

CITY OF BALTIMORE

CATHERINE E. PUGH, Mayor



DEPARTMENT OF LAW

ANDRE M. DAVIS, City Solicitor
101 City Hall
Baltimore, Maryland 21202

March 25, 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 18-0305 – Rezoning – Certain Properties in the
Harwood Community

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 18-0305 for form and legal sufficiency. The bill would change the zoning for certain properties in the Harwood community from the R-7 to C-1, from R-8 to C-1, from R-8 I-MU and from R-7 to I-MU.

The rezoning proposed by this bill is comprehensive rezoning. In *Mraz v. County Comm'rs of Cecil County*, 291 Md. 81 (1981) the Court outlined the criteria that need to be satisfied before a rezoning can be deemed “comprehensive”:

The indicia of "comprehensiveness" in zoning are well established. A comprehensive zoning or rezoning must be well thought out, the product of careful consideration and extensive study, and based upon considerations concerning the common needs of the particular area. It must be designed to control and direct the use of land and buildings according to present and planned future conditions, to accomplish as far as possible the most appropriate uses of land consistent with the public interest and the safeguarding of the interests of the individual property owners. Other characteristics of comprehensiveness may be found in the fact that the zoning or rezoning applies to or covers a substantial or wide geographical area, that it regulates all uses, and that it covers all of the usual factors of land utilization: height, area and use. The fact that few changes in zoning are made does not affect the comprehensive nature of the zoning or rezoning.

291 Md. at 88-89.

The City’s Zoning Code operationalized this standard by defining “comprehensive rezoning” as an ordinance that is:

- (1) initiated by City government to modify the zoning classifications of multiple properties;
- (2) based on considerations concerning the common needs of a substantial geographic area, involving a considerable number of properties;
- (3) designed to control and direct the use of land and structures according to present and planned future conditions; and
- (4) the product of:
 - (i) careful consideration and extensive study by the Planning Department; and
 - (ii) review by the Planning Commission.

City Code, Art. 32, § 1-304(m).

Unlike piecemeal rezoning which entails a quasi-judicial process, comprehensive zoning is purely a legislative process, requiring merely generalized considerations of the types and uses of properties within the area to be rezoned. *See Mayor & Council of Rockville v. Rylyns Enters.*, 372 Md. 514, 532 (2002) (original and comprehensive zoning are purely legislative processes). When a determination is made that legislation is an act of comprehensive rezoning, the only substantive inquiry thereafter is whether the act is a proper exercise of the police power. As the Court declared in *Ark Readi-Mix Concrete Corp. v. Smith*, 251 Md. 1 (1968):

Zoning is a legislative function, and when reviewing the acts of the zoning authorities, the duty of the courts is to decide whether such action was arbitrary, discriminatory or illegal. A court cannot substitute its judgment for that of the zoning authorities if their decision is supported by substantial evidence and the issue before them is fairly debatable. When a comprehensive map designed to cover a substantial area is adopted, it is entitled to the same presumption of correctness as an original zoning. Thus, persons attacking the correctness of the map's classifications have a heavy burden of overcoming the presumption of their validity. This burden is heavier in the case of comprehensive zoning than in the case of piecemeal reclassification.
(citations omitted)

251 Md. at 4.

We note further that the test of a "substantial" area for purposes of comprehensive zoning is a flexible one. Just as in piecemeal zoning where the concept of "neighborhood" is flexible in determining whether a change in the neighborhood has taken place, whether an area is sufficiently substantial to qualify for comprehensive zoning varies according to the geographical location involved. *Woodward & Lothrop*, 280 Md. 686, 705 (1977).

Finally, the Planning Commission Report ("Report") provides evidence that the proposed rezonings are the product of careful consideration, extensive study and review by the Planning Department and the Planning Commission. The Report notes that since the study conducted for

Transform Baltimore, more recent studies of this area through the Greenmount LINCS and the subsequent East Harwood Land Use Visioning process (2017) have revealed that some of the structures intended to be protected by the zoning classifications in Transform have been demolished or are severely distressed. The Transform classifications are therefore no longer appropriate. In addition, both the Planning Department and Planning Commission studied these properties. *See Report at 3.* Both entities recommended the classifications proposed in the bill.

Finally, we point out that 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.” 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 conspicuous places around the perimeter of the property and by first-class mail to each person who appears on the tax records of the City as an owner of the property to be rezoned. 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 addresses of the properties and the name of the applicant. Art. 32, §5-601(c). The posted notices must be at least 3 feet by 4 feet in size, placed at a prominent location, and at least one sign must be visible from each of the property’s street frontages. Art. 32, §5-601(d). The published and mailed notices must be given at least 15 days before the hearing; the posted notice must be at least 30 days before the public hearing. Art. 32, §5-601(e) and (f).

Assuming the required procedures are satisfied, the Law Department is prepared to approve the bill as drafted for form and legal sufficiency.

Sincerely yours,



Elena DiPietro
Chief Solicitor

cc: Andre M. Davis, City Solicitor
Karen Stokes, Director, Mayor’s Office of Government Relations
Jeff Amoros, Mayor’s Legislative Liaison
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