



**BALTIMORE CITY COUNCIL
ECONOMIC AND COMMUNITY DEVELOPMENT
COMMITTEE**

Mission Statement

On behalf of the Citizens of Baltimore City, the Committee on Economic and Community Development (ECD) is responsible for supporting strong thriving communities. ECD will review proposed zoning and land use changes, tackle issues related to economic development, oversee housing policy, and promote equitable economic opportunity for all Baltimore residents.

The Honorable Sharon Green Middleton

PUBLIC HEARING

November 28, 2023

2:50 PM

CLARENCE "DU" BURNS COUNCIL CHAMBERS

23-0410

Rezoning - 6311 Eastern Avenue

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BILL SYNOPSIS

Committee: Economic and Community Development

Bill: 23-0410

Rezoning – 6311 Eastern Avenue

Sponsor: Councilmember Cohen

Introduced: July 17, 2023

Purpose:

For the purpose of changing the zoning for the property known as 6311 Eastern Avenue (Block 6699, Lot 002A), as outlined in red on the accompanying plat, from the I-2 Zoning District to the C-2 Zoning District.

Effective: The 30th day after the date it is enacted

Agency Reports

City Solicitor	Approve for form and Sufficiency
Planning Commission/Department	Favorable
Dept Housing and Community Development	No Objection
Parking Authority	No Objection
BMZA	Defers to Planning
BDC	
Dept Transportation	No Objection

Analysis

Current Law

Article 32 – Zoning, Zoning District Map Sheet 60.

Under § 5-508(b)(1) of Article 32 – Zoning, and the State Land Use Article, the City Council may approve a rezoning based on 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.

Bill Summary

This bill if enacted would amend the zoning classification for the properties listed from I-2 to C-2 zoning. The property is known as 6311 Eastern Avenue.

The lot is located in the southern arm of the Pulaski Industrial Area, south of the Bayview residential neighborhood on the northern side of Eastern Avenue. The site is improved by a Royal Farms store and gas station.

Current Zoning

I-2 - General Industrial Zoning. Manufacturing, fabricating, processing, wholesale distributing and warehousing. Commercial uses and open storage are allowed.

Proposed Zoning

C-2 - Community Commercial Zoning District is intended for areas of small to medium-scale commercial use, typically located along urban corridors, that are designed to accommodate pedestrians and, in some instances, automobiles.

Additional Information

Fiscal Note: Not Available

Information Source(s): Baltimore City Code, Reporting Agencies, Bill 23-0388.

Analysis by: Anthony Leva

Direct Inquiries to: 410-396-1091

Analysis Date: November 21, 2023

**CITY OF BALTIMORE
COUNCIL BILL 23-0410
(First Reader)**

Introduced by: Councilmember Cohen
At the request of: Two Farms, Inc.
Address: c/o Caroline L. Hecker, Esq.
Rosenberg Martin Greenberg, LLP
25 South Charles Street, Suite 21st Floor
Baltimore, Maryland 21201
Telephone: (410) 727-6600

Introduced and read first time: July 17, 2023

Assigned to: Economic and Community Development Committee

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

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Rezoning – 6311 Eastern Avenue**

3 FOR the purpose of changing the zoning for the property known as 6311 Eastern Avenue
4 (Block 6699, Lot 002A), as outlined in red on the accompanying plat, from the I-2 Zoning
5 District to the C-2 Zoning District.

6 BY amending

7 Article - Zoning
8 Zoning District Maps
9 Sheet 60
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 60 of the Zoning District Maps is amended by changing from the I-2 Zoning District to the
14 C-2 Zoning District the property known as 6311 Eastern Avenue (Block 6699, Lot 002A), as
15 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.

Council Bill 23-0410

1 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 30th day
2 after the date it is enacted.

**ECONOMIC AND COMMUNITY
DEVELOPMENT COMMITTEE**

**23-0410
AGENCY REPORTS**

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 #23-0410 / REZONING – 6311 EASTERN AVENUE		

TO

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

DATE: September 1, 2023

At its regular meeting of August 31, 2023, the Planning Commission considered City Council Bill #23-0410, for the purpose of changing the zoning for the property known as 6311 Eastern Avenue (Block 6699, Lot 002A), as outlined in red on the accompanying plat, from the I-2 Zoning District to the C-2 Zoning District.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report which recommended approval of City Council Bill #23-0410 and adopted the following resolution, with eight members being present (seven in favor, one abstained):

RESOLVED, That the Planning Commission concurs with the recommendation of its departmental staff, adopts the findings and equity analysis outlined in the staff report, with consideration for testimony and facts presented in the meeting, and recommends that City Council Bill #23-0410 be **approved** 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: Ms. Nina Themelis, Mayor's Office
The Honorable Eric Costello, Council Rep. to Planning Commission
Mr. Colin Tarbert, BDC
Ms. Rebecca Witt, 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
Ms. Drew Tildon, Esq.



Brandon M. Scott
Mayor

PLANNING COMMISSION

Sean D. Davis, Chair; Eric Stephenson, Vice Chair

STAFF REPORT



Chris Ryer
Director

August 31, 2023

REQUEST: City Council Bill #23-0410/ Rezoning – 6311 Eastern Avenue:

For the purpose of changing the zoning for the property known as 6311 Eastern Avenue (Block 6699, Lot 002A), as outlined in red on the accompanying plat, from the I-2 Zoning District to the C-2 Zoning District.

RECOMMENDATION: Adopt findings and Approve

STAFF: Eric Tiso

PETITIONER: Two Farms, Inc. c/o Caroline L. Hecker, Esq.

OWNER: Two Farms, Inc.

SITE/GENERAL AREA

Site Conditions: 6311 Eastern Avenue is located on the southeastern corner of the intersection with Imla Street. This property is currently zoned I-2 Industrial, contains 0.773 ± acres of land, and is improved by a former Royal Farms convenience store and gas station.

General Area: This property is located in the southern arm of the Pulaski Industrial Area, south of the Bayview residential neighborhood on the northern side of Eastern Avenue. To the rear of the property is a Home Depot store. Immediately to the east across the Home Depot entry roadway is a Wendy's fast food restaurant. A variety of commercial establishments are located on the north side of Eastern Avenue in this block.

HISTORY

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

ZONING CODE REQUIREMENTS

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.

ANALYSIS

Background:

The proposed rezoning from I-2 industrial to C-2 commercial is for this site that was previously used as a Royal Farms convenience store and gas station. Staff understands that the future redevelopment for the property is for an auto parts retail store.

Required Findings:

Per §5-508(b)(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. The applicant has provided a zoning analysis and proposed findings of fact based on a mistake. Staff concurs with that analysis.

Maryland Land Use Code – Requirements for Rezoning:

The Land Use Article of the Maryland Code requires the Planning Commission and the Board of Municipal and Zoning Appeals (BMZA) 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 Code, Land Use § 10-305 (2023)). In reviewing this request, the staff finds that:

- 1. The Plan:** There are no specific plans that call for the retention of industrial zoning in this area. While Planning typically prefers to retain existing nodes of industrial zoning and compact districts where they exist, the change of zoning of this specific parcel would not any particular loss of industrial potential.
- 2. The needs of Baltimore City:** Staff believes that the potential for industrial re-use of this property that has previously been commercial in nature, along with the current proposal for reuse as a different commercial use, to better provide for the needs of the City by providing new commercial development.

- 3. The needs of the particular neighborhood:** As it's unlikely that an industrial user would want this parcel, given its small size, and given its adjacency to the C-2 commercial node, the neighborhood would be better served by this property continuing in commercial use.

Similarly, the Land Use article, also adopted by Article 32 – *Zoning* §5-508(b)(2), requires the City Council to make findings of fact (MD Code, Land Use § 10-304 (2023)). The findings of fact include:

- 1. Population changes;** There haven't been significant changes in residential density that would impact this particular rezoning proposal.
- 2. The availability of public facilities;** This area is well served by public infrastructure, which will be sufficient to support future commercial redevelopment.
- 3. Present and future transportation patterns;** The proposed rezoning, and anticipated redevelopment of the site will not have any significant impact on transportation patterns in the immediate neighborhood.
- 4. Compatibility with existing and proposed development for the area;** Commercial zoning for this parcel will complement the existing C-2 commercial node along Eastern Avenue. Further, the loss of the existing I-2 zoning will not create any negative impacts, as staff believes the site by itself is too small for practical industrial uses.
- 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 approval 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.** There are no particular provisions of any formally adopted plan that would call for retaining industrial use for this parcel.

There are additional standards under Article 32 – *Zoning* §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;** Adjacent uses to the east along Eastern Avenue include a fast-food restaurant, an auto dealership, and a sit-down restaurant. To the rear of this property is a Home Depot. To the west along Eastern Avenue is a metal products distributor. Across Eastern Avenue to the north is a 7-Eleven convenience store and other retail businesses, with a residential neighborhood to the northwest.
- (ii) the zoning classification of other property within the general area of the property in question;** The Home Depot to the south and the metal products distributor to the west are zoned I-2. Businesses on both sides of Eastern Avenue to the east of this site are C-2 commercial. The residential neighborhood to the north of Eastern Avenue is zoned R-7 residential. A small commercial strip of C-1 and C-2 is located to the west on both sides of Eastern Avenue about a block away.

- (iii) **the suitability of the property in question for the uses permitted under its existing zoning classification; and** This site is approximately 0.77 ± acres in size, which is not large enough to be practically useful for modern industrial uses. The prior use of the property (Royal Farms) as a *Retail Goods Establishment (No Alcoholic Beverages Sales)* would be a nonconforming use in the I-2 district (which would also prevent the proposed use as an auto parts retailer), while *Fuel Stations* are a lawful conditional use.
- (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 not been any significant changes to the Eastern Avenue corridor within a few blocks in either direction.

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 in the public's interest, in that it will allow for commercial redevelopment of this lot, and will not require finding a limited industrial user that can operate within the relatively small size of the existing lot.

Equity:

Staff does not believe that there are any particular impacts to equity as a result of this rezoning, or the potential future uses for the property. There has been successful outreach to the Bayview Community Association, which has provided a letter of support.

Notification: Bayview Community Association has been notified of this action.

For/ *Chris Ryer*

Chris Ryer
Director

CITY OF BALTIMORE

Brandon M. Scott, Mayor



BOARD OF MUNICIPAL AND
ZONING APPEALS

Rebecca Lundberg Witt, *Acting Executive
Director*

July 20, 2023

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

Re: CC Bill #23-0410- Rezoning-6311 Eastern Ave

Ladies and Gentlemen:

City Council Bill No. 23-0410 has been referred to by your Honorable Body to the Board of Municipal and Zoning Appeals for study and report.

The purpose of City Council Bill No. 23-0410 is to change the zoning for the property known as 6311 Eastern Avenue (Block 6699, Lot 002A) from the I-2 Zoning District to the C-2 Zoning District. The BMZA is deferring its recommendation on the legislation to that of the report and recommendation of the Planning Commission.

Sincerely,

A handwritten signature in black ink that reads "Rebecca R Witt".

Rebecca Lundberg Witt
Executive Director

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

TRANSMITTAL MEMO

TO: Council President Nick J. Mosby
FROM: Peter Little, Executive Director
Date: August 9, 2023
RE: City Council Bill 23-0410




I am herein reporting on City Council Bill 23-0410 introduced by Councilmember Cohen at the request of Two Farms, Inc.

The purpose of this bill is to change the zoning for the property known as 6311 Eastern Avenue (Block 6699, Lot 002A) from the General Industrial (I-2) Zoning District to the Community Commercial (C-2) Zoning District.

The Parking Authority of Baltimore City (PABC) has reviewed the proposed legislation. The legislation requests for the selected property to be rezoned and does not reference parking requirements. The parking requirements for the lot will be based on the standards in the Zoning Code. PABC does not administer any on-street parking programs at the location. The site is also in proximity to other commercial uses. When building plans and uses are submitted, PABC will be involved through the Site Plan Review Committee (SPRC) to ensure that parking and loading demands are adequately addressed and that negative effects of parking and loading are mitigated.

Based on the comments above, the PABC does not oppose the passage of City Council Bill 23-0410.

F R O M	NAME & TITLE	Corren Johnson, Director	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	Department of Transportation (DOT) 417 E Fayette Street, Room 527		
	SUBJECT	Council Bill 23-0410		

DATE: 11/27/2023

TO: Mayor Brandon Scott
TO: Economic and Community Development Committee
FROM: Department of Transportation
POSITION: **No Objection**
SUBJECT: Council Bill 23-0410

INTRODUCTION - Rezoning - 6311 Eastern Avenue

PURPOSE/PLANS - For the purpose of changing the zoning for the property known as 6311 Eastern Avenue (Block 6699, Lot 002A), as outlined in red on the accompanying plat, from the I-2 Zoning District to the C-2 Zoning District.

COMMENTS – Council Bill 23-0410 seeks to rezone the property known as 6311 Eastern Ave from the I-2 Zoning District to the C-2 Zoning District. I-2 zoning district allows for general industrial zoning allocated for manufacturing, fabricating, processing, wholesale distributing and warehousing. C-2 Zoning is small to medium-scale commercial and mixed-use developments along urban corridors, that is geared to accommodating pedestrians over vehicles, in some instances. The statement of intent from Two Farms, Inc. notes that the applicant would like to convert the property to a retail goods establishment. The property, formerly as Royal Farms fuel station and convenience store, is located along the major arterial corridor of Eastern Ave within the Southeast Baltimore community of Bayview.

AGENCY/DEPARTMENT POSTION – For the reasons above, The Baltimore City Department of Transportation foresees no direct operational or fiscal impact resulting from the legislation and has **no objection** towards the advancement of Council Bill 23-0410.

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

Sincerely,

Corren Johnson,
Director



MEMORANDUM

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

From: Alice Kennedy, Housing Commissioner

Date: November 11, 2023

Re: City Council Bill 23-0410 Rezoning - 6311 Eastern Avenue

The Department of Housing and Community Development (DHCD) has reviewed City Council Bill 23-0410 for the purpose of changing the zoning for the property known as 6311 Eastern Avenue (Block 6699, Lot 002A), as outlined in red on the accompanying plat, from the I-2 Zoning District to the C-2 Zoning District.

If enacted, City Council Bill 23-0410 would allow for the rezoning of 6311 Eastern Avenue from the I-2 Zoning District to the C-2 Zoning District to be used as an auto parts retail store. The site was previously used as a convenience store and gas station.

At its regular meeting of August 31, 2023, the Planning Commission concurred with the recommendation of its Departmental staff and recommended the Bill be approved by the City Council. Planning staff noted in their report that the rezoning of the subject property is in the public's interest, in that it will allow for commercial redevelopment of this lot, and will not require finding a limited industrial user that can operate within the relatively small size of the existing lot.

6311 Eastern Avenue presently has a vacant building notice (VBN). This rezoning and abatement of the VBN will promote reinvestment in the immediate area by reducing vacancy and blight. The subject property is not located within any of DHCD's Impact Investment Areas or Community Development Zones. The property is located in a DHCD Streamlined Code Enforcement Area. This rezoning may lead to the productive re-use of this property and expand commercial redevelopment opportunities for the Bayview and surrounding communities, potentially benefiting local businesses and area residents.

DHCD **does not object** to the passage of City Council Bill 23-0410.

AK/sm

cc: Ms. Themelis, Nina, Mayor's Office of Government Relations

Brandon M. Scott, Mayor • Alice Kennedy, Housing Commissioner

417 East Fayette Street • Baltimore, MD 21202 • 443-984-5757 • dhcd.baltimorecity.gov

CITY OF BALTIMORE

BRANDON M. SCOTT
Mayor



DEPARTMENT OF LAW
EBONY THOMPSON
ACTING CITY SOLICITOR
100 N. HOLLIDAY STREET
SUITE 101, CITY HALL
BALTIMORE, MD 21202

October 10, 2023

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 23-0410 – Rezoning – 6311 Eastern Avenue

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 23-0410 for form and legal sufficiency. The bill would change the zoning for the property at 6311 Eastern Avenue from the I-2 Zoning District to the C-2 Zoning District.

Although any number of zoning designations are open for properties in original or comprehensive rezoning, there is not the same flexibility in piecemeal rezoning such as this. *See Mayor and City Council of Rockville v. Rylyns Enterprises*, 372 Md. 514, 535-36 (2002) (explaining the rationale behind rigidity in zoning as protecting landowners and society at large). Even if the Mayor and City Council believes now that the selection of the I-2 Zoning District for this parcel was wrong, second guessing is not allowed in piecemeal rezoning.

However, the Mayor and City Council may permit a piecemeal rezoning if it finds facts sufficient to show either: 1) there was mistake in the original zoning classification; or 2) there has been a substantial change in the character of the neighborhood since the original zoning classification. *Id. See also* Md. Code, Land Use Art., § 10-304(b)(2); Baltimore City Code, Art. 32, §§ 5-508(a) and (b)(1). “The ‘mistake’ option requires a showing that the underlying assumptions or premises relied upon by the legislative body during the immediately preceding original or comprehensive rezoning were incorrect. In other words, there must be a showing of a mistake of fact.” *Rylyns Enterprises*, 372 Md. at 538-39. With regard to the “change” option, “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.” *Id.* at 538. The legal standard for each of these options is discussed in more detail below.

Legal Standard for Change in the Character of the Neighborhood

“It is unquestioned that the City Council has the power to amend its City Zoning Ordinance whenever there has been such a change in the character and use of a district since the original

enactment that *the public health, safety, morals, or general welfare would be promoted by a change in the regulations.*” *Cassel v. Mayor and City Council of Baltimore*, 195 Md. 348, 354 (1950) (emphasis added). Thus, the Mayor and City Council must find facts of a substantial change in the character and the use of the district since the last comprehensive rezoning of the property and that the rezoning will promote the “public health, safety, morals, or general welfare” and not merely advantage the property owner. *Id.*

The “substantial change” must be in the “immediate neighborhood” of the subject property, and must be of “such a nature as to have affected its character.” *Clayman v. Prince George’s County*, 266 Md. 409, 418 (1972). Moreover, the required changes must be physical in nature. *Anne Arundel County v. Bell*, 442 Md. 539, 555 (2015) (citations omitted). However, infrastructure changes such as sewer or water extension or road widening do not count. *Id.* at 419. In addition, the physical changes have to be shown to be unforeseen at the time of the last rezoning. *Ryllys Enterprises*, 372 Md. at 538. Contemplated growth and increased density are not sufficient. *Clayman*, 266 Md. at 419.

Legal Standard for Mistake

To sustain a piecemeal change on the basis of a mistake in the last comprehensive rezoning, 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 v. Spring*, 109 Md. App. 692, 698 (1996) (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.* “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.’” *Boyce v. Sembly*, 25 Md. App. 43, 52 (1975) (citations omitted).

A court has not considered it enough to merely show that the new zoning would make more logical sense. *Greenblatt v. Toney Schloss Properties Corp.*, 235 Md. 9, 13-14 (1964). Nor are courts persuaded that a more profitable use of the property could be made if rezoned is evidence of a mistake in its current zoning. *Shadynook Imp. Ass’n v. Molloy*, 232 Md. 265, 272 (1963). Courts have also been skeptical of finding a mistake when there is evidence of careful consideration of the area during the past comprehensive rezoning. *Stratakis v. Beauchamp*, 268 Md. 643, 653-54 (1973).

Avoiding Spot Zoning

In piecemeal rezoning bills, like this one, if there is not a factual basis to support the change or the mistake, then rezoning is considered illegal spot zoning. *Cassel*, 195 Md. at 355. Spot zoning “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.” *Id.* It 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.” *Id.* 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.” *Id.*

However, “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.” *Id.* Examples include “small districts within a residential district for use of grocery stores, drug stores and barber shops, and even gasoline filling stations, for the accommodation and convenience of the residents of the residential district.” *Id.* at 355-356.

Thus, to avoiding spot zoning, the Mayor and City Council must show how the contemplated use is consistent with the character of the neighborhood. *See, e.g., Tennison v. Shomette*, 38 Md. App. 1, 8 (1977) (cited with approval in *Rylyns Enterprises*, 372 Md. at 545-46).

Additional Required Findings of Fact

In addition to finding that there was either a substantial change in the character of the neighborhood or a mistake in the original zoning classification, the Mayor and City Council is required to make findings of fact on the following matters:

- (i) population change;
- (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 Baltimore City Planning Commission and the Board [of Municipal and Zoning Appeals]; and
- (vi) the relationship of the proposed amendment to Baltimore City’s plan.

Md. Code, Land Use, § 10-304(b)(1); Baltimore City Code, Art. 32, § 5-508(b)(2).

The Mayor and City Council must also 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." *City Council of Prince George's Cty. v. Zimmer Dev. Co.*, 444 Md. 490, 510 (2015) (citation omitted); *see also White*, 109 Md. App. at 699 ("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.").

Planning Commission Recommendation

The Planning Commission Report ("Report") supports this rezoning. It states that Planning Commission staff concur with the applicant's "zoning analysis and proposed findings of fact based on a mistake." However, that analysis does not appear in the Report. The proposed findings of fact based on mistake will need to be sufficient under the relevant legal analysis outlined above and put in the hearing record for consideration and adoption by the Council, as outlined below.

The Report makes findings on each of the additional required matters outlined in the previous section.

Process Requirements

The City Council 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 Council is required to make findings of fact about the factors in Section 10-304 of the Land Use Article of the Maryland code and Section 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 or a substantial change in the neighborhood; 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.

Additionally, certain procedural requirements apply to this bill beyond those discussed above because a change in the zoning classification of a property 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 or description 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 near the sidewalk or right-of-way for pedestrians and motorists to view, 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, and the posted notice must be provided 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 for rezoning has been met. Assuming the required findings are made at the hearing and that all procedural requirements are satisfied, the Law Department can approve the bill for form and legal sufficiency.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jeffrey Hochstetler', is written over a light blue horizontal line.

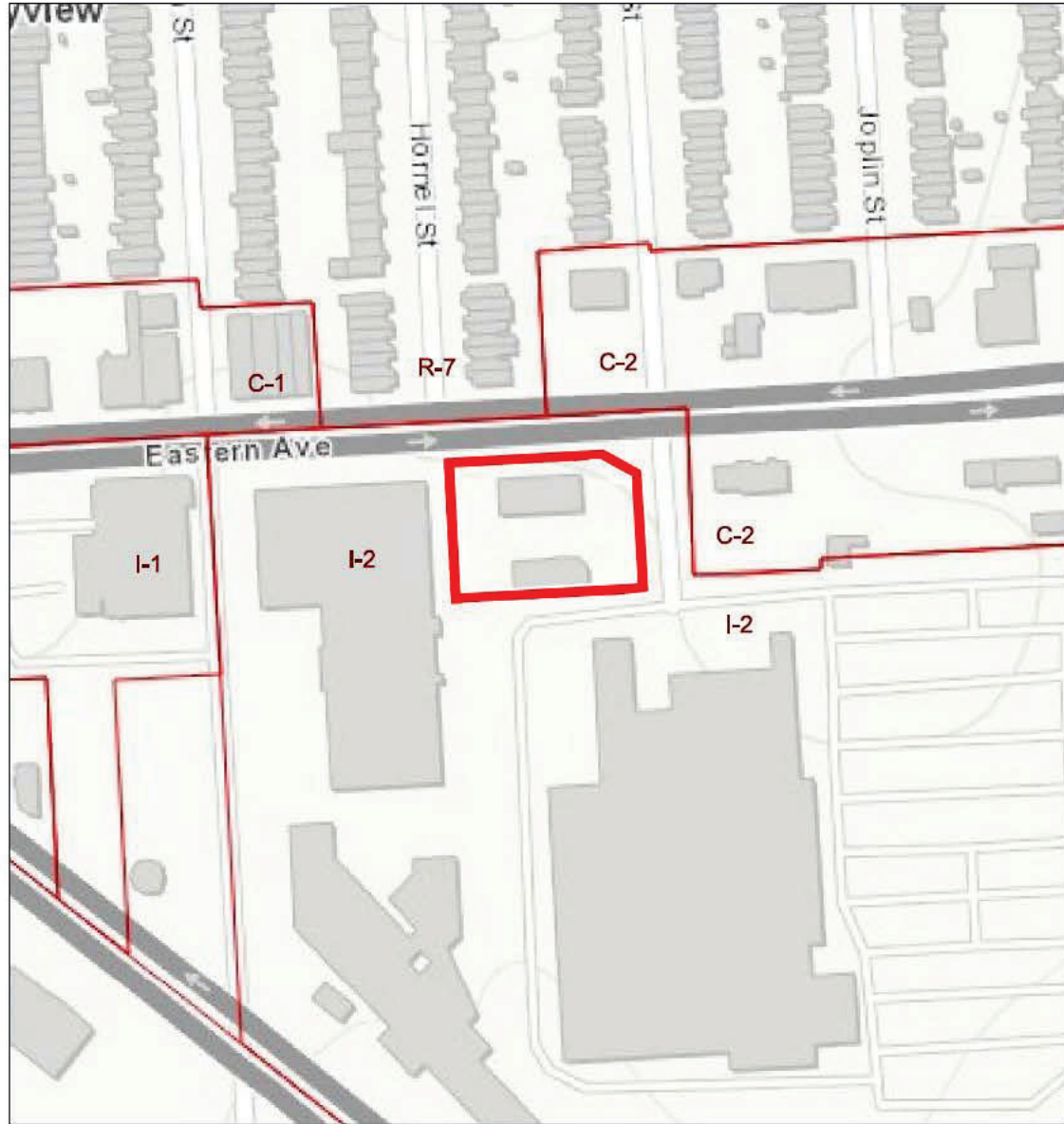
Jeffrey Hochstetler
Chief Solicitor

cc: Ebony Thompson, Acting City Solicitor
Nina Themelis, Mayor's Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Ashlea Brown, Chief Solicitor
Michelle Toth, Special Solicitor
Teresa Cummings, Assistant Solicitor

**ECONOMIC AND COMMUNITY
DEVELOPMENT COMMITTEE**

**23-0410
ADDITIONAL DOCUMENTS**

THE ZONING DISTRICT MAP OF THE BALTIMORE CITY ZONING CODE



GRAPHIC SCALE

Scale: 1" = 200'

Note:

The Applicant wishes to request the Rezoning of the following parcel outlined in blue:
6311 Eastern Avenue I-2 Zoning District to the C-2 Zoning District.

Zoning Map Sheet 60

Ward 26

Section 01

Block 6699

Lot 2A

Applicant:
Two Farms, Inc.
Address: c/o Caroline Hecker, Esq.
Rosenberg | Martin | Greenberg, LLP
25 S. Charles Street, Suite 21st Floor,
Baltimore, Maryland 21201
Telephone: 410-727-6600

Plat Prepared by:
Matis Warfield, Inc
Address: c/o Steve Warfield, P.E.
909 Ridgebrook Rd, Suite 100
Sparks, Maryland 21152
Telephone: 410-683-7004
Date: 6/15/23

MAYOR

PRESIDENT CITY COUNCIL

**STATEMENT OF INTENT
FOR**

Rezoning 6311 Eastern Avenue

1. Applicant's Contact Information:

Name: Two Farms, Inc. c/o Caroline L. Hecker, Rosenberg Martin Greenberg, LLP
Mailing Address: 25 S. Charles Street, 21st Floor, Baltimore, MD 21201
Telephone Number: (410) 727-6600
Email Address: checker@rosenbergmartin.com

2. All Proposed Zoning Changes for the Property: Rezone the above-referenced property from the I-2 Zoning District to the C-2 Zoning District.

3. All Intended Uses of the property: Retail goods establishment (no alcoholic beverages sales)

4. Current Owners' Contact Information:

Name: Two Farms, Inc.
Mailing Address: 3611 Roland Avenue
Baltimore, MD 21211
Telephone Number: _____
Email Address: _____

5. Property Acquisition:

The property was acquired by the current owner on January 23, 2003 by deed recorded in the Land Records of Baltimore City in Liber 3315, Folio 256.

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

7. **Agency:**

- (a) The applicant is ___ is not X acting as an agent for another.
- (b) If the applicant is acting as an agent for another, the names of all principals on whose behalf the applicant is acting, including the names of the majority stockholders of any corporation, are as follows *{use additional sheet if necessary}*: N/A

AFFIDAVIT

I, Caroline L. Hecker, solemnly affirm under the penalties of perjury that the information given in this Statement of Intent is true and complete to the best of my knowledge, information and belief.



Caroline L. Hecker, Authorized Agent for Applicant

July 3, 2023

Date

Baltimore City Council
Certificate of Posting - Public Hearing Notice

Today's Date: [10/27/2023]

City Council Bill No.: 23-0410



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

Address: 6311 Eastern Avenue Frontage

Date Posted: October 27, 2023

Name: Martin Ogle

Address: 9912 Maidbrook Road Parkville Md, 21234

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

Affidavit of Publication

To: Rosenberg, Martin, Greenberg, LLP - Caroline L. Hecker
25 S Charles St, Fl 21
Baltimore, MD, 21201

Re: Legal Notice 2554752,
PUBLIC HEARING ON BILL NO. 23-0397

We hereby certify that the annexed advertisement was published in Maryland The Daily Record, a Daily newspaper published in the State of Maryland 1 time(s) on the following date(s): 11/07/2023

By



Joy Hough
Authorized Designee of the Publisher

Baltimore City

BALTIMORE CITY COUNCIL PUBLIC HEARING ON BILL NO. 23-0397

The Economic and Community Development Committee of the Baltimore City Council will conduct a public hearing on City Council Bill No. 23-0410 on Tuesday, November 28, 2023, at 2:30 p.m. in the Clarence "Du" Burns Chamber, City Hall, 100 N. Holliday Street, 4th Floor, Baltimore, MD 21202. Information on how the public can participate in the hearing virtually, via Webex, will be available at <https://baltimore.legistar.com/Calendar.aspx>.

Rezoning - 6311 Eastern Avenue

For the purpose of changing the zoning for the property known as 6311 Eastern Avenue (Block 6699, Lot 002A), as outlined in red on the accompanying plat, from the I-2 Zoning District to the C-2 Zoning District.

By amending Article - Zoning; Zoning District Maps; Sheet 60
Baltimore City Revised Code (Edition 2000)

Applicant: Two Farms Inc. C/O Caroline L Hecker, Rosenberg Martin Greenberg, LLP

For more information, contact Committee Staff at (410) 396-1091.

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

SHARON GREEN MIDDLETON
Chair

n7 2554752