

# ECONOMIC AND COMMUNITY DEVELOPMENT COMMITTEE

## FINDINGS OF FACT

### City Council Bill No: 22-0261

MOTION OF THE CHAIR OF THE ECONOMIC AND COMMUNITY DEVELOPMENT COMMITTEE, AFTER A PUBLIC HEARING AT WHICH AGENCY REPORTS AND PUBLIC TESTIMONY WERE CONSIDERED, AND PURSUANT TO SECTIONS 10-304 AND 10-305 OF THE MARYLAND LAND USE ARTICLE AND SECTION 5-508 OF THE BALTIMORE CITY CODE, THE CITY COUNCIL ADOPTS THESE FINDINGS OF FACT CONCERNING THE REZONING OF:

#### **Rezoning - 801 South Haven Street, Block 6458/Lot 004A, and Block 6467/Lot 021A, and a Portion of Block 6458/Lot 004**

Upon finding as follows with regard to:

(1) Population changes;

According to the ACS 5-year Estimate Survey and the 2020 Census, the Property's census tract (tract 2607) experienced population growth, going from approximately 2,691 residents in 2017 to 2,933 in 2019. At first glance, the 2020 population data appears to show a slight decline to approximately 2,563 residents, but the 380-person margin combined with the significant increase in residential development—70 townhomes on the adjacent property, 36 townhomes at 4001 Hudson Street, and a 371-unit apartment building at 1211 S. Eaton Street—indicate that the population likely held steady or increased from 2019 to 2020.

(2) The availability of public facilities;

The area is well-served by public utilities and services and will remain so for the foreseeable future.

(3) Present and future transportation patterns;

The rezoning of the Property is not anticipated to adversely impact present or future traffic patterns. Because the adjacent property and several other properties in the immediate vicinity are already zoned for residential and commercial use and operating as such, the Property's change to the same category will not have any effect on transportation patterns.

(4) Compatibility with existing and proposed development for the area;

The R-8 zoning designation is most appropriate for the Property, which is adjacent to an R-8 zoned lot and is in an area rapidly trending away from industrial use and toward residential and commercial uses. Furthermore, the R-8 Zoning Designation will permit the construction of the long-awaited Baltimore City Greenway Trail, which will be developed, at the sole cost to the Developer, in tandem with the proposed 25 townhomes.

- (5) The recommendations of the City agencies and officials, including the Baltimore City Planning Commission and the Board of Municipal and Zoning Appeals;

The Planning Commission voted unanimously to recommend passage of the bill and the BMZA deferred to the Planning Commission’s recommendation which favored passage of the bill. The City agencies to which the bill was referred made the following recommendations:

Planning Commission	Favorable
Board of Municipal and Zoning Appeals	Defers to Planning
Department of Transportation	No Objection
City Solicitor	Favorable with Comments
Department of Housing and Community Development	Does Not Object
Baltimore Development Corporation	Favorable
Parking Authority	Not Opposed

- (6) The proposed amendment’s relationship to and consistency with the City’s Comprehensive Master Plan.

The proposed rezoning from I-2 and IMU-2 to R-8 is consistent with the City’s Comprehensive Master Plan goal of increasing housing opportunities. Furthermore, it will be consistent with the Master Plan’s stated goal to promote play in Baltimore City by enabling the conversion of abandoned railroad tracks into an urban trail.

- (7) Existing uses of property within the general area of the property in question;

The area surrounding the Property has been trending away from industrial and toward residential and commercial since shortly after the 2016 passage of Transform Baltimore. The proposed rezoning from industrial to residential is in-line with many surrounding uses and the direction in which the area is trending.

- (8) The zoning classification of other property within the general area of the property in question;

The property directly adjacent to the Property is zoned R-8. There are several other residential and commercial zones in close proximity to the Property, as evidenced by the zoning map included above.

- (9) The suitability of the property in question for the uses permitted under its existing zoning classification;

The four lots that comprise the Property, which range from approximately 4,128 square feet to approximately 32,234 square feet, are significantly too small and irregularly shaped to accommodate light industrial use. Furthermore, the present outdoor storage yard use of 801 S. Haven Street is not permitted by right under the current IMU-2 zoning designation. The impracticality of the Property for light industrial use and the above-discussed significant shift in the area from industrial to residential and commercial make the Property best suited for the R-8 Zoning District.

- (10) 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 classification;

As indicated above, the Brewers Hill neighborhood is trending heavily toward residential and commercial uses. The changes in use have occurred since the enactment of Transform Baltimore in 2016 and taken off further since 2021. Because the Property, along with the surrounding area, was still operating industrially at the time Transform Baltimore was enacted, the City Council could not have anticipated that the Property would require residential zoning. The changes that occurred following 801 S. Haven Street's 2021 rezoning rendered the Council similarly unable to appropriately classify the property. Now that the character of the neighborhood has transitioned away from industrial and toward residential and commercial, and the adjacent property is zoned R-8, the City Council should amend the Property's zoning classification.

- (11) For a rezoning based on a SUBSTANTIAL CHANGE IN THE CHARACTER OF THE NEIGHBORHOOD, the following facts establish the substantial change since the time of the last comprehensive rezoning:

A substantial change in the character of the neighborhood has taken place since Transform Baltimore was passed in 2016 because the area has subsequently transitioned from heavy industrial to predominately residential and commercial. The Property is adjacent to 601 S. Haven Street. In 2019, 601 S. Haven Street was consolidated with a former railroad bed, which was rezoned from I-2 to R-8 via City Council Bill # 19-426 in 2019 to enable the construction of 70 rowhouses. The Planning

Department recommended approval of the rezoning on the grounds of a change in the character of the neighborhood, citing the ceased industrial use of the adjacent parcel resulting in the 2019 demolition of neighboring vacant warehouse. The Planning Department also noted the abandonment of the railroad's right-of-way as of July 2019. This Commission adopted the Planning Department's recommendation for approval in a memorandum dated October 10, 2019.

The Planning Commission's 2019 finding that there was a substantial change in the neighborhood meriting the rezoning of the adjacent former railroad serves as conclusive evidence that the character of the neighborhood has substantially evolved since the enactment of Transform Baltimore in 2016. As further evidence of the above-discussed change, the following are further examples of the neighborhood's five-year evolution. Each project described below is located within ½ mile of the Property.

- 2018: The former warehouse at 4001 Hudson Street was demolished and 36 townhomes were erected on the property. The development is known as Evergreene Homes.
- 2019: A 90,000-SF shopping center known as Canton Crossing Phase II opened to patrons.
- 2019: The former warehouse at 4015 Foster Avenue was converted for use as offices, a personal training studio, and a brewery with a tap room.
- 2019: A 371-unit apartment building opened at 1211 S. Eaton Street.
- 2019: By passage of Ordinance No. 19-282, the City Council amended the Canton Industrial Area Urban Renewal Plan to remove a 12-acre property at 1200 S. Haven Street from the plan area, thus removing the heavy industrial land use restriction.
- 2020: The property removed from the Canton Industrial Area Urban Renewal Plan was converted into the "Collective at Canton," a mixed-use development. Current tenants include Sprouts Grocery, Sola Salon, and Chase Bank.
- 2020: Construction began on a 500-unit apartment building in the Collective at Canton

The neighborhood has continued its evolution from industrial to commercial and residential since 801 S. Haven Street was rezoned IMU-2 in 2021, meriting the Property's rezoning from industrial mixed-use to residential. "The IMU Industrial Mixed-Use Zoning Districts are intended to encourage the reuse of older industrial buildings for light industrial use, as well as a variety of non-residential uses." Art. 32, §11-203. The

parcel known as 801 S. Haven Street is not presently, nor has it recently been, improved by an industrial building that could be repurposed for commercial, light-industrial, or non-residential use. The below-listed existing and proposed changes in the neighborhood indicate that the IMU-2 designation, which explicitly prohibits residential use and permits light industrial uses, is no longer suitable for the area, which is rapidly turning into a residential-commercial area no longer suitable for light industrial uses.

- 2022 Construction began on Phase II of the Collective at Canton following approvals from the Board of Municipal Zoning Appeals. The second development round will include in addition to a host of other commercial uses.

To demonstrate change in the character of the Neighborhood, the Committee on Economic and Community Development is entitled to consider projects that are "reasonably probable of fruition in the foreseeable future." *Jobar Corp. v. Rodgers Forge Community Ass'n*, 236 Md. 106 (1964) (citations and quotations omitted). In addition to the changes above, the following non-industrial projects are "probable of fruition" in the Brewers Hill neighborhood. Id.

- 2022: AvalonBay Communities announced its plans to erect a seven-story, 380-unit luxury apartment complex at 3700 Boston Street.
- 2022: The Shops at Canton Crossing announced an additional retail building that will house three more commercial tenants.
- 2023 (pending the approval of the subject rezoning): A two-mile bike trail will be constructed along the abandoned Pennsylvania Railroad line as part of the Baltimore City Greenway Trail.

Based on the above-described existing and anticipated conversions of properties within ½ mile of the Property from industrial to commercial and residential mixed uses, there has been a substantial change in the character of the Brewers Hill neighborhood.

- (12) For a rezoning based on a MISTAKE in the existing zoning classification, the following facts establish that at the time of the last comprehensive zoning the Council failed to consider then existing facts, or projects or trends which were reasonably foreseeable and/or that events occurring subsequent to the comprehensive zoning have proven that the Council's initial premises were incorrect:

The Council acted in error when zoning the Property, I-2 under Transform Baltimore and later rezoning 801 S. Haven Street to the IMU-2 Zoning District in lieu of assigning the lot a high-density residential or low-density commercial zoning designation. Accordingly, the Council should rezone the Properties to the R-8 Zoning District.

An "error [or mistake] 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." *Boyce v. Sembly*, 25 Md. App. 43, 51 (1975) (citations omitted). "Thus, in order to establish error based upon a failure to take existing facts or events reasonably foreseeable of fruition into account, it is necessary not only to show the facts that existed at the time of the comprehensive zoning but also which, if any, of those facts were not actually considered by the Council." *Id.* at 52

The City Council's 2016 I-2 Zoning Classification of the Property and the subsequent 2021 rezoning of 801 S. Haven Street to the IMU-2 Zoning District constituted a mistake because:

- (1) it did not account for the proposed Baltimore City Greenway trail; and
- (2) the city council Committee on Economic and Community development findings of fact indicate the City Council was unaware of the proposed playground and trail.

In 2015, the Rails to Trails and the Baltimore Greenway Commission proposed a trail that would run up the abandoned Pennsylvania Railroad Line and into portions of private property in the area between Haven Street and O'Donnell Street, which would serve as a portion of the Baltimore Greenway Trails Network. The map (displayed in the Rosenberg memorandum dated 9/22/22) indicates that the proposed bike trail would likely run directly through the Property.

As is evidenced in the referenced map, substantial steps have been taken toward the completion of the project, demonstrating its feasibility and longevity. Moreover, in 2020, WYPR' released a story discussing the proposed 2-mile trail ranging from the Canton neighborhood up to the Baltimore Gas & Electric Corridor along the unused Pennsylvania Railroad line. The above map also demonstrates that the 2-mile stretch from Canton neighborhood would very likely pass through the Property.

Under the Code, hiking and biking trails fall under the "parks; playground" use category. Art. 32, § I-311(i)(2). Parks and playgrounds are prohibited in the I-2 and IMU-2 Zoning Districts. Art. 32, Table. 11-301. Despite the initial 2015 proposal of the Baltimore City Greenway Trail Network and the Baltimore Greenway Commission's continued pursuit of the project, the City Council zoned the Property I-2 in 2016 and then rezoned 801 S. Haven Street to the IMU-2 District in 2021, two zoning districts that prohibit the proposed use. The R-8 District, on the other hand, permits parks or playgrounds by right. Art. 32, Table 9-301. The failure to assign the Property a zoning designation that

would facilitate the proposed trail constitutes a misapprehension of a reasonably foreseeable project.

The Transform Baltimore full bill file does not indicate there was discussion of the proposed trail location in evaluating the appropriate zoning designation for the Property. Furthermore, the City Council Committee on Economic and Community Development (the "ECD") Findings of Fact for City Council Bill 21-0013, which adopted the Planning Commission's Findings of Fact, do not mention the proposed Greenway Trails Network. The ECD's Findings of Fact for City Council Bill 21-0013 are attached for your reference. The City Council's failure to consider the trail when assigning the Property, the I-2 designation in 2016 and later when assigning the IMU-2 designation to 801 S. Haven Street in 2021 indicates that the City Council was not aware of the proposed use.

In sum, the City Council (1) failed to account for the proposed Baltimore City Greenway Trail when evaluating the I-2 zoning for the Property as a whole in 2016 and the IMU-2 designation for of 801 S. Haven Street in 2021, and (2) was unaware of the proposed trail when evaluating the IMU-2 Zoning District for the lot. For those two reasons, the City Council's mistake meets the Boyce court's requirements of (1) misapprehension regarding probable development and (2) lack of knowledge of said probable developments. The Property should therefore be rezoned to the R-8 District.

As of 2018, the lots to the north and south-west of 801 S. Haven Street were zoned high density residential and low-density commercial. Furthermore, but for a small sliver of under-utilized outdoor storage area and abandoned railroad tracks, the Property abuts a low-density commercial district on the east. Additionally, the two other properties that were rezoned in conjunction with 801 S. Haven as part of the 2019 comprehensive rezoning were intended for and operate as commercial uses, despite the IMU-2 zoning classification. Potentially of greatest significance is the fact that the majority of the narrow strip of properties between S. Haven Street and the railroad tracks that lie north of O'Donnell Street and south of Eastern Avenue are residentially and commercially zoned. The map below indicates that the industrially zoned properties surrounding 801 S. Haven Street are dwarfed by high-density residential and low-density commercial zones.

A review of the Findings of Fact presented by the ECD which, as noted above, adopted the Planning Department's findings of fact, state "the existing uses of property within the general area of [the site] are a mix of residential, light industrial, and commercial." The language in the Findings of Fact indicates the committee was not aware of the disproportionately commercial and residential uses surrounding 801 S. Haven Street, as the memorandum gives equal weight to residential, light industrial, and commercial uses.

The City Council was unaware of the character of the surrounding area and was therefore unable to take said character into account when evaluating the 2019 comprehensive rezoning. Accordingly, the City Council's mistake meets the Boyce court's requirements of (1) failure to account for existing facts; and (2) lack of knowledge of said facts, indicating that the City Council should rezone the lot.



SOURCE OF FINDINGS (Check all that apply):

[X] Planning Report – Planning Commission’s report, dated September 23, 2022, which included the Department of Planning Staff Report, dated September 22, 2022.

[X] Testimony presented at the Committee hearing

Oral – Witness:

- Matt DeSantis, Planning Department
- Elena DiPietro, Law Department
- Sophia Gebrehiwot, Board of Municipal Zoning Appeals
- Drew Tildon, Rosenberg, Martin and Greenberg, LLP

Written:

- Planning Commission Report – Dated September 23, 2022 and Planning Department Staff Report – Dated September 22, 2022
- Department of Transportation, Agency Report – Dated December 12, 2022
- Board of Municipal and Zoning Appeals, Agency Report – Dated April 16, 2022
- Law Department, Agency Report – Dated October 18, 2022
- Department of Housing and Community Development, Agency Report – Dated December 13, 2022
- Baltimore Development Corporation, Agency Report – Dated October 6, 2022
- Parking Authority, Agency Report – Dated August 29, 2022
- Rosenberg, Martin, Greenberg – Memorandum – Dated September 22, 2022

**COMMITTEE MEMBERS VOTING IN FAVOR**

Sharon Green Middleton, Chair  
John Bullock  
Mark Conway  
Antonio Glover  
Odette Ramos  
Robert Stokes