

FROM	NAME & TITLE	CHRIS RYER, DIRECTOR	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 TH FLOOR, 417 EAST FAYETTE STREET		
	SUBJECT	CITY COUNCIL BILL #20-0507 / REZONING 1720 Frederick Avenue		

DATE:

TO

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

May 8, 2020

At its regular meeting of May 7, 2020, the Planning Commission considered City Council Bill #20-0507, for the purpose of changing the zoning for the property known as 1720 Frederick Avenue, from the C-1 Zoning District to the C-2 Zoning District.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report which recommended disapproval of City Council Bill no. 20-0507 and adopted the following resolution, nine members being present (eight in favor):

RESOLVED, That the Planning Commission does not concur with the recommendation of its Departmental staff, and recommends that City Council Bill #20-0507 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/ml

attachment

- cc: Mr. Nicholas Blendy, Mayor's Office
 Mr. Matthew Stegman, Mayor's Office
 Ms. Nina Themelis, Mayor's Office
 The Honorable Edward Reisinger, Council Rep. to Planning Commission
 Mr. Colin Tarbert, BDC
 Mr. Derek Baumgardner, BMZA
 Mr. Geoffrey Veale, Zoning Administration
 Ms. Stephanie Murdock, DHCD
 Ms. Elena DiPietro, Law Dept.
 Mr. Francis Burnszynski, PABC
 Mr. Liam Davis, DOT
 Ms. Natawna Austin, Council Services
 Mr. Dominic McAily, Council Services
 The Honorable John Bullock, 9th Councilmanic District
 Mr. Rason Taru



Bernard C. "Jack" Young
Mayor

PLANNING COMMISSION

Sean D. Davis, Chairman

STAFF REPORT



Chris Ryer
Director

May 7, 2020

REQUEST: City Council Bill #19-0507/ Rezoning – 1720 Frederick Avenue:

For the purpose of changing the zoning for the property known as 1720 Frederick Avenue (Block 209, Lot 026), as outlined in red on the accompanying plat, from the C-1 Zoning District to the C-2 Zoning District.

RECOMMENDATION: Disapproval

STAFF: Martin French

PETITIONERS: Councilmember Bullock, at the request of Rason Taru for T7 LLC

OWNER: T7 LLC

SITE/GENERAL AREA

Site Conditions: 1720 Frederick Avenue is on the north side of the street, approximately 136' east of the intersection with Fulton Avenue. This property measures approximately 24'3" by an average of 120' and is currently improved with a one-story attached commercial building covering the entire lot.

General Area: This property is located in but near the western edge of the Union Square Historic District, and is also in the Operation Reach Out Southwest (OROSW) Strategic Neighborhood Action Plan area. To the northeast is a commercial corridor centered on Baltimore Street; otherwise, the predominant land use is attached residential dwellings, most three-story row-houses. Across Frederick Avenue immediately opposite this property are commercial structures and open lots also in the C-1 Zoning District.

HISTORY

The Union Square District was created by Ordinance no. 821 on June 2, 1970, and enlarged by Ordinance no. 580 dated November 17, 1977. It was certified to the National Register of Historic Places on September 15, 1983. This property and adjacent properties were rezoned from B-3-2 (Community Commercial) to C-1 (Neighborhood Business) or to R-8 (Residential) during the comprehensive rezoning mapping process associated with the effective date of the current Zoning Code on June 5, 2017.

CONFORMITY TO PLANS

The proposed rezoning does not support goals, objectives and strategies contained in the Comprehensive Master Plan for Baltimore City. Specifically, the proposed action would contradict one important objective of creating a new zoning code, "consistency of zoning with

existing land use [*emphasis added*], community character, City plans and projects, and City economic development goals” (Master Plan, p. 15).

ANALYSIS

Prior to 2017, this property and much of the West Baltimore Street commercial corridor of which it is an outlying part were zoned B-3, zoning that allowed, as a conditional use, “garages, other than accessory, for storage, repair, and servicing of motor vehicles not over 1½ tons capacity – including body repair, painting, or engine rebuilding” [*emphasis added*] (§6-408 (12) of the Baltimore City Revised Code, as amended through 2009). This characterization allowed the level of service and repair now included in the current Zoning Code definition of “Motor vehicle service and repair: Major”, which is:

- “Motor vehicle service and repair: Major” means an establishment that is engaged in major repair to motor vehicles, such as:
- (i) engine rebuilding;
 - (ii) ...
 - (iii) ...
 - (iv) collision services, including body, frame, or fender repair or straightening; or
 - (v) painting. (§1-310 (e))

The proposed rezoning is expressly for the purpose of allowing, where once allowed, use of a property for major motor vehicle service and repair functions (body repair, painting, and engine rebuilding, etc.) that since 1971 have been considered inconsistent with neighborhood-oriented commercial uses, and incompatible, at such short distance as across Frederick Avenue less than a block away, with neighboring residential uses. The last authorized use of this property was an automobile accessory store with related repair and service, which would be a nonconforming use in the C-1 zoning district. The Zoning Code does not authorize changes of nonconforming use, hence the applicant is unable to obtain a Use and Occupancy permit for the proposed (and allegedly currently operating) use since it is also a nonconforming use in the C-1 zoning district.

Below are the approval standards under §5-508(b) of Article 32 – *Zoning* for proposed zoning map amendments:

(b) *Map amendments.*

(1) *Required findings.*

As required by the State Land Use Article, the City Council may approve the legislative authorization based on a finding that there was either:

- (i) a substantial change in the character of the neighborhood where the property is located; or
- (ii) a mistake in the existing zoning classification.

(2) *Required findings of fact.*

In making the determination required by subsection (b)(1) of this section, the City Council must also make findings of fact that address:

- (i) population changes;
- (ii) the availability of public facilities;
- (iii) present and future transportation patterns;
- (iv) compatibility with existing and proposed development for the area;
- (v) the recommendations of the City agencies and officials; and
- (vi) the proposed amendment’s consistency with the City’s Comprehensive Master Plan.

(3) *Additional standards – General*

Additional standards that must be considered for map amendments are:

- (i) existing uses of property within the general area of the property in question;
- (ii) the zoning classification of other property within the general area of the property in question;
- (iii) the suitability of the property in question for the uses permitted under its existing zoning classification; and
- (iv) the trend of development, if any, in the general area of the property in question, including changes, if any, that have taken place since the property in question was placed in its present zoning classification.

Below is the staff's review of the required considerations of §5-508(b)(3) of Article 32 – *Zoning*, where staff finds that this change is not in the public's interest, in that it would create an islet of more intense commercial use within a single building on a predominantly low-intensity, neighborhood-oriented commercial block in West Baltimore, near to a long-established community/ neighborhood business corridor along both sides of West Baltimore Street which intersects Fulton Avenue immediately northwest of the subject property. Additionally, the proposed rezoning would split the north side of this block of Frederick Avenue that is now zoned C-1 (with the exception of one property adjoining the east side of this one, which is a through lot fronting on Baltimore Street that is zoned R-8) and thus juxtapose permitted low-intensity neighborhood-oriented commercial use of the remainder of this block of Frederick Avenue with higher-intensity commercial use of its small portion known as 1720 Frederick Avenue, an unfortunate result which could be characterized by some as "spot zoning", a form of land use regulation that courts have invalidated.

Maryland Land Use Code – Requirements for Rezoning:

The Maryland Land Use Code requires the Planning Commission to study the proposed changes in relation to: 1. The plan; 2. The needs of Baltimore City; and 3. The needs of the particular neighborhood in the vicinity of the proposed changes (*cf.* Md. LAND USE Code Ann. 2012, §10-305). In reviewing this request, the staff finds that:

1. **The Plan:** This action would not support goals, objectives, and strategies in LIVE EARN PLAY LEARN, the Comprehensive Master Plan for Baltimore City.
2. **The needs of Baltimore City:** This action is not needed to serve either a comprehensive redevelopment strategy or a Mayoral initiative.
3. **The needs of the particular neighborhood:** The proposed action would not help meet the needs of the surrounding communities, and there is a larger area immediately northeast of this C-1 zoned area that is in the C-2 zoning district, where the proposed use could be allowed as a conditional use.

Similarly, the Land Use article requires the City Council to make findings of fact (*cf.* Md. LAND USE Code Ann. 2012, §10-304). The findings of fact include:

1. **Population changes;** There has not been a significant change in population in this area since June 5, 2017, when the current Zoning Code and map became effective.

2. **The availability of public facilities;** All public facilities necessary to support use of this property consistent with its current C-1 zoning are available and expected to remain available.
3. **Present and future transportation patterns;** There is no change anticipated in transportation patterns, which are sufficient to support C-1 (Neighborhood Business) use of this property.
4. **Compatibility with existing and proposed development for the area;** The proposed action would allow a use not compatible with permitted existing or other proposed uses or development of the southwestern edge of the Baltimore Street commercial corridor or the Union Square community.
5. **The recommendations of the Planning Commission and the Board of Municipal and Zoning Appeals (BMZA);** For the above reasons, the Planning Department will recommend disapproval of the rezoning request to the Planning Commission. The BMZA has not yet commented on this bill, but will comment separately.
6. **The relation of the proposed amendment to the City's plan.** Replacement of the overlarge former B-3 zoning district with a smaller C-1 zoning district was consistent with the City's Master Plan goal of strengthening neighborhoods. The proposed action would not be in harmony with this previous initiative.

There are additional standards under §5-508(b)(3) that must be considered for map amendments. These include:

- (i) **existing uses of property within the general area of the property in question;** The predominant commercial uses along this part of Frederick Avenue, and West Baltimore Street northeast of this property, are retail goods and personal services establishments, including some adjacent properties. Outside of the Baltimore Street commercial corridor, and including properties directly across the street from this property, the predominant use is residential.
- (ii) **the zoning classification of other property within the general area of the property in question;** This property is part of the C-1 zoning district covering the west end of the Baltimore Street business corridor. Surrounding this C-1 district to its north, south, and west is the R-8 residential zoning district. (The eastern end of this part of the C-1 zoning district touches the Baltimore Street portion of the C-2 zoning district which reaches east several blocks until it nears University of Maryland Hospital Center.)
- (iii) **the suitability of the property in question for the uses permitted under its existing zoning classification; and** As noted above, the property is suited for the low-intensity commercial uses allowed by the C-1 zoning district in which it is located.
- (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.** There have been no significant changes to the general area around 1720 Frederick Avenue since June of 2017, when the current C-1 zoning classification became effective.

Per §5-508(1) of Article 32 – *Zoning*, and as required by the State Land Use Article, the City Council may approve the legislative authorization based on a finding that there was either: (i) a substantial change in the character of the neighborhood where the property is located; or (ii) a mistake in the existing zoning classification. There is no evidence at hand that there was a mistake in placing this property in the C-1 zoning district, and there has been no substantial change in the character of the neighborhood where this property is located in the less than three years since the property was placed in the C-1 district. C-1 zoning is more appropriate for the property as it is currently improved, and appropriate for a commercial property facing residential properties across and along Frederick Avenue.

ADDITIONAL COMMENT

Planning staff, in the course of reviewing this bill and studying the area, has concluded that a more comprehensive approach to the current and potential zoning of the block on which the subject property is located, and of a few nearby commercially-zoned blocks, should be considered. In recognition of the fact that there may be several automotive-repair or automobile-oriented businesses operating in this vicinity, study should be made of the relative value of retaining C-1 zoning as opposed to changing zoning to C-2, which does allow some automotive-repair and automobile-oriented businesses, for properties on either side of, and across the street from, the property named in this bill.

Notification: The Franklin Square Community Association, Southwest Partnership, and Union Square Association, and Councilman Bullock, have been notified of this action. Due to the closure of non-essential businesses by the Governor of Maryland in response to the current CoViD-19 pandemic, the site was not posted per normal Planning Commission requirements. Staff requests that the Commission waive its applicable posting requirements in recognition of the present emergency situation.



Chris Ryer
Director

