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CITY OF BALTIMORE

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Mayor



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October 4, 2024

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 24-0581 Rezoning - 200 North Central Avenue

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 24-0581 for form and legal sufficiency. The bill would change the zoning for the property known as 200 North Central Avenue (Block 1320, Lot 001), as outlined in red on the accompanying plat, from the EC-2 Zoning District to the C-2 Zoning District.

The EC-2 zoning classification is a campus district for colleges and universities that allows for certain non-educational uses and dormitories for students. A condition of the EC-2 District zoning designation is that the primary use within the proposed area is an educational facility. ART. 32, § 12-503(e)(1). The C-2 zoning classification allows for small to medium-scale commercial use, typically located along urban corridors. The classification is designed to accommodate pedestrians and, in some instances, the automobile; mixed-use development is appropriate within this district.

Acting in their quasi-judicial capacity for a single property rezoning, 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.” *Ryllys 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. In this case, change is the basis for the rezoning request.

### 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).

### Required 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) 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 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 *Rylins*, 372 Md. at 545-46).

#### Planning Commission Recommendation & Proposed Amendment

The Report of the Planning Commission (“Report”) supports this rezoning, finding that there has been a substantial change in the character of the neighborhood since the last comprehensive rezoning. The Report notes that the Sojourner Douglass College closed in 2015, shortly before the completion of the previous comprehensive zoning; at the time of the Transform rezoning process culmination in 2016, the college still owned the land, and it was unclear if the college would reopen. The college has not reopened and there are no plans to continue the property’s use as an educational campus. The Report provides all the standards and required findings for the rezoning.

The Planning Department also proposes an amendment to include the adjacent property at 249 Aisquith Street in the rezoning from EC-2 to C-2. The property is directly adjacent to 200 N. Central and was previously owned by the Sojourner Douglas College, who previously intended to renovate it for use as part of its campus. The site is a City Landmark known as the Eastern Female High School. The Planning Department provides the same context and reasoning for the change at the property at 249 Aisquith as the rezoning of 200 N. Central. However, the addition of the property at 249 Aisquith at the Council hearing would not meet the notice requirements in the Zoning Code unless the Planning Commission hearing also advertised that additional property as part of what was to be considered at the Planning Commission hearing with the address and the names of the applicant(s) for 249 Aisquith. City Code, Art. 32, § 5-506(a), (c).

#### 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 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. Unless the additional property was advertised and noticed as being including before the Planning Commission, the Law Department could not approve the amendment to include the property at this point in the process.

Very truly yours,



Desiree Luckey  
Assistant Solicitor

cc: Ebony Thompson, City Solicitor  
Stephen Salisbury, Deputy City Solicitor  
Nina Themelis, Mayor's Office of Government Relations  
Elena DiPietro, Chief Solicitor, General Counsel Division  
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Ashlea Brown, Chief Solicitor  
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