When a rezoning ordinance is introduced in the City Council, it is referred for a report to the Board of Municipal and Zoning Appeals and to the Planning Commission (Code (1957), Art. 66B, Sec. 5. See also Baltimore City Charter, Sec. 121.) Such an ordinance is also referred to the Department of Traffic and Transit. The City Council is not bound by the reports or recommendations of any of these departments or agencies. Baylis v. City of Baltimore, 219 Md. 164, 168, 148 A.2d 429. All of the ordinances here involved were in fact approved by all of these authorities. Two of them, which became Nos. 1929 and 1930, dealing with Tract One were approved by the Planning Commission on condition that Food Fair and Stewart's enter into an agreement with

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the City relating thereto. The Commission's approvals of the original ordinances, which had been introduced in October, 1958, were given on November 13, 1958. Its report to the Council dealing with what became, **385 when enacted, Ordinance No. 1929, referred to its report on what became No. 1930. The report relating to the latter was the major report. Each report quotes an excerpt from the minutes of the meeting of the Commission at which these ordinances were approved setting forth the terms to be contained in the Agreement. The Agreement itself recites that its execution was a condition to the approval of the Commission. A member of the City Council is an *ex officio* member of the Commission. So is the Mayor (Baltimore City Charter, Sec. 102). The Agreement purported to be between the Mayor and City Council of Baltimore (which is the full corporation title of the City), Food Fair and Stewart's. It was approved as to form and legal sufficiency by the Acting City Solicitor and an Assistant City Solicitor on November 14, 1958. It is dated November 17, 1958.

These Ordinances (as well as No. 1931) were passed in *342 April, 1959 and were approved by the Mayor on April 27, 1959. None of them makes any reference to the Agreement. We think it reasonable to suppose that its purport was known to the City Council.

The Baylis case, above cited, which is the principal foundation of the appellants' argument on this aspect of the case was decided by this Court on February 18, 1959. It reversed a decree of the Circuit Court of Baltimore City. The appeal therein was pending in this Court when the Agreement was entered into, and the decision of that case preceded the passage of the ordinances here attacked by about two months; and we think that it may safely be assumed that the City Council was also aware of the Baylis decision.

The resolution of the Commission adopted on November 13, 1958, relating to the Agreement was, in substance, as follows:

> 'That this Commission's action of approval is based upon an agreement being entered into between the transferees of the present record owners and the * * * City * * * providing that in consideration of the Planning Commission's approval of the rezoning to First Commercial of the property described in Ordinances numbered [1929 and 1930] for the purposes of building a regional shopping center, as generally proposed in the plans submitted, if it is subsequently determined that this project cannot be carried out as substantially proposed and in that event the City takes action to repeal the rezoning ordinance to the end that the property will revert to its present existing uses, the transferees will not interpose objections to the passage of the repeal ordinance, and that the agreement further [provide that] the transferees * * * agree: To lay out and develop the * * * property as a planned shopping center in accordance with plans approved by the * * * Commission * * *.'

The Agreement embodied the terms stated in the above resolution. It further provided that upon substantial performance *343 by Food Fair or Stewart's (or both of them) of the provisions of the ordinances relating to the respective properties upon which they proposed to build, the Agreement should become null and void as to the respective properties, and that the Agreement should bind and should inure to the benefit of the parties, their successors and assigns.

The ordinances themselves make no reference whatever to the Agreement. Apart from whatever inference may be drawn from the City Council's knowledge of the existence or purport of the Agreement, there is nothing to show that the City Council was actually influenced in passing the ordinances by the existence of the Agreement. It might, perhaps, as readily be inferred that, with knowledge of the Baylis case, the City Council deliberately decided to place no reliance on the Agreement. Whatever the reasons for the Council's **386 omission of reference to the Agreement may have been, it is clear that in this case, unlike Baylis; Rose v. Paape, 221 Md. 369, 157 A.2d 618; and Carole Highlands Citizens Assn. v. Prince Georges County, 222 Md. 44, 158 A.2d 663, the legislative body has not itself sought to impose conditions and has

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certainly not stated that its own action is dependent upon compliance with any conditions.

In the instant case, the conditions sought to be imposed by the Planning Commission are, in brief, merely that the sponsor of the large shopping center and the prospective builder of the warehouse or service building should go ahead with the proposals which they had submitted and that their plans should be subject to approval by the Commission, and that if the sponsor and builder should fail to go ahead as proposed, they would not oppose the repeal of the rezoning ordinances and the restoration of the previous residential rezoning, if the City Council should see fit to take such action. No matter how moderate, reasonable or even desirable these conditions may be, we find no authority for their imposition by the Planning Commission. The State Enabling Act (Code (1957), Art. 66B, Sec. 7(g) (4)) authorizes a zoning board (except in two counties) to 'approve buildings, and uses limited as to location under such rules and regulations as may be provided by ordinance of the local legislative body,' but no such authorization *344 extends to the Planning Commission, nor does the Baltimore City Zoning Ordinance undertake to confer power to impose such conditions in a case like the present upon the Planning Commission, even if it could do so.[5] Cf. Kublitsky v. Zimnoch, 196 Md. 504, 507, 77 A.2d 14.

We thus have a situation in which the City Council was not bound by the recommendations of the Planning Commission, in which that Commission sought to impose conditions that it was not authorized to exact and that are therefore invalid, and in which the Council did not undertake or attempt to incorporate the invalid conditions in its rezoning ordinances and did not even refer to them.

A purported grant of rezoning might be invalid because actually based upon conditions destructive of uniformity of zoning, even though the rezoning ordinance itself made no express reference to such conditions, as in Houston Petroleum Co. v. Automotive Products Credit Ass'n, 11 N.J.Super. 357, 78 A.2d 310, affirmed 9 N.J. 122, 87 A.2d 319. That, we think, is not shown here. On the contrary, in the circumstances of the present case, it would, in our judgment, be *345 merely speculative to impute to the legislative body an intention to impose conditions or to make them the basis of its action in rezoning the property.

The disruption of uniformity of zoning, which is a major vice of rezoning upon **387 conditions (Baylis v. City of Baltimore, supra), has already been dealt with in our consideration of spot zoning. So has the question whether or not the rezoning is in the interest of the sponsors of the project rather than of the public. The existence of the invalid Agreement under which the Commission sought to impose conditions does not alter our view as to either.

We find none of the objections of the appellants well taken, and that two of the appellants have no present interest in the case. Accordingly, the appeal of the latter will be dismissed and decree will be affirmed as to the other appellants.

Appeal of Abraham and Dora Komitzsky dismissed as moot; decree otherwise affirmed; the appellants to pay the costs.

**All Citations**

222 Md. 330, 160 A.2d 379

## Footnotes

1 Reisterstown Road actually runs northwest-southeast along the subject properties, and Patterson Avenue meets it approximately at a right angle at the eastern corner of Tract One. For convenience and simplicity we shall treat Reisterstown Road as if it ran north and south and Patterson Avenue as if it ran east and west.

2 A map filed as an exhibit indicates that one corner of this area now occupied by a gasoline station on a lot fronting about 175 feet on Reisterstown Road and about 150 feet deep, which adjoins Tract One, is not affected by the rezoning under attack. It also shows a street which separates one part of Tract Two adjoining Tract One from the balance of Tract Two.

3 A master plan long in contemplation and long in course of preparation is reported to be nearing completion.

4 Professor Haar testified as an expert witness for the appellees in this case.

5 In Reus v. City of Baltimore, 220 Md. 566, 155 A.2d 513, an ordinance permitted the establishment of a parking area in a Residential and Office Use district. This ordinance was introduced, referred and enacted in compliance with the express terms of Sec. 17 of the general Zoning Ordinance (Baltimore City Code (1950), Art. 40, as amended in 1953). That Section permitted the enactment of such an ordinance when such use would benefit the health, safety or general welfare of the community. It required, *inter alia*, that any such ordinance be referred to the Planning Commission. That

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Commission recommended the approval of the ordinance in question subject to conditions as to screening, which were incorporated in the ordinance as enacted. Under Section 17 such conditions might be imposed as the Mayor & City Council might determine. American Oil Co. v. Miller, 204 Md. 32, 102 A.2d 727, and Baylis were distinguished on the ground that under Section 17 of the general ordinance, the validity of which was not contested, the use in question was permissible in a district of the classification there involved and, hence, that no question of rezoning or reclassification was presented. There would seem to be some similarity between the situation in Reus and that presented in the case of a special exception. Cf. Huff v. Board of Zoning Appeals, 214 Md. 48, 62, 133 A.2d 83, 91.

End of Document

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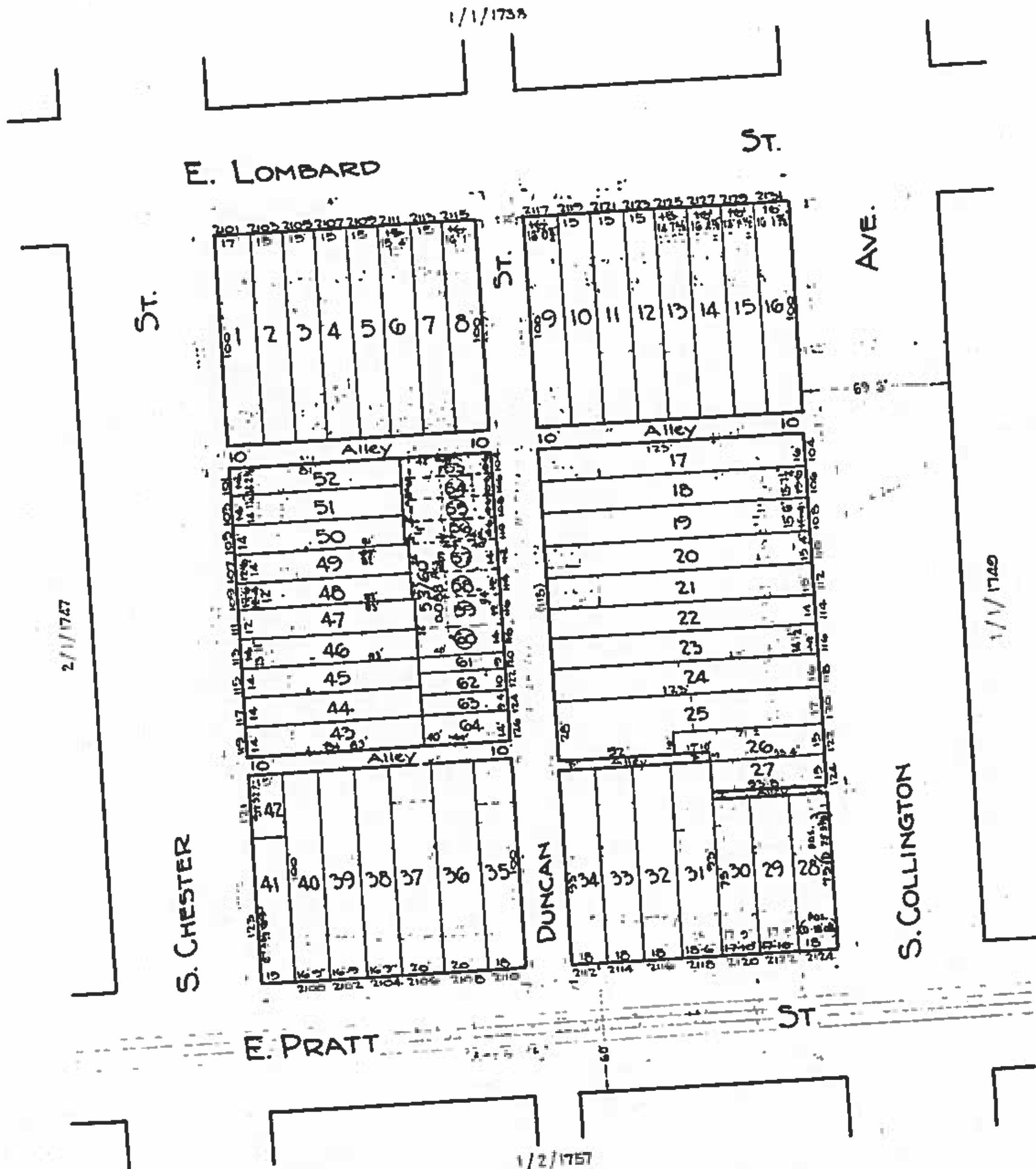
# Exhibit 5

REVISIONS

Revised BS (Corrick) June 6 1952 C.Sh Nº 599
Lot 28 Dim. Changed Per PLD. C.Sh. 8001A
LOTS 43 THRU 49 & 61 THRU 64 PER DEED C.SH 77-190-191
LOTS 53-60 CONS'D PER APPL C.SH 77-190/191
LOT 53/60 CHANGED PER PLS C.SH 78-110
LOTS 48 & 49 DIM CORRECTED PER DEED C.SH 81-269

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|---|---|
| TRACED | C.H. BAIN BY C. GILBERT |
| LETTERED | BY W.M. Lee |
| CHECKED | BY C. GILBERT BAIN-LITZ |

**NOTICE**

THIS IS A REAL PROPERTY PLAT AS PROVIDED FOR UNDER ARTICLE 76(M) OF THE CITY CHARTER. IT IS COMPILED FROM TITLE AND OTHER SOURCES AND IS NOT AN AUTHENTIC SURVEY

CITY OF BALTIMORE
DEPARTMENT OF PUBLIC WORKS
BUREAU OF PLANS & SURVEYS
PROPERTY LOCATION DIVISION

WARD 1 SECTION 1

BLOCK 1748

SCALE: [illegible] DATE: JAN. [illegible]

# Exhibit 6

primarily by flyers, websites, e-blasts, and social media and customarily selling general admission tickets at the door.

(3) *Inclusions.*

"Banquet hall" includes an establishment that provides live entertainment as an accessory to the use described in paragraph (1) of this subsection.

(4) *Exclusions.*

"Banquet hall" does not include any restaurant or tavern.

(d) *Basement.*

"Basement" means that portion of a building that has its floor subgrade (below ground level) on all sides.

(e) *Bay window.*

"Bay window" means a window that:

(1) projects outward from a building;

(2) begins at least 2 feet above the ground; and

(3) has no structural support to the ground.

(f) *Bed and breakfast.*

"Bed and breakfast" means an owner-occupied, single-family dwelling that:

(1) is used primarily as a the owner's personal home; but

(2) also, while the owner is in residence, provides lodging in 3 or fewer guest rooms to members of the general public who have primary residences elsewhere.

(g) *Billboard.*

"Billboard" means any sign that directs attention to a business or commodity that is:

(i) sold or offered somewhere other than on the property on which the sign is located; or

(ii) sold or offered on that property only incidentally, if at all.

(h) *Blockface.*

"Blockface" means all of 1 side of a given street between 2 consecutive intersecting streets.

(o) *Stadium.*

(1) *In general.*

"Stadium" means a structure with tiers of seats rising around a field or court, intended to be used:

(i) primarily for the viewing of athletic events; and

(ii) secondarily, for entertainment and other public gathering purposes, such as conventions, circuses, or concerts.

(2) *Inclusions.*

"Stadium" includes the following accessory uses designed and intended primarily for patrons of the facility:

(i) a gift or souvenir shop; and

(ii) a restaurant or refreshment stands.

(p) *Stacking space.*

"Stacking space" means a space specifically designated as a waiting area for vehicles patronizing a drive-through establishment.

(q) *Stormwater.*

"Stormwater" means the water running off the surface of a drainage area during and immediately following rain or as a result of other precipitation.

(r) *Story.*

"Story" means that portion of a building, other than a basement, that is:

(1) included between the surface of any floor and the surface of the floor next above it; or

(2) if there is no floor above it, then the space between the floor and the ceiling next above it.

(s) *Street.*

"Street" means any street, boulevard, road, highway, alley, lane, sidewalk, footway, or other way that is owned by the city or habitually used by the public.

(t) *Structural alteration.*

"Structural alteration" means:

## *SUBTITLE 5*
## *AREAS OF SPECIAL SIGNAGE CONTROL*

### § 17-501. Purpose.

The City recognizes that certain commercial areas present a unique character that could be enhanced with the application of sign standards that depart from the requirements of this title. In these circumstances, these standards would be considered supportive of the commercial area. Under this subtitle, the Planning Commission may recommend and the City Council may approve the designation of an area that meets certain criteria as an Area of Special Signage. The Planning Commission may then approve a specific Signage Plan for that Area of Special Signage Control.
*(Ord.18-216.)*

### § 17-502. Applicability.

(a) *Districts.*

(1) An Area of Special Signage Control may be applied for in the C-1, C-1-E, C-1-VC, C-2, C-3, C-4, C-5, I-MU, OR, or TOD Zoning Districts.

(2) The entire PC Zoning District, as mapped on the adopted Zoning Map, as of June 5, 2017, is designated an Area of Special Signage Control, unless the boundaries of the Area of Special Signage Control are otherwise amended per § 17-505.

(b) *Size of Area.*

(1) An Area of Special Signage Control must include multiple properties and cover an area that has at least 600 linear feet of street frontage.

(2) The block faces may either be located directly across the street from each other or adjacent to each other along the street.

(3) The block faces may be in any 1 or combination of the zoning districts identified in subsection (a) of this section.
*(Ord.18-216.)*

### § 17-503. Application process.

(a) *Application by Ordinance.*

Approval of an Application for an Area of Special Sign Control requires approval by ordinance, in accordance with the applicable procedures of Title 5, Subtitle 5 {"Legislative Authorizations"} of this Code, except that §§ 5-506(a)(2) and 5-508 do not apply.

(b) *Process.*

(1) If an area is located in a zoning district listed in § 17-502(a)(1) of this subtitle and meets the requirements of this subtitle, a proposed Ordinance can be introduced to designate that area as an Area of Special Sign Control.

**§ 12-505. Minimum size of district.**

An Educational Campus District must encompass at least the smaller of the following:

(1) 2 acres of land; or

(2) the entire city block on which it is situated.
*(Ord. 17-015.)*

# City of Baltimore

City Council
City Hall, Room 408
100 North Holliday Street
Baltimore, Maryland
21202

## Meeting Minutes - Final

## Land Use and Transportation Committee

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**Wednesday, July 10, 2019** **1:10 PM** **Du Burns Council Chamber, 4th floor, City Hall**

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**19-0356**
**Rescheduled from 6/12/19**

### *CALL TO ORDER*

### *INTRODUCTIONS*

### *ATTENDANCE*

**Present** 6 - Member Edward Reisinger, Member Sharon Green Middleton, Member Mary Pat Clarke, Member Eric T. Costello, Member Ryan Dorsey, and Member Robert Stokes Sr.

**Absent** 1 - Member Leon F. Pinkett III

### *ITEMS SCHEDULED FOR PUBLIC HEARING*

19-0356 **Zoning Map Amendment - 123 South Chester Street**

For the purpose of amending the Zoning District Map for the R-8 zoned property known as 123 South Chester Street (Block 1748, Lot 041), as outlined in red on the accompanying plat, to apply a Rowhouse Mixed-Use Overlay District (R-MU) designation; and providing for a special effective date.

***Sponsors:*** Zeke Cohen

**A motion was made by Member Costello, seconded by Member Dorsey, that the bill be recommended favorably. The motion carried by the following vote:**

**Yes:** 5 - Member Reisinger, Member Middleton, Member Costello, Member Dorsey, and Member Stokes Sr.

**Abstain, COI:** 1 - Member Clarke

**Absent:** 1 - Member Pinkett III

### *ADJOURNMENT*

CITY OF BALTIMORE
BERNARD C. "JACK" YOUNG, Mayor

OFFICE OF COUNCIL SERVICES
LARRY E. GREENE, Director
415 City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202
410-396-7215 / Fax: 410-545-7596
email: larry.greene@baltimorecity.gov

# HEARING NOTES

## Bill: 19-0356

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### Zoning Map Amendment - 123 South Chester Street

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**Committee:** Land Use
**Chaired By:** Councilmember Edward Reisinger

**Hearing Date:** July 10, 2019
**Time (Beginning):** 1:20 PM
**Time (Ending):** 1:35 PM
**Location:** Clarence "Du" Burns Chamber
**Total Attendance:** ~20
**Committee Members in Attendance:**
Reisinger, Edward - Chairman
Middleton, Sharon - Vice Chair
Clarke, Mary Pat
Costello, Eric
Dorsey, Ryan
Stokes, Robert

---

**Bill Synopsis in the file?** ........ ☒ yes ☐ no ☐ n/a
**Attendance sheet in the file?** ........ ☒ yes ☐ no ☐ n/a
**Agency reports read?** ........ ☒ yes ☐ no ☐ n/a
**Hearing televised or audio-digitally recorded?** ........ ☒ yes ☐ no ☐ n/a
**Certification of advertising/posting notices in the file?** ........ ☒ yes ☐ no ☐ n/a
**Evidence of notification to property owners?** ........ ☒ yes ☐ no ☐ n/a
**Final vote taken at this hearing?** ........ ☒ yes ☐ no ☐ n/a
**Motioned by:** ........ **Councilmember Costello**
**Seconded by:** ........ **Councilmember Dorsey**
**Final Vote:** ........ **Favorable**

---

# CITY OF BALTIMORE
## CITY COUNCIL HEARING ATTENDANCE RECORD

**Committee:** Land Use and Transportation | **Chairperson:** Edward Reisinger

**Date:** July 10, 2019 | **Time:** 1:10 p.m. | **Place:** Clarence "Du" Burns Chambers

**Subject:** Ordinance - Zoning Map Amendment - 123 South Chester Street | **CC Bill Number:** 19-0356

### PLEASE PRINT

**IF YOU WANT TO TESTIFY PLEASE CHECK HERE**

| FIRST NAME | LAST NAME | ST. # | ADDRESS/ORGANIZATION NAME | ZIP | EMAIL ADDRESS | TESTIFY | WHAT IS YOUR POSITION ON THIS BILL? FOR | AGAINST | (*) LOBBYIST: ARE YOU REGISTERED IN THE CITY YES | NO |
|---|---|---|---|---|---|---|---|---|---|---|
| John | Doe | 100 | North Charles Street | 21202 | Johndoenbmore@yahoo.com | √ | √ | √ | √ | √ |
| Justin | Williams | 25 | S Charles St. 21st Fl. | 21201 | jwilliams@rosenbergmartin.com | ✓ | — | | — | |
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(*) NOTE: IF YOU ARE COMPENSATED OR INCUR EXPENSES IN CONNECTION WITH THIS BILL, YOU MAY BE REQUIRED BY LAW TO REGISTER WITH THE CITY ETHICS BOARD. REGISTRATION IS A SIMPLE PROCESS. FOR INFORMATION AND FORMS, CALL OR WRITE: BALTIMORE CITY BOARD OF ETHICS, C/O DEPARTMENT OF LEGISLATIVE REFERENCE, 626 CITY HALL, BALTIMORE, MD 21202. TEL: 410-396-4730: FAX: 410-396-8483.

## Major Speakers

*(This is not an attendance record.)*

- Mr. Eric Tiso, Department of Planning
- Mr. Liam Davis, Department of Transportation
- Ms. Livhu Ndou, Board of Municipal Zoning Appeals
- Ms. Hilary Ruley, Department of Law
- Ms. Bob Pipik, Department of Housing and Community Development
- Mr. Justin Williams, representative, Chester Street Properties, LLC

## Major Issues Discussed

1. Councilmember Reisinger introduced committee members and read the bill's title, purpose and public notice certification report. He also stated that the committee had received a letter of support from Beth Braun, President of the Butchers Hill Association.
2. Councilmember Cohen explained the purpose of the bill. He indicated that the restaurant wanted outside seating at the restaurant. Neighbors and the Butcher Hill Association support the request.
3. Mr. Eric Tiso testified that the Planning Commission recommended a favorable report for passage of the bill. The Planning Commission adopted findings of fact in the form of Memorandum dated April 18, 2019 and presented by Justin Williams, representatives for the applicant. The Planning Department's staff report recommended disapproval of the bill.
4. Ms. Livhu Ndou testified that the Board of Municipal Zoning Appeal recommends an unfavorable report for the bill.
5. Mr. Liam Davis testified that the Department of Transportation has no objection to passage of the bill.
6. Ms. Hilary Ruley testified that the Law Department can approve the bill if all of the standings are found.
7. Mr. Bob Pipik testified that the Department of Housing and Community Development has no objection to the bill.
8. Mr. Justin Williams, representative for the owner, presented handouts to the committee which included a letters of support from Butchers Hill Association and neighbors and a memorandum from Mr. Justin Williams (Rosenberg, Martin, Greenberg) dated July 10, 2019 with information and findings in support of the map amendment.

   Mr. Williams indicated that population in the area has declined since the last rezoning. The Board of Municipal Zoning Appeals approved use of the property as a neighborhood commercial establishment, but outdoor seating was not allowed. Mr. Williams also explained the rationale the Planning Commission used in defining the term "50% of its blockface." (see page 3 of memorandum), which was one of the requirements that could be used for obtaining an R-MU Zoning District designation.

Mr. Williams explained that the Planning Commission adopted findings of fact via a memorandum, which was dated April 18, 2019 and presented by Justin Williams (Rosenberg Martin Greenberg) on behalf of the applicant.

9. Councilmember Clarke asked questions about use of the property.
10. The committee voted to approve the findings of fact.
11. The committee voted to recommend the bill favorable.
11. The hearing was adjourned.

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## Further Study

**Was further study requested?** ☐ **Yes** ☒ **No**
**If yes, describe.**

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## Committee Vote:

Reisinger, Edward, Chairman........................................**Yea**
Middleton, Sharon, Vice Chair........................................**Yea**
Clarke, Mary Pat........................................**Abstain**
Costello, Eric........................................**Yea**
Dorsey, Ryan........................................**Yea**
Pinkett, Leon........................................**Absent**
Stokes, Robert:........................................**Yea**

---

Jennifer L. Coates, Committee Staff Date: July 10, 2019

cc: Bill File
OCS Chrono File

# City of Baltimore

City Council
City Hall, Room 408
100 North Holliday Street
Baltimore, Maryland
21202

## Meeting Agenda - Final

## Land Use and Transportation Committee

**Wednesday, July 10, 2019** **1:10 PM** **Du Burns Council Chamber, 4th floor, City Hall**

**19-0356**
**Rescheduled from 6/12/19**

### *CALL TO ORDER*

### *INTRODUCTIONS*

### *ATTENDANCE*

### *ITEMS SCHEDULED FOR PUBLIC HEARING*

19-0356 **Zoning Map Amendment - 123 South Chester Street**

For the purpose of amending the Zoning District Map for the R-8 zoned property known as 123 South Chester Street (Block 1748, Lot 041), as outlined in red on the accompanying plat, to apply a Rowhouse Mixed-Use Overlay District (R-MU) designation; and providing for a special effective date.

***Sponsors:*** Zeke Cohen

### *ADJOURNMENT*

**THIS MEETING IS OPEN TO THE PUBLIC**

# BALTIMORE CITY COUNCIL
# LAND USE AND TRANSPORTATION COMMITTEE

*Mission Statement*

***On behalf of the Citizens of Baltimore City***, the mission of the Land Use and Transportation Committee is to review and support responsible development and zoning initiatives to ensure compatibility with the aim of improving the quality of life for the diverse population of Baltimore City.

## The Honorable Edward Reisinger
## Chairperson

PUBLIC HEARING

**Wednesday, July 10, 2019**
**1:10 PM**

***City Council Bill # 19-0356***

***Zoning Map Amendment - 123 South Chester Street***

# CITY COUNCIL COMMITTEES

**BUDGET AND APPROPRIATIONS**
Eric Costello – Chair
Leon Pinkett – Vice Chair
Bill Henry
Sharon Green Middleton
Brandon M. Scott
Isaac "Yitzy" Schleifer
Shannon Sneed
*Staff: Marguerite Currin*

**EDUCATION AND YOUTH**
Zeke Cohen – Chair
Mary Pat Clarke – Vice Chair
John Bullock
Kristerfer Burnett
Ryan Dorsey
*Staff: Matthew Peters*

**EXECUTIVE APPOINTMENTS**
Robert Stokes – Chair
Kristerfer Burnett– Vice Chair
Mary Pat Clarke
Zeke Cohen
Isaac "Yitzy" Schleifer
*Staff: Marguerite Currin*

**HOUSING AND URBAN AFFAIRS**
John Bullock – Chair
Isaac "Yitzy" Schleifer – Vice Chair
Kristerfer Burnett
Bill Henry
Shannon Sneed
Zeke Cohen
Ryan Dorsey
*Staff: Richard Krummerich*

**JUDICIARY AND LEGISLATIVE INVESTIGATIONS**
Eric Costello – Chair
Mary Pat Clarke – Vice Chair
John Bullock
Leon Pinkett
Edward Reisinger
Brandon Scott
Robert Stokes
*Staff: Matthew Peters*

**LABOR**
Shannon Sneed – Chair
Robert Stokes – Vice Chair
Eric Costello
Bill Henry
Mary Pat Clarke
*Staff: Samuel Johnson*

**LAND USE AND TRANSPORTATION**
Edward Reisinger - Chair
Sharon Green Middleton – Vice Chair
Mary Pat Clarke
Eric Costello
Ryan Dorsey
Leon Pinkett
Robert Stokes
*Staff: Jennifer Coates*

**PUBLIC SAFETY**
Brandon Scott – Chair
Ryan Dorsey – Vice Chair
Kristerfer Burnett
Shannon Sneed
Zeke Cohen
Leon Pinkett
Isaac "Yitzy" Schleifer
*Staff: Richard Krummerich*

**TAXATION, FINANCE AND ECONOMIC DEVELOPMENT**
Sharon Green Middleton – Chair
Leon Pinkett – Vice Chair
Eric Costello
Edward Reisinger
Robert Stokes
*Staff: Samuel Johnson*
- *Larry Greene (pension only)*

Rev. 04/30/18

CITY OF BALTIMORE
BERNARD C. "JACK" YOUNG, Mayor

OFFICE OF COUNCIL SERVICES
LARRY E. GREENE, Director
415 City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202
410-396-7215 / Fax: 410-545-7596
email: larry.greene@baltimorecity.gov

# BILL SYNOPSIS

**Committee: Land Use and Transportation**

**Bill 19-0356**

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**Zoning Map Amendment - 123 South Chester Street**

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***Sponsor:*** *Councilmember Cohen*
***Introduced:*** *March 18, 2019*

**Purpose:**

**For the purpose of amending the Zoning District Map for the R-8 zoned property known as 123 South Chester Street (Block 1748, Lot 041), as outlined in red on the accompanying plat, to apply a Rowhouse Mixed-Use Overlay District (R-MU) designation; and providing for a special effective date.**

**Effective: Date of enactment**

**Hearing Date/Time/Location: July 10, 2019 / 1:10 p.m. / Clarence "Du" Burns Chambers**

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## Agency Reports

| | |
|---|---|
| Planning Commission | Favorable |
| Board of Municipal and Zoning Appeals | Unfavorable |
| Department of Transportation | No Objection |
| Department of Law | Favorable/Comments |
| Department of Housing and Community Development | No Objection |

## Analysis

### Current Law

Article 32 – Zoning; Zoning District Map; Sheet 57; Baltimore City Revised Code (Edition 2000)

### Background

If approved, Bill 19-0356 proposes to rezone 123 South Chester Street from the residential R-8 Zoning District to the residential mixed-use R-MU Zoning District.

According to the State Land Use Article, a rezoning may be approved based on a finding that there was:

(1) either a substantial change in the character of the neighborhood where the property is located; or

(2) a mistake in the existing zoning classification.

The applicant and owner of the properties is Chester Street Properties, LLC. The property is situated in the Butcher's Hill neighborhood. The building is situated on the northeast corner of the intersection of North Chester Street and East Pratt Street. Patterson Park is located two (2) blocks to the east. The property is zoned R-8.

The property is improved with a three-story, attached, end of row building. The building has been recently renovated for use as a restaurant, "Charmed Kitchen." The neighborhood is predominantly residential. There are commercial uses throughout the community.

According to the Planning Department's staff report the property does not comply with Article 32 - Section 12-1002. Planning staff indicate that the property does not constitute at least 50% of the length between East Pratt and East Lombard Streets, and is not at least 50% of the length between East Pratt and South Duncan Streets, and therefore cannot be zoned with the R-MU Overlay District. The Planning Commission, however does not concur with the recommendation of its departmental staff, and instead recommends that the bill be approved.

If approved, Bill 19-0356 proposes to rezone the property as follows:

| Property | Zoning | | |
|---|---|---|---|
| | Prior to Transform | Current | Proposed |
| 141 – 145 Hamburg St. | R-8 | R-8 | R-MU |

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

**Current Zoning District – R-8**

**§ 9-204. R-8 Rowhouse Residential District.**

(a) Neighborhoods.

The R-8 Rowhouse Residential Zoning District is intended to accommodate and maintain the traditional form of urban rowhouse development typical of many of the City's inner neighborhoods, which contain continuous, block-long rowhouse development built to or only modestly set back from the street.

**Proposed Zoning District – R-MU**

**§ 12-1001. Applicability.**

(a) In general.

A Rowhouse Mixed-Use Overlay District may be applied to rowhouse dwellings in the R-5, R-6, R-7, R-8, R-9, R-10, and OR Districts. This Overlay District allows the Rowhouse dwelling to be used for 1 of the non-residential uses listed in § 12-1003 {"Use regulations"}of this subtitle.

(b) Initial conversion requires BMZA approval. A rowhouse dwelling's initial conversion from a residential use to a non-residential use listed in § 12-1003 {"Use regulations"} of this subtitle requires conditional-use approval by the Board of Municipal and Zoning Appeals.

*(Ord. 16-581; Ord. 17-015.)*

**§ 12-1002. Minimum size of district.**

An R-MU Overlay District may only be applied to a minimum of:

(1) 50% of the blockface; or

(2) two opposing corner lots.

*(Ord. 16-581; Ord. 17-015.)*

**§ 12-1003. Use regulations.**

(a) *Permitted non-residential uses.*

In an R-MU Overlay District, 1 (but no more than 1) of the following non-residential uses is permitted on the ground floor of a rowhouse structure:

(1) Art gallery.
(2) Arts studio.
(3) Day-care center: Adult or child (See § 14-309 for use standards).
(4) Office.
(5) Personal services establishment.
(6) Restaurant.
(7) Retail goods establishment – no alcoholic beverage sales.

(b) Conditional uses.

In an R-MU Overlay District, the following uses are conditional uses requiring approval by the Board of Municipal and Zoning Appeals:

(1) Outdoor Dining (See § 14-329 for use standards).
(2) Initial conversion of a rowhouse dwelling from a residential use to a non-residential use listed in subsection (a) of this section.
(3) Use of upper floor for a non-residential use listed in subsection (a) of this section.

*(Ord. 16-581; Ord. 17-015.)*

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## Additional Information

**Fiscal Note:** Not Available

**Information Source(s):** Agency reports

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Analysis by: Jennifer L. Coates Direct Inquiries to: (410) 36-1260

Analysis Date: July 1. 2019

# CITY OF BALTIMORE
# COUNCIL BILL 19-0356
# (First Reader)

Introduced by: Councilmember Cohen
At the request of: Chester Street Properties, LLC
Address: c/o Justin A. Williams, Esquire, Rosenberg | Martin | Greenberg LLP, 25 South Charles Street, Suite 21st Floor, Baltimore, Maryland 21201
Telephone: 410-727-6600
Introduced and read first time: March 18, 2019
Assigned to: Land Use and Transportation Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Board of Municipal and Zoning Appeals, Planning Commission, Department of Transportation, Department of Housing and Community Development

## A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Zoning Map Amendment – 123 South Chester Street**

3 FOR the purpose of amending the Zoning District Map for the R-8 zoned property known as 123
4 South Chester Street (Block 1748, Lot 041), as outlined in red on the accompanying plat, to
5 apply a Rowhouse Mixed-Use Overlay District (R-MU) designation; and providing for a
6 special effective date.

7 BY amending
8 Article 32 - Zoning
9 Zoning District Map
10 Sheet 57
11 Baltimore City Revised Code
12 (Edition 2000)

13 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That
14 Sheet 57 of the Zoning District Map is amended by applying an R-MU Overlay District
15 designation to the R-8 zoned property known as 123 South Chester Street (Block 1748, Lot 041),
16 as outlined in red on the plat accompanying this Ordinance.

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

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

1 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the date it is
2 enacted.

SHEET NO. 57 OF THE ZONING DISRICT MAP OF THE BALTIMORE CITY ZONING CODE

EAST LOMBARD STREET

SOUTH CHESTER STREET

S DUNCAN ST

R-8

123

EAST PRATT STREET

SCALE: 1" = 100'

The Applicant requests that a Rowhouse Mixed-Use (R-MU) District Overlay be applied to the property known as 123 S. Chester Street, outlined in red, which is currently and will retain its underlying R-8 Zoning District Designation.

CHARMED KITCHEN
123 S Chester Street, Baltimore, MD 21231
Map 01, Section 01, Block 1748, Lot 041

MAYOR

PRESIDENT CITY COUNCIL

Plat Prepared by:
Architecture & Urban Views inc
Virgil Bartram AIA
2011 E Pratt St, Baltimore, MD 21231
410-327-4964

Date: 3/2/19

Applicant:
Chester Street Properties, LLC
c/o Justin Williams
Rosenberg I Martin I Greenberg, LLP
25 S. Charles Street 21st Floor,
Baltimore, MD 21201
410-727-6600

| | |
|---|---|
| **From:** | Coates, Jennifer |
| **To:** | "checker@rosenbergmartin.com"; "jwilliams@rosenbergmartin.com" |
| **Cc:** | Austin, Natawna B. |
| **Subject:** | Public Notice Instructions for Hearing on Bill 19-0356 |
| **Date:** | Tuesday, June 11, 2019 4:52:00 PM |
| **Attachments:** | PNI - Letter - 19-0356- RZ - 123 South Chester Street 2 7-10-19.docx<br>Afro American.msg<br>Michele Griesbauer - Sunpaper - Advertising.msg<br>Darlene Miller.msg<br>LU Form - Contacts for Sign Posting RZ COMPRZ PUD - Art 32.docx<br>Sample - Certificate of Posting - Attachment C.docx<br>image002.png |

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Caroline Hecker and Justin Williams:

Attached is the information you will need to post, publish and mail public hearing notice(s) for the subject bill to be heard by the Land Use and Transportation Committee on **July 10, 2019 at 1:10 p.m.** at City Hall in the City Council Chamber.

I have also attached a contact list for sign makers, business cards for newspaper contacts and a sample certification template.

Feel free to contact me if you need more information.

**PLEASE ACKNOWLEDGE RECEIPT OF THIS EMAIL**

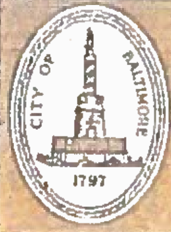
**Jennifer L. Coates**
*Senior Legislative Policy Analyst*
*Office of Council Services*

100 N. Holliday Street, Room 415
Baltimore, MD 21202
jennifer.coates@baltimorecity.gov

Office: (410) 396-1260
Fax: (410) 545-7596

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor




OFFICE OF COUNCIL SERVICES

LARRY E. GREENE, Director
415 City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202
410-396-7215 / Fax: 410-545-7596
email: larry.greene@baltimorecity.gov

TO: Chester Street Properties, LLC c/o Justin A. Williams, Esquire

FROM: Jennifer L. Coates, Committee Staff, Land Use and Transportation Committee, Baltimore City Council

Date: June 11, 2019

RE: INSTRUCTIONS FOR NOTICE OF A PUBLIC HEARING – MAP AMENDMENTS (REZONINGS); PLANNED UNIT DEVELOPMENTS

---

The Land Use and Transportation Committee has scheduled the following City Council Bill for a public hearing:

**Bill:** **City Council Bill No. 19-0356**

**Date:** **Wednesday, July 10, 2019**

**Time:** **1:10 p.m.**

**Place:** **City Council Chambers, 4th floor, City Hall, 100 N. Holliday Street**

At the expense of the applicant, notice of the public hearing must be provided in accordance with:

**Article 32. Zoning § 5-601 – Map or Text Amendments; PUDs**

For helpful information about the notice requirements under Article 32 - Zoning (pages 127 – 128) see Attachment B. You are encouraged to access and review Article 32 using the web link below:

**http://ca.baltimorecity.gov/codes/Art%2032%20-%20Zoning.pdf**

**Disclaimer.** The City makes no claims as to the quality, completeness, accuracy, timeliness, or content of any data contained herein or on this site. All such items and materials are provided on an "as is" basis, and you are fully and solely responsible for your use of them and for any results or consequences of your use. They have been compiled from a variety of sources, including sources beyond the control of the City, and are subject to change without notice from the City. The data is subject to change as modifications and updates are complete. It is understood that the information contained in the site is being used at one's own risk. In no event shall the City or its elected/appointed officials, municipal agencies and departments, employees, agents, or volunteers be liable for any direct, indirect, special, punitive, incidental, exemplary or consequential damages arising your accessing or using the site, or otherwise arising from this site or from anything contained in or displayed on this site. Nothing contained in or displayed on this site constitutes or is intended to constitute legal advice by the City or any of its elected/appointed officials, municipal agencies and departments, employees, agents, and volunteers

Printed on recycled paper with environmentally friendly soy based ink.

**Newspaper Advertisement**

A notice of the public hearing must be published in one (1) newspaper of general circulation, 15 days prior to the date of the hearing.

You may choose any of the following newspapers for advertising purposes: The Daily Record, The Baltimore Sun; or the Afro-American.

**Wording for Written Notice to Property Owner(s), Sign Posting and Newspaper Advertisement**

The information that must be published in a newspaper advertisement, posted on a sign and mailed to the property owner appears between the double lines on the attached page (***See Attachment A***); the deadline date is indicated in BOLD letters at the top of Attachment A.

**Certification of Postings**

Certification of the written notice, sign posting on the property, and publication of the newspaper advertisement, in duplicate, must be sent four (4) days prior to the hearing to:

Ms. Natawna Austin, Executive Secretary
Baltimore City Council
100 N. Holliday Street, Fourth Floor, Room 400
Baltimore, MD 21202

**If the required certifications are not received as specified above, the public hearing will be cancelled without notice to the applicant. The deadline dates are as follows:**

| | |
|---|---|
| ***Newspaper Ad Must Be Published By:*** | ***June 25, 2019*** |
| ***Sign Must Be Posted By:*** | ***June 10, 2019*** |
| ***Written Notice to Property Owners By:*** | ***June 25, 2019*** |

**Please note that ALL of these requirement MUST be met in order for your hearing to proceed as scheduled. If you have any questions regarding your notice requirements please contact:**

Ms. Jennifer L. Coates, Committee Staff
Baltimore City Council,
Land Use and Transportation Committee
410-396-1260
Jennifer.Coates@baltimorecity.gov.

*ATTACHMENT A*

THE INFORMATION BETWEEN THE DOUBLE LINES (SEE BELOW) MUST BE **POSTED BY JUNE 10, 2019** AND **PUBLISHED BY JUNE 25, 2019,** AS DISCUSSED ON THE PREVIOUS PAGE AND OUTLINED ON ATTACHMENT B.

---

**BALTIMORE CITY COUNCIL**

**PUBLIC HEARING ON BILL NO. 19-0356**

The Land Use and Transportation Committee of the Baltimore City Council will meet on Wednesday, July 10, 2019 at 1:10 p.m. in the City Council Chambers, 4th floor, City Hall, 100 N. Holliday Street to conduct a public hearing on City Council Bill No. 19-0356.

**CC 19-0356 ORDINANCE - Zoning Map Amendment - 123 South Chester Street**

FOR the purpose of amending the Zoning District Map for the R-8 zoned property known as 123 South Chester Street (Block 1748, Lot 041), as outlined in red on the accompanying plat, to apply a Rowhouse Mixed-Use Overlay District (R-MU) designation; and providing for a special effective date.

BY amending
Article 32 - Zoning
Zoning District Map
Sheet 57
Baltimore City Revised Code
(Edition 2000)

NOTE: This bill is subject to amendment by the Baltimore City Council.

Applicant: Chester Street Properties, LLC

For more information, contact committee staff at (410) 396-1260.

EDWARD REISINGER
Chair

---

**SEND CERTIFICATION OF PUBLICATION TO:**

Baltimore City Council
c/o Natawna B. Austin
Room 409, City Hall
100 N. Holliday Street
Baltimore, MD 21202

**SEND BILL FOR THIS ADVERTISEMENT TO:**

Chester Street Properties, LLC
c/o Mr. Justin A. Williams, Esquire
Rosenberg, Martin, Greenberg LLP
25 South Charles Street, Suite 21st Floor
Baltimore, MD 21201
410-727-6600

*ATTACHMENT B*

**ZONING**
**SUBTITLE 6 – NOTICES**

**ARTICLE 32, § 5-601**

§ 5-601. Map or text amendments; PUDs.
(a) Hearing required.

For a bill proposing a zoning map amendment, a zoning text amendment, or the creation or modification of a planned unit development, the City Council committee to which the bill has been referred must conduct a hearing at which:

(1) the parties in interest and the general public will have an opportunity to be heard; and

(2) all agency reports will be reviewed.

(b) Notice of hearing required.

Notice of the hearing must be given by each of the following methods, as applicable:

(1) by publication in a newspaper of general circulation in the City;

(2) for the creation or modification of a planned unit development and for a zoning map
amendment, other than a comprehensive rezoning:

(i) by posting in a conspicuous place on the subject property; and

(ii) by first-class mailing of a written notice, 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; and

(3) for a comprehensive rezoning:

(i) by posting in conspicuous places within and around the perimeter of the subject area or district, as the Department of Planning designates; and

(ii) by first-class mailing of a written notice, on forms provided by the Zoning Administrator, to each person who appears on the tax records of the City as an owner of property within the subject area or district.

(c) Contents of notice.

The notice must include:

(1) the date, time, place, and purpose of the public hearing;

(2) the address of the subject property or a drawing or description of the boundaries of the area affected by the proposed rezoning; and

(3) the name of the applicant.

(d) Number and manner of posted notices.

(1) For a zoning map amendment or the creation or modification of a planned unit development, the number and manner of posting is as follows:

(i) for an individual property, at least 1 sign must be visible from each of the property's street frontages;

(ii) for a comprehensive rezoning, a change in the boundaries of a zoning district, or the creation or modification of a planned unit development, at least 2 or more signs are required, as the Department of Planning designates;

(iii) each sign must be posted at a prominent location, near the sidewalk or public right-of-way, so that it is visible to passing pedestrians and motorists;

(iv) a window-mounted sign must be mounted inside the window glass and placed so that it is clearly visible to passing pedestrians and motorists; and

(v) each sign must be at least 3 feet by 4 feet in size.

(2) Nothing in this subtitle prevents the voluntary posting of more notices than required by this subtitle.

(e) Timing of notices – In general.

The notice must be published, mailed, and, except as provided in subsection (f) of this section, posted:

(1) at least 15 days before the public hearing; or

(2) for a comprehensive rezoning, at least 30 days before the public hearing.

(f) Timing of notices – Posting for map amendment or PUDs.

For a zoning map amendment or the creation or modification of a planned unit development, the posted notice must be:

(1) posted at least 30 days before the public hearing; and

(2) removed within 48 hours after conclusion of the public hearing.

## Coates, Jennifer

| | |
|---|---|
| **From:** | Coates, Jennifer |
| **Sent:** | Tuesday, April 23, 2019 11:14 AM |
| **To:** | 'jwilliams@rosenbergmartin.com' |
| **Cc:** | Cohen, Zeke; Thomson, Joshua; Austin, Natawna B. |
| **Subject:** | Public Notice Instruction for Hearing on Bill 19-0356 |
| **Attachments:** | PNI - Letter - 19-0356- RZ - 123 South Chester Street.docx; Afro American; Michele Griesbauer - Sunpaper - Advertising; Darlene Miller; LU Form - Contacts for Sign Posting RZ COMPRZ PUD - Art 32.docx; Sample - Certificate of Posting - Attachment C.docx |

Mr. Justin Williams:

Attached is the information you will need to post, publish and mail public hearing notice(s) for the subject bill to be heard by the Land Use and Transportation Committee on **June 12, 2019 at 1:05 p.m.** at City Hall in the City Council Chamber.

I have also attached a contact list for sign makers, business cards for newspaper contacts and a sample certification template.

Feel free to contact me if you need more information.

**PLEASE ACKNOWLEDGE RECEIPT OF THIS EMAIL**

OFFICE OF COUNCIL SERVICES

**Jennifer L. Coates**
*Senior Legislative Policy Analyst*
*Office of Council Services*

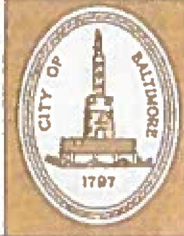
100 N. Holliday Street, Room 415
Baltimore, MD 21202
jennifer.coates@baltimorecity.gov

Office: (410) 396-1260
Fax: (410) 545-7596

Confidentiality Notice:
This e-mail, including any attachment(s), is intended for receipt and use by the intended addressee(s), and may contain legal or other confidential and privileged information. If you are not an intended recipient of this e-mail, you are hereby notified that any unauthorized use or distribution of this e-mail is strictly prohibited, and requested to delete this communication and its attachment(s) without making any copies thereof and to contact the sender of this e-mail immediately. Nothing contained in the body and/or header of this e-mail is intended as a signature or intended to bind the addressor or any person represented by the addressor to the terms of any agreement that may be the subject of this e-mail or its attachment(s), except where such intent is expressly indicated.

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor




OFFICE OF COUNCIL SERVICES

LARRY E. GREENE, Director
415 City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202
410-396-7215 / Fax: 410-545-7596
email: larry.greene@baltimorecity.gov

TO: Chester Street Properties, LLC c/o Justin A. Williams, Esquire

FROM: Jennifer L. Coates, Committee Staff, Land Use and Transportation Committee, Baltimore City Council

Date: April 23, 2019

RE: INSTRUCTIONS FOR NOTICE OF A PUBLIC HEARING – MAP AMENDMENTS (REZONINGS); PLANNED UNIT DEVELOPMENTS

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The Land Use and Transportation Committee has scheduled the following City Council Bill for a public hearing:

**Bill:** **City Council Bill No. 19-0356**

**Date:** **Wednesday, June 12, 2019**

**Time:** **1:05 p.m.**

**Place:** **City Council Chambers, 4th floor, City Hall, 100 N. Holliday Street**

At the expense of the applicant, notice of the public hearing must be provided in accordance with:

**Article 32. Zoning § 5-601 – Map or Text Amendments; PUDs**

For helpful information about the notice requirements under Article 32 - Zoning (pages 127 – 128) see Attachment B. You are encouraged to access and review Article 32 using the web link below:

**http://ca.baltimorecity.gov/codes/Art%2032%20-%20Zoning.pdf**

**Disclaimer.** The City makes no claims as to the quality, completeness, accuracy, timeliness, or content of any data contained herein or on this site. All such items and materials are provided on an "as is" basis, and you are fully and solely responsible for your use of them and for any results or consequences of your use. They have been compiled from a variety of sources, including sources beyond the control of the City, and are subject to change without notice from the City. The data is subject to change as modifications and updates are complete. It is understood that the information contained in the site is being used at one's own risk. In no event shall the City or its elected/appointed officials, municipal agencies and departments, employees, agents, or volunteers be liable for any direct, indirect, special, punitive, incidental, exemplary or consequential damages arising your accessing or using the site, or otherwise arising from this site or from anything contained in or displayed on this site. Nothing contained in or displayed on this site constitutes or is intended to constitute legal advice by the City or any of its elected/appointed officials, municipal agencies and departments, employees, agents, and volunteers

**Newspaper Advertisement**

A notice of the public hearing must be published in one (1) newspaper of general circulation, 15 days prior to the date of the hearing.

You may choose any of the following newspapers for advertising purposes: The Daily Record, The Baltimore Sun; or the Afro-American.

**Wording for Written Notice to Property Owner(s), Sign Posting and Newspaper Advertisement**

The information that must be published in a newspaper advertisement, posted on a sign and mailed to the property owner appears between the double lines on the attached page ***(See Attachment A)***; the deadline date is indicated in BOLD letters at the top of Attachment A.

**Certification of Postings**

Certification of the written notice, sign posting on the property, and publication of the newspaper advertisement, in duplicate, must be sent four (4) days prior to the hearing to:

Ms. Natawna Austin, Executive Secretary
Baltimore City Council
100 N. Holliday Street, Fourth Floor, Room 400
Baltimore, MD 21202

**If the required certifications are not received as specified above, the public hearing will be cancelled without notice to the applicant. The deadline dates are as follows:**

| | |
|---|---|
| ***Newspaper Ad Must Be Published By:*** | ***May 28, 2019*** |
| ***Sign Must Be Posted By:*** | ***May 13, 2019*** |
| ***Written Notice to Property Owners By:*** | ***May 28, 2019*** |

**Please note that ALL of these requirement MUST be met in order for your hearing to proceed as scheduled. If you have any questions regarding your notice requirements please contact:**

Ms. Jennifer L. Coates, Committee Staff
Baltimore City Council,
Land Use and Transportation Committee
410-396-1260
Jennifer.Coates@baltimorecity.gov.

***ATTACHMENT A***

THE INFORMATION BETWEEN THE DOUBLE LINES (SEE BELOW) MUST BE **POSTED BY MAY 13, 2019** AND **PUBLISHED BY MAY 28, 2019,** AS DISCUSSED ON THE PREVIOUS PAGE AND OUTLINED ON ATTACHMENT B.

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**BALTIMORE CITY COUNCIL**

**PUBLIC HEARING ON BILL NO. 19-0356**

The Land Use and Transportation Committee of the Baltimore City Council will meet on Wednesday, June 12, 2019 at 1:05 p.m. in the City Council Chambers, 4th floor, City Hall, 100 N. Holliday Street to conduct a public hearing on City Council Bill No. 19-0356.

**CC 19-0356 ORDINANCE - Zoning Map Amendment - 123 South Chester Street**

FOR the purpose of amending the Zoning District Map for the R-8 zoned property known as 123 South Chester Street (Block 1748, Lot 041), as outlined in red on the accompanying plat, to apply a Rowhouse Mixed-Use Overlay District (R-MU) designation; and providing for a special effective date.

BY amending
Article 32 - Zoning
Zoning District Map
Sheet 57
Baltimore City Revised Code
(Edition 2000)

NOTE: This bill is subject to amendment by the Baltimore City Council.

Applicant: Chester Street Properties, LLC

For more information, contact committee staff at (410) 396-1260.

EDWARD REISINGER
Chair

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**SEND CERTIFICATION OF PUBLICATION TO:**

Baltimore City Council
c/o Natawna B. Austin
Room 409, City Hall
100 N. Holliday Street
Baltimore, MD 21202

**SEND BILL FOR THIS ADVERTISEMENT TO:**

Chester Street Properties, LLC
c/o Mr. Justin A. Williams, Esquire
Rosenberg, Martin, Greenberg LLP
25 South Charles Street, Suite 21st Floor
Baltimore, MD 21201
410-727-6600

***ATTACHMENT B***

**ZONING**
**SUBTITLE 6 – NOTICES**

**ARTICLE 32, § 5-601**

§ 5-601. Map or text amendments; PUDs.

(a) Hearing required.

For a bill proposing a zoning map amendment, a zoning text amendment, or the creation or modification of a planned unit development, the City Council committee to which the bill has been referred must conduct a hearing at which:

(1) the parties in interest and the general public will have an opportunity to be heard; and

(2) all agency reports will be reviewed.

(b) Notice of hearing required.

Notice of the hearing must be given by each of the following methods, as applicable:

(1) by publication in a newspaper of general circulation in the City;

(2) for the creation or modification of a planned unit development and for a zoning map
amendment, other than a comprehensive rezoning:

(i) by posting in a conspicuous place on the subject property; and

(ii) by first-class mailing of a written notice, 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; and

(3) for a comprehensive rezoning:

(i) by posting in conspicuous places within and around the perimeter of the subject area or district, as the Department of Planning designates; and

(ii) by first-class mailing of a written notice, on forms provided by the Zoning Administrator, to each person who appears on the tax records of the City as an owner of property within the subject area or district.

(c) Contents of notice.

The notice must include:

(1) the date, time, place, and purpose of the public hearing;

(2) the address of the subject property or a drawing or description of the boundaries of the area affected by the proposed rezoning; and

(3) the name of the applicant.

(d) Number and manner of posted notices.

(1) For a zoning map amendment or the creation or modification of a planned unit development, the number and manner of posting is as follows:

(i) for an individual property, at least 1 sign must be visible from each of the property's street frontages;

(ii) for a comprehensive rezoning, a change in the boundaries of a zoning district, or the creation or modification of a planned unit development, at least 2 or more signs are required, as the Department of Planning designates;

(iii) each sign must be posted at a prominent location, near the sidewalk or public right-of-way, so that it is visible to passing pedestrians and motorists;

(iv) a window-mounted sign must be mounted inside the window glass and placed so that it is clearly visible to passing pedestrians and motorists; and

(v) each sign must be at least 3 feet by 4 feet in size.

(2) Nothing in this subtitle prevents the voluntary posting of more notices than required by this subtitle.

(e) Timing of notices – In general.

The notice must be published, mailed, and, except as provided in subsection (f) of this section, posted:

(1) at least 15 days before the public hearing; or

(2) for a comprehensive rezoning, at least 30 days before the public hearing.

(f) Timing of notices – Posting for map amendment or PUDs.

For a zoning map amendment or the creation or modification of a planned unit development, the posted notice must be:

(1) posted at least 30 days before the public hearing; and

(2) removed within 48 hours after conclusion of the public hearing.

**THE NOTICE OF HEARING SIGN(S) MUST BE POSTED IN ACCORDANCE WITH ARTICLE 32; SECTION 5-601 *(See Attachment B)*, WHICH CAN ALSO BE OBTAINED FROM THE FOLLOWING WEBSITE:**

**http://ca.baltimorecity.gov/codes/Art%2032%20-%20Zoning.pdf**

**SIGNS MAY BE OBTAINED FROM A VENDOR OF YOUR CHOICE OR ANY OF THOSE LISTED BELOW:**

RICHARD HOFFMAN
904 DELLWOOD DRIVE
BALTIMORE, MARYLAND 21047
PHONE: (443) 243-7360
E-MAIL: DICK_E@COMCAST.NET

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JAMES EARL REID
LA GRANDE VISION
5517 HADDON AVENUE
BALTIMORE, MARYLAND 21207
PHONE: (443) 722-2552
E-MAIL: JamesEarlReid@aol.com or JamesEarlReid@aim.com

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SIGNS BY ANTHONY
ANTHONY L. GREENE
2815 TODKILL TRACE
EDGEWOOD, MD 21040
PHONE: 443-866-8717
FAX: 410-676-5446
E-MAIL: bones_malone@comcast.net

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LINDA O'KEEFE
523 PENNY LANE
HUNT VALLEY, MD 21030
PHONE: 410-666-5366
CELL: 443-604-6431
E-MAIL: LUCKYLINDA1954@YAHOO.COM

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**This office is not associated with any of the above drafting companies, nor do we recommend any specific one.**

**Disclaimer.** The City makes no claims as to the quality, completeness, accuracy, timeliness, or content of any data contained herein or on this site. All such items and materials are provided on an "as is" basis, and you are fully and solely responsible for your use of them and for any results or consequences of your use. They have been compiled from a variety of sources, including sources beyond the control of the City, and are subject to change without notice from the City. The data is subject to change as modifications and updates are complete. It is understood that the information contained in the site is being used at one's own risk. In no event shall the City or its elected/appointed officials, municipal agencies and departments, employees, agents, or volunteers be liable for any direct, indirect, special, punitive, incidental, exemplary or consequential damages arising your accessing or using the site, or otherwise arising from this site or from anything contained in or displayed on this site. Nothing contained in or displayed on this site constitutes or is intended to constitute legal advice by the City or any of its elected/appointed officials, municipal agencies and departments, employees, agents, and volunteers

ATTACHMENT C

# Baltimore City Council
# Certificate of Posting - Public Hearing Notice
# <u>City Council Bill No.:</u>

*Today's Date: [Insert Here]*

*(Place a picture of the posted sign in the space below.)*

**Address:**

**Date Posted:**

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**<u>Name:</u>**
**<u>Address:</u>**
**<u>Telephone:</u>**

- *Email to: Natawnab.Austin@baltimorecity.gov*
- *Mail to: Baltimore City Council; c/o Natawna B. Austin; Room 409, City Hall; 100 N. Holliday Street; Baltimore, MD 21202*

## Coates, Jennifer

| | |
|---|---|
| **Full Name:** | Afro American |
| **Last Name:** | American |
| **First Name:** | Afro |
| **Business:** | (410) 554-8251 |
| **E-mail:** | TRobinson@afro.com |
| **E-mail Display As:** | TRobinson@afro.com |

## Coates, Jennifer

| | |
|---|---|
| **Full Name:** | Michele Griesbauer |
| **Last Name:** | Griesbauer |
| **First Name:** | Michele |
| **Company:** | Sunpaper - Advertising |
| **Business Address:** | http://ts.merlinone.com/scripts/foxisapi.dll/sur.x.go?WHkI8OI--1 |
| **Business:** | (410) 332-6381 |
| **Business Fax:** | (410) 783-2507 |
| **E-mail:** | mgriesbauer@baltsun.com |
| **E-mail Display As:** | Sunpaper - Advertising (mgriesbauer@baltsun.com) |

Monday, June 09, 2014 4:07 PM:
Michele Wharton 410-332-6522

## Coates, Jennifer

| | |
|---|---|
| **Full Name:** | Darlene Miller |
| **Last Name:** | Miller |
| **First Name:** | Darlene |
| **Company:** | Daily Record |
| **Business Address:** | 443-524-8188 Direct, Line<br>United States of America |
| **Business Fax:** | (410) 752-5469 |
| **E-mail:** | legalad@thedailyrecord.com |
| **E-mail Display As:** | Darlene Miller - Daily Record (legalads@thedailyrecord.com) |

# CITY OF BALTIMORE
# COUNCIL BILL 19-0356
# (First Reader)

Introduced by: Councilmember Cohen
At the request of: Chester Street Properties, LLC
Address: c/o Justin A. Williams, Esquire, Rosenberg | Martin | Greenberg LLP, 25 South Charles Street, Suite 21st Floor, Baltimore, Maryland 21201
Telephone: 410-727-6600
Introduced and read first time: March 18, 2019
Assigned to: Land Use and Transportation Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Board of Municipal and Zoning Appeals, Planning Commission, Department of Transportation, Department of Housing and Community Development

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Zoning Map Amendment – 123 South Chester Street**

3 FOR the purpose of amending the Zoning District Map for the R-8 zoned property known as 123
4 South Chester Street (Block 1748, Lot 041), as outlined in red on the accompanying plat, to
5 apply a Rowhouse Mixed-Use Overlay District (R-MU) designation; and providing for a
6 special effective date.

7 BY amending
8 Article 32 - Zoning
9 Zoning District Map
10 Sheet 57
11 Baltimore City Revised Code
12 (Edition 2000)

13 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That
14 Sheet 57 of the Zoning District Map is amended by applying an R-MU Overlay District
15 designation to the R-8 zoned property known as 123 South Chester Street (Block 1748, Lot 041),
16 as outlined in red on the plat accompanying this Ordinance.

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

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

1 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the date it is
2 enacted.

APPROVED FOR FORM
STYLE, AND TEXTUAL SUFFICIENCY
3-14-19
DEPT LEGISLATIVE REFERENCE

# INTRODUCTORY*

## CITY OF BALTIMORE
## COUNCIL BILL ____

Introduced by: Councilmember Cohen
At the request of: Chester Street Properties, LLC
Address: c/o Justin A. Williams, Esquire, Rosenberg | Martin | Greenberg LLP, 25 South Charles Street, Suite 21st Floor, Baltimore, Maryland 21201
Telephone: 410-727-6600

A BILL ENTITLED

AN ORDINANCE concerning

**Zoning Map Amendment – 123 South Chester Street**

FOR the purpose of amending the Zoning District Map for the R-8 zoned property known as 123 South Chester Street (Block 1748, Lot 041), as outlined in red on the accompanying plat, to apply a Rowhouse Mixed-Use Overlay District (R-MU) designation; and providing for a special effective date.

BY amending

Article 32 - Zoning
Zoning District Map
Sheet 57
Baltimore City Revised Code
(Edition 2000)

**SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That Sheet 57 of the Zoning District Map is amended by applying an R-MU Overlay District designation to the R-8 zoned property known as 123 South Chester Street (Block 1748, Lot 041), as outlined in red on the plat accompanying this Ordinance.

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

**SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the date it is enacted.

* WARNING: THIS IS AN UNOFFICIAL, INTRODUCTORY COPY OF THE BILL.
THE OFFICIAL COPY CONSIDERED BY THE CITY COUNCIL IS THE FIRST READER COPY.

**STATEMENT OF INTENT**
**FOR**

Zoning Map Amendment of 123 S. Chester Street
*{Address}*

1. **Applicant's Contact Information:**
   Name: Chester St. Properties, LLC c/o Justin A. Williams, Rosenberg Martin Greenberg, LLP
   Mailing Address: 25 S. Charles Street, 21st Floor, Baltimore, MD 21201
   Telephone Number: (410) 727-6600
   Email Address: jwilliams@rosenbergmartin.com

2. **All Proposed Zoning Changes for the Property:** Apply an R-MU Overlay District to the above-referenced property while retaining the underlying R-8 zoning map designation of the Property.

3. **All Intended Uses of the property:** Restaurant with outdoor dining; multi-family dwelling

4. **Current Owner's Contact Information:**
   Name: Chester St. Properties, LLC
   Mailing Address: 120 S. Chester Street
   Baltimore, MD 21231
   Telephone Number: ______
   Email Address: ______

5. **Property Acquisition:**

   The property was acquired by the current owner on January 26, 2017 by deed recorded in the Land Records of Baltimore City in Liber 18831 Folio 210.

6. **Contract Contingency:**

   (a) There is ____ is not X a contract contingent on the requested legislative authorization.

   (b) If there is a contract contingent on the requested legislative authorization:

   (i) The names and addresses of all parties on the contract are *{use additional sheet if necessary}*:
   N/A

   (ii) The purpose, nature and effect of the contract are: N/A

SHEET NO. 57 OF THE ZONING DISRICT MAP OF THE BALTIMORE CITY ZONING CODE

EAST LOMBARD STREET

SOUTH CHESTER STREET

S DUNCAN ST

R-8

123

EAST PRATT STREET

SCALE: 1" = 100'

The Applicant requests that a Rowhouse Mixed-Use (R-MU) District Overlay be applied to the property known as 123 S. Chester Street, outlined in red, which is currently and will retain its underlying R-8 Zoning District Designation.

CHARMED KITCHEN
123 S Chester Street, Baltimore, MD 21231
Map 01, Section 01, Block 1748, Lot 041

MAYOR

PRESIDENT CITY COUNCIL

Plat Prepared by:
Architecture & Urban Views inc
Virgil Bartram AIA
2011 E Pratt St, Baltimore, MD 21231
410-327-4964

Date: 3/2/19

Applicant:
Chester Street Properties, LLC
c/o Justin Williams
Rosenberg | Martin | Greenberg, LLP
25 S. Charles Street 21st Floor,
Baltimore, MD 21201
410-727-6600

## ACTION BY THE CITY COUNC

FIRST READING (INTRODUCTION) MAR 18 2019

PUBLIC HEARING HELD ON July 10, 2019

COMMITTEE REPORT AS OF July 22, 2019

✓ FAVORABLE ____ UNFAVORABLE ____ FAVORABLE AS AMENDED ____ ~~WITHOUT~~ RECOMMENDATION

Edward Reisinger
Chair

COMMITTEE MEMBERS: COMMITTEE MEMBERS:

SECOND READING: The Council's action being favorable (unfavorable), this City Council bill was (was not) ordered printed for Third Reading on:

JUL 22 2019

____ Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING JUL 22 2019

____ Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING (ENROLLED) ____ 20 ____

____ Amendments were read and adopted (defeated) as indicated on the copy attached to this blue backing.

THIRD READING (RE-ENROLLED) JUL 22 2019

WITHDRAWAL ____ 20 ____

There being no objections to the request for withdrawal, it was so ordered that this City Council Ordinance be withdrawn from the files of the City Council.

President

Chief Clerk

1050-10-2