

FROM	NAME & TITLE	THOMAS J. STOSUR, DIRECTOR	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 8 TH FLOOR, 417 EAST FAYETTE STREET		
	SUBJECT	CITY COUNCIL BILL #17-0122 / REZONING – 1 NORTH HAVEN STREET		

TO

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

DATE: July 16, 2018

At its regular meeting of July 12, 2018, the Planning Commission considered City Council Bill #18-0122, for the purpose of changing the zoning for the property known as 1 North Haven Street, as outlined in red on the accompanying plat, from the I-2 Zoning District to the I-MU Zoning District.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report which recommended disapproval of City Council Bill #18-0122 and adopted the following resolution nine members being present (six in favor):

RESOLVED, That the Planning Commission disagrees with the recommendation of its departmental staff, and recommends that City Council Bill #18-0122 be amended to include the property at 101 North Haven Street, and that it is passed by the City Council with that amendment.

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

TJS/ewt

attachment

cc: Mr. Pete Hammen, Chief Operating Officer
 Mr. Jim Smith, Chief of Strategic Alliances
 Ms. Karen Stokes, Mayor's Office
 Mr. Colin Tarbert, Mayor's Office
 Mr. Kyron Banks, Mayor's Office
 The Honorable Edward Reisinger, Council Rep. to Planning Commission
 Mr. William H. Cole IV, BDC
 Mr. Derek Baumgardner, BMZA
 Mr. Geoffrey Veale, Zoning Administration
 Ms. Sharon Daboin, DHCD
 Ms. Elena DiPietro, Law Dept.
 Mr. Francis Burnszynski, PABC
 Ms. Eboni Wimbush, DOT
 Ms. Natawna Austin, Council Services
 Mr. Ervin Bishop, Council Services
 Mr. Justin Williams, Esq.



Catherine E. Pugh
Mayor

PLANNING COMMISSION

Sean D. Davis, Chairman

STAFF REPORT



Thomas J. Stosur
Director

July 12, 2018

REQUEST: City Council Bill #17-0122/ Rezoning – 1 North Haven Street:

For the purpose of changing the zoning for the property known as 1 North Haven Street, as outlined in red on the accompanying plat, from the I-2 Zoning District to the I-MU Zoning District.

RECOMMENDATION: Disapproval

STAFF: Eric Tiso

PETITIONER: Metro Development, LLC, c/o Justin Williams, Esq.

OWNER: Metro Development, LLC

SITE/GENERAL AREA

Site Conditions: 1 North Haven Street is located on the east side of the street, at the “T” intersection with East Baltimore Street. The property contains ±1.902 acres, and is currently improved with a one- and two-story industrial building covering a majority of the site.

General Area: This site is located on the western edge of the Kresson neighborhood, at the border of the Baltimore Highlands neighborhood.

HISTORY

- On June 5, 2017, this property was rezoned to the I-2 Industrial District from the M-3 Industrial District.
- This bill was previously scheduled for the Planning Commission meetings of October 19, 2017 and November 9, 2017, but was postponed.

ANALYSIS

Background: Staff understands that this request was brought about due to an interest by a potential tenant for 1 North Haven Street for an indoor recreation use. That use of the building is not permitted in the I-2 District, but would be permitted in the I-MU district. Since the first Planning Commission meeting for this bill, the requested use was accommodated through an interpretation by the Zoning Administrator, which removed the immediate need for this bill. The same owner also has two adjacent small parcels (Block 6264A, Lots 001 and 002), as well as 101 North Haven Street, which is currently in use as the Emerging Technology Center (ETC) Haven Campus, a venture of the Baltimore Development Corporation (BDC).

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 Article 32 – *Zoning*, §5-508(b), where staff finds that this change is not in the public's interest. It also references a memorandum submitted by the applicant with their justification for rezoning (attached), and incorporates our review of that position.

Required findings – §5-508(b)(1): Applicants argue in their proposed findings of fact letter that it was a mistake that this property was not rezoned to the Industrial-Mixed Use (I-MU) district as part of the Comprehensive Rezoning effort, TransForm Baltimore, where the building was renovated in 2015 to allow for a mix of office and light-industrial tenants. As support for this concept, a 2015 approval for office use within the building, and previous authorization for a brewery use were offered, and that these uses would disqualify the property from being appropriately zoned I-2, as those uses would either preclude the building from being used industrially, or that the uses have become nonconforming.

Staff disagrees with this analysis, both in the sense that the building is now disqualified from industrial use due to its renovation, and that the existing uses are now nonconforming. There is a wide range of uses now allowed in the I-2 district. While a given building may not have the heaviest of uses within it in every instance, the need for a cohesive industrial district is important to the survival of the industrial district as a whole. The erosion of existing industrial areas puts undue pressure on the remaining industrial users, and as potential commercial or residential typically offer higher prices, it can lead to a domino effect in loss of industrial uses. For that

reason, maintaining appropriately sized and located industrial districts is important for the overall health of this sector of Baltimore's economy.

Staff disagrees with the argument that the existing use mix in the building disqualifies it from being appropriately zoned I-2. Office uses were permitted as a conditional use in the M-3 district under the old zoning classification under the title of "Offices – Business & professional (other than accessory)". "Office" use is now permitted in the current I-2 district as a conditional use, though when secondary to a primary industrial use. To mitigate that protective requirement, office uses legally established as of the effective date of this Code are deemed conforming and are not required to be secondary to a primary industrial use.

The use of "Beer and ale: brewing" was a permitted use in the M-3 district under the old zoning classification, and is now a permitted use in the I-2 district under the "Industrial: Light" land use. As such, these uses have not become nonconforming, and may continue. Even if certain uses became nonconforming, it does not support an argument that the industrial use is not appropriate. If that argument were accepted, it would only accelerate the erosion of the industrial districts as discussed above – the exact opposite effect of the protection that industrial zoning should provide.

For all of these reasons, staff cannot find that the designation of 1 North Haven Street in the I-2 district was a mistake, and recommends that the Planning Commission reject the argument for mistake. Additionally, for the alternative argument: While there have been some changes of land use within the area, staff does not find those changes to amount to a significant change in the area that would otherwise support a rezoning. This industrial area remains intact, this building is located on a major truck route that serves the Port of Baltimore, and so the existing designation of I-2 continues to be appropriate.

Required findings of fact – §5-508(b)(2):

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;

- The applicant cites an increase in population in the area of approximately 1,000 people. It is not clear what information was used to support that assertion. The information available to the Department of Planning through the American Community Survey (ACS) shows this property at the edge of three reporting areas, one to the southwest, one to the southeast, and another to the north (including the site itself). The first two incorporate larger solidly residential areas. If those areas were used to provide the population estimate, additional caution in relying on that data is due. The ACS data is useful for showing trends of changes in populations, but as a survey tool, should not be relied upon for specific population counts. In any event, an increase in housing demand putting pressure on the existing industrial areas further reinforces the need to protect those industrial areas from intrusion.

(ii) the availability of public facilities;

- This part of the City is well served by public facilities, which does not independently affect the zoning of this property.

- (iii) present and future transportation patterns;
- This property is located on Haven Street, on a through truck route (second in rank-order only to Interstate Highways). The existing transportation infrastructure supports the existing industrial district, and is a necessary link to nearby highways and port.
- (iv) compatibility with existing and proposed development for the area;
- The applicant asserts that the existing building is not suitable for modern heavy industrial use, and that it should therefore be considered for a wider range of alternative uses. An important consideration is that there are alternative uses available under the existing I-2 classification which will be suitable for this building. More importantly, is the preservation of a cohesive industrial district that will not lead to further non-industrial development pressure, accelerating the deterioration of the existing industrial zone. For that reason, staff believes that this property still has value to the industrial district, and still has an adequate range of options available for its reuse, as has already been demonstrated through the renovations it has seen to date. Additionally, the I-MU district would also allow for residential use, which is incompatible with the heavier industrial zone surrounding this site, and should not be encouraged.
- (v) the recommendations of the City agencies and officials; and
- The Board of Municipal and Zoning Appeals (BMZA) will comment separately on this bill.
- (vi) the proposed amendment's consistency with the City's Comprehensive Master Plan.
- The applicant's memorandum includes a partial quotation from the City's Comprehensive Master Plan (CMP) on page 163, and then interprets the section to provide a rationale for the rezoning of this property to the I-MU district, due to a desire to include mixed-use within the building. That section of the plan asserted the need for additional types of industrial districts, to meet broader spectrum of needs for the industrial users as much as it was to allow for the reuse of existing buildings that would otherwise be incentivized to be demolished. Through the Comprehensive Rezoning of the City, those new industrial districts have since been enacted as the Industrial- Mixed-use (I-MU), Bioscience Campus (BSC), and Office Industrial Campus (OIC) districts in today's Article 32 – *Zoning*. As the quoted section continues onto the next page of the plan, it goes on to say:

“One of the fundamental purposes for our existing industrial districts is to protect the industrial uses by intrusion from other uses. The commercial uses allowed in this mixed-use district will have to be carefully controlled so as not to allow them to overrun the industrial uses that are not able to afford the same property prices, else they will be out-competed and will moot the mixed-use district.” (CMP p. 164)

This again indicates the need for keeping cohesive industrial districts that support a wider range of industrial uses, without compromising the district as a whole. The Plan further indicated for proposed changes to the Industrial districts (i.e. not those proposed to be newly created) that they:

“...will be essentially our existing exclusively industrial and manufacturing zones. They need to be reviewed and updated to ensure that the needs of our industrial users are met. This will also provide protection, as they are not able to afford the same property prices as business and residential uses. Without this protection, industrial uses can be out-competed and will leave the City in a shortage of consolidated industrial core areas.”
(CMP p. 164)

Additional standards – General – §5-508(b)(3):

Additional standards that must be considered for map amendments are:

- (i) existing uses of property within the general area of the property in question;
 - There are a variety of industrial and commercial uses in the immediate area, to include:
 - Mid-Atlantic Baking (which the applicant incorrectly labels as a nonconforming use, as discussed above) and a metal fabrication shop immediately across Haven Street to the west;
 - a wood-turning company within the subject property; and
 - a BG&E substation, an auto recycler, and an ornamental iron company to the immediate north.
- (ii) the zoning classification of other property within the general area of the property in question;
 - This parcel is part of the I-2 District, and while there are other zoning classifications within a multi-block radius of this site, none are adjacent to this site. Rezoning this site alone would create a new stand-alone island of I-MU zoning, unrelated to any other properties. Nearly the entire extent of the Kresson area is zoned I-2 industrial, with the only other classification being I-1 at the eastern end of the area, and nearly the entirety of the Orangeville Industrial Area to the north is also zoned I-2. For this reason, the subject property should not be rezoned to I-MU in isolation.
- (iii) the suitability of the property in question for the uses permitted under its existing zoning classification; and
 - The existing I-2 classification provides for a range of industrial uses for the existing building. The proposed I-MU zone would allow for residential use, which is not appropriate in this area.
- (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 been an increase in pressure on industrial districts to the south of this area, by intruding commercial and residential uses. The office and brewery uses of this building are allowed by the existing I-2 zoning (see discussion above), and may continue to operate, just as before when the property was zoned M-3.

Maryland Land Use Code – Requirements for Rezoning:

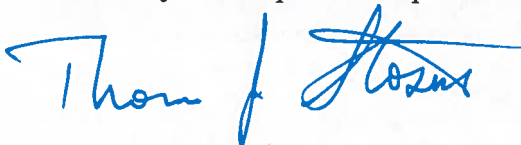
The Maryland Land Use Code requires the Planning Commission to study the proposed changes in relation to: 1. The plan; 2. The needs of Baltimore City; and 3. The needs of the particular neighborhood in the vicinity of the proposed changes (*cf.* Md. LAND USE Code Ann. 2012, §10-305). In reviewing this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

1. **The Plan:** In addition to the information above, the Comprehensive Plan anticipated creating a new variety of industrial districts to serve modern needs of industry, but had as a central goal the preservation of industrial areas, and protecting them from erosion.
2. **The needs of Baltimore City:** There is a need to protect industrial areas that now exist, and there are other appropriately-zoned areas for the specific use proposed that triggered this application, which supports the disapproval of this rezoning.
3. **The needs of the particular neighborhood:** This site is set among other industrial users, and zoning this site as I-MU does not meet any need or goal of the neighborhood at large.

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 has not been a significant change in population that would indicate a change in zoning is needed.
2. **The availability of public facilities;** Adequate facilities are now available, and will remain available to serve a broad range of land uses.
3. **Present and future transportation patterns;** This site is located along a designated through truck route, which is intended to serve this industrial area, providing access to the highways, and the rest of the City.
4. **Compatibility with existing and proposed development for the area;** While the I-MU district generally provides for compatible uses with general industrial use, in this specific instance, it likely would lead to the erosion of a heavier industrial district by allowing incompatible uses (specifically Recreation: Indoor, and residential uses).
5. **The recommendations of the Planning Commission and the Board of Municipal and Zoning Appeals (BMZA);** For the above reasons, the Planning Department recommends 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.** Again, the Comprehensive Plan has as a goal of preservation of industrial areas.

Notification: The following community organizations were notified of this bill: The Brewer's Hill Community Association, the Brewers Hill Neighbors, the Baltimore-Highland Community Association, Inc., the Highlandtown Community Association (HIGH-C), and the Southeast Community Development Corporation (SCDC).



Thomas J. Stosur
Director