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Honorable Sharon G. Middleton
Chair, Economic & Community Development Committee
Baltimore City Council
Baltimore City Hall, Room 532
100 Holliday Street
Baltimore, Maryland 21202
sharon.middleton@baltimorecity.gov

Re: Testimony on CC22-0296 - Rezoning 810 Leadenhall Street: **OPPOSE**

Dear Chairwoman Middleton and Members of the Committee:

As a concerned resident of Baltimore City, I write to ask the Committee to vote against CC22-0296, the requested rezoning of 810 Leadenhall Street in the Historic Sharp Leadenhall neighborhood. Prior to retiring, I was a housing and civil rights attorney with the ACLU of Maryland and the Legal Aid Bureau for 37 years. Through that work, I became familiar with the Sharp Leadenhall neighborhood and its unique --- and uniquely vulnerable --- place in Baltimore's past and present.

I strongly urge you to vote against this rezoning bill. CC22-0296 is based on erroneous findings and otherwise fails to meet the legal standards for spot zoning to be considered lawful. As an affordable housing advocate I generally support the development of multifamily housing. However, this particular case is an egregious example of inequitable development and a misuse of the new TOD4 category.

The Planning Commission's erred in placing 810 Leadenhall in the Otterbein neighborhood, rather than Sharp Leadenhall. This error influenced other aspects of the findings, for example, its view of population changes (as discussed below). 810 Leadenhall is clearly within the boundaries of the Sharp Leadenhall Master Plan area as shown in the Plan's maps. That Plan was jointly developed by the Planning Department and Sharp Leadenhall Planning Council, and was adopted by the Planning Commission in 2004. It is still in effect, is in the record before the Planning Commission, and is posted here on the Planning Department website: <https://planning.baltimorecity.gov/sites/default/files/SharpLeadenhall.pdf>

As the report of the Law Department recognizes, piecemeal rezoning bills like 22-0296 are considered illegal spot zoning unless there is a factual showing that meets a stringent legal test. The Planning Commission found no evidence of a "mistake" to justify spot zoning. Thus, the Law Department notes, the Mayor and City Council must find facts of a substantial change in the character and the use of the district since the comprehensive rezoning of the property on June 5, 2017 and that the rezoning will promote the "public health, safety, morals, or general welfare and not merely advantage the property owner." For the reasons set out below, **this case does not meet the test to justify spot zoning.**

There has been no change in the immediate neighborhood of 810 Leadenhall. This property, an 1890's era warehouse, is located in the northwest corner of Sharp Leadenhall, adjacent to the historic Little Montgomery district of Otterbein. This part of the neighborhood is a well-defined area surrounded and somewhat buffered by adjacent CHAP recognized historic properties, the campus of Sharp Leadenhall Apartments, and the Martini Church and parking lot. There has been no physical change in the surrounding blocks since 2017, or for many years prior to 2017 to trigger a "change in character." For this reason, at the Planning Commission hearing the Commissioners expressed difficulty finding a "substantial change in character."

Instead, to accommodate the requested rezoning, the Planning Commission's stretched to find a "change" by relying on development outside the immediate neighborhood, in the Cross Street area of Sharp Leadenhall nearly a half mile away to the south and east. That area has been experiencing gentrification enabled by piecemeal rezoning of other parcels to TOD4. Whether one considers the property to be located in Otterbein or Sharp Leadenhall, the development around Cross Street it is not in the "immediate neighborhood" of 810 Leadenhall. In effect, the Planning Commission's improperly used gentrification fueled by City action in one part of the Sharp Leadenhall neighborhood to bootstrap a justification to spread gentrification to 810 Leadenhall and surrounding blocks.

The changes cited by the Planning Commission's findings were not "unanticipated" as required by Maryland law. To constitute a substantial change, physical changes have to be shown to be unforeseen at the time of the last rezoning, in this case 2017. *County Council of Prince George's County v. Zimmer Development Co.*, 444 Md. 490 (2015). Here, there is no evidence of any unanticipated changes. To the contrary, the Commission ignored evidence in the Sharp Leadenhall Master Plan that development and gentrification were foreseen by both the City and Sharp Leadenhall residents.

Due to its proximity to Federal Hill and Otterbein, the neighborhood is particularly vulnerable to gentrification. The Master Plan specifically anticipates that "high-density infill construction" will bring "more residents to the neighborhood" and attempts to deal with the threat that this could bring to the remnants of an encircled, historic African American community. Thus, one of its central visions of the Master Plan is that new development will create "opportunities for affordable units, while maintaining the existing fabric." However, contrary to the Master Plan, neither the new developments in the Cross Street corridor, nor the plans for 810 Leadenhall, include *any* affordable units. Despite the obvious relevance of the Master Plan to the legal test

for spot zoning, the Planning Commission does not reference it in their findings and at the hearing appeared to disregard it entirely after Councilman Costello stated that the Master Plan is "only a neighborhood plan" and does not override zoning like an Urban Renewal Plan¹ or CHAP designation. This dismissal of clear evidence that the cited "changes" were anticipated requires denial of the rezoning.

The evidence does not support a finding that the proposed plan meets the needs of Baltimore City or of the particular neighborhood as required by MD Land Use Code § 10-305 (2019). The Planning Commission's findings do not address why the existing zoning that permits 139 units is not sufficient. The change to TOD4 permits a building up to 100 feet by right, and more by conditional use. It also permits a wide range of intensive use including a hotel. The rezoning to TOD4 benefits the developer and uses public action to create private value. But the findings are extremely vague and cursory in explaining what, if any, benefit the people of Baltimore City, or the area surrounding 810 Leadenhall stand to by increasing the height and number of the apartments --- none of which will be dedicated to affordable housing.

While there was discussion among Planning Commissioners about this being the only industrial zoned property in the immediate area. To the extent that conversion to residential use is seen as a benefit, as Commissioner Stevenson pointed out, this is already permitted by right under the current zoning category. The property is currently zoned Industrial Mixed Use 1 (IMU-1), which permits both the existing use by small businesses, and up to 139 apartments in a building of 60 feet in height. Nor is there actual evidence that elimination of latitude for mixed use will benefit the neighborhood. To the contrary, the testimony of residents of both Sharp-Leadenhall and Otterbein established that the current zoning provided desirable opportunities for the kind of small businesses, maker space and job creation that the existing building offers.

The Planning Commission report suggests, without evidence, that creation of yet more high rent studio and one-bedroom units would be a benefit to the City and neighborhood based on the developer's claims that it would "fill a gap in the market." Again, that can be done under the current IMU-1 zoning. As noted by the Law Department report:

In determining whether the change benefits only the property owner, courts look, in part, to see if a similar use exists nearby of which the community could easily take advantage. 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).

The hundreds of new apartments built in the Cross Street area, along with thousands being built across the City and elsewhere on the South Baltimore peninsula are virtually all high rent studio and one bedroom units marketed to young, affluent, mostly White singles. The Planning Commission's findings do not offer evidence to show that more of this type of housing would benefit residents of Sharp Leadenhall for whom they are unaffordable. The needs of the City as a whole and Sharp Leadenhall community are for affordable housing for a range of households.

¹ Apparently, the Sharp Leadenhall Urban Renewal Plan has expired. Community leaders say that this happened without their knowledge.

Moreover, there is a real danger that as more high rent apartments are built in the neighborhood, the new owner of the HUD assisted Sharp Leadenhall Apartments will have a financial incentive to opt-out of the subsidy contract and convert the project to market rate. This would literally displace the current residents.

None of these adverse impacts are acknowledged in in the Planning Commission's findings. Most egregiously, the Planning Commission entirely ignored the relevant provisions of the Sharp Leadenhall Master Plan which specify that future development include affordable housing in order to benefit the community:

"[N]ew housing construction include an affordable component...the existing Sharp-Leadenhall urban renewal plan will be amended to required affordable units to be include with new residential development above a certain size."

The Planning Commission's findings regarding compatibility with surrounding uses are inaccurate and contradictory. On the one hand, the Commission concludes that the extraordinary high density and permitted uses of TOD4 are appropriate given proximity to the Hamburg Street Light Rail. It then characterizes this extremely high intensity use as compatible with the surrounding neighborhoods. This claim of compatibility is patently incorrect. The surrounding residences. are mostly small townhomes and rowhouses, including the Little Montgomery historic district of Otterbein, one of the oldest in the City. Unlike the more commercial Cross Street area that was previously rezoned TOD4, and where as the Commission noted, the prior zoning was M-2 Industrial, B-2 Commercial, and OR Office Residential Districts, the areas surrounding 810 Leadenhall are zoned R-7 and R-8. One would be hard put to find a project with less sensitivity to compatibility with such a unique surrounding community.

Consideration of "population change" does not support rezoning. To the contrary, it shows the rezoning should be denied. The Planning Commission's findings gloss over this factor, going no deeper than to note a 32% increase in the population of Otterbein attributable to other high rent apartment projects in northern parts of Otterbein that border downtown (e.g. 414 Light Street and Arrive). No attempt was made to disaggregate data on population trends by race and income. Sharp Leadenhall population trends were ignored completely.

The Planning Commission failed to conduct an Equity Analysis for this proposed rezoning to determine the impact of additional construction of high rent market rate apartments on an historic African American community. Had the Planning Department looked at their own data and conducted the required Equity Analysis, they would have seen a much more complete and relevant picture of population trends. Due to the recent development of high rent apartments, occupied almost entirely by an influx of young, affluent, White singles, the population of Sharp Leadenhall has increased by 53%. In the process, **Sharp Leadenhall is rapidly losing its identify as an historic African American community in the midst of the overwhelmingly white South Baltimore peninsula.**

As of 2010, Otterbein was almost entirely White and Sharp Leadenhall had a mixed but majority Black population of 68.25%. But by 2020, the population of Sharp Leadenhall had grown by a striking 53% as a result of the new development., and virtually all of the growth was among White households, who now comprise 45% of the Sharp Leadenhall residents. The Black population remained static, and declined to a 45% share of the population. The population is now 45% White while the Black share of population declined to 45% Black. On the surface, this may look like neighborhood integration, but it is anything but stable and the trend is unmistakable. If new development, like that proposed for 810 Leadenhall Street, continues to be 100% high rent, small market rate apartments --- and affordable housing is not built or included as development occurs --- Black legacy residents will become a smaller and smaller minority within the neighborhood they fought so hard to preserve.

This is clearly a misuse of TOD4 to accommodate the desires of a particular developer, not the goals and principles of Transit Oriented Development. One of the foundational purposes of TOD is to increase affordable housing near transit --- both to meet the needs of lower income people who are the most likely to need and use transit, and to provide more ridership for transit systems. This plan for this project does not provide any affordable housing for transit dependent persons. It is not motivated or designed to reduce parking and vehicle use, as evidenced by the plan to provide parking spaces at a 1:1 ratio --- *the maximum permitted in TOD4 and the exact same ratio required by the current zoning.*

I recognize that zoning changes are traditionally approved or denied based on the position of the councilmember where a property is located. However, the practice of "councilmanic courtesy" is disfavored under federal Fair Housing law because it has been used by White neighborhoods to reject affordable housing. Rarely, has it served to protect Black neighborhoods from harmful development or environmental hazards. In this case, the rezoning will bring harm to what remains of an historic Black neighborhood that has been dispossessed and displaced by City action, and supports affordable housing as a means to protect its history and identity and survive further displacement. I strongly urge you to vote no on CC22-0296.

Sincerely,

/s/

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