



Stephanie Rawlings-Blake
Mayor

PLANNING COMMISSION

Wilbur E. "Bill" Cunningham, Chairman

STAFF REPORT



Thomas J. Stosur
Director

August 8, 2013

REQUEST: CCB #13-0245/ Rezoning – 2038 Eastern Avenue:

For the purpose of changing the zoning for the property known as 2038 Eastern Avenue, as outlined in red on the accompanying plat, from the R-8 Zoning District to the O-R-3 Zoning District.

RECOMMENDATION: Amendment and Approval:

- That the following properties be rezoned to the B-1-2 District: 2036, 2038, 2040, and 2042 Eastern Avenue.

STAFF: Eric Tiso

PETITIONER: Cristo Rey Jesuit High School, Inc.

OWNER: Cristo Rey Jesuit High School, Inc.

SITE/GENERAL AREA

Site Conditions: 2038 Eastern Avenue is located on the north side of the street, approximately 15' east of the intersection with Castle Street. The property measures 14' by 70', is currently zoned R-8, and is improved with a three-story attached dwelling.

General Area: This property is located on the southern edge of the Upper Fells Point community, which is largely residential in character, with some commercial corridors passing through it, such as along Eastern Avenue. The Cristo Rey Jesuit High School is located adjacent to this property to the rear, and a Burger King is located across the street to the south. The Patterson Bowling Center is located a block to the east, and the southern end of Patterson Park is located four blocks to the east. The harbor is located three blocks to the south.

HISTORY

There are no previous legislative or Planning Commission actions regarding this site.

ANALYSIS

Background: Cristo Rey Jesuit High School recently purchased 2038 Eastern Avenue, with the intent to use the property for office space. Though this is essentially a small expansion of the larger school campus, the problem is that this property is zoned R-8 residential, where school uses require a larger minimum lot size under the Zoning Code than the property contains – 7,500 sqft vs. 980 sqft, in this case (*cf.* Zoning, §4-1106).

The school also is not able to consolidate the lot with the lot with the existing school buildings, since that lot is owned by the church. Consolidations require the same owner for both parcels in order to be joined. Since consolidation isn't possible, the school was presented with a practical difficulty in how to get the office use approved, and so they pursued rezoning as the next viable option. The proposed O-R-3 Office Residential district was selected, since offices are a permitted use in that district, and no minimum lot area is required for that use. The school would like to establish the office use as soon as possible, as the beginning of the school year is rapidly approaching.

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 offers the following for consideration, both for the O-R-3 district requested by the applicant, and the B-1-2 alternate proposed by staff:

1. **The Plan:** This property is currently proposed to remain R-8 residentially zoned through the TransForm Baltimore comprehensive rezoning process, as the expectation was that the property would continue in residential use. Educational facilities are generally permitted in this district, and so were thought to be compatible with the R-8 district. With a rezoning of this parcel, and perhaps others as recommended by staff, the proposed zoning maps under TransForm Baltimore will need to be reconsidered and amended.
2. **The needs of Baltimore City:** The proposed O-R-3 District would not be appropriate for this location, and there is no increased demand for Office Residential zoning that would justify this proposal. Staff's recommended B-1-2 District would complete the commercial corridor in this area.
3. **The needs of the particular neighborhood:** This neighborhood is stable, and does not have a demand for Office Residential zoning, high-rise apartment buildings, or the like. The staff's recommended B-1-2 District would provide for current and future expansion needs of the school or area businesses, would resolve a nonconforming use, and provide for more appropriate potential building heights and residential densities compatible with the surrounding residential and commercial districts.

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 have been no significant changes in population that would require the much higher density of the proposed O-R-3 district.
2. **The availability of public facilities;** The property is well served by City services, with no expected impacts as a result of rezoning.
3. **Present and future transportation patterns;** Eastern Avenue is a major street, capable of supporting modest additional development, with no significant impacts expected.

4. Compatibility with existing and proposed development for the area;

- Office Residential districts are normally located along major corridors, and adjacent to higher-density residential zones such as R-9 and R-10 districts. Under O-R-3, this parcel would have a floor area ratio of 6.0, and would allow up to five dwelling units. The parcel would have the potential to be over-developed, completely out of scale with adjacent properties.
- The proposed O-R-3 District would be inappropriate for this single parcel, and staff believes this would constitute invalid spot-zoning – meaning that this action would separate a single parcel of land into a separate and inconsistent district solely for the benefit of the owner, without a greater public purpose.
- As an alternative, staff recommends rezoning four parcels to the B-1-2 District. The B-1-2 district exists on the north side of Eastern Avenue, immediately to the west of Castle Street. The portion of the school to the east (and in the same block) as the subject property is zoned B-3-3. The Burger King restaurant to the south, across Eastern Avenue is zoned B-2-2. By extending the B-1-2 District eastward to include 2036-2042 Eastern Avenue, the commercial corridor would be made more consistent. The existing tavern in 2036 Eastern Avenue, now a nonconforming use in the R-8 District, would be made conforming. The residential use of 2040 and 2042 Eastern Avenue would be allowed to continue as permitted uses.

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 amendment of the rezoning request to the Planning Commission, and proposes an alternate zoning category of B-1-2 instead of O-R-3, with the inclusion of three adjacent parcels. The BMZA has not yet commented on this bill.

6. The relation of the proposed amendment to the City's plan. As mentioned above, the proposed O-R-3 is incompatible with the existing zoning plan of the City, and the staff alternate zoning of B-1-2 would provide a better fit.

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. In this case, the need for the school expansion was not previously anticipated, and so represents a change in the neighborhood.

Community Input: The following community organizations and individuals have been notified of this action: The Fells Point Community Organization, the Fells Point Main Street, the Fells Point Task Force, Fells Prospect, Inc., and the owners of 2036-2042 Eastern Avenue.



Thomas J. Stosur
Director