



Amy Gowan, Director

FAX 410-313-3467

December 24, 2020

TECHNICAL STAFF REPORT

Planning Board Meeting of January 7, 2020

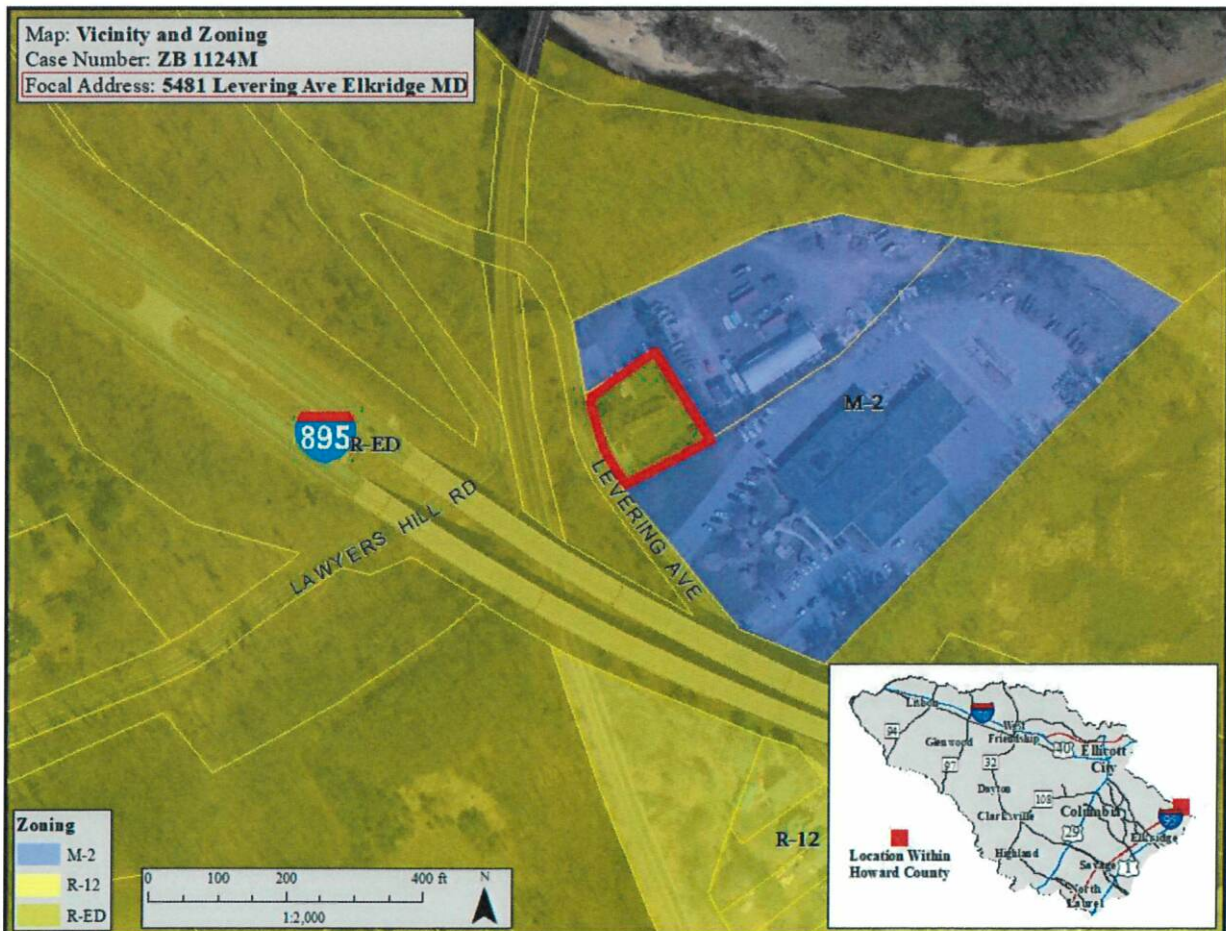
Case No./Petitioner: ZB-1124M – A.R. Levering, LLC

Location: 5481 Levering Avenue
Tax Map 32, Grid 22, Parcel 50

Area of Site: 0.40 acre

Current Zoning: R-ED

Proposed Zoning: M-2



I. DESCRIPTION OF PROPOSAL

The Petitioner requests a Zoning Map Amendment to rezone the Property from R-ED (Residential – Environmental Development) to the M-2 (Manufacturing - Heavy) with a Documented Site Plan (DSP) for a 3,380 square foot office.

The Petitioner asserts that the proposed Zoning Map Amendment is justified based on a mistake in zoning (“Mistake”) made during the 2013 Comprehensive Zoning Plan (the “2013 CZP”).

Documented Site Plan (Sec. 100.G.2)

Section 100.G.2 of the zoning regulations state that “a site plan zoning petition is a petition for an amendment to the zoning district boundaries that includes documentation specifying the proposed development and use of the property.” Section 100.G.2.f further clarifies that “a property rezoned in accordance with a site plan zoning petition must be substantially complete in accordance with the site plan(s) approved by the Zoning Board” which includes the proposed use on the site.

The Documented Site Plan (DSP) submitted by the Petitioner depicts a 3,380 square foot office in the existing residential building and six existing parking spaces. Six additional parking spaces are shown on the adjacent property and will be used to meet the 12-space parking requirement. The DSP indicates that the maximum number of employees will be 10 and the hours of operations will be 7:00 a.m. to 5:00 p.m. No new buildings, additions/alterations to the existing building, or additional impervious area are proposed.

II. ZONING HISTORY

A. Subject Property

The Property was zoned R (Residential District) in the 1951 Comprehensive Zoning Plan and rezoned to R-20 (Residential, Single) during the 1985 Comprehensive Zoning Plan. The Property was rezoned to the current R-ED (Residential – Environmental Development) District during the 1993 Comprehensive Zoning Plan.

B. Adjacent Properties

The two properties to the northeast and southeast were rezoned from R-ED (Residential – Environmental Development) to the current M-2 (Manufacturing - Heavy) zoning district during the 2004 Comprehensive Zoning Plan in an amendment to Council Bill 75-2003.

All other surrounding properties were rezoned from R-20 (Residential - Single) to the current R-ED (Residential – Environmental Development) during the 1993 Comprehensive Zoning Plan.

III. BACKGROUND INFORMATION

A. Site Description

The Property contains a 3,380 square foot historic residence, known as the Hockley Grist Mill House, built around 1794. It is listed on the Historic Sites Inventory (HO-152). The Property is in the Patapsco River 100-year floodplain and is relatively flat, with an elevation of approximately 30-feet in the southern corner and approximately 26-feet in the northern corner.

B. Vicinal Properties

North/northeast of the Property is Parcel 25, zoned M-2, and also owned by A.R. Levering, LLC. According to the State Department of Assessments of Taxation "SDAT" records for Parcel 25, it appears to be developed with a storage warehouse.

East/southeast is Parcel 72, zoned M-2, and owned by GIP 2017, LLC. According to SDAT records for Parcel 72, it appears to be developed with a transit warehouse.

All other surrounding properties to the north of Route 895 are zoned R-ED.

West of the Property is Levering Avenue.

C. Roads

The portions of Levering Avenue that adjoin the Property have approximately 25 feet of paving and are located within a 30-foot right-of-way.

There is no traffic volume data for this section of Levering Avenue.

D. Water and Sewer Service

The Property is in the Metropolitan District and the Planned Service Area.

E. General Plan

The Property is designated as an Established Communities place type on the *PlanHoward 2030* maps.

Levering Avenue is a Minor Collector.

F. Subdivision Review Committee

As required by Section 100.0.G.2.c. of the Zoning Regulations, this site plan was evaluated by the Subdivision Review Committee ("SRC") on May 21, 2020. The Department of Planning and Zoning Division of Land Development indicates that the development shown on the proposed site plan has the potential to comply with all technical requirements of the reviewing agencies in subsequent subdivision and site development plan stages of review, subject to the attached comments from review agencies.

IV. EVALUATIONS

A. Relation to the General Plan and the Zoning Regulations

The Property is within the Established Communities place type, as designated in the PlanHoward 2030 General Plan. Page 74 of Plan Howard 2030 states that Established Communities "consist of already established residential and commercial areas in the eastern portion of the County where limited growth is expected, primarily through infill development". While some M-2 zoning districts can be found within the County's Established Communities, most are located within the Targeted Growth and Revitalization Areas where residential and job growth is planned to expand; therefore, an M-2 (Manufacturing-Heavy) zoning district is not typical with this place type's purpose.

The property is listed on the Historic Sites Inventory (HO-152). Policy 4.10 in PlanHoward 2030 on page 41 calls to "[e]xpand existing programs to enhance historic preservation." Implementing Action b. seeks to "[s]trengthen historic preservation programs and laws both to prevent demolition and incentivize restoration and adaptive reuse." Office uses are appropriate and compatible uses within historic residential structures and to the extent this proposal allows for the restoration and adaptive reuse of the historic

home, it would be consistent with this policy.

Policy 3.7 and Implementing Action A (page 24) calls for the County to “secure better protection of environmental resources [streams, wetland, floodplains] within new developments” and to “evaluate the effectiveness of current regulations in protecting streams, wetlands, and floodplains.” This property is located within the 100 year floodplain and Sec. 16.115.c.1 of the County’s sub-division and land development regulations, Floodplain Preservation, states that “a person shall not store materials of any kind in a floodplain either temporarily or permanently. Accordingly, building materials and other debris shall not be stored or discarded in floodplains.” The site plan does not depict any outdoor storage or increase in impervious area.

The Petitioner asserts that the proposed rezoning from R-ED to M-2 for an office is in harmony with the following General Plan policies:

Policy 6.4 Implementing Action c.

“[e]stablish policies to protect and promote commercially and industrially zoned land for future job and business growth opportunities.”

Policy 5.5 Implementing Action d.

“[e]ncourage land assembly to prevent piecemeal redevelopment and facilitate projects that are integral to the County’s long-term development strategy.”

Policies 6.4 and 5.5 are intended for existing commercial and industrial zoned properties and encourage assemblage of land for large development projects. However, the proposal is for conversion of an existing residential building for a stand-alone office.

B. Evaluation of the Petition Concerning the Change Rule

To substantiate a change in character of the neighborhood, the petitioner must establish the “neighborhood” boundary and specify the changes that occurred after the comprehensive zoning that altered the character of the “neighborhood”.

The Petitioner stated that “there is no allegation of substantial change in the character of the neighborhood,” so DPZ did not evaluate the petition regarding the Change Rule.

C. Evaluation of the Petition Concerning the Mistake Rule

To substantiate a mistake in zoning, evidence must show that the Zoning Authority erred when it adopted the comprehensive zoning map.

The Petitioner asserts that climate change, the property’s location in the floodplain, and removal of a dam from the Patapsco River in 2018 have resulted in more frequent flooding since the 2013 Comprehensive Zoning; therefore, the property is not safe for residential use. The Petitioner suggests that the County Council may have considered rezoning the Property during the 2013 Comprehensive Zoning process if they had anticipated that the removal of two dams prior to 2013 would significantly change the flow of the Patapsco River in a way that would cause more frequent and severe future flooding on the Property. The Petitioner also claims that removal of the Bloede Dam, five years after the 2013 Comprehensive Zoning, contributes to the flooding of the property.

The Petitioner also claims that had the County Council anticipated that negative effects of climate change on the Property during the 2013 Comprehensive Zoning process and predicted that these changes would cause more frequent and severe future flooding on the Property, they may have considered rezoning the Property during the 2013 Comprehensive Zoning process to a use other than residential.

However, at the commencement of the 2013 Comprehensive Zoning, the property was located in the floodplain, zoned R-ED, designated Established Communities on the place type map of PlanHoward 2030, and contained a historic single-family dwelling.

D. Evaluation of Site Plan Documentation Factors in Section 100.G.2.d.

1. *The compatibility of the proposed development with the existing and potential land uses of the surrounding areas.*

The properties to the north/northwest and east/southeast are zoned M-2 and developed with warehouse uses. The Property is separated from other developed R-ED properties by Interstate US 895. Therefore, the proposed office is generally compatible with existing uses of the surrounding area.

2. *Protection of the environmental integrity of the subject property and adjoining areas in the location and design of site improvements.*

The existing building is a historic structure and the property is located within the floodplain. The DSP does not depict any site improvements such as additional building, outdoor storage, or impervious area. Therefore, the proposed site design, as shown on the DSP, is unlikely to adversely impact the environmental integrity of the Property.

3. *The availability of safe road access for the proposed development.*

Levering Avenue is a Minor Collector, which is an appropriate classification for the type and number of vehicles associated with an office. The property currently has two points access to Levering Avenue. One access point from the Property and one from the adjoining parcel located at Tax Map 32, Parcel 25. All existing access points will remain.

Both access points should be evaluated for adequate sight distance with the development plans. The subject property is located on the inside radius of a turn on Levering and may require a public sight distance easement to be located within its boundary to assure the horizontal sight lines may be maintained for the appropriate distances.

The State Highway Administration has no objection to the proposal as shown on the DSP for the Property.

4. *Compatibility of the proposed development with the policies and objectives of the Howard County General Plan.*

This criterion is evaluated in Section A- Relation to the General Plan and the Zoning Regulations.

E. Appropriateness of Zoning District

Residential

The R-ED (Residential – Environmental Development) District was “established to accommodate residential development at a density of two dwelling units per net acre in areas with a high proportion of sensitive environmental and/or historic resources. Protection of environmental and historic resources

is to be achieved by minimizing the amount of site disturbance and directing development to the most appropriate areas of a site, away from sensitive resources. To accomplish this, the regulations allow site planning flexibility and require that development proposals be evaluated in terms of their effectiveness in minimizing alteration of existing topography, vegetation and the landscape setting for historic structures.”

Considering the historic nature of the structure, the properties location in the floodplain, and General Plan policies, R-ED is an appropriate district to protect the sensitive environmental and historic resources.

Additionally, Historic Building Uses, which includes business and professional offices, is permitted in R-ED through the conditional use process. Therefore, a historic structure could be converted to an office through this process under the current zoning.

Non-residential

The M-2 (Manufacturing - Heavy) District was “established to permit a mix of manufacturing, warehousing, industrial and business uses with provisions for limited retail sales.”

In general, the M-2 district is not the most appropriate based on the historic nature of the structure, the property’s location in the floodplain, and General Plan policies. The M-2 district is typically reserved for heavy industrial uses that would not be appropriate near sensitive environmental areas. Furthermore, M-2 uses often require outdoor storage which is prohibited in the floodplain per Section 16.115.c.1 of the County’s Sub-division and Land Development regulations, which state that “a person shall not store materials of any kind in a floodplain either temporarily or permanently.

However, this rezoning request only allows what is depicted on the DSP, which does not show either heavy industrial uses or outdoor storage. An office use, as permitted in M-2, would be appropriate for a property located entirely within the floodplain and would be safer than a residential use. The Zoning Board may want to consider whether M-1 or a commercial business district is more appropriate than M-2.

Approved by:



Amy Gowan, Director

12/23/20
Date

Department of Planning and Zoning
Division of Land Development
COMMENTS

RE: ZB-1124M, A.R. Levering, LLC

The Department of Planning and Zoning, Division of Land Development has no objection to the proposal to rezoning 5481 Levering Avenue from R-ED to M-2 based on the following:

- The property is prone to flooding, making is unsafe for residential use.
- The properties immediately adjacent to the site are zoned M-2.
- There are no residential properties in the vicinity of the site that would be negatively impacted by the rezoning.
- Existing buildings are to remain, but no new buildings or improvements are proposed in the floodplain.
- SRC agencies have no objections to the proposal.



Howard County

Department of Planning and Zoning

Subject: Planning Board Case No: ZB1124M
Applicant: AR Levering, LLC
Petition: To change the current zoning of the subject property from R-ED (Residential: Environmental Development) zoning district to the M-2 (Manufacturing-Heavy) zoning district to permit office use in accordance with the Documented Site Plan.

To: Division of Zoning Administration and Enforcement
Department of Planning and Zoning

From: Development Engineering Division
Department of Planning and Zoning

Date: May 21, 2019

The Development Engineering Division has reviewed the above referenced petition and has no objection.

Based on an examination of the petition, we offer the following comments:

1. All improvements must comply with current Howard County design criteria.
2. An APFO Traffic Study shall be submitted with the proposed SDP.
3. Since there are no changes to the site stormwater management would not be required.
4. The entire site appears to be within the 100-year floodplain of the Patapsco River.

If you have any questions concerning this matter please contact me at extension 2350.



Chad Edmondson, P.E., Chief

CE/pmt

cc: James M. Irvin, Director, Department of Public Works
Thomas E. Butler, Department of Public Works
Reading File
File



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Voice/Relay

Amy Gowan, Director

FAX 410-313-3467

Subject: SRC Agenda
ZB 1124M –A.R. Levering, LLC

To: Department of Fire and Rescue Services
Environmental Health
Development Engineering Division
Division of Comprehensive and Community Planning
Division of Transportation – Dave Cookson
State Highway Division

From: ^{ds}
ac Anthony Cataldo, Chief
Division of Land Development

Date: May 6, 2020

The attached Zoning Board Petition **ZB 1124M** has been scheduled for the May 21, 2020 SRC meeting. This is a Site Plan Zoning Map Amendment to change the zoning of the subject property from **R-ED (Residential: Environmental Development)** to **M-2 (Manufacturing: Heavy)**. In accordance with Section 127.0.D.4 of the Zoning Regulations, the petition must be reviewed by the SRC to determine if the proposed development has the potential to comply with technical requirements without substantial changes.

A plan has been submitted in Pdox for your review. Please be ready to discuss any comments you may have at the May 21st SRC meeting.

Please attach all comments to the Agency Comment Folder in Pdox. If you have any questions, please contact me or JJ Hartner.

Attachment

NO COMMENT NOR OBJECTION.

D. SCOTT JEWELL MDOT SHA D-7



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Court House Drive

Ellicott City, Maryland 21043

410-313-2350

Voice/Relay

Amy Gowan, Director

FAX 410-313-3467

Memo Correction

Subject: General Plan Comments- ZB 1124 M, 5481 Levering Avenue, Elkridge, MD

To: Geoff Goins, Division Chief, Public Service and Zoning, Department of Planning and Zoning (DPZ)

From: Kristin O'Connor, Division Chief, Comprehensive and Community Planning, DPZ

Date: December 18, 2020 (Amended on January 6, 2021)

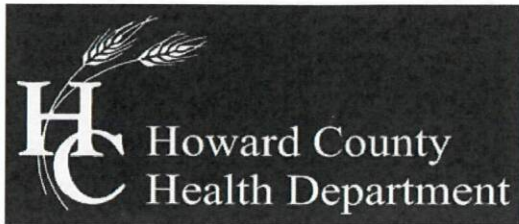
General Plan

DPZ's Division of Comprehensive and Community Planning finds that ZB 1124 M is not inconsistent with *PlanHoward 2030* policies and goals. The Petitioner requests a Zoning Map Amendment to rezone the Property from R-ED (Residential Environmental Development) to the M-2 (Manufacturing - Heavy) with a Documented Site Plan (DSP) for a 3,380 square foot office.

The site is located in a flood plain, just a short distance from the Thomas Viaduct (a national historic landmark built in the 1830s). The residential property is improved with one of the oldest homes in Howard County. The historic home, known as the Hockley Grist Mill House, was built around 1794.

Policy 4.10 in *PlanHoward 2030* on page 41 calls to [e]xpand on existing programs to enhance historic preservation." Implementing Action b. seeks to [s]trengthen historic preservation programs and laws both to prevent demolition and incentivize restoration and adaptive reuse." The reuse of the historic residence as an office without any additions or alterations to the exterior of the structure would be in harmony with this General Plan policy.

Since a re-zoning with a DSP restricts the future use to an office and will result in an adaptive re-use of a historic building, there does not appear to be an inconsistency with the General Plan.



Bureau of Environmental Health

8930 Stanford Boulevard, Columbia, MD 21045

Main: 410-313-2640 | Fax: 410-313-2648

TDD 410-313-2323 | Toll Free 1-866-313-6300

www.hchealth.org

Facebook: www.facebook.com/hocohealth

Twitter: [HowardCoHealthDep](https://twitter.com/HowardCoHealthDep)

Maura J. Rossman, M.D., Health Officer

MEMORANDUM

TO: Geoff Goins
Division of Zoning Administration and Public Service

FROM: Jeff Williams
Program Supervisor, Well & Septic Program
Bureau of Environmental Health

RE: **ZB-1124M**

DATE: May 18, 2020

The Health Department has reviewed the above referenced petition and has no comments.



HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING

3430 Court House Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Voice/Relay

Amy Gowan, Director

FAX 410-313-3467

Subject: Comments for ZB-1124M, 5481 Levering Avenue
To: Geoff Goins, Division Chief, Public Service and Zoning, Department of Planning and Zoning (DPZ)
From: Beth Burgess, Division Chief, Resource Conservation Division, DPZ
Date: December 18, 2020

The following are the Resource Conservation Division comments for the Petition to change an R-ED parcel at 5481 Levering Avenue to M-2.

This location is on the Howard County Historic Sites Inventory HO- #152. The inventory information can be found in its entirety on the Maryland Historic Sites Inventory site at https://data.howardcountymd.gov/scannedpdf/Historic_Sites/HO-152.pdf.

“Believed to be one of the oldest homes in Howard, County, this house stands as the remaining building of the Hockley Grist Mill begun by Caleb Dorsey, the iron master, who built Belmont and Rockburn in the early 1700’s.” The inventory says it has more than state-local historical significance but of “national significance since it is associated with the development of grain to replace the tobacco economy of Maryland.” “Architecturally this structure is an interesting composite of four buildings interestingly and harmoniously connected. The slave quarters and south wing were the first structures and the two mid sections later filled in the house.” A 1794 iron plaque is said to be on the building.

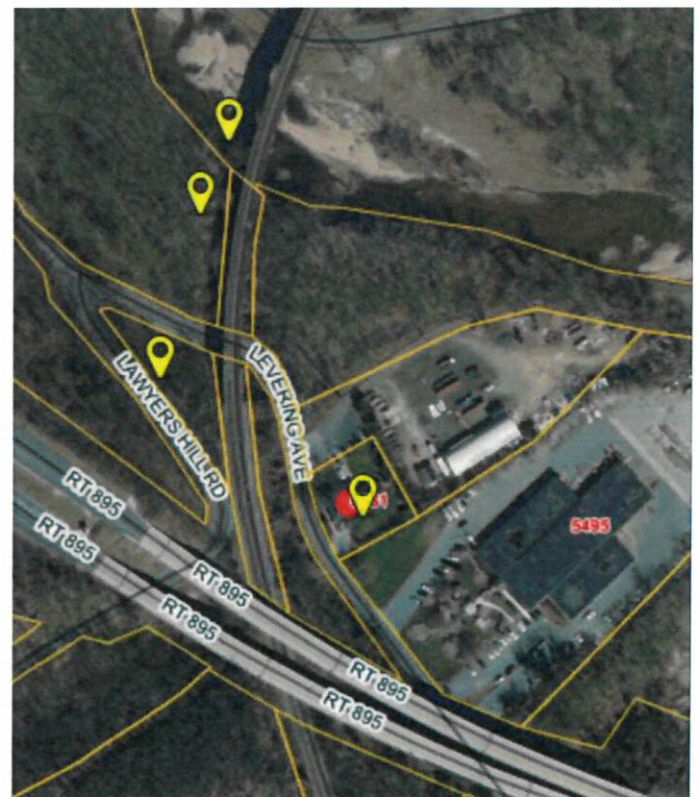


Photo from Inventory c. late 1970’s to early 1980’s



Photos from c.2017

The historic parcel is R-ED and surrounded by M-2 but is also in close proximity to the Patapsco River, the means to which the site floods when the river overflows. The parcel is in close proximity to the historic Thomas Viaduct, HO-#80 and other historic parcels and structures noted by the yellow pins on the first page.

The structures and parcel have historic significance but have been altered throughout the years.

The parcel sits within the 100 year floodplain where new construction would not be permitted. The floodplain prohibits the current residential use from being practical in light of life safety. It is noted in the inventory that the site was flooded in 1972 and 1975. In recent years it was impacted by the 2016 and 2018 floods. In 2017, the back end of the addition was removed and rebuilt due to flood damage.

Guidelines on Flood Adaptation for Rehabilitating Historic Buildings from the U.S. Department of the Interior National Park Service states “Rehabilitation is defined as the act or process of making possible a compatible use for a property through repair, alterations, and additions while preserving those portions or features which convey its historic, cultural, or architectural values.”

If this historic structure were to remain in place and convert to M-2 zoning, efforts should be made to rehabilitate the building to anticipate flooding. This could be done in numerous ways such as dry floodproofing, wet floodproofing, protecting utilities above the flood risk level to ensure the structure is protected and retains its outward historic character and features. The plan does not appear to alter the footprints of the buildings helping to maintain the long term preservation of its historic character.