
CITY OF BALTIMORE

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Mayor



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December 2, 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 19-0384– Rezoning – 3302 Edgewood St.

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 19-0384 for form and legal sufficiency. If enacted, the bill would change the zoning for 3302 Edgewood St. from the R-1 Zoning District to the C-1 Zoning District. For the reasons set forth within, the Law Department cannot find that the bill is legally sufficient.

The City Council can only permit this rezoning 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); City Code, Art. 32, §§5-508(a), (b)(1). There would appear to be no basis to believe that the neighborhood could have substantially changed between the comprehensive rezoning of the property on June 5, 2017 and the present. Therefore, to legally rezone the property, the City Council must identify a “mistake” that lead to the inappropriate zoning of the property as R-6 only a short time ago. Md. Code, Land Use §10-304(b)(2); City Code, Art. 32, §§5-508(a), (b)(1).

As “there is a strong presumption of the correctness of original zoning and of comprehensive rezoning,” there must be substantial 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.” *People’s Counsel v. Beachwood I Ltd. Partnership*, 107 Md. App. 627, 641 (1995) (citations omitted); *Boyce v. Sembly*, 25 Md. App. 43, 52 (1975) (citations omitted). In other words, “the Council’s action was premised initially on a misapprehension” making the selection of the R-6 zoning designation a “conclusion based upon a factual predicate that is incomplete or inaccurate.” *People’s Counsel*, 107 Md. App. at 641, 645 (citation omitted); accord *White v. Spring*, 109 Md. App. 692, 698 (1996). “[A]n allegedly aberrant conclusion based on full and accurate information, by contrast, is simply a case of bad judgment, which is immunized from second-guessing.” *People’s Counsel*, 107 Md. App. at 645. Without showing either facts that were not considered or subsequent events, “the presumption of validity accorded to comprehensive zoning is not overcome and the question of error is not ‘fairly debatable.’” *Boyce*, 25 Md. App. at 52.

To be sure, if evidence of a factual mistake sufficient to justify a rezoning is revealed, then courts will accord deference to the legislative judgment to rezone. *Cty. Council of Prince George’s*

Cty. v. Zimmer Dev. Co., 444 Md. 490, 509-510 (2015); *accord 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”); *Floyd v. County Council of Prince George’s County*, 55 Md. App. 246, 258 (1983) (“Substantial evidence, we have noted, ‘means a little more than a “scintilla of evidence.””)

The Report of the Planning Commission does not recommend approval of the bill so it does not offer facts to support the rezoning, The City Council must compile facts from other sources to make the required findings of fact. Under these circumstances, it may be difficult to find the needed support. The Planning Commission explains that this is a property with two structures, one with a residential use and another in the rear that is used for a liquor store. If the property was rezoned to C-1, the liquor store would be allowed as a conditional use by ordinance. In addition, it is possible that the entire property could be used for the liquor store since the entire property would be rezoned c-1. Since there has been no change in the character of the neighborhood in such a short time since the comprehensive rezoning the applicant has to show there was a mistake in the comprehensive rezoning that resulted in the R-1 zoning. With respect to finding to support the zoning the Planning staff noted that regarding compatibility with existing and proposed development the C-1 zoning is not compatible as the area is predominantly residential. Consequently, the Planning Commission can not recommend the change. The proposed zoning is also not consistent with the City’s comprehensive Master Plan which contemplates residential uses for the area rather than a mixed-use area. Facts to support the additional standards on 5-508(b)(3) also are not possible to provide as the change is simply not compatible with the existing uses of properties in the area or with the surrounding zoning districts. The Planning Report also provides that the change is not supported by the Md. State Code Land Use Art. standards which are similar to the City Code provisions. Given the nature of this property and the surrounding area, it does not seem possible to find facts to support all the required standards.

Finally, rezoning this property now to C-1 would constitute unlawful spot zoning because it would be only for the benefit of the property owner. When the City has undertaken such efforts in the past, Maryland’s highest court has invalidated such an ordinance as unreasonable, discriminatory spot zoning because the rezoning had insufficient relationship to the public health, safety or general welfare. *See, e.g., Cassel v. Mayor and City Council of Baltimore*, 195 Md. 348, 354 (1950).

On the present record, it does not appear that there can be facts that show that the City Council had a misapprehension about the facts applicable to the property when it was comprehensively zoned residential. In addition, it is unlikely that there can be facts to support the standards for finding a mistake in the original zoning as it is clearly incompatible with the existing uses in the neighborhood and with the surrounding zoning districts. Accordingly, the legal standard for rezoning cannot be met and the Law Department cannot approve the bill for legal sufficiency.

Very truly yours,



Andre M. Davis
City Solicitor

**cc: Matthew Stegman, Mayor's Office of Government Relations
Caylin Young, President's Legislative Director
Natawna Austin, Executive Secretary
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Victor Tervalá, Chief Solicitor
Ashlea Brown, Assistant Solicitor**