
CITY OF BALTIMORE

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November 14, 2025

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 25-0089 – Zoning – Rezoning – Conditional Use Conversion of a Single-Family Dwelling to 2 Dwelling Units in the R-7 Zoning District – 1029 West 37th Street

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 25-0089 for form and legal sufficiency. The bill would change the zoning classification for the property known as 1029 West 37th Street (Block 3539, Lot 014) from the R-6 Zoning District to the R-7 Zoning District and would permit the conversion of a single-family dwelling unit on the property to two dwelling units.

The R-6 zoning classification is for “low density rowhouse neighborhoods that reflect a naturalistic environment typified by open and landscaped front yards of buildings that are set back and that contain stoops and porches oriented to those yards.” Baltimore City Code, Art. 32, § 9-202(a). The R-7 zoning classification is for “areas that offer a diverse range of housing types. Development in this district accommodates a transition between naturalistic and urban residential settings.” Baltimore City Code, Art. 32, § 9-203(a).

The Baltimore City Code permits residential conversions in the R-7 and R-8 zoning districts by conditional-use approval of the Mayor and City Council. Baltimore City Code, Art. 32, § 9-701(2). This property is currently zoned R-6, where conversions are prohibited. To meet the conversion requirements, the property must first be rezoned before a conditional use could be approved.

Rezoning Standards

Even if the Mayor and City Council now believe that the selection of the R-6 Zoning District for this parcel was wrong, second guessing is not allowed in piecemeal rezoning. While any number of zoning designations are open for properties in a comprehensive rezoning, there is not the same

flexibility in piecemeal rezoning. *Mayor and City Council of Rockville v. Rylyns Enterprises*, 372 Md. 514, 535-536 (2002).

Although “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,” Maryland’s highest Court has explained that the greater good to the landowner and society at large is the reason for the rigidity in zoning. *Id.* at 536. 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.” *Id.*

Therefore, the Mayor and City Council may permit a piecemeal rezoning only 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).

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 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.

Rylyns Enterprises, 372 Md. at 538-539.

It is critical to understand that in “Maryland, the change-mistake rule applies to all piecemeal zoning applications involving Euclidian zones, including those involving conditional zoning. 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. This is why a change or a mistake must be found for rezoning and NOT for comprehensive map changes or Planned Unit Developments, which is a type of floating zone.

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). 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 this rezoning will promote the “public health, safety, morals, or general welfare” and not merely advantage the property owner. *Id.*

As to the substantial change, courts in Maryland want to see facts of a “significant and unanticipated change in a relatively well-defined area.” *Rylyns Enterprises*, 372 Md. at 538. The “‘neighborhood’ must be the immediate neighborhood of the subject property, not some area miles away; and the changes must occur in that immediate neighborhood of such a nature as to have affected its character.” *Clayman v. Prince George’s County*, 266 Md. 409, 418 (1972). The changes are required to be physical. *Anne Arundel County v. Bell*, 442 Md. 539, 555 (2015) (citations omitted). However, those physical changes cannot be infrastructure such as sewer or water extension or road widening. *Clayman*, 266 Md. at 419. In addition, the physical changes have to be shown to be unforeseen at the time of the last rezoning. *Rylyns Enterprises*, 372 Md. at 538. Contemplated growth and density are not sufficient. *Clayman*, 266 Md. at 419. As to whether the change benefits solely the property owner, Courts look, in part, to see if a similar use is nearby such that the community could easily take advantage of the use elsewhere. *Cassel*, 195 Md. at 358 (three other similar uses only a few blocks away lead to conclusion that zoning change was only for private owner’s gain).

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 on 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.

The Supreme Court of Maryland has said it is not sufficient 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 the fact 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). 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.*

Findings of Fact

In determining whether to rezone based on mistake or change in the character of the neighborhood, 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) the 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.’”).

Spot Zoning

The City must find sufficient facts for a change or mistake because “[z]oning 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.” *Cassel*, 195 Md. at 353.

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. *Id.* 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.* The example given was “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 avoid 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 *Ryllys*, 372 Md. at 545-46).

Conditional Use Standards

The conversion of a single-family dwelling to a multi-family dwelling in an R-7 District requires conditional-use approval by ordinance. City Code, Art. 32, § 9-701(2). The only properties eligible for conversion are those that meet the standards set forth in Section 9-703 of Article 32 of the Baltimore City Code. Eligible properties must “continue to conform to the applicable bulk and yard regulations, including lot area per dwelling unit, for the district in which the building is located”. Baltimore City Code, Art. 32, § 9-703(b). Properties “may not violate any dwelling unit occupancy regulations or restrictions of the City Code” and “the exterior of the dwelling must retain its existing residential character”. Baltimore City Code, Art. 32, § 9-703(c)-(d). The converted dwelling must continue to conform to the bulk and yard regulations, including minimum lot size, for the district in which the building is located. Baltimore City Code, Art. 32, § 9-703(b), (d).

To approve a conditional use, the City Council must find:

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

Baltimore City Code, Art. 32, § 5-406(b). These findings must be guided by several required considerations. Baltimore City Code, Art. 32, § 5-406(a).

Planning Commission Recommendation

The Planning Department Report (“Report”) recommends disapproval of this rezoning, finding that there is no evidence of a mistake or substantial change in character since the last comprehensive rezoning in 2017. The Planning Commission’s report contains conditional use findings based on the criteria outlined in Section 5-406(a) of the Zoning Code. The report notes that rezoning is required for the proposed residential conversion, regardless of any favorable findings from the conditional use evaluation criteria.

Process

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 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 an ordinance that authorizes a conditional use or change in the zoning classification is considered a “legislative authorization.” Baltimore City Code, Art. 32, § 5-501(2)(ii) and (iii). Specifically, notice requirements apply to the bill, and it must be referred to certain City agencies, which are obligated to review it in a specified manner. Baltimore City Code, Art. 32, §§ 5-504, 5-506, 5-602. Additionally, certain limitations on the City Council’s ability to amend the bill after the committee hearing apply. Baltimore City Code, Art. 32, § 5-507.

The Law Department notes the Planning staff’s evaluation of rezoning and conditional use approval for the property. 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 and conditional-use approval 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,



Desiree Luckey
Assistant Solicitor

cc: Ebony Thompson, City Solicitor
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