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MEMORANDUM

To: Baltimore City Planning Commission
From: Caroline L. Hecker
Justin A. Williams
CC: 3925 Gough Street, LLC
Date: June 24, 2020
Re: **City Council Bill #19-474 – Rezoning 3925 Gough Street
Proposed Findings of Fact**

This firm represents 3925 Gough Street, LLC, (the “Applicant”), at whose request Councilmember McCray introduced the above-referenced legislation to rezone the property known as 3925 Gough Street (the “Property”). Located in the Highlandtown area of the 2nd Councilmanic District and improved with a warehouse building that SDAT records indicate was constructed in 1940, the Property last received a certificate of occupancy in 2013 for use as an auto parts warehouse; however, after several false starts to use a portion of the building as a recreation center, the building has been vacant for years.

At meeting held on February 20, 2020, the Planning Commission considered City Council Bill # 19-474 and favorably recommended approval of the legislation to rezone the Property from the I-1 Zoning District to the IMU-2 Zoning District based upon a finding that the City Council made a mistake in not including the Property in the list of properties to be rezoned IMU-2 during the last comprehensive zoning map changes made effective by the enactment of Ord. 19-304.

In the light of the Planning Commission’s recommendation and the letters of support from the Highlandtown Community Association and Southeast Community Development Corporation attached as Exhibit A, the City Council Land Use Committee is urged to favorably recommend the enactment of CCB #19-474 and to adopt the Planning Commission’s findings of fact and to supplement them with respect to the requirement of mistake set forth in Section 10-304(b)(2) of the Land Use Article and Section 5-508(b) of the Zoning Code with the following:

THE REQUESTED REZONING MAY BE APPROVED BECAUSE OF A MISTAKE IN THE EXISTING ZONING CLASSIFICATION

The City Council has the authority to change the zoning classification of a property as part of a comprehensive rezoning process or upon a finding that there was either 1) a substantial change in the character of the neighborhood where the property is located, or 2) a mistake in the existing zoning classification. MD. CODE ANN., Land Use § 10-304(b)(2); Baltimore City Code, Article 32 – Zoning § 5-508(b)(1).

As detailed below, there was a mistake during the 2019 enactment of the last comprehensive rezoning, in which a number of properties in various areas of the City were rezoned to the IMU-2 Zoning District pursuant to CCB #18-0294. The mistake being that the City Council (and Planning Staff) failed to take into account existing facts about the Property and its suitability to be rezoned to IMU-2. The proposed rezoning is appropriate to correct that mistake.

A Liberal Standard is Applied to Support a Change from One Zoning Subcategory to Another

- When seeking a rezoning on the basis of a mistake, “there is a strong presumption of correctness of the original zoning and of comprehensive zoning.” *People’s Counsel v. Beachwood I Ltd. Partnership*, 107 Md. App. 627, 641 (1995). However, Maryland courts have held that “[i]n considering whether this presumption [of correctness] has been overcome a more liberal standard is applied when the property is being reclassified from one commercial subcategory to another than is applied when the reclassification involves a change from one use category to another.” *Tennison v. Shomette*, 38 Md. App. 1, 5 (1977) (citing *Chapman v. Montgomery County Council*, 259 Md. 641 (1970); *Missouri Realty, Inc. v. Ramer*, 216 Md. 442 (1958)).
- Here, the rezoning proposed for the Property is to reclassify it from one industrial sub-district to another, so a more liberal standard should be applied to overcome the presumption of correctness in the Property’s existing I-1 zoning map designation.

A Mistake Occurred During Council's Action in the IMU-2 Comprehensive Rezoning Process by Failing to Consider the Facts about the Property that Made it Suitable for Rezoning

- 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.
- A review of the Planning Commission’s staff report of in support of CCB #18-294 reveals the reason the IMU-2 comprehensive rezoning occurred was “to address[] outstanding concerns planning staff had with recent rezoning requests to change industrially zoned properties to I-MU.” The properties included within the list of those proposed to be rezoned to IMU-2 was “focused on areas no longer suitable for the heaviest industry, yet not appropriate for residential use.”
- Because the Property had not previously been the subject of a rezoning request and was not within the heavier I-2 Zoning District, the Property was “not actually considered by the Council,” which was a mistake as the Property meets the stated purpose for creating the IMU-2 Zoning District as contained in the Staff Report for CCB #18-294. *See Boyce*, 25 Md. App. at 52.
- As indicated in the Staff Report for CCB #18-294, the IMU-2 Zoning District “provide[s] a zoning classification option for the re-use of buildings that does not include the negative pressures brought by residential development on surrounding industrial users, [and] allow[s] for adaptive reuse without putting otherwise stable industrial users at risk.”
- Given that the Property was vacant for years because it was ill-suited for modern industrial uses, significant commercial development was occurring in the

vicinity, and the Property could serve as a buffer between the heavier industrial zoning on the east of Haven Street and the residential zoning on the west, it is clear that the Property's I-1 Zoning District designation is an error. *See e.g., Rohde v. County Bd. of Appeals for Baltimore County*, 234 Md. 259 (1964) (holding that evidence demonstrating lack of anticipation by a zoning body of the trend of development and increased demand for apartment use in the immediate area, coupled with the desirability of that use acting as a buffer to prevent the spread and encroachment of commercial areas into residential areas, was sufficient to demonstrate error in the existing zoning). The error or mistake should be corrected by rezoning the Property to IMU-2.

Exhibit A

**Letters of Support from:
Southeast Community Development Corporation and
Highlandtown Community Association**



SOUTHEAST

community development corporation

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October 15, 2019

The Honorable Danielle McCray
Baltimore City Council
City Hall
100 N. Holiday Street, Suite 500
Baltimore, Maryland 21202

RE: 3925 Gough Street

Dear Councilwoman McCray:

Please accept this letter in support of the rezoning of the property at 3925 Gough Street to the IMU-2 Zoning District. The building at 3925 Gough Street has been an eyesore for years, and we look forward to a redeveloped site with uses that are more compatible with the neighborhood and the Highlandtown Elementary/Middle School. I have met with representatives of the property owner and I am pleased to see this amenity coming to the Highlandtown Arts & Entertainment District.

Thank you for your consideration.

Sincerely,

Kari Snyder
Executive Director

H!GHLANDTOWN

COMMUNITY ASSOCIATION

November 20, 2018

The Honorable Danielle McCray
Baltimore City Council
City Hall
100 N. Holiday Street, Suite 500
Baltimore, Maryland 21202

RE: 3925 Gough Street

Dear Councilwoman McCray:

The Highlandtown Community Association (HCA) is pleased to support the rezoning of the property at 3925 Gough Street to the IMU-2 Zoning District. The building at 3925 Gough Street has been an eyesore for years, and we look forward to seeing a redeveloped site with uses that are more compatible with the neighborhood and the Highlandtown Elementary/Middle School. Representatives of the property owner have presented their plans to the Highlandtown Community Asso. and we are pleased to support this proposal in this underdeveloped corner of our neighborhood. As per our conversation with these representatives, this letter of support is contingent on a Memorandum Of Understanding (MOU), which will include additional details (hours of operation, plans for security such as cameras, etc.) that have yet to be finalized. It is standard procedure for us to ask all new businesses to sign an MOU, when zoning changes or liquor licenses are part of any proposal.

Thank you for your consideration.

Sincerely,



Brian Sweeney
President-Highlandtown Community Asso.
Highlandtown21224@gmail.com
C- 443-220-9780

letter HCA support for 3925 Gough St. 191120

HIGHLANDTOWN COMMUNITY ASSOCIATION
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