

TJA

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 #17-0106 / REZONING – 3601-3605 PARK HEIGHTS AVENUE		

TO

DATE:

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

September 29, 2017

At its regular meeting of September 28, 2017, the Planning Commission considered City Council Bill #17-0106, for the purpose of changing the zoning for the property known as 3601-3605 Park Heights Avenue, as outlined in red on the accompanying plat, from the R-6 Zoning District to the C-1 Zoning District.

In its consideration of this Bill, the Planning Commission reviewed the attached staff report, which recommended disapproval of City Council Bill #17-0106. Upon a motion to recommend disapproval of the bill, three members voted in favor of approving the bill, and three voted against the bill. Pursuant to the Charter of Baltimore City § 72(l), the Planning Commission “may report and submit to the City Council amendments to the Baltimore City Zoning Ordinance. Any such amendment shall be submitted only by resolution, adopted by the affirmative vote of two-thirds of the entire membership of the Commission.” As the Planning Commission did not have six votes in the affirmative, they are unable to make a recommendation to the Council.

If you have any questions, please contact Mr. Wolde Ararsa, Division Chief, Land Use and Urban Design Division at 410-396-4488.

TJS/WA

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. David Tanner, BMZA
Mr. Geoffrey Veale, Zoning Administration
Ms. Sharon Daboin, DHCD
Ms. Lindsay Wines, DOT
Ms. Elena DiPietro, Law Dept.
Ms. Natawna Austin, Council Services
Mr. Paul Plymouth, Council President’s Office
Mr. Francis Burnszynski, PABC
Mr. Kwan Lee



Catherine E. Pugh
Mayor

PLANNING COMMISSION

Wilbur E. "Bill" Cunningham, Chairman

STAFF REPORT



Thomas J. Stosur
Director

September 28, 2017

REQUEST: City Council Bill #17-0106/ Rezoning – 3601-3605 Park Heights Avenue

For the purpose of changing the zoning for the property known as 3601-3605 Park Heights Avenue, as outlined in red on the accompanying plat, from the R-6 Zoning District to the C-1 Zoning District.

RECOMMENDATION: Disapproval

STAFF: Martin French

PETITIONERS: Councilmember Middleton, at the request of Robinson's Food and Variety Market, Inc. c/o Kwan Lee

OWNERS: Kwan Young Lee and Jeong Sug Lee

SITE/GENERAL AREA

Site Conditions: This property is located at the northeast corner of the intersection of Park Heights Avenue and Ulman Avenue, measures approximately 45' by 102', and is currently improved with a two-story formerly porch-front middle-and-end-of-row residential mixed-use building covering approximately 75% of the consolidated lot. This structure was built in 1915 as three single-family dwellings; by the mid-1930s, with the porches enclosed, no. 3601 was being used as a pharmacy and drug store and one dwelling unit; no. 3603 was being used as a tailor's shop and one dwelling unit; and no. 3605 was being used as a delicatessen and lunchroom and one dwelling unit. In July of 1980 the Board of Zoning Appeals approved consolidation of the stores and three dwellings (appeal no. 374-80X), subject to the condition that the liquor store authorized (Robinson's) was limited in floor area to the floor area of the pharmacy and drug store that it replaced. Entrance to the liquor store is on the corner of the building, from both Park Heights Avenue and Ulman Avenue; the other two storefront entrances (now closed) are on Park Heights Avenue.

General Area: This property is in the southern portion of a predominantly residential area known as Park Heights that is comprised primarily of two-story attached and semi-detached dwellings with some non-residential uses such as churches and small retail establishments present, of which the subject property is an example. This southern portion of the larger Park Heights area developed from 1915 onward as an in-city suburban-style neighborhood made possible by an electric street-car line on Park Heights Avenue, and has been designated as the Park Heights National Register Historic District. Two blocks northeast of this property is a large multi-story Federally-subsidized multi-family development for senior citizens built

in 1979. Across Ulman Avenue, on the southeast corner of Park Heights and Ulman Avenues, is a new playground for children.

HISTORY

The original Urban Renewal Plan for Park Heights was approved by Ordinance no. 304 dated April 16, 1973. By Ordinance no. 113 dated June 30, 1976, the second amendment to that Plan added 3601, 3603, 3605, and all other properties on the east side of the 3600 block of Park Heights Avenue to the list of properties to be acquired by purchase or condemnation. The property that is subject of this bill was never actually acquired under this Plan. Over thirty years later, a replacement Urban Renewal Plan for Park Heights was approved by Ordinance no. 08-93 dated December 11, 2008. This Plan was last amended by Ordinance no. 14-297 dated October 1, 2014. The replacement Urban Renewal Plan, although containing lists of many properties to be acquired and disposed of, does not list any properties on the east side of the 3600 block of Park Heights Avenue other than 3633 Park Heights Avenue, reflecting the focus of the Plan on commercial and mixed-use revitalization in portions of Park Heights north of this property. The Plan's Exhibit 1E, Land Use Plan map, designates this property as "Neighborhood Business" – surrounded by blocks and properties designated as "Medium Density Residential". The Plan's text states: "In the area designated as Neighborhood Business on the Land Use Plan, uses shall be limited to those uses permitted and conditional under the B-1 category of the Zoning Code of Baltimore City" (Plan, Land Use Plan, Permitted Uses, B.4.). The B-1 zoning district formerly covering this property did not permit either liquor stores: package goods, or taverns, although it did permit drug stores and pharmacies (subsections 6-206 through 6-209 of the former Code).

Additionally, this property was subject to rezoning during the TransForm Baltimore process (see below).

CONFORMITY TO PLANS

The proposed rezoning action does not support the goals, objectives and strategies contained in the Comprehensive Master Plan for the City of Baltimore. One of the objectives expressed in the Master Plan for the new zoning code was consistency of zoning with existing land use, community character, City plans and projects, and City economic development goals (Master Plan, p. 15). In this regard, the structure of which this property is a part is a group of houses, and in a community defined by its row-housing and semi-detached housing and the residents as residential, for which the existing R-6 zoning is appropriate. Use of the property in part as a liquor store makes it a site of an "alcohol outlet" which in turn means nonconforming status under the new TransForm Baltimore zoning code which rezoned the property into the R-6 Zoning District. ~~One of the goals of the comprehensive rezoning process was reduction of~~ nonconforming alcohol outlets, particularly those in Residential zoning districts. It appears that, in the context of a rezoning which could have the practical effect of extending operation of a liquor store at this location, the proposed action would prevent implementation of the requirement that nonconforming retail goods establishments stop selling liquor (alcoholic beverages) within two years of the June 5, 2017 effective date of the new zoning code. It would thereby also conflict to a certain extent with LIVE Goal 2, Objective 3, Strategy 4: Ensure all residents are within 1.5 miles of quality groceries and neighborhood services, in that possible conversion of this liquor store to a food store or other retail goods establishment with no alcohol sales would not be encouraged.

ANALYSIS

In April 1971, under the previous Zoning Code, this property was zoned B-1-2, a district which allowed continuation of the pharmacy, tailor shop and shoe-shine parlor, and delicatessen and variety store, that occupied the street levels of 3601, 3603, and 3605 Park Heights Avenue. The surrounding area was all part of the R-6 zoning district, a classification which has been continued according to the replacement Zoning Code (Article 32) that became effective on June 5, 2017.

This particular property was rezoned from B-1-2 to R-6 effective June 5, 2017, reflecting the residential character of the row of houses to which this property is the row's south end, and of the housing on both sides of the 3600 block (and 3400, 3500, 3700 and 3800 blocks) of Park Heights Avenue. Across the 10' wide alley behind this property the zoning is also R-6, reflective of the single-family attached and semi-detached dwellings that predominate in this part of the community. The Planning Commission, in developing the map for the new TransForm Baltimore zoning code, carefully studied the existing conditions of this area and concluded that this R-6 zoning along both sides of Park Heights Avenue and R-6 zoning to its immediate east should remain with the 10' wide alley and a party wall no longer defining a boundary between an island of C-1 (successor to B-1) commercial zoning and the R-6 Residential Districts.

The Planning Commission further studied the non-residential uses that should be included as Neighborhood Commercial Establishments in residential zoning districts. As a Neighborhood Commercial Establishment includes commercial zoning land uses with low impact upon, but desirability to, residents of established neighborhoods, as an option available to the property owner it should encourage use of the property with community-oriented enterprises in a way that could advance the Comprehensive Master Plan's LIVE Goal 2, Objective 3, Strategy 4 of ensuring residents have better access to quality grocery stores and neighborhood services, cited above under "Conformity to Plans". The Mayor and City Council concurred with the Planning Commission's recommendations in adopting the new Zoning Code and its map which became effective on June 5, 2017.

Introduction to the rationale for rezoning. Following is the staff's review of the required considerations of §16-305 of the Zoning Code, on the basis of which staff finds that this change is not in the public's interest, in that it would make the existing structure and its current first floor level liquor store usable in its entirety as a commercial establishment physically attached to a row of dwellings. The bill would void the restriction on liquor store floor area that has been in effect since 1980, thus also expanding what is otherwise a nonconforming use. There would be no public street or alley to separate the non-residential use from its residential neighbor at 3607 Park Heights Avenue, which is part of a row of dwellings.

Under §16-305(c) of the Zoning Code, the Planning Commission must consider the following matters:

(1) *existing uses of property within the general area of the property in question;*

All other parts of the row to which this end-of-row structure is attached are used residentially. Properties north, south, east and west of this property were built as housing, and are zoned and used residentially.

(2) *the zoning classification of other property within the general area of the property in question;*

Properties to all points of the compass surrounding this property are zoned R-6 and have been so zoned since 1971 and remained so zoned after June 5, 2017.

(3) the suitability of the property in question for the uses permitted under its existing zoning classification;

The R-6 zoning that became effective June 5, 2017 allows residential use. Given some past alterations to the original structures now consolidated as 3601-3605 Park Heights Avenue, the property may be appropriate for community-oriented commercial use under the classification of Neighborhood Commercial Establishment. The current R-6 zoning does not allow the liquor store, because liquor stores are not among the Neighborhood Commercial Establishments allowed as conditional uses under the TransForm Baltimore zoning code. Because the liquor store remained in place after June 5, 2017, it is now classified as a nonconforming use by the new Zoning Code. According to §18-701 of the Code, an establishment with alcoholic beverage sales that existed as a lawful nonconforming use before June 5, 2017 must end alcoholic beverage sales no later than June 4, 2019, notwithstanding any issuance of a prior use permit as a nonconforming package goods liquor store.

(4) 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.

It has only been three months since the property was placed in its present zoning classification. Residential use of this block and nearby residentially-developed blocks has remained. The new zoning of the subject property (R-6) that took effect on June 5, 2017 is reflective of its physical attachment to a row of dwellings and to its location in a larger area of residential use that has also been designated as historic. This southern portion of the greater Park Heights community has been historically viewed as the Park Heights Gateway area, with the two major routes emanating northward from Park Circle (Park Heights Avenue and Reisterstown Road) leading to major commercial nodes further north of this property. The City of Baltimore is undertaking an initiative to improve the residential character and curb appeal of this residential portion of Park Heights as part of a Mayoral priority to revitalize this area as part of realizing the goals and objectives of the Park Heights Area Master Plan (which was approved as the forerunner to the new Park Heights Urban Renewal Plan adopted in 2008). The Urban Renewal Plan's first objective is: "To establish a positive and identifiable image for the Park Heights area" and retaining this property's non-residential use as a liquor store is inconsistent with it.

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, Planning staff finds that:

- 1. The Plan:** This action does not advance the goals, objectives or strategies contained in the Comprehensive Master Plan also known as LIVE EARN PLAY LEARN.

2. **The needs of Baltimore City:** This action is not needed to serve either a comprehensive redevelopment strategy or a Mayoral initiative. In fact, as noted above, it may actually conflict with a Mayoral initiative. It is also contradictory to the City's policy, represented in the new Zoning Code, of reducing alcohol outlet density. This policy, which is supported by many community members and associations, recognizes relationships that have been studied showing correlated higher rates of crime near liquor outlets, particularly sellers of alcohol for off-premises consumption, and showing correlated poorer health outcomes, including shorter life expectancy.
3. **The needs of the particular neighborhood:** This action does not help to meet the needs of the southern portion of the larger Park Heights neighborhood, the southern part of which has been determined to be in a "food desert". To the extent that this particular neighborhood will benefit from the improvement initiatives focussed on the Park Heights Gateway area, enabling continuation of an establishment with alcoholic beverages sales at this location is inconsistent with those initiatives.

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 is not likely to be a noticeable population change between June 5, 2017 and the effective date of this proposed action.*
2. **The availability of public facilities;** *Public facilities are expected to remain unchanged.*
3. **Present and future transportation patterns;** *These are expected to remain unchanged.*
4. **Compatibility with existing and proposed development for the area;** *The proposed action would be incompatible with existing development in the area, as elaborated upon previously. There are no proposed development plans for the area that would call for this action. Retail development in general is intended by the Park Heights Urban Renewal Plan to be concentrated north of this residential area.*
5. **The recommendations of the Planning Commission and the Board of Municipal and Zoning Appeals (BMZA);** *For the above reasons, 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.** *As the R-6 zoning that became effective June 5, 2017 is consistent with the City's Comprehensive Master Plan, which the Planning Commission previously determined in recommending the new zoning districts map to the Mayor and City Council, there is no obvious relationship of this proposed amendment to the City's plan.*

The City Council may grant the amendment to change the zoning classification based on a finding that there was: (i) a substantial change in the character of the neighborhood where the property is located; or (ii) a mistake in the existing zoning classification. There is not likely to be substantial change in neighborhood character between June 5, 2017 and the effective date of the proposed amending ordinance. The current zoning classification of R-6 was based upon the

physical characteristics of the existing structure (an end-of-row dwelling group with a nonconforming commercial use of its street level) and of the dwellings to which it is attached, as well as the residential character of the surrounding community. As such, there was no mistake in classifying the subject property as R-6, even though the change has made continuation of the existing liquor store use on the street level of the premises nonconforming.

Notification: Planning staff notified the Cottage/ Park Heights/ Violet/ Springhill/ Ulman Avenues Non-Profit Association, Development Corporation of Northwest Baltimore, Fellowship Outreach Corporation, Inc., Northwest Zoning Committee, Northwest District Police-Community Relations Council, Park Heights Community Council, and Park Heights Renaissance, Inc. of this matter.



Thomas J. Stosur
Director