


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 #20-0567 / REZONING – 407 BENNINGHAUS ROAD		

DATE: August 26, 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 #20-0567, for the purpose of changing the zoning for the property known as 407 Benninghaus Road (Block 5014C, Lot 004A), as outlined in red on the accompanying plat, from the R-3 Zoning District to the OR-1 Zoning District.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report, which recommended disapproval of City Council Bill #20-0567 and adopted the following resolution; nine members being present (nine in favor):

RESOLVED, That the Planning Commission does not concur with the recommendation of its departmental staff. Instead, the Planning Commission moved to adopt the facts offered by the applicant, which provided evidence of a mistake. The Planning Commission recommends that City Council Bill #20-0567 be passed 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
Mr. Jonathan Fishman



Bernard C. "Jack" Young
Mayor

PLANNING COMMISSION

Sean D. Davis, Chairman

STAFF REPORT



Chris Ryer
Director

August 20, 2020

REQUEST: City Council Bill #20-0567/ Rezoning – 407 Benninghaus Road:

For the purpose of changing the zoning for the property known as 407 Benninghaus Road (Block 5014C, Lot 004A), as outlined in red on the accompanying plat, from the R-3 Zoning District to the OR-1 Zoning District.

RECOMMENDATION: Disapproval

STAFF: Eric Tiso

PETITIONER: Govmoco, LLC

OWNER: Govmoco, LLC, c/o Jonathan Fishman

SITE/GENERAL AREA

Site Conditions: 407 Benninghaus Road is located on the southwest corner of the intersection with Hess Avenue, and is zoned R-3. This irregularly shaped property contains approximately 0.078 acres and is currently improved with a two-story building.

General Area: This property is located on the eastern edge of the Homeland Neighborhood, which is bounded by Bellona Avenue and York Road on the east, Homeland Avenue on the south, North Charles Street on the west, and East Melrose Avenue on the north. This neighborhood is residential in character, with single-family detached homes representing the majority of the housing stock.

HISTORY

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

ANALYSIS

Background: Staff understands that the owner wishes to demolish the existing structure in order to redevelop it for use as a surface parking lot. Parking lots are not permitted in the R-3 district, which led to the request for rezoning to a district where parking lots are allowed.

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*. In our analysis, which included the past and present zoning of the property and the uses of surrounding properties, we find that this change is not in the public's interest. Staff believes this action will constitute a spot zoning in order to achieve a specific outcome.

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 City's comprehensive rewrite of the zoning code, and the accompanying remapping of the entire City became effective June 5, 2017. This site is located just outside of both the York Road Community Strategic Neighborhood Action Plan (SNAP), and the York Road Technical Assistance Panel (TAP) area, both of which follow the York Road corridor. Its placement behind the properties that are along York Road would indicate that it does not naturally fit within the commercial corridor. In fact, the subject property was zoned residential prior to the comprehensive rezoning of the City, and it retained residential rezoning afterwards.
- 2. The needs of Baltimore City:** There is no significant need in this area for Office-Residential zoned property. Given that it isn't a part of the commercial corridor, one of the other purposes for Office-Residential zoning is to provide a transition between a higher-intensity commercial area and a lower-intensity residential area. This property is too small by itself to provide such a buffering effect or functional step-down in intensity.

3. **The needs of the particular neighborhood:** There is no overt neighborhood goal or purpose supported by this rezoning, and it appears in fact to be a spot-zoning that only benefits the property owner.

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;** According to the Census American Community Survey (ACS), population has dropped in the Census Block Group where this property is located (#245102712003) in recent years. In 2013 it was 1,130, then in 2014 it was 1,097, dropping to 885 in 2017, and finally in 2018 it was 683.
2. **The availability of public facilities;** This site is well served by City infrastructure, which will continue with or without this proposed rezoning.
3. **Present and future transportation patterns;** This site is proposed to be redeveloped as a surface parking lot. This lot's small size is unlikely to have any significant impacts on the surrounding transportation patterns or amount of traffic in nearby streets.
4. **Compatibility with existing and proposed development for the area;** This property contains just under 3,400 sqft of land, and so this relatively small parcel is unlikely to significantly impact surrounding properties.
5. **The recommendations of the Planning Commission and the Board of Municipal and Zoning Appeals (BMZA);** For the reasons listed here, 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.** This site was residentially zoned prior to the citywide rezoning effort, and is still residentially zoned. While its most recent use is for an office, Office-Residential zoning isn't needed for this activity to continue. Staff notes that this building could be eligible for a neighborhood commercial establishment which includes office use.

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;** In addition to this property, there are a few other nonconforming uses in the residential portion of this short block of Benninghaus Road, including an auto repair garage and surface parking lots on the north side of the street. Otherwise, the properties surrounding this site generally follow the allowed uses for their zoning districts.
- (ii) **the zoning classification of other property within the general area of the property in question;** This site is located at the intersection of two small streets. In general, this property and those to the west are now, and have been, residentially zoned. To the east of Hess Avenue are the backs of the commercially-zoned properties that front on York Road or Bellona Avenue. Through the rezoning of the City in 2017, the few nonconforming

uses retained their residential classification, which encourages those uses to eventually convert to uses permitted in that R-3 district.

(iii)the suitability of the property in question for the uses permitted under its existing zoning classification; and The existing structure is residential in character, though it has been converted for use as an office, which is a nonconforming use. It is therefore suitable for a variety of uses permitted in the existing R-3 district. Staff understands that this property was purchased with the intent of demolishing it for redevelopment as a surface parking lot, which is not permitted in the R-3 district – which brings the request for rezoning to a district where a parking lot would be allowed as a conditional use requiring approval by the Board of Municipal and Zoning Appeals (BMZA). It appears that this request for rezoning is made to solve a land use problem, which will only be of benefit for this specific property, with the present intention of developing a parking lot. For this reason, staff believes this constitutes spot-zoning, which is not permitted.

(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. There has not been a significant change in development in the immediate area that would invalidate the zoning designation of this property, or any in the immediate area.

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. Staff does not believe there was a mistake in the prior or current zoning for this property, nor has there been a significant change that would invalidate that designation. For this reason, staff recommends that the Planning Commission recommend disapproval of this bill.

Notification: The Homeland Community Association has been notified of this action.



Chris Ryer
Director