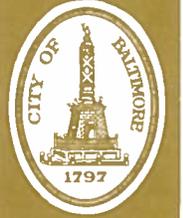


FROM

NAME & TITLE	CHRIS RYER, DIRECTOR
AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 TH FLOOR, 417 EAST FAYETTE STREET
SUBJECT	CITY COUNCIL BILL #19-0355 / REZONING – 141-145 WEST HAMBURG 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 #19-0355, for the purpose of changing the zoning for the property known as 141-145 West Hamburg Street (Block 0932, Lot 063), as outlined in red on the accompanying plat, from the R-7 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 #19-0355 and adopted the following resolution eight members being present (eight in favor):

RESOLVED, That the Planning Commission concurs with the recommendation of its departmental staff, and recommends that City Council Bill #19-0355 be disapproved 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
 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
 Ms. Caroline Hecker, Esq.



Catherine E. Pugh
Mayor

PLANNING COMMISSION

Sean D. Davis, Chairman

STAFF REPORT



Chris Ryer
Director

April 18, 2019

REQUEST: City Council Bill #19-0355/ Rezoning – 141-145 West Hamburg Street:

For the purpose of changing the zoning for the property known as 141-145 West Hamburg Street (Block 0932, Lot 063), as outlined in red on the accompanying plat, from the R-7 Zoning District to the C-1 Zoning District.

RECOMMENDATION: Disapproval

STAFF: Eric Tiso

PETITIONER: Ms. Eun-yon Yim, c/o Caroline L. Hecker, Esq.

OWNER: Ms. Eun-yon Yim

SITE/GENERAL AREA

Site Conditions: 141-145 West Hamburg Street is located on the southeastern corner of the intersection with Leadenhall Street, and is zoned R-7. This property measures approximately 40' by 51', and is currently improved with a three-story end-of-row building that has been used as a liquor store. Residential use of upper floors ceased in 2000, when three dwelling units were removed to retain the liquor store only.

General Area: This property is located within the Sharp-Leadenhall neighborhood, which is predominantly residential in character, with the exception of the businesses along South Hanover Street. The Solo Gibbs Park and the Sharp-Leadenhall Elementary School are one block to the south, and the M&T Bank Stadium is three blocks to the west, across I-395.

HISTORY

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

CONFORMITY TO PLANS

The proposed rezoning action does not support the goals, objectives and strategies contained in the Comprehensive Master Plan for the City of Baltimore. One of the objectives expressed in the Master Plan for the new zoning code was consistency of zoning with existing land use, community character, City plans and projects, and City economic development goals (Master Plan, p. 15). This structure is located within a residential area, attached to three-story rowhomes, and located opposite of apartment buildings on each other corner, for which the R-7 zoning is appropriate.

ANALYSIS

Use of this property as a liquor store makes it a site of an “alcohol outlet” which in now continues to exist as a nonconforming use under the current Zoning Code, which continued the R-7 residential zoning of this property. One of the goals of the comprehensive rezoning process was the reduction of nonconforming alcohol outlets in residential zoning districts (Art. 32 – *Zoning* §18-701). This requested rezoning from R-7 to C-1 will have the practical effect of preventing the mandatory termination of the alcohol sales at this location, as determined by the comprehensive rezoning of the City, not later than June 4, 2019 (*i.e.* two years after the effective date of the zoning code). It would thereby also conflict with LIVE Goal 2, Objective 3, Strategy 4: Ensure all residents are within 1.5 miles of quality groceries and neighborhood services, in that possible conversion of this liquor store to a food store or other retail goods establishment without alcohol sales would not be encouraged.

The zoning code provides an opportunity for this property to possibly be approved as a Neighborhood Commercial Establishment (NCE), subject to the requirements of §14-328, through a conditional use process. Approval of a NCE would allow for a variety of uses, including art gallery (without live entertainment), art studios, day care centers, offices, personal services establishments, restaurants (without live entertainment), and retail goods establishments (without alcoholic beverage sales). This provision allows for reasonable reuse of the building for a limited palette of commercial uses.

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

(b) *Map amendments.*

(1) *Required findings.*

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

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

(2) *Required findings of fact.*

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

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

(3) *Additional standards – General*

Additional standards that must be considered for map amendments are:

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

Below is the staff's review of the required considerations of §5-508(b)(3) of Article 32 – *Zoning*, where staff finds that this change is not in the public's interest, in that it will perpetuate the existing use of this property for a liquor store, and leaves open the opportunity for a variety other incompatible commercial uses.

It has been less than two years since this property was placed in its present zoning classification. There has been no significant change in this general area since the previous version of the Zoning Code was adopted in 1971. Residential use of this block and nearby residentially-developed blocks has remained constant. The zoning of this property (R-7) that continued in effect on June 5, 2017 is reflective of its setting in a residential neighborhood, and its attachment to a row of dwellings. The property's commercial use became nonconforming in 1971 and has continued to be nonconforming since that time.

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:** The adoption of Zoning Code (more formally, Article 32 – *Zoning*) included a new provision for the mandatory termination of retail goods establishments with alcoholic beverage sales (*cf.* §18-701), not later than June 4, 2019. This proposed rezoning would circumvent the mandatory termination of the liquor store on this property.
2. **The needs of Baltimore City:** This neighborhood has been zoned residentially for decades, which was continued as part of the comprehensive rezoning of the City. There was sufficient notice for alcohol outlets that would become or remain nonconforming uses, so that their interests could be considered. While there was an opportunity for this property to be zoned to any other district other than the R-7 residential category it retained, no changes were made.
3. **The needs of the particular neighborhood:** The purpose of the mandatory termination of alcohol outlets was to support improvements in health throughout Baltimore's neighborhoods. Zoning this property to C-1 would perpetuate this alcohol outlet, the opposite of the City's intended policy goal.

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 is not a significant population change between June 5, 2017 and the effective date of this proposed action. If anything, an increase in residential density would support the retention of residential zoning in this area.
2. **The availability of public facilities;** This area is adequately served by municipal utilities, which will not be impacted by this proposed zoning change.

3. **Present and future transportation patterns;** This area is served by the City's street network, which will not be impacted by this proposed zoning change.
4. **Compatibility with existing and proposed development for the area;** This property is located in the middle of a residentially-zoned area, that has been residentially zoned for decades. This property has been nonconforming for that extended period of time, and this proposed rezoning will increase the degree of incompatibility with the surrounding neighborhood.
5. **The recommendations of the Planning Commission and the Board of Municipal and Zoning Appeals (BMZA);** For the above reasons, the Planning Department will recommend disapproval of the rezoning request to the Planning Commission. The BMZA has not yet commented on this bill.
6. **The relation of the proposed amendment to the City's plan.** Continuation of the R-7 zoning that became effective June 5, 2017 is consistent with the City's Comprehensive Master Plan. The Planning Commission previously supported the continued residential zoning on the new zoning district maps as part of that legislative process. This proposal does not support the City's plan to reduce the impact of alcohol outlets on residential areas.

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;** This property is surrounded by a mix of residential types, including rowhomes and apartment units.
- (ii) **the zoning classification of other property within the general area of the property in question;** Properties within a two-block radius are residentially zoned (R-7), with the nearest commercial zone two blocks to the east.
- (iii) **the suitability of the property in question for the uses permitted under its existing zoning classification; and** This building could either be renovated for residential use, or the owner may wish to apply for a neighborhood commercial establishment.
- (iv) **the trend of development, if any, in the general area of the property in question, including changes, if any, that have taken place since the property in question was placed in its present zoning classification.** The most significant change in the area, is the redevelopment of the Stadium Square properties, to the south, comprised of three blocks. The closest block will add a significant number of additional residential units to this neighborhood.

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.

Since the comprehensive rezoning of the City, there hasn't been a significant change in the neighborhood that would invalidate the residential zoning that has been continued for this

property, and for the surrounding blocks. The choice of R-7 zoning is appropriate for this area, and reflects the physical form of the neighborhood.

Notification: The Sharp-Leadenhall Improvement Association and the South Baltimore Gateway Partnership have been notified of this action.



Chris Ryer
Director