
CITY OF BALTIMORE

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Mayor



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October 28, 2020

The Honorable President and Members
of the Baltimore City Council
Attn: Natawna B. Austin, Executive Secretary
Room 409, City Hall, 100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 20-0609 - Rezoning – 4207 – 4209 Menlo Drive

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 20-0609 for form and legal sufficiency. The bill changes the zoning for the property known as 4207-4209 Menlo Drive from the I-1 Zoning District to the OIC Zoning District.

The City Council may permit the proposed rezoning if it finds facts sufficient to show either a mistake in the existing zoning classification or a substantial change in the character of the neighborhood. Md. Code, Land Use, §10-304(b)(2); Baltimore City Code, Art. 32, §§5-508(a) and (b)(1).

In determining whether the proposed rezoning meets either standard, the City Council is required to make findings of fact on the following matters: (1) population change; (2) the availability of public facilities; (3) the present and future transportation patterns; (4) compatibility with existing and proposed development; (5) the recommendations of the Planning Commission and the Board of Municipal and Zoning Appeals; and (6) the relationship of the proposed amendment to the City's plan. Md. Land Use Code Ann., §10-304(b)(1); see also, Baltimore City Code, Art. 32, §5-508(b)(2) (citing same factors with (v) being "the recommendations of the City agencies and officials," and (vi) being "the proposed amendment's consistency with the City's Comprehensive Master Plan.").

Furthermore, the City Council is required to 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 Planning Department concluded that neither a mistake nor a substantial change in the neighborhood supported the rezoning. Report, p. 4. The Planning Commission agreed and voted to disapprove the bill.

Furthermore, the facts in the staff report support a finding of spot zoning. Report, p.3 (“This rezoning does not appear to support any particular City plan or demand, and instead will rezone a single property in order to enable a specific land use for the applicant.”)

The law with respect to spot zoning is well settled. In *Tennison v. Shomette*, 38 Md. App. 1, 8 (1977), the Court of Special Appeals explained that spot zoning occurs when a small area in a district is placed in a zoning classification which is different from the surrounding properties. The *Tennison* court reasoned that generally "spot zoning is not invalid per se", but that "its validity depends on the facts of each individual case."

It has also long been held by the courts that although spot zoning is illegal if inconsistent with an established comprehensive plan and is made solely for the "benefit of private interests", it can also be a valid exercise of the police power where the zoning is in harmony with the comprehensive plan and bears a substantial relationship to the public health, safety, and general welfare. *Cassell v. Mayor of Baltimore*, 195 Md. 348 (1950). (Emphasis added.) **According to the staff report, zoning to OIC would not be in the public’s interest.** Report, p. 3.

Therefore, for the bill to be legally sufficient, there must be testimony adopted establishing that the rezoning is for the public good and in accordance with the comprehensive plan.

Given the content of the Report, **the City Council cannot rely on it to find facts sufficient to lawfully rezone the property.** The testimony provided at the bill’s public hearing must reference the above criteria and establish whether a mistake in zoning or a substantial change in the neighborhood has occurred and establish that this rezoning is not spot zoning.

Provided the City Council agrees with such testimony and finds the necessary facts, the Law Department could approve the bill for form and sufficiency.

Sincerely,



Ashlea H. Brown
Assistant Solicitor

cc: Dana Moore, Acting City Solicitor
Matt Stegman, Mayor’s Legislative Liaison
Caylin Young, President’s Legislative Director
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Victor Tervalá, Chief Solicitor