


FROM	NAME & TITLE	Chris Ryer, Director	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	Department of Planning 417 East Fayette Street, 8 th Floor		
	SUBJECT	CITY COUNCIL BILL #20-0571 / REZONING – 1301 NORTH FULTON AVENUE		

DATE: August 21, 2020

TO The Honorable President and Members
of the City Council
City Hall, Room 400
100 North Holliday Street

At its regular meeting of August 20, 2020, the Planning Commission considered City Council Bill #20-0571, for the purpose of changing the zoning for the property known as 1301 North Fulton Avenue (Block 0032, Lot 051), as outlined in red on the accompanying plat, from the R-8 Zoning District to the C-1 Zoning District.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report, which recommended disapproval of City Council Bill #20-0571 and adopted the following resolution; nine members being present (eight in favor):

RESOLVED, That the Planning Commission concurs with the recommendation of its departmental staff, and recommends that City Council Bill #20-0571 be disapproved by the City Council.

If you have any questions, please contact Mr. Eric Tiso, Division Chief, Land Use and Urban Design Division at 410-396-8358.

CR/ewt

attachment

cc: Mr. Nicholas Blendy, Mayor's Office
Mr. Matthew Stegman, Mayor's Office
Ms. Nina Themelis, Mayor's Office
The Honorable Edward Reisinger, Council Rep. to Planning Commission
Mr. Colin Tarbert, BDC
Ms. Livhu Ndou, BMZA
Mr. Geoffrey Veale, Zoning Administration
Ms. Stephanie Murdock, DHCD
Ms. Elena DiPietro, Law Dept.
Mr. Francis Burnszynski, PABC
Mr. Liam Davis, DOT
Ms. Natawna Austin, Council Services
Mr. Dominic McAlily, Council Services
Ms. Caroline Hecker, Esq.



Bernard C. "Jack" Young
Mayor

PLANNING COMMISSION

Sean D. Davis, Chairman

STAFF REPORT



Chris Ryer
Director

August 20, 2020

REQUEST: City Council Bill #20-0572/ Rezoning – 1301 North Fulton Avenue:

For the purpose of changing the zoning for the property known as 1301 North Fulton Avenue (Block 0032, Lot 051), as outlined in red on the accompanying plat, from the R-8 Zoning District to the C-1 Zoning District.

RECOMMENDATION: Disapproval

STAFF: Eric Tiso

PETITIONER: Ms. Suah Lee, c/o Caroline L. Hecker, Esq.

OWNER: Hyung Man Lee

SITE/GENERAL AREA

Site Conditions: 1301 North Fulton Avenue is located on the northeastern corner of the intersection of Laurens Street and North Fulton Avenue. This property is zoned R-8 and measures 16' by 71'. It is improved with a three-story brick building, that has been most recently used as a liquor store.

General Area: This property is located within the Sandtown-Winchester neighborhood, which is predominantly residential in nature, with periodic institutional or commercial uses throughout.

HISTORY

There are no previous legislative or Planning Commission actions regarding this site.

CONFORMITY TO PLANS

The proposed rezoning action does not support the goals, objectives and strategies contained in the Comprehensive Master Plan for the City of Baltimore. One of the objectives expressed in the Master Plan for the new zoning code was consistency of zoning with existing land use, community character, City plans and projects, and City economic development goals (Master Plan, p. 15). This structure is located within a residential area, attached to three-story rowhomes, and is surrounded by rowhomes, and is across the street from the Habitat for Humanity ReStore. These uses are appropriate for the current R-8 zoning. On the southwest corner of the intersection is a vacant C-2 zoned property that was once used for a car wash, though that equipment has since been removed. Half a block to the east, on the south side of Laurens Street is the James A. Morton & Sons funeral home.

ANALYSIS

Use of this property as a liquor store makes it a site of an “alcohol outlet” which now continues to exist as a nonconforming use under the current Zoning Code, which continued the R-8 residential zoning of this property. One of the goals of the comprehensive rezoning process was the reduction of nonconforming alcohol outlets in residential zoning district (Art. 32 – *Zoning* §18-701). This requested rezoning from R-8 to C-1 will have the practical effect of preventing the mandatory termination of the alcohol sales at this location, as determined by the comprehensive rezoning of the City, not later than June 4, 2019 (i.e. two years after the effective date of the zoning code). It would thereby also conflict with LIVE Goal 2, Objective 3, Strategy 4: Ensure all residents are within 1.5 miles of quality groceries and neighborhood services, in that possible conversion of this liquor store to a food store or other retail goods establishment without alcohol sales would not be encouraged.

The zoning code provides an opportunity for this property to possibly be approved as a Neighborhood Commercial Establishment (NCE), subject to the requirements of §14-328, including art gallery (without live entertainment), art studios, day care centers, offices, personal services establishments, restaurants (without live entertainment), and retail goods establishments (without alcoholic beverage sales). This provision allows for reasonable reuse of the building for a limited palette of commercial uses.

Below are the approval standards under §5-508(b) of Article 32 – *Zoning* for proposed zoning map amendments:

(b) *Map amendments.*

(1) *Required findings.*

As required by the State Land Use Article, the City Council may approve the legislative authorization based on a finding that there was either:

- (i) a substantial change in the character of the neighborhood where the property is located; or
- (ii) a mistake in the existing zoning classification.

(2) *Required findings of fact.*

In making the determination required by subsection (b)(1) of this section, the City Council must also make findings of fact that address:

- (i) population changes;
- (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 City agencies and officials; and
- (vi) the proposed amendment’s consistency with the City’s Comprehensive Master Plan.

(3) *Additional standards – General*

Additional standards that must be considered for map amendments are:

- (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.

Below is the staff's review of the required considerations of §5-508(b)(3) of Article 32 – *Zoning*, where staff finds that this change is not in the public's interest, in that it will perpetuate the existing use of this property for a liquor store, and leaves open the opportunity for a variety of other incompatible commercial uses.

It has been three years since this property was placed in its present zoning classification. There has been no significant change in this general area since the previous version of the Zoning Code was adopted in 1971. Residential use of this block and nearby residentially-developed blocks has remained constant. The zoning of this property (R-8) that continued in effect on June 5, 2017 is reflective of its setting in a residential neighborhood, and its attachment to a row of dwellings. The property's commercial use became nonconforming in 1971 and has continued to be nonconforming since that time.

Maryland Land Use Code – Requirements for Rezoning:

The Maryland Land Use Code requires the Planning Commission to study the proposed changes in relation to: 1. The plan; 2. The needs of Baltimore City; and 3. The needs of the particular neighborhood in the vicinity of the proposed changes (*cf.* Md. LAND USE Code Ann. 2012, §10-305). In reviewing this request, the staff finds that:

- 1. The Plan:** The adoption of Zoning Code (more formally, Article 32 – *Zoning*) included a new provision for the mandatory termination of retail goods establishments with alcoholic beverage sales (*cf.* §18-701), not later than June 4, 2019. This proposed rezoning would circumvent the mandatory termination of the liquor store on this property.
- 2. The needs of Baltimore City:** This neighborhood has been zoned residentially for decades, which was continued as part of the comprehensive rezoning of the City. There was sufficient notice for alcohol outlets that would become or remain nonconforming uses, so that their interests could be considered. While there was an opportunity for this property to be zoned to any other district other than the R-8 residential category it retained, no changes were made.
- 3. The needs of the particular neighborhood:** The purpose of the mandatory termination of alcohol outlets was to support improvements in health throughout Baltimore's neighborhoods. Zoning this property to C-1 would perpetuate this alcohol outlet, the opposite of the City's intended policy goal.

Similarly, the Land Use article requires the City Council to make findings of fact (*cf.* Md. LAND USE Code Ann. 2012, §10-304). The findings of fact include:

- 1. Population changes;** There is not a significant population change between June 5, 2017 and the effective date of this proposed action.
- 2. The availability of public facilities;** This area is adequately served by municipal utilities, which will not be impacted by this proposed zoning change.
- 3. Present and future transportation patterns;** This area is served by the City's street network, which will not be impacted by this proposed zoning change.

4. **Compatibility with existing and proposed development for the area;** This property is located in a residential area, that has been residentially zoned for decades. This property has been nonconforming for that extended period of time, and this proposed rezoning will increase the degree of incompatibility with the surrounding neighborhood.
5. **The recommendations of the Planning Commission and the Board of Municipal and Zoning Appeals (BMZA);** For the above reasons, the Planning Department will recommend disapproval of the rezoning request to the Planning Commission. The BMZA has not yet commented on this bill.
6. **The relation of the proposed amendment to the City's plan.** Continuation of the R-8 zoning that became effective June 5, 2017 is consistent with the City's Comprehensive Master Plan. The Planning Commission previously supported the continued residential zoning on the new zoning district maps as part of that legislative process. This proposal does not support the City's plan to reduce the impact of alcohol outlets on residential areas.

There are additional standards under §5-508(b)(3) that must be considered for map amendments. These include:

- (i) **existing uses of property within the general area of the property in question;** This property is located in a residential neighborhood, which is predominantly composed of rowhomes.
- (ii) **the zoning classification of other property within the general area of the property in question;** The majority of surrounding properties are zoned R-8 residential, with the exception of the vacant and abandoned commercial lot to the southwest, and the existing funeral home one block to the east.
- (iii) **the suitability of the property in question for the uses permitted under its existing zoning classification; and** This building could either be renovated for residential use, or the owner may wish to apply for a Neighborhood Commercial Establishment.
- (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.** This neighborhood has remained residential in character, with no trends towards adding commercial uses.

Per §5-508(1) of Article 32 – *Zoning*, and as required by the State Land Use Article, the City Council may approve the legislative authorization based on a finding that there was either: (i) a substantial change in the character of the neighborhood where the property is located; or (ii) a mistake in the existing zoning classification.

Since the comprehensive rezoning of the City, there hasn't been a significant change in the neighborhood that would invalidate the residential zoning that has been continued for this property and for the surrounding blocks. The choice of R-8 zoning is appropriate for this area, and reflects the physical form of the neighborhood.

Notification: The Fulton Community Association, the Sandtown-Winchester Improvement Association, and the Clergy United to Transform Sandtown have been notified of this action.



Chris Ryer
Director