
CITY OF BALTIMORE

BRANDON M. SCOTT
Mayor



DEPARTMENT OF LAW

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July 14, 2021

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 21-0012 - Rezoning – 1214-1220 Hull Street

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 21-0012 for form and legal sufficiency. The bill changes the zoning for the property known as 1214-1220 Hull Street Block (1988B, Lot 019) from the R-8 Zoning District to the O-R-1 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 reviewed these standards in its report dated March 11, 2021 (“Department Report”). It concluded that neither a mistake in zoning has occurred nor has there been a significant change in the neighborhood to warrant a rezoning. Department Report, pages 4 and 5. Moreover, it concluded the following:

- The proposed rezoning “may be inconsistent with Live Earn Play Lear, the Comprehensive Master Plan for Baltimore, Live Goal 1, Build Human and Social Capital by Strengthening Neighborhoods, and specifically its Objective 4: Protect and Enhance Preservations of Baltimore’s Historic Buildings and Neighborhoods.” Department Report, page 2.
- The rezoning “is not in the public interest, in that it would allow land uses that are incompatible with the historic character of the Locust Point community, in addition to allowing a building height of up to 60’ if it garnered a conditional use approval from the Board of Municipal and Zoning Appeal “in the midst of a surrounding residential area in which the maximum building height without a variance is limited to 45’ with BMZA’s conditional use approval.” Department Report, page 3.
- The rezoning “would not serve a Mayoral initiative or other established plan purpose.” Department Report, page 3.
- The rezoning “would not serve a specific neighborhood need, although there may be a few members of the Locust Point community employed at this location.” Department Report, page 3.
- “Some uses that would be authorized by rezoning these properties from Residential to Office-Residential are generally considered incompatible with permitted existing uses and development of the Locust Point area.” Department Report, page 4.
- The proposed rezoning “does not appear consistent with the Comprehensive Master Plan.” Department Report, page 4.

Nonetheless, the Planning Commission did not concur with the Planning Department’s recommendation to disapprove the rezoning. Instead, in its memorandum, dated March 12, 2021, the Planning Commission recommended that the City Council approve the bill. The Planning Commission memorandum reported the following findings:

- A mistake was made during Transform in zoning the property to an R-8 Residential District when the facts showed that the property had been used for commercial purposes since the 1980s.
- The R-8 zoning made the commercial uses non-conforming uses, which was in opposition to one of the goals of Transform to minimize non-conforming uses.

- The proposed zoning to O-R-1 would have been, and is, “a more appropriate zoning district for the subject properties and is more compatible with the current use of the properties.”

The opposing views about the facts that underly this rezoning, at least as reported by the Planning Commission and the Planning Department, underscores the need for the City Council to find its own facts to determine if the rezoning is lawful. To make matters more complicated, the findings of the Planning Commission alone are insufficient to rezone the property. The various laws involved in a rezoning require a host of facts to be established. The memorandum from the Planning Commission provides some of them, but not all of them. The Department Report is similarly hampered: it provides some but obviously not all the facts required for a lawful rezoning.

It is the Law Department’s conclusion that if the City Council wishes to rezone this property, it must carefully select the list of facts that allow for this rezoning. These can be established by picking through the two opposing documents provided by the Planning Commission and Planning Department and compiling the list of facts on which this rezoning is to be based. A second option is available. The City Council can rely on a comprehensive list compiled and provided by a third party at the bill’s public hearing. All the required facts, however, must be present in whatever list is ultimately compiled and used.

Provided the City Council finds facts sufficient facts to rezone the property, the Law Department will be prepared to approve the bill for form and sufficiency.

Sincerely,

Victor K. Tervala

Victor K. Tervala
Chief Solicitor

cc: James L. Shea, City Solicitor
Nina Themelis, Mayor’s Office of Government Relations
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