



BALTIMORE CITY COUNCIL COMMITTEE ON ECONOMIC AND COMMUNITY DEVELOPMENT

Mission Statement

On behalf of the Citizens of Baltimore City, the Committee on Economic and Community Development (ECD) is responsible for supporting strong thriving communities ECD will review proposed zoning and land use changes, tackle issues related to economic development, oversee housing policy, and promote equitable economic opportunity for all Baltimore residents.

The Honorable Sharon Green Middleton

PUBLIC HEARING

March 2, 2021

2:05 PM

Virtual Webex Meeting

City Council Bill #21-0006

Rezoning - 407 Benninghaus Road

CITY COUNCIL COMMITTEES

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Ryan Dorsey
Antonio Glover
Odette Ramos
Robert Stokes
Staff: Jennifer Coates

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Staff: Richard Krummerich

**BILL SYNOPSIS****Committee: Economic and Community Development****Bill: 21-0006**

Rezoning - 407 Benninghaus Road

Sponsor: Councilmember Conway**Introduced:** January 11, 2021**Purpose:**

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.

Effective: The 30th day after the date it is enacted

Agency Reports

Planning Commission	Favorable
Board of Municipal and Zoning Appeals	
Department of Transportation	No Objection
City Solicitor	Favorable with Comments
Department of Housing and Community Development	
Baltimore Development Corporation	

Analysis

Current Law

Article 32 – Zoning, Zoning District Map Sheet 6. Baltimore City Revised Code (Edition 2000).

Under § 5-508(b)(1) of Article 32 – Zoning, and the State Land Use Article, the City Council may approve a rezoning based on 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.

Background

The bill would change the zoning for the property known as 407 Benninghaus Road from the R-3 Zoning District to the OR-1 Zoning District. The property is located on the southwest corner of the intersection with Hess Avenue. The property is irregularly shaped, contains approximately 0.078 acres, and is currently improved with a two-story building. The existing structure was originally residential, but has been converted for use as an office (a nonconforming use).

The 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. The property was zoned residential prior to the Transform Baltimore comprehensive rezoning and it retained residential zoning afterwards. Properties to the west are generally residentially zoned. To the east of Hess Avenue are the backs of the commercially zoned properties that front on York Road or Bellona Avenue.

The intended purposes for the current and proposed zoning districts, as described in Article 32, are below:

Current Zoning District – R-3

The R-3 Detached Residential Zoning District is intended for neighborhoods of detached dwellings located on lots of at least 5,000 square feet.

Proposed Zoning District – OR-1

OR Office-Residential Zoning Districts are intended for areas where there is a mix of office and residential uses. The regulations for these Districts are designed to ensure that office uses remain compatible with residential uses, thereby permitting the area to maintain a more residential character.

Additional Information

Fiscal Note: Not Available

Information Source(s): Reporting Agencies, Statement of Intent, Bill 21-0006

Analysis by: Jennifer L. Coates

Direct Inquiries to: 410-396-1260

Analysis Date: February 25, 2021

CITY OF BALTIMORE
COUNCIL BILL 21-0006
(First Reader)

Introduced by: Councilmember Conway

At the request of: Govmoco, LLC

Address: c/o Jonathan Fishman, 5609 Hess Avenue, Baltimore, Maryland 21212

Telephone: 410-336-6238

Introduced and read first time: January 11, 2021

Assigned to: Economic and Community Development Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Board of Municipal and Zoning Appeals, Planning Commission, Department of Housing and Community Development, Baltimore Development Corporation, Department of Transportation

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Rezoning – 407 Benninghaus Road**

3 FOR the purpose of changing the zoning for the property known as 407 Benninghaus Road (Block
4 5014C, Lot 004A), as outlined in red on the accompanying plat, from the R-3 Zoning District
5 to the OR-1 Zoning District.

6 BY amending

7 Article 32 - Zoning

8 Zoning District Map

9 Sheet 6

10 Baltimore City Revised Code

11 (Edition 2000)

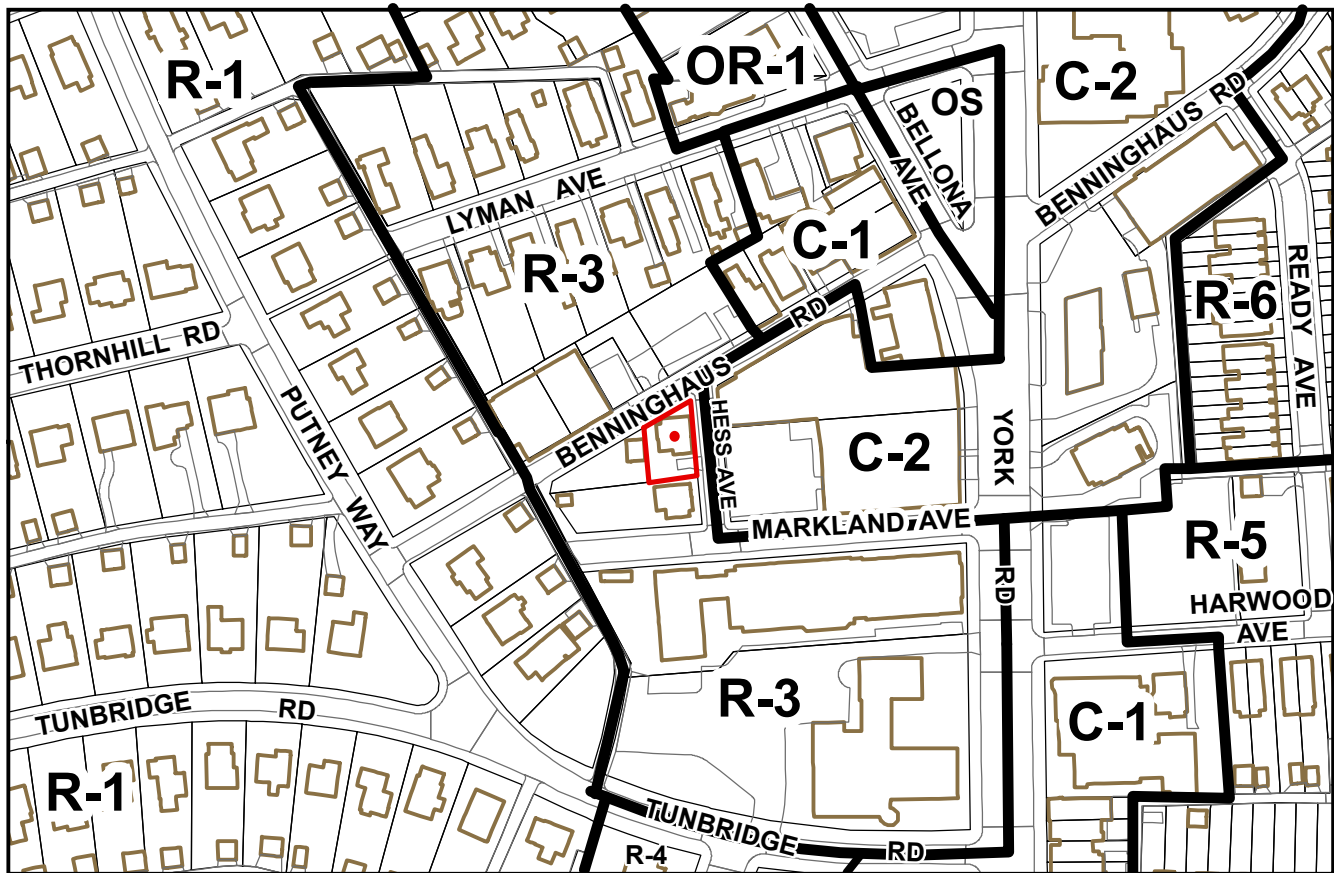
12 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That
13 Sheet 6 of the Zoning District Map is amended by changing from the R-3 Zoning District to the
14 OR-1 Zoning District the property known as 407 Benninghaus Road (Block 5014C, Lot 004A) ,
15 as outlined in red on the plat accompanying this Ordinance.

16 **SECTION 2. AND BE IT FURTHER ORDAINED,** That as evidence of the authenticity of the
17 accompanying plat and in order to give notice to the agencies that administer the City Zoning
18 Ordinance: (i) when the City Council passes this Ordinance, the President of the City Council
19 shall sign the plat; (ii) when the Mayor approves this Ordinance, the Mayor shall sign the plat;
20 and (iii) the Director of Finance then shall transmit a copy of this Ordinance and the plat to the
21 Board of Municipal and Zoning Appeals, the Planning Commission, the Commissioner of
22 Housing and Community Development, the Supervisor of Assessments for Baltimore City, and
23 the Zoning Administrator.

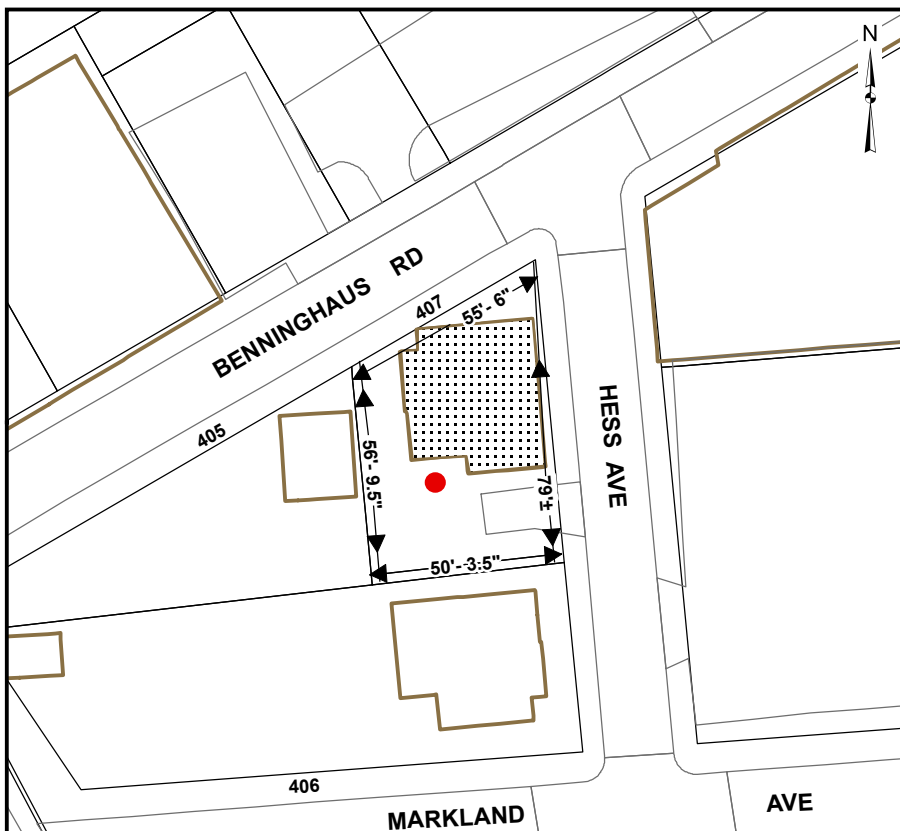
24 **SECTION 3. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 30th day
25 after the date it is enacted.

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

**SHEET NO. 6 OF THE ZONING MAP OF
THE ZONING CODE OF BALTIMORE CITY**



Scale: 1" = 200'



Scale: 1" = 50'

Note:

In Connection With The Property Known As No. 407 BENNINGHAUS ROAD. The Applicant Wishes To Request The Rezoning Of The Aforementioned Property From R-3 Zoning to OR-1 Zoning, As Outlined In Red Above.

WARD 27 SECTION 11
BLOCK 5014C LOT 4A


MAYOR

PRESIDENT CITY COUNCIL

COMMITTEE ON ECONOMIC AND COMMUNITY DEVELOPMENT

21-0006 AGENCY REPORTS

Planning Commission	Favorable
Board of Municipal and Zoning Appeals	
Department of Transportation	No Objection
City Solicitor	Favorable with Comments
Department of Housing and Community Development	
Baltimore Development Corporation	

FROM	NAME & TITLE	CHRIS RYER, DIRECTOR	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 TH FLOOR, 417 EAST FAYETTE STREET		
	SUBJECT	CITY COUNCIL BILL #21-0006 / REZONING – 407 BENNINGHAUS ROAD		

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

DATE: January 14, 2021

At its regular meeting of January 15, 2021, the Planning Commission considered City Council Bill #21-0006, 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 approval of City Council Bill #21-0006 and adopted the following resolutions; seven members being present (seven in favor):


RESOLVED, That the Planning Commission concurs with the recommendation of its departmental staff, adopts the findings outlined in the previous staff report, with consideration for testimony and facts presented in that meeting, and recommends that City Council Bill #21-0006 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: Ms. Natasha Mehu, Mayor's Office
Ms. Nina Themelis, Mayor's Office
The Honorable Eric Costello, 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

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

F R O M	NAME & TITLE	Steve Sharkey, Director	CITY of BALTIMORE M E M O	
	AGENCY NAME & ADDRESS	Department of Transportation (DOT) 417 E Fayette Street, Room 527		
	SUBJECT	City Council Bill 21-0006		

TO: Mayor Brandon M. Scott
TO: Economic & Community Development Committee
FROM: Department of Transportation
POSITION: **No Objection**
RE: Council Bill – 21-0006

DATE: 2/18/21

INTRODUCTION – Rezoning - 407 Benninghaus Road

PURPOSE/PLANS – 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.

COMMENTS – Council Bill 21-0006 looks to change 407 Benninghaus Road from the R-3 Zoning District to the OR-1 Zoning District. Per the City’s Zoning Code, R-3 Zoning Districts are classified as being comprised of detached residential dwellings while the OR-1 Zoning District is classified as office-residential with structure height limits capped at 40 feet.

AGENCY/DEPARTMENT POSITION – The Department of Transportation foresees no immediate direct fiscal or operational impact resulting from the advancement of Council Bill 21-0006. The Department of Transportation has **no objection** to Council Bill 21-0006.

If you have any questions, please do not hesitate to contact Liam Davis at Liam.Davis@baltimorecity.gov or at 410-545-3207.

Sincerely,

Steve Sharkey
Director

February 17, 2021

The Honorable President and Members
of the Baltimore City Council
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: Mayor and City Council Bill 21-0006 – Rezoning– 407 Benninghaus Road

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 21-0006 for form and legal sufficiency. The bill would change the zoning for 407 Benninghaus Road from the R-3 Zoning District to the OR-1 Zoning District. This bill is the same as City Council Bill 20-567 from last term.

The City Council may permit this 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). There is likely little basis to believe that the neighborhood has substantially changed between the comprehensive rezoning of the property on June 5, 2017 and today's date. Therefore, to legally rezone the property the City Council must identify a "mistake" that lead to the inappropriate zoning of the property as R-3.

In determining whether to rezone based on mistake, 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); Baltimore City Code, Art. 32, § 5-508(b)(2) (citing same factors with (v) being "the recommendations of the City agencies and officials," and (iv) being "the proposed amendment's consistency with the City's Comprehensive Master Plan.").

Article 32 of the City Code also requires Council 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 Mayor and City Council's decision regarding a piecemeal rezoning is reviewed under the substantial evidence test and should be upheld "if reasoning minds could reasonably reach the conclusion from facts in the record." *City Council of Prince George's Cty. v. Zimmer Dev. Co.*, 444 Md. 490, 510 (2015) (quoting *Cremins v. Cnty. Comm'rs of Washington Cnty.*, 164 Md. App. 426, 438 (2005)); see also *White v. Spring*, 109 Md. App. 692, 699, cert. denied, 343 Md. 680 (1996) ("the courts may not substitute their judgment for that of the legislative agency if the issue is rendered fairly debatable"); accord *Floyd v. County Council of Prince George's County*, 55 Md. App. 246, 258 (1983) ("substantial evidence" means a little more than a "scintilla of evidence.").

Regarding rezoning for mistake, it is "firmly established that there is a strong presumption of the correctness of original zoning and of comprehensive rezoning." *People's Counsel v. Beachwood I Ltd. Partnership*, 107 Md. App. 627,641 (1995) (quoting *Wells v. Pierpont*, 253 Md. 554, 557 (1969)). To sustain a piecemeal change, there must be substantial evidence that "the Council failed to take into account then existing facts ... so that the Council's action was premised on a misapprehension." *White*, 109 Md. App. at 698 (citation omitted). In other words, "[a] conclusion based upon a factual predicate that is incomplete or inaccurate may be deemed in zoning law, a mistake or error; an allegedly aberrant conclusion based on full and accurate information, by contrast, is simply a case of bad judgment, which is immunized from second- guessing." *Id.* "Error 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[,] [and] "by showing that events occurring subsequent to the comprehensive zoning have proven that the Council's initial premises were incorrect." *Boyce v. Sembly*, 25 Md. App. 43, 51 (1975) (citations omitted). "Thus, unless there is probative evidence to show that there were then existing facts which the Council, in fact, failed to take into account, or subsequently occurring events which the Council could not have taken into account, the presumption of validity accorded to comprehensive zoning is not overcome and the question of error is not 'fairly debatable.'" *Id.* at 52.

A finding of mistake, however, absent a regulatory taking, merely permits the further consideration of rezoning, it does not mandate a rezoning. *White*, 109 Md. App. at 708. Rather, a second inquiry "regarding whether, and if so, how, the property is reclassified," is required. *Id.* at 709. This second conclusion is due great deference. *Id.* (after a prior mistake has been established and accepted as fact by a legislative zoning entity, that entity's decision as to whether to rezone, and if so, how to reclassify, is due the same deference the prior comprehensive rezoning was due). In sum, the City Council is required to hold a quasi-

judicial public hearing with regard to the bill wherein it will hear and weigh the evidence as presented in: (1) the Planning Report and other agency reports; (2) testimony from the Planning Department and other City agency representatives; and (3) testimony from members of the public and interested persons. After weighing the evidence presented and submitted into the record before it, the Committee is required to make findings of fact for each property about the factors in Sections 10-304 and 10-305 of the Land Use Article and Section 5-508 of Article 32 of the Baltimore City Code. If, after its investigation of the facts, the Committee makes findings which support: (I) a mistake in the comprehensive zoning; and (2) a new zoning classification for the properties, it may adopt these findings and the legal requirements for granting the rezoning would be met.

Here, the Planning Department Report (“Report”) asserts that there was no evidence of mistake and the neighborhood has not substantially changed. The City Council must find facts, at its hearing, to support that there was a mistake in rezoning the neighborhood R-3 at the time of the last comprehensive rezoning. This must be a true mistake and not merely a differing opinion or current analysis that indicates the selection of R-3 is no longer considered appropriate. Rather, there must be some factual basis to support that the Council had meant in 2017 to select something other than R-3 at the time of the comprehensive rezoning. This would likely prove extremely difficult given that the Planning Department has explained the deliberate thought that went into the selection of R-3 to keep the property in character with the traditional residential neighborhood. Moreover, at the time of this last comprehensive rezoning, the surrounding properties’ non-conforming residential uses were zoned residential in an effort to increase the residential character of the neighborhood. *See, e.g., Tennison v. Shomette*, 38 Md. App. 1, 5 (1977), *cert. denied*, 282 Md. 739 (1978). Despite the Report, the Planning Commission decided there had been a mistake in this rezoning. The Planning Commission provides no facts to support this assertion other than it believes the applicant that offered facts to substantiate a mistake.

Rezoning this parcel now, only to allow the owner to make profitable use of it, would likely be considered illegal spot zoning. *See, e.g., Tennison v. Shomette*, 38 Md. App. 1, 8, (1977) (cited with approval in *Mayor and City Council of Rockville v. Rylyns Enterprises, Inc.*, 372 Md. 514, 546-47 (2002)). The Council should articulate reasons why this rezoning is consistent with the plans for the area and beneficial to the public. Specifically, why the use the property as a parking lot is not merely in the self-interest of the owner.

Finally, 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.” Baltimore City Code, 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 a conspicuous place on the property and by first-class mail, on forms provided by the Zoning Administrator, to each person who appears on the tax records of the City as an owner of the property to be rezoned. Baltimore City Code, 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 address or description of the property and the name of the applicant. Baltimore City Code, 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. City Code, Art., § 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. Baltimore City Code, Art. 32, § 5-601(e), (f).

The bill is the appropriate method for the City Council to review the facts and make the determination as to whether the legal standard for rezoning has been met. Assuming the required findings are made at the hearing to support a mistake and to evidence that this is not spot zoning, and all procedural requirements are satisfied, the Law Department can approve the bill for form and legal sufficiency.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Hilary Ruley", is centered below the closing. The signature is fluid and cursive.

Hilary Ruley
Chief Solicitor

cc: Nina Themelis, Mayor's Office of Government Relations
Elena DiPietro, Chief Solicitor, General Counsel Division
Victor Tervalá, Chief Solicitor
Ashlea Brown, Assistant Solicitor