

# Joint Statement Opposing Baltimore City Council Bill #23-0344 (Rezoning of 1302 Key Highway)

**Riverside Neighborhood Association**  
**Federal Place Homeowners' Association**

May 24, 2023

This joint statement focuses on a proposed zoning change for a parcel of land at 1302 Key Highway (Council Bill #23-0344).<sup>1</sup> We find that the proposed change:

- (1) Does not meet the threshold criteria for rezoning required under Maryland Land Use Code and Article 32, Zoning, of the Baltimore City Code;
- (2) Eliminates the ability of the community to provide public testimony in any regulatory setting about the specific characteristics of the building constructed on the site and its effect on the neighborhood.

**Therefore, we call on the Planning Commission recommend against City Council passage and that Members of the City Council to vote against CB #23-0344.**

NOTE: This memo explains our opposition only to the rezoning bill. Explanation of our opposition to the related CB #23-0358, to amend the Urban Renewal Plan for Key Highway by removing the parcel at 1302 Key Highway from the URP is provided in a companion statement.

## **The change would affect many properties and property owners—and benefit only one**

Council Bill #23-0344 only alters the zoning of the property at 1302 Key Highway (Block 1927A, lot 34A). The parcel is very small—only 14,300 square feet or approximately one-third of an acre.<sup>2</sup> The proposed change will *benefit* only a single property owner, Key Highway Investment LLC. Yet, the proposed change to this small property will *adversely affect* scores of abutting and surrounding property owners and the larger Riverside community's ability over time to influence decisions that materially affect the character of the area.

## **The bill does not meet the two required criteria for approving zoning changes in Baltimore City**

The Land Use provisions of Maryland law as well as Baltimore City Zoning Code<sup>3</sup> establish the criteria required for rezoning under legislative authorization. The City Council may permit such rezoning if it finds sufficient facts to show 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."<sup>4</sup>

## **The C-2 zoning of 1302 Key Highway is not a mistake**

The C-2 zoning for the property at 1302 Key Highway is not a mistake. In fact, it is exactly what the current owners (as represented by their current counsel) specifically requested in writing and were granted when City of Baltimore restructured its entire zoning code in 2016.

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### <sup>1</sup>Endnotes

<https://baltimore.legistar.com/LegislationDetail.aspx?ID=6004198&GUID=9CD9DB99-5FDC-425E-A5E7-FBE52695A861&Options=ID|Text|Attachments|Other|&Search=23-0344>

<sup>2</sup> See <https://sdat.dat.maryland.gov/RealProperty/Pages/default.aspx>

<sup>3</sup> **ARTICLE 32 ZONING** (As Enacted & Corrected, Effective June 5, 2017, by Ords. 16-581 & 17-015; and As Last Amended by Ord. 21-020)

<sup>4</sup> Md. Code, Land Use, Division I, Title 10, Subtitle 3, §10-304(b)(2). See [https://govt.westlaw.com/mdc/Document/NBC91C480D13F11E1907192670EC569F8?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/mdc/Document/NBC91C480D13F11E1907192670EC569F8?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)). See also Baltimore City Code, Art. 32, §5-508(b)(1).

On October 5, 2016, Joe Woolman (current counsel) on behalf of Key Highway Investment LLC (current owner) secured a map amendment to TransForm Baltimore (CB #12-0152) that changed the zoning of 1302 Key Highway to C-2.<sup>5</sup> The amendment was enacted into law with the full zoning bill on December 5, 2016.<sup>6</sup>

### **There has been no “substantial change in the character of the neighborhood” since 2016**

Several facts show that there has not been a substantial change in the neighborhood since TransForm Baltimore was passed in 2016 and the owners of 1302 Key Highway secured the C-2 zoning for their property.

- There have been no changes in the character of the properties adjacent to 1302 Key Highway. Harborview, across Key Highway, is the same; Federal Place, to the West, is the same; the row houses on Jackson Street to the South and West are the same; the parking lot at 1400 Anchor Street to the South is the same; and the single-family residence at 1350 Key Highway to the East is the same.
- There have been no changes in the character of properties since 2016 on the waterfront side of Key Highway.
- There have been no significant changes on the inland side of Key Highway from 1220 Key Highway (where CrossFit is located) to 1420 Key Highway at Lawrence St. (where Medstar is located). Although some businesses have changed, the buildings along this entire straight stretch of Key Highway are the same.<sup>7</sup>
- The only visible change in the area—construction of the multi-unit residential building (“Bainbridge Federal Hill”) at 1110 Key Highway—represents a finding of fact that the character of this area is in full compliance with both the 2016 zoning and fully-vetted plans dating to well before 2016. Plans for that building had been in place for a very long time and its construction did not change the character of the neighborhood; ***it merely fulfilled the vision for that site based on a decade of planning.*** To be clear; construction of 1110 Key Highway was a fully anticipated development in 2016 and hence does not constitute a *change*. In fact, building something materially *different* on the site could have violated the 2016 zoning scheme.
  - In 2011, the Urban Renewal Plan for Key Highway (URP) envisioned very different futures for the Bainbridge site and 1302 Key Highway.<sup>8</sup> Bainbridge was always intended to be a large building; the 1302 Key Highway site was intended to have a right-sized building that would help create a lively, pedestrian-friendly streetscape along this portion of Key Highway. To achieve that goal, the URP set a maximum building height of 50 feet for the 1302 Key Highway site.
  - A specific proposal for Bainbridge site was in play for **more than two years before** the owners of 1302 Key Highway submitted their request for the C-2 zoning designation of their property in 2016. The concept was introduced in March 2014 and widely covered in local news outlets in that year.<sup>9</sup> Baltimore’s Urban Design and Architectural Review Panel held a hearing on the Bainbridge development on May 14, 2015.<sup>10</sup> By contrast, the owners of 1302 Key Highway didn’t seek the C-2 zoning for their property until the autumn of 2016.

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<sup>5</sup> See ID M730, page 2 of Attachment 105, “11<sup>th</sup> District Proposed Map Amendments 10.5.16” at <https://baltimore.legistar.com/LegislationDetail.aspx?ID=2177661&GUID=11A3FD46-A1EE-418B-A06C-C9F99BAA8AD6&Options=ID|Text|Attachments|Other|&Search=12-0152>

<sup>6</sup> *Ibid*

<sup>7</sup> For data on when permits were issued, see [https://cels.baltimorehousing.org/Search\\_TM\\_MAP.aspx](https://cels.baltimorehousing.org/Search_TM_MAP.aspx)

<sup>8</sup> See link to Baltimore City Urban Renewal Plan Key Highway (2011) on <https://planning.baltimorecity.gov/planning-plans/urban-renewal>

<sup>9</sup> <https://www.baltimoresun.com/business/bs-xpm-2014-03-28-bal-large-apartments-proposed-for-federal-hill-20140327-story.html>

<sup>10</sup> <https://planning.baltimorecity.gov/may-14-2015-%E2%80%93-meeting-204>

- Although there has been some new development along Lawrence Street and Fort Avenue, these new properties do not have Key Highway addresses, they are not part of the same Urban Renewal Plan, and they are almost ½ mile away from 1302 Key Highway. Moreover, the construction of the largest of these developments—Anthem House—actually started well before the current zoning for 1302 Key Highway was set.<sup>11</sup> Anthem House was a fully anticipated development.

In summary, the character of the neighborhood surrounding 1302 Key Highway has not substantially changed since 2016. But the character of the neighborhood would be permanently and substantially altered if the zoning change is approved, the Urban Renewal Plan is amended as proposed, and the owners are authorized to construct an out-sized, residential only building on the site, as they have suggested they plan to do.

Without a finding of fact that there was a substantial change in the character of the neighborhood or that an error was made, this proposed change is not permitted by law.

**Opportunities for public input will be adversely affected by the zoning change, clearing the way to foreclose public input not only in Riverside, but also in neighborhoods across Baltimore**

Approving the zoning change would lock in an unfair process for the community. If the zoning change is approved, the community would have no regulatory, policy making, or planning forum to provide testimony in an open, public hearing about the specific building that the owner may ultimately want to build on the site.

Under the current C-2 zoning, the developer would have to seek a conditional-use approval from Baltimore City Board of Municipal & Zoning Appeals (“BMZA”) for any building taller than 68 feet, as the developer had indicated that he intends to do.<sup>12</sup> The Zoning Code requires that the BMZA consider the following in its deliberations about conditional-use approvals: the size and shape of the proposed building; the effects on the character of the neighborhood; the resulting effects on traffic patterns and adequacy of proposed off-street parking and loading; the accessibility of emergency vehicles; and the effect on light and air.<sup>13</sup>

This process also requires an open public hearing before a decision-making body on the substance of the appeal. Residents would have the opportunity to express their support or concerns in public testimony about the specific building that the developer intended to construct and its full impact on their neighborhood. The neighborhood could legitimately raise *any* issue relevant to the criteria that guide BMZA decision-making.

But if the parcel is rezoned to OR-2 through a single act of the City Council, the public input process completely changes. The general public, including designated community leaders, are shut out of any public discussion about the building and its effect on their community (i.e., size, shape, effects on character of the neighborhood, traffic patterns, parking, emergency access, effect on light and air). There is no opportunity for the community to provide testimony in a public meeting. The role of neighboring property owners, the community, and the general public in shaping the project is left to informal discussions with the developer who is under no obligation to address concerns.

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<sup>11</sup> See [https://cels.baltimorehousing.org/Search\\_TM\\_MAP.aspx](https://cels.baltimorehousing.org/Search_TM_MAP.aspx) for when permits were issued for Anthem House.

<sup>12</sup> Currently, the Urban Renewal Plan for Key Highway sets a maximum building height of 50 feet on the 1302 site. However, the owners are also seeking to remove that site from the URP through Bill #23-0358. If that bill was enacted, the height limits in parcel's zoning code designation would be the controlling factor.

<sup>13</sup> See *Conditional Use Approval Standards (Article 32, Section 406)* through the link “Zoning Appeals Approval Standard, Conditional Use” on <https://zoning.baltimorecity.gov/how-apply-bmza>

This "finesse" of the system is contrary to the intent of the public notice and hearing process inherent in the City's development review and approval procedures—and is fundamentally unfair. If the zoning is changed, the only opportunity for the community to provide public testimony, by law, would be at the upcoming Planning Commission and subsequent City Council hearings on the zoning change itself—but those discussions would be limited to the narrow, technical topic of zoning. The developer's proposed building as envisioned by renderings already presented to the community would not be considered "in scope"—actually to be ruled out of order—in the discussion among decision-makers at those meetings and therefore, not subject to any ruling by a City board at this critical approval stage.

If the zoning change is enacted, when will the community have an opportunity to share its thoughts and concerns in a public hearing with decision makers about the proposed building itself? The answer is never.

This device to exclude community input is not only true in this case; it is true of and consequential for every Baltimore neighborhood association that may ever encounter a development proposal that is advanced through this "rezone first" tactic—and hence, of concern to every member of the City Council.

**Recommendation: Reject Council Bill #23-0344**

We urge the Planning Commission to reject CB #23-0344 and Members of the City Council to vote against it.

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